



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

Case Reference : CHI/OOHB/LSC/2023/0018

Property : Flat 1, Gospel Hall, Langford Road,
Bristol BS13 7AR

Applicant : Marvin Medley

Representative : **None**

Respondent : F.T.Z Limited
[Company number 04010802](#)

Representative : Circle Residential Management Limited
Company number 5131646

Type of Application : Determination of liability to pay and
reasonableness of service charges Landlord
and Tenant Act 1985

Tribunal Member(s) : Judge H Lederman

Date of hearing : 2nd January 2024
Date of Decision: 26th January 2024

DECISION AND REASONS

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DECISION

The Tribunal determines:

1. The amounts payable as service charge for the following service charge years for Flat 1, Gospel Hall, Langford Road, Bristol BS13 7AR (“the property”) are as follows:

| Service charge year | Amount payable/credit | Interim or final demand |
|-------------------------|-----------------------|-------------------------|
| 01 01 2021- 31 12 2021 | 1344.65 | Final |
| 01 01 2022 - 31 12 2022 | 916.39 | Final |
| 01 01 2023 – 31 12 2023 | 42.75 | Interim |
| | | |

2. The amount payable by the Applicant as an administration charge for the letter before action on 23 12 2022 claimed as £204.00 [111] is Nil.
3. The amount payable by the Applicant as an administration charge for the letter before action on 02 02 2023 claimed as £240.00 [121] is Nil.
4. The Tribunal orders that none of the Respondent’s costs incurred or to be incurred in connection with these proceedings (CHI/ooHB/LSC/2023/0018) are relevant costs to be taken into account in determining the amount of service charge payable by the Applicant, by Claire Louise Parnall, Lucy Naomi Jaime or Jennifer Claire Boyce the other leaseholders of Gospel Hall Langford Road Bristol for the purpose of demanding service charge under section 20C of the Landlord and Tenant Act 1985 (“the 1985 Act”).
5. The Tribunal orders that none of the Respondent’s litigation costs incurred or to be incurred in connection with these proceedings (CHI/ooHB/LSC/2023/0018) are payable by the Applicant pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.
6. The Tribunal orders the Respondent is to reimburse the Applicant the application fee for this application in the sum of £100.00 to be paid by 12th February 2024.

REASONS

Introduction

1. The Applicant leaseholder of the property seeks a determination of his liability to pay and reasonableness of service charges claimed by the Respondent landlord for the service charge years 1st January 2021 to 31st December 2021,

1st January 2022 to 31st December 2022 and interim demand for service charges for the service charge year 1st January 2023 – 31st December 2023 pursuant to section 27A of the 1985 Act. The Applicant also asks the Tribunal to determine whether charges of £204.00 and £240.00 for “letter(s) before action” issued by the Respondent’s agent on 23rd December 2022 and 2nd February 2023 are payable.

2. In these reasons references to page numbers in [] are to the bundle consisting of 191 pages.
3. The property is one of 4 Flats in a converted church (“the building”). It is common ground each flat has two bedrooms. The Applicant says and it is not challenged each flat has an open plan front room and kitchen. Flats 1 and 2 have one main door access. Flats 3 and 4 have another main door access. Flats 1 and 3 are on the ground floor and Flat 2 and 4 are accessed by a separate staircase. Photographs of part of the exterior of the building are found at [33] - part of the witness statement of Mr Paine. The photographs and the date of grant of the Lease (and the leases of the other 3 flats) all give rise to the inference that the works of the conversion were completed recent, in the period not long before the service charge years in issue. There is no evidence in the Bundle or suggestion in the witness statements that the works of conversion were poorly carried out or that there were any outstanding issues relating to those works. The building and its curtilage are relatively small and there is no “garden” as such. Neither party has drawn attention to particular complications or factors which would take this out of the run of many small developments, even taking account the problems with one of the front doors.
4. Each flat is let on a 250 year lease from January 2016 (“ the Lease”). The Respondent became the registered proprietor of the freehold on 31st January 2019 [102]. Circle Residential Management Limited (“Circle”) were engaged to manage the building on behalf of the Respondent “since 2019” according to the witness statement of Martin Paine of 3rd July 2019 paragraph 1.4 [32]. The Tribunal has not been supplied with a letter of engagement or any contractual terms evidencing the terms of the relationship between Circle and the Respondent, or specification of the scope of the engagement of Circle by the Respondent. The leaseholders including the Applicant exercised a “right to manage” which became effective from a date in February 2023 – see paragraph 12 of the Applicant’s statement. The Respondent did not disagree with this.

Procedural background

5. This application was received on 30th January 2023. It took a little time to identify the Respondent as the landlord. Directions issued on 4th May 2023 recorded that the Tribunal Judge formed the view that this application was likely to be suitable for determination upon the papers alone without an oral hearing pursuant to rule 31 of the Tribunal Procedure Rules 2013 unless any party objected in writing to the Tribunal within 28 days of the date of receipt of the directions. Neither party objected.
6. The Tribunal Judge has reviewed the potential issues in the light of the hearing

bundle and considered that determination upon the papers remains appropriate, is proportionate to the sums in issue and is consistent with the overriding objective of determining applications of this kind efficiently and with the best use of resources of the parties and the Tribunal.

7. Those directions indicated the Tribunal would not carry out an inspection of the property but gave the parties permission to include photographs in the bundle. Permission to make an application for an external inspection was also given in those directions. No application for inspection was made. An inspection is not required.
8. It took some time to obtain a copy of the Lease of the property dated 12th August 2016 (“the Lease”). This is between Echo Trading (Bristol) Limited and the Applicant dated 12th August 2016 and was registered under Title BL144740. The official copy of the Applicant’s title to the property is at [97-98].
9. Within the hearing bundle there are 2 witness statements. One from the Applicant dated 15th June 2023 [27-30]. One from Martin Paine a director of Circle dated 3rd July 2023 [31-43]. There is a further witness statement of 3rd the Applicant of 26th October 2023 concerning the production of the Lease. The email correspondence in the bundle at pages [186-188] between January and July 2023 shows that the Respondent through Mr Paine at Circle took an active role in deciding what documents and Schedules of figures should be included in the Hearing Bundle.
10. In reaching its decision the Tribunal has taken into account the overriding objective in rule 6 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the 2013 Rules”) which in its relevant parts provides

“3.—(1) The overriding objective of these Rules is to enable the Tribunal to deal with cases fairly and justly.
(2) Dealing with a case fairly and justly includes—
(a) dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
(b) avoiding unnecessary formality and seeking flexibility in the proceedings;
(c) ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
(d) using any special expertise of the Tribunal effectively; and
(e) avoiding delay, so far as compatible with proper consideration of the issues.”

The Scope of the Tribunal’s jurisdiction in this application

11. The Tribunal is asked to determine the reasonableness and liability to pay service charges for the above years for the property by the Applicant. The tribunal does not have power to order any refund or reimbursement of service charges which may have been overpaid. The Tribunal has not seen any evidence or observations from any other leaseholder. This Decision should not

be treated as binding any other Leaseholder. The Tribunal has only considered those service charges and other charges which are mentioned in the application and the Applicant's witness statement. The Tribunal has not considered whether other charges made to the Applicant are payable.

12. The Tribunal is also asked to consider the reasonableness of the charges for letters before action described below.
13. The sums claimed for these letters are administration charges within the meaning of paragraph 1(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. An "administration charge" is defined as:

“(1)an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

.....

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.”

14. The Tribunal does not have power to consider a claim for repayment of ground rent which is referred to in paragraph 13 of the Applicant's witness statement. Ground rent is not a service charge or an administration charge. This does not mean the Tribunal disagrees or agrees with the Applicant. Parliament has not instructed the Tribunal to deal with disputes about ground rent and this issue will not be covered by this Decision.
15. The Tribunal has looked at the witness statement of the Applicant, the application form and the witness statement of Mr Paine. The Tribunal has considered whether individual service charge costs were reasonably incurred or services provide to reasonable standard under section 19 of the 1985 Act. It also has the power to decide whether sums are payable under section 27A of the 1985 Act – this can means whether a charge is authorised under the Lease or by another law. Under section 19(2) of the 1985 Act the Tribunal is also permitted to consider where service charge is payable before the relevant costs are incurred, whether the amount charged in advance is reasonable.

Provisions in the Lease relevant to service charges

16. Paragraph 4.2 of the Sixth Schedule to the Lease requires the Respondent landlord to send the leaseholder an estimate of service charges and an estimate of the service costs before or as soon as possible after the service charge year. Paragraph 4.3 of the Sixth Schedule to the Lease requires the landlord to send the leaseholder as soon as reasonably practicable after the end of the service charge year a certificate showing “service costs” and “service charge”.
17. Paragraph 6 of the Fourth Schedule to the Lease requires the leaseholder to pay to the landlord the estimated service charge for the year on the “rent payment date”. That date is defined in clause 1 as 1st January. Paragraph 2.3 of the Fourth Schedule provides for a crediting mechanism if the estimated service charge is

in excess of the actual service charge and for payment by the Leaseholder of the “difference” on demand if the actual service charge exceeds the estimated service charge. Relevant provisions in the Sixth Schedule are referred to below.

Structure of these reasons

18. The individual challenges made by the Applicant are considered below. Where reasons are given for individual challenges it should not be assumed those reasons only refer to or are relevant to the individual head of expenditure. In particular the Tribunal’s reasons relating to preparation of estimates, statements of expenditure, accounting for expenditure and communications with leaseholders concerning individual heads of expenditure are relevant to other heads of expenditure such as management and account fees.

Overall approach to Applicant’s challenges

19. Many of the challenges made by the Applicant do not distinguish between interim (“on account”) service charge demands and demands (invoices) for excess or balancing charge after the service charge year has ended. With the exception of the “on account” charges for 2021 and 2023, where relevant the Tribunal concentrates upon the final sums charged.

The “on account” sum claimed for Service charge year 1st January 2021 to 31st December 2021

20. The Applicant challenges the sum of £1094.71 claimed as an interim (“on account”) charge for this service charge year on 01 12 2020 at page [104] – see paragraph 7 of his statement at [28]. This is 25% of £4376.83 in the budget for that service charge year at [183]. However when the remainder of the concerns about charges in his statement are considered it is apparent that the burden of his complaints are about the works carried out and the actual expenditure (that is the sums charged after expenditure was incurred). The figure of £1094.71 was an estimate relating to future expenditure in the period 1st January 2021 to 31st December 2021. The Applicant has not produced evidence that persuades the Tribunal that the figures estimated in that Budget were outside the range of figures which a reasonable managing agent or landlord might charge in advance, with one exception – year end accounting. The Tribunal considers the Applicant’s challenges to the sums actually charged for the services provided in this service charge year separately.
21. The Tribunal does not accept that it was reasonable to charge in advance for “year end accounting” a fee of £307.20 budgeted at [183] for the reasons given below. Taking account of that deduction £787.11 was a reasonable sum to charge in advance payable as an “on account” sum.

Excess service charge for service charge year 2020 £264.38

22. The Applicant challenges the excess service charge of £264.38 in paragraph 7 of his statement at [28]. The service charge demand prepared by Circle dated 24th February 2021 confirms this relates to “excess service charge 31 December 2020”: see [105]. Mr Paine’s Scott schedule at [35] provides no comment in response to this challenge. This excess charge was also challenged in section 7A of the application form at item [6].

23. The evidence from Circle and the Respondent does not explain or demonstrate how £264.38 is calculated. No certificate or statement of expenditure for the service charge year ended 31st December 2020 complying with paragraph 4.5 of the Sixth Schedule to the Lease has been produced. There is no satisfactory evidence about the expenditure in the service charge year ending 31st December 2020 to show that an excess sum of £264.38 is payable as the “difference” between the “estimated service charge” and the “service charge” within paragraph 2.3 of the Fourth Schedule of the Lease.
24. In addition the Respondent has not shown that it has complied with paragraph 4.4 of the Sixth Schedule to the Lease by producing the accounts records and receipts giving rise to the claim to £264.38. The Applicant’s challenge to this figure amounts to a request for production of the relevant records. Mr Paine has said that Circle manage approximately 2500 leasehold interests: paragraph 2.8 of his statement at [37]. The Respondent has failed to show on the balance of probabilities that £264.38 is payable by the Applicant as an excess service charge for the 2020 service charge year. The Tribunal does not need to conclude that compliance with paragraphs 4.4 or 4.5 of the Sixth Schedule is a condition precedent to liability arising for an excess demand for the 2020 service charge year. The omission to provide the documents/receipts or the certificate is an indication that the excess charge is not due.

Service charge year 1st January 2021 to 31st December 2021 actual expenditure – the budget

25. The amounts claimed in the Budget for this service charge year are at [183]. This document describes itself as Budget for the period ending 31 12 2021. The index to the bundle describes this document as “amended”. The date and nature of the amendments are not specified. It is unclear whether the document at [183] was the original or the amended document. The Budget document is unsigned and undated. The Tribunal infers from the witness statement of Mr Paine that this Budget was prepared by Circle as there are references to the budgets in paragraphs 3.6 and 3.7. The author is not specified. Mr Paine does not comment on this budget in his evidence. His references to “budgeted expenditure” in paragraph 3 of his statement relate to the 2022 service charge year. The Tribunal takes the Budget for this service charge year at [183] as an important factor against which to assess the actual expenditure for 2021 in the context of guidance given about Budgets in the RICS Service Charge Residential Management Code (3rd edition) (“the Code”).

Gardening costs service charge years 2021, 2022 and 2023

26. The claim for “£510” for gardening was challenged by the Applicant in his witness statement in paragraph 7[28] “We have no communal garden area or drives which require gardening? Please explain reason for charge and proof of works undertaken”. The Applicant implicitly challenges the gardening cost for 2022 by challenging the entirety of the service charge cost at paragraph 11 of his statement.
27. The actual cost for gardening in the service charge year January 2021- 31st December 2021 was £595.00 according to the statement of service charges at [131]. The Tribunal treats this as a challenge to that actual cost. The Budget document at [183] under the column gardening is accompanied by a note which says “no contractor” and a figure for “cost/ occurrence” of £50.00.

However nothing is budgeted for gardening in this Budget. This is a surprising omission if this expenditure was contemplated.

28. It appears the Applicant's challenge is to the figure of £510.00 for gardening included in the statement of service charges for the year 1st January 2022 to 31st December 2022 at [162].
29. Mr Paine's response to this in paragraph 2.2 of his witness statement at [34] is "the copy invoices contained in the service charge accounts previously emailed to the Applicant on 26 Mat (sic) 2023 evidence the expenditure and detail the works undertaken. I can confirm that all of the contractor's invoices have been discharged". In the Schedule at [35] the following comment is added: "This equates to less than £10.00 per week". Circle refers to paragraphs 1(a) and 1(d) of part 1 of Schedule 7 of the Lease. Paragraph 1(a) of Schedule 7 refers to cleaning repairing maintaining decorating the retained parts. The retained parts are defined in clause 1.1 of the Lease very widely to include almost everything which is not demised (leased to the Applicant) including external surfaces. Paragraph 1(d) of Schedule 7 refers to cleaning repairing and replacing furniture fittings and equipment in the common parts. "Common parts" are defined in clause 1.1 of the Lease as follows:

"Common Parts: these are:

(a) the front door, entrance hall, passages, staircases and landings of the Building; and

(b) the external paths, yard, staircases, Refuse Area, Cycle Store and Meter Cupboard at the Building;

that are not part of the Property or the Flats and which are intended to be used by the tenants and occupiers of the Building"

30. The statement of service charges for the period ending 31 December 2021 dated 10th March 2022 at [131-132] gives the amount for gardening as £595.00. The £595.00 figure is reflected in the print out of Circle's internal accounting document at [133].
31. This discrepancy between the two sums might be explained by the fact that the invoice which appears to be the source of the £595.00 debit from D.R.U.M. Garden Home and Maintenance date 19th June 2021 at [150] says that it relates to "monthly into bi monthly visits to the area around the property clear and tidy of foliage weeds plant life and debris" for 4 visits in 2020 and 3 occasions on 25th January 2021, 27th April 2021 and 9th June 2021. The remainder of the cost said to have been incurred in 2021 appears to be covered by an invoice for £255.00 from the same contractor dated 3rd January 2022 at [176] for "bi monthly visits to the area around the property clear and tidy of foliage weeds plant life and debris" for visits said to have taken place in "August 2021, October 2021 and December 2021".
32. This is further explained in paragraph 2.7.4 of Mr Paine's witness statement as "bi-monthly attendance to remove vegetation and rubbish from communal areas." Mr Paine does not explain why this description for "gardening" does not feature in the budget for the 2021 service charge year at [183], in the budget for the 2022 service charge year at [184] or the budget for the 2023 service charge year at [185]. The Tribunal infers there is no satisfactory explanation.

33. The statement of service charge expenditure for 2021 at [131] dated 10th March 2022 contains a column for estimates for the period ending 31st December 2022. Against this head of expenditure the estimate is nil. Similarly the Budget for 2022 at [184] (ostensibly compiled on 27 08 2021) gives an estimate of nil for gardening. Against these nil estimates the costs said to have been incurred as actual expenditure on gardening are puzzling.
34. It is recorded in the print out produced by Circle at [164-165] that the same contractor continued to be paid £255.00 as at 3rd January 2022 and 15th August 2022. If Mr Paine's evidence about the work carried out by this contractor is accurate, this means that the budget estimates for 2021 and 2022 for "Gardening" were inaccurate and did not conform to the requirement of the 2016 RICS Code paragraph 7.3 as they did not explain the estimated costs to be incurred.
35. Despite the Tribunal's concerns about the inaccurate description and substandard estimating of these costs in the Budgets for 2021-2022 - 2023, in the statement of service charge at [131] the Tribunal finds on the balance of probabilities that costs of £595.00 were incurred for gardening from the invoices produced at [250] and [176] and £510 was incurred for this head of cost in the 2022 year. The sums incurred were within the reasonable band of costs which a landlord could incur, even if the service could have been obtained at a cheaper cost or a lower number of visits might have sufficed.

Cleaning – service charge years 2021 and 2022

36. The final sum claimed by Circle on behalf of the Respondent for cleaning is £477.00 for the 2021 year which reflects the invoices and payment listed on the internal accounting document at page [133] and the statement of service charge at [131].
37. The Applicant refers to the Budget document at [183] which says in relation to window cleaning "not undertaken" but nevertheless budgets for £180.00 and for a separate figure of £252.00 for unspecified cleaning. Whilst these may reflect a poorly drawn budget document, they do not by themselves lead to the conclusion that cleaning was not carried out or was not carried out to a reasonable standard.
38. The Applicant's challenge to the figure of £359.00 in paragraph 7 of his statement appears to relate to the sums claimed as the actual costs for cleaning in the 2022 service charge year as reflected in the statement of service charge at [162]. £359.00 is explained by the invoices and payments listed on the internal accounting document at page [164] which are at pages [167-182]. The Applicant's challenge to this figure is not made out.

Window cleaning and cleaning on account demand for service charge year 2023

39. Circle budgeted for 4 visits at £37.50 plus VAT per visit for window cleaning the 2023 service charge year – see [185]. The Applicant challenges this. It is implicit in his evidence that he had not been consulted about this sum. As before the author of the budget document is not named. The contractor used previously for 2022 (Pegasus) was not VAT registered : see the invoices at [169] and [179] for example. It would have been reasonable to budget for 4 visits over

the course of one year but by January 2023 it must have been obvious that the right to manage would take effect so only 2 visits could at most be reasonable to charge in advance. In the absence of a rational explanation from the Respondent it was not reasonable to charge in advance to engage a VAT registered contractor for work of this kind at this building. There does not appear to have been any attempt to consult with leaseholders about this advance charge. The Tribunal allows 2 visits at £37.50 each a total of £75.00 as an on account payment for 2023. Some of these payments will be for the period after the RTM company has taken over management. Similarly for ordinary cleaning for a building of this size the Respondent has failed to justify why it became appropriate to engage a VAT registered contractor when the contractors used previously were not so registered. The Tribunal allows 2 visits at £17.50 each £35.00 as an on account payment for 2023.

Other “on account” demands for 2023

40. The Tribunal reaches similar findings for the remainder of the Respondent’s “on account” service charge costs claimed for 2023. It was not reasonable to charge in advance for costs for a year on 1st January 2023 when the right to manage was due to take effect early in 2023. At most a 3 month period of charge would have been appropriate. The budgeted sums payable should be reduced or excluded accordingly as set out in the schedule attached. (The proposed property inspection charge is dealt with separately).

Health and Safety costs

41. The Applicant asks what costs were incurred in his statement paragraph 7 at [28] for a cost of £619.00. Mr Paine’s schedule at [35] refers to fire alarm and emergency lighting tests, call out and inspections. The figure of £619.08 is reflected in the service charge statement of expenditure for the service charge year 2022 dated 22nd March 2023 at [162]. This document would not have been available at the date this application was issued. The invoices are at [171-172] and [178-180]. These sums are payable under the Lease and reasonably incurred.

Insurance valuation

42. The figure of £133.06 is included the statement of service charge expenditure for year ended 31st December 2022 at [162] (“survey and valuation fees”). The Applicant challenged this in paragraph 7 of his statement asking for evidence and documentation. Mr Paine’s response on behalf of the Respondent in the schedule at page [35] says there is an “insurance revaluation”. He refers to paragraph 1(b) of part 2 to the 7th Schedule to the Lease. Circle’s accounting print out at [164] refers to a payment for this sums on 23 February 2022. The only document of that date is an invoice from Circle to the Respondent which includes a sum of £133.06 for “insurance valuation”. In the absence of any evidence showing that such a valuation was required, the Tribunal is not satisfied that any valuation which was carried out was “reasonably and properly carried out” by Circle as managing agents or by any other person within the meaning of paragraph 1(b) of part 2 to the 7th Schedule to the Lease. There is no evidence that such a valuation was necessary or appropriate in February 2022 or that the person who carried out that exercise had any relevant qualifications or expertise. If such a valuation was carried out within the meaning of paragraph 1(b) of part 2 to the 7th Schedule to the Lease, the

cost was not reasonably incurred as it was not carried out by an appropriately qualified individual or entity. The Respondent did not produce the valuation for the Tribunal to consider. This cost is not payable.

Fire safety equipment 2022

43. The sum of £265.82 was included in the statement of expenditure for the year ended 31 12 2022. The invoice for this work (call out and replacement of battery) is at [175]. This sum was reasonably incurred and is payable.

Property Inspection – 2023 service charge year £475.00 plus VAT

44. The figure appears in the 2023 budget at [185] and is challenged by the Applicant. Mr Paine says that 4 inspections have been budgeted for, to comply with the Building Safety Act 2022 (“the 2022 Act”): see paragraph 3.8 of his statement at [39]. The Tribunal is troubled by the failure to explain this “on account” charge. There is no explanation of why a 2 storey building of this kind should require specific inspections to comply with the 2022 Act. The budget itself only refers to one inspection, although this may be a clerical error. No explanation is given as to who should carry out that inspection or the scope of their instruction or expertise. In the absence of further explanation the Tribunal does not find it was reasonable to charge this sum in advance of cost being incurred. It is not payable.

Management fees charged by Circle

45. The budget for 2021 at [183] gives a figure of £1069.63 (inclusive of VAT) for management fees for this service charge year for the whole building. This works at £267.40 per unit – see also the statement of expenditure signed on 10 March 2022 at [132-133]. The Tribunal accepts that this figure is within the range of reasonable management fees for a property of this size in 2021.
46. The Applicant challenges the management fee of £3599.99 included in the annual statement of service charge expenditure for 31st December 2022 prepared on 22nd March 2023 at [162] (The Applicant mistakenly categorises this as a charge for the 2021 year in paragraph 8 of his statement but the challenge is clear).
47. Mr Paine accepts the figure of £3559.99 was “erroneous” in his schedule at [35] and claims a figure of £1464.00 (being £305.00 plus VAT per unit). The Schedule actually says £350 per unit, but the Tribunal takes this as a claim to £305.00 per unit as the 2022 budget document at [184] claimed £305 per unit. This was not just an accounting error. The internal accounting document at page [165] appears to show that Circle paid itself a total of £3599.99 from service charge funds and an invoice for that sum (and other amounts) was rendered to the Respondent on 31st December 2022 [156]. Mr Paine does not comment on this. On any view this accounting error was substandard management. If there was a payment of that sum to Circle, any overpayment needs to be made to the service charge fund. The absence of an explanation by Circle or the Respondent for these errors or attempts to notify the lessees of these errors is further evidence of management below the standards expected by the Code.
48. It is also relevant to consider the Applicant’s complaint that the interim

demand for the 2022 service charge year of £1730.60 (at [108]) was unreasonably high compared with the 2021 service charge year of £1094.71 at [104]. Mr Paine provides an explanation for the 2022 service charges year at paragraphs 3.2 – 3.11 [38-39]. He does not provide any explanation for the increase. The most likely explanation can be derived from the column for estimates on the statement of service charges for 2021 at [131] from which the £1730.60 is derived – a quarter of £6922.40. The author of that document took the repairs to the front door incurred in the 2021 service charge years at £2887.00 and assumed that those repairs would be repeated in 2022 with an uplift – without any reasoned or expressed basis for such an assumption. As the Applicant was in financial difficulties during 2021 as he had a payment plan the increase would have caused him additional financial pressure. Whilst some increase in the budget or interim demand could be expected, there is no evidence that the Applicant or other leaseholders were consulted about this or given any explanation. The absence of such communication or consultation is not consistent with the recommendations in the foreword to the 3rd edition of the Code which provide:

“In incurring costs in the provision of services, the managing agent is spending other people’s money and must demonstrate competence, objectivity and transparency in dealing with client money including service charge monies. *Communication and consultation between managing agents and leaseholders should be timely and regular to encourage and promote good working relationships and understanding with regard to the provision, relevance, cost and quality of services*

Transparency is essential to achieving good communication. By being transparent in the accounts, the explanatory notes, policies and day-to-day management, the managing agent will prevent disputes. Prompt notification of material variances to plans or forecasts ensures better relationships between landlord, managing agent and leaseholder” (emphasis added)

49. The “on account” charge for management for 2023 was £330.00 per unit plus VAT: see [185]. This sum is not outside the range of reasonable charges for a building of this size. However the failure to discover the error in management charges paid to Circle on 31 12 2022, and to correct the error in Circle’s internal accounting document dated 15th February 2023 at [164-165] or notify the Leaseholders about the error are departures from the standards of transparency and efficiency expected by the Code. These omissions are all the more serious as Circle charged an “accounting fee” on 31 12 2022 of £386.60 for year end accounting: see the invoice of that date at [166] and the accounting entry at [164].
50. Taking the failures relating to budgeting and accounting for each service charge year in issue in the round and all the circumstances the Tribunal finds that for each year the management service provided was not of a reasonable standard. For the 2021 service charge year the failures of budgeting mean only 80% of the management fee is payable as reasonably incurred. For the 2022 year the failures of management mean only 50% of the budgeted fee was payable. For the “on account” charge for 2023 only 25% of the budgeted fee

was payable.

Accounting fee charged by Circle

51. The Applicant does not challenge this cost separately but raises a general challenge to the sums demanded for 2021 and 2022 and in the “on account” demand for 2023 which includes Circle’s fee for this item for each of those service charge years. Mr Paine’s witness statement in paragraphs 2.71 and 3.12 supports this charge by reference to paragraph 7.13 of the Second edition of the Code: see [36] and [40]. This has been superseded by the 3rd edition but paragraph 7.13 remains the same. The “Scott” Schedules incorporated into his statement additionally refer to paragraph 7.10 of the 2nd edition of the Code, the relevant parts of which provide as follows:

“7.10 Accounting for service charges

An annual statement should be issued to leaseholders following the end of each service charge period, giving a summary of the costs and expenditure incurred and a statement of any balance due to either party to the lease. It is also recommended that explanatory notes are included. The accounts should be transparent and reflect all of expenditure in respect of the account period.

Many leases set out the procedures regarding preparation of the annual statement and often require for it to be certified by the landlord’s surveyor, managing agent and sometimes the landlord’s accountant. In addition, certain leases might also require the statement to be audited. It is essential that contractual requirements in the lease are followed. Compliance with the requirements and procedures set down in the lease may be a condition precedent. You should therefore ensure that service charge statements are issued strictly in accordance with the procedures and requirements as set down under the terms of the lease.”

52. Mr Paine seeks to justify this accounting charge by reference to paragraph 1(b) of part 2 to the Schedule 7 to the Lease – see the “Scott” Schedule at [35]. The second schedule at [38] (presumably for the 2022 service charge year although this is not explicit) contains no reference to a Lease provision to support this fee.
53. The leaseholder is required to pay the service charge in accordance with Schedule 4. Service charge is defined as the leaseholder’s proportion of the service costs. “Service costs” are defined in part 1 of Schedule 7 to the Lease. Paragraph 1(a)(i) of the 7th Schedule defines “service costs” as the total of “all of the costs reasonably and properly incurred or reasonably and properly estimated by the Landlord to be incurred of providing “the services” which are defined in part 1 of Schedule 7. Part 1 of Schedule 7 lists services which mainly relate to cleaning maintenance and decoration.
54. Paragraph 1(b) of part 2 to the Schedule 7 to the Lease defines “service costs” which can be charged to service charge as:

“(b) the costs, fees and disbursements reasonably and properly incurred of:

- (i) managing agents employed by the Landlord for the carrying out and provision at the Services or, where managing agents are not employed, a management fee for the same;
- (ii) accountants employed by the Landlord to prepare and audit the service charge accounts: and
- (iii) any other person reasonably and properly retained by the Landlord to act on behalf of the Landlord in connection with the Building or the provision of Services.”

55. It is not clear which part(s) of paragraph 1(b) Mr Paine relies upon to support the charge for an account fee. Paragraphs 3.12.2 and 2.7.1. of his statement contain the following comments in support of this charge:

“In the case of *Fernandez v Shanterton* the position of the Court was that costs incurred in seeking professional advice are likely to be considered reasonable and conversely failing to take the relevant advice is in fact evidence of unreasonableness.

It is the Respondent’s position that the accounting costs incurred are appropriate, proportionate and reasonable given the size and level of expenditure on this property”

56. *Fernandez* concerned whether legal costs of instructing solicitors to carry out works and provide advice were recoverable. That decision is of no assistance to the Tribunal in deciding whether the account fee is recoverable under the Lease. If Mr Paine is suggesting that Circle or the Respondent took external accounting or legal advice in respect of the service charge accounts, there is no evidence of this.
57. There is no evidence that Circle had any particular or professional expertise in preparing accounts. Circle’s invoices and communications do not suggest that expertise. At its highest the Respondent’s case appears to be a separate fee was or should be payable to Circle as managing agents for preparing year end service charge accounts and certifying the statement of service charge expenditure.
58. The relevant parts of paragraphs 3.4 and 3.5 of the Code say the following about managing agents’ charges:

“3.4 Annual fee
Subject to the terms of any written contract, for an annual fee (where the level of service provided will

normally have regard to the amount of the fee), a managing agent should normally carry out the following work:

- a) prepare invoices for and collect service charges from leaseholders
- b) instruct, with the client's consent, solicitors or debt recovery agents in the collection of unpaid service charges, subject to any statutory procedures that need to be followed. (Preparing for and attendance at courts/tribunals is not normally covered by the annual fee.)
- c) prepare and submit service charge statements and demand service charge contributions
- d) pay for general maintenance out of funds provided and ensure that service charges and all outgoing monies are used for the purposes specified under the lease and in accordance with legislation
- e) produce annual spending estimates/budgets to calculate service charges and reserves, as well as administering the funds
- f) produce and circulate service charge accounts that comply with TECH 03/11 and supply information to leaseholders and any residents' association, liaising with and providing information to accountants where required*
- g) administer building and other insurance if instructed and authorised, subject to Financial Conduct Authority (FCA) regulations
-
- l) deal reasonably and as promptly as possible with enquiries from leaseholders having regard to any requirements or constraints in the contract
- m) keep records on leases having regard to the data protection legislation
- n) keep clients informed of changes in legal requirements, including any statutory notices and other requirements of public authorities, and check compliance with lease terms; and
- o) advise on day-to-day management policy.

You should provide a basic summary of the terms and duties to leaseholders upon request.

3.5 Menu of charges

As part of the terms of engagement, you should have a 'menu' of charges for duties outside the scope of the annual fee. Examples include (this is not an exhaustive list):

- preparing statutory notices and dealing with consultations where qualifying works or qualifying long-term agreements are proposed
- preparing specifications, obtaining tenders and supervising substantial repairs of works; and
- attending courts and tribunal proceedings.

Some of these additional charges may be the responsibility of individual leaseholders, for example:

- considering leaseholders' applications for alterations
- advising on and dealing with assignments of leases, subletting and change of use;
- dealing with breaches of the lease, for example, late payment of service charges and
- giving information to prospective purchasers, vendors or their agents of the leasehold interests in the individual dwelling including pre-contract enquiries.

All charges should be proportionate to the time and amount of work involved and any service or provision of information should be delivered within a reasonable timeframe.

You should provide a basic summary of your charges for duties outside the scope of your annual fee to leaseholders upon request.”

(emphasis added)

59. The Respondent has not produced evidence to show that an “account fee” was agreed with Respondent or that it was reasonable to charge separately for such a fee in the light of the provision of the Code. No evidence is given by Mr Paine about when the budgets were supplied to the leaseholders. The Tribunal is not satisfied that a separate accounting fee was (a) agreed to be payable by the Respondent or (b) was reasonably or properly incurred within the meaning of paragraph 1(b) of part 2 to the Schedule 7 to the Lease. Separately, the Tribunal is not satisfied that such an account fee has been reasonably incurred within the meaning of section 19(2) of the 1985 Act having regard to the small size of the building, the number of leaseholders and lack of complexity of the site.
60. If the Tribunal had found that an account fee was authorised under the terms of the Lease, it would have disallowed that charge for the service charge years 2022, as the statements of expenditure at [162-163] certified as due management charges which were in excess of those agreed to be payable. No explanation has been provided for what Mr Paine now acknowledges was an “erroneous management fee” in his Schedule at page 35 and [162]. The service provided in respect of the account fee was not of a reasonable standard.

Excess charge payable for service charge year 2021

61. The Tribunal's findings mean that a total figure of £5378.61 was payable for the service charge year ending 31 12 2021. The Applicant's share of this was £1344.65. However he had been invoiced for £1094.71 at [104] and paid. This means that his excess charge payable for 2021 was £249.94. The figure of £380.24 invoiced on 10th March 2022 by Circle/ the Respondent at [109] is not payable.

Administration charges

62. The Applicant challenges charges added to his account for two documents each described by Circle's statements as a letter before action. The first is 23 12 2022 – £204.00 [111-120]. The second is dated 02 02 2023 – £240.00 [121

onwards] - see the Applicant's statement at page [29] (paragraph 11) and page [30] (paragraph 14). Mr Paine and Circle respond to the second of these challenges at paragraph 5 on page 42 (part of Mr Paine's statement) as follows:

"Administration Charges

5.1. The Lessor is seeking to recover Contractual costs incurred in relation to the service of a Small Claims Pre-action Protocol Letter dated 2nd February 2023 served on the Applicant by Circle due to the Applicant's failure to pay service charges as and when they fell due for payment under the terms of the lease; 1st January 2023

5.2. These costs are fixed scale charges applied by the managing agent to the freeholder, including VAT @ 20%, for the preparation and service of such notices

6. Reasonableness of the Administration Charges

6.1. The matter to be considered under Schedule 11 CLRA 2002 relating to the reasonableness, or otherwise, of the cost of Administration Charges,

6.2. The Respondent submits that the cost was reasonably incurred, so as to comply with the Small Claims Protocol and that being £170.00 + vat as set out in the test under CPR 44.5:

"(1) Subject to paragraphs (2) and (3), where the court assesses (whether by summary or detailed assessment) costs which are payable by the paying party to the receiving party under the terms of a contract, the costs payable under those terms are, unless the contract expressly provides otherwise, to be presumed to be costs which –

(a) have been reasonably incurred; and

(b) are reasonable in amount, and the court will assess them accordingly."

6.3. The cost have been incurred to comply with the Small Claims Protocol

6.4. I submit that the amount of the charge is reasonable as the Letter Before Action was prepared by a fee earner who's charge out rate is £170.00/hr and we allow 1 hour to draft and serve such documents"

63. There is no explicit response to the challenge to the challenge to the cost of the first letter before action.
64. Circle does not identify the contractual provision relied upon to support the charge. The letters assert that either service charges or ground rent were outstanding. Presumably Circle rely upon paragraph 7 of Schedule 4 of the Lease which provides that the Leaseholder covenanted as follows:

"COSTS

To pay on demand the costs and expenses of the Landlord (including any solicitors', surveyors' or other professionals' fees, costs and expenses and any VAT on them) reasonably and properly incurred by the Landlord

(both during and after the end of the Term) in connection with or in contemplation of any of the following:
(a) the enforcement of any of the Tenant Covenants;”

65. The first document described as a “letter before action” at [111] is standard form document claiming a total of £946.38 (including cost of the letter and the vague “costs for reporting on land registry”). It appears to be derived from a standard template. It does not appear to have been preceded by any other letter. It is not even clear that the letter on behalf of the Respondent rather than Circle.

66. There is a pre-action protocol for debt claims. The pre-action protocol for “small claims” referred to by Mr Paine has not been produced, if it exists. Neither letter before action complies with the paragraph in the debt protocol which provides:

“if regular instalments are currently being offered by or on behalf of the debtor, or are being paid, an explanation of why the offer is not acceptable and why a court claim is still being considered;”

67. No offer of alternative dispute resolution was made on behalf of the Respondent. This is a requirement of all pre-action protocols. No explanation is given why this omission was appropriate.

68. At the date of each letter before action liability for the sums claimed and the cost of the letter of claim had not been established or formally admitted. Circle would have been aware of the significance of this as they manage more than 2500 properties according to Mr Paine. The Applicant says that in 2022 he was under a payment plan with Circle: see paragraph 11 of his statement at [29]. This is borne out by the service charge statements in the bundle. The Respondent has not explained why it was appropriate to issue a letter before action when a payment plan was in place.

69. If either claim had proceeded to the County Court and was allocated to the small claims track, ordinarily no costs would be payable other than specified fixed costs, witness costs and other costs set out in paragraph 27.14 of the Civil Procedure Rules. In many cases where service charges were disputed, the claim would be transferred to the County Court and/or heard by the First tier Tribunal with the same Tribunal Judge sitting as a District Judge of the County Court at the same hearing. In neither event would cost of £170.00 per hour plus VAT be awarded for a letter before action to a claimant in the position of the Respondent even if the claim for arrears of service charge or alleged arrears of ground rent was successful.

70. The Respondent and Circle have not produced any confirmation of the terms of the Circle’s engagement in respect of charges for letters before action or evidence that this was made known to the leaseholders in advance. There is no evidence of the identity of the “fee earner” said to have charged £170.00 per hour plus VAT, their experience or qualifications. Paragraph 5.2 of Mr Paine’s statement refers to “fixed scale charges applied by the managing agent to the freeholder”. This is not evidence that £170.00 per hour plus VAT was a reasonable sum for a letter of this kind by a managing agent or that it was agreed on the open market.

71. The Tribunal is not satisfied that fees for either letter before action were (a) agreed at market rates as payable by the Respondent or (b) were reasonably or properly incurred within the meaning of paragraph 7 to the Schedule 4 to the Lease. Separately, the Tribunal is not satisfied that such a fee has been reasonably incurred having regard to the size of the alleged debt, the absence of evidence of attempt to resolve the debt and failure to comply with the pre action protocol concerning debts or the Practice Direction on Pre-action Conduct.
72. If, the Tribunal had found any administration fee was payable by the Applicant under paragraph 7 of Schedule 4 of the Lease, it would have reduced that fee to a maximum of £30.00 per letter, given the standard nature of the letter. No VAT would have been payable as the Respondent has not shown that VAT on such fees was irrecoverable.

Summary

73. The Tribunal's findings are summarised in the 3 Schedules attached.

Reimbursement of fees

74. The Applicant asks for reimbursement of fees. In the light of the outcome of this Decision and the Tribunal's findings it is just and equitable that such an order be made. The Applicant has achieved a significant amount of success.

Section 20C and paragraph 5A of Schedule 11 to the 2002 Act

75. The Respondent does not oppose orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the 2002 Act: see page [21] part of Mr Paine's statement.

Rights of appeal

76. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the London regional office.
77. The application for permission to appeal must arrive at the office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
78. If the application is not made within the 28 day time limit, the application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
79. The application for permission to appeal must identify the decision of the Tribunal to which it relates, give the date, the property and the case number; state the grounds of appeal; and state the result the party making the application is seeking.

Name: Tribunal Judge
H Lederman

Date: 26 January 2024