FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/00MC/LIS/2023/0027**
Property	**:**	**Flats 19 and 26 Projection West, Reading**
Applicants	**:**	**(1) Z Choudrey (2) R Fitzsimons**
Represented by	**:**	**In person**
Respondent	**:**	**Ground Rent Trading Ltd**
Represented by	**:**	**Mr Simon, solicitor and in-house counsel for Moreland Property Group Ltd**
Type of Application	**:**	**Application for the determination of the reasonableness and payability of service charges**
Tribunal Members	**:**	**Tribunal Judge Stephen Evans** **Mrs Sarah Redmond MRICS**
Date and venue of Hearing	**:**	**22 January 2025, by video**
Date of Decision	**:**	**28 February 2025**

DECISION

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DECISION

1. **The Tribunal determines that the First Applicant should be credited the following amounts by the Respondent:**

   (1) IRRP: £950
   (2) Window cleaning: £7.60
   (3) Common parts cleaning and gardening: £109.07
   (4) Fire alarms, extinguishers and fire safety: £23.60
   (5) Health & Safety: £19
   (6) Management Fees: £ 84.97
   (7) Sinking Fund: £19

2. **The Tribunal determines that the Second Applicant should be credited the following amounts by the Respondent:**

   (1) IRRP: £1674
   (2) Window cleaning: £22.32
   (3) Common parts cleaning and gardening: £160.16
   (4) Fire alarms, extinguishers and fire safety: £34.64
   (5) Health & Safety: £27.90
   (6) Management Fees: £ 124.77
   (7) Sinking Fund: £27.90

3. **The Tribunal determines that all other relevant costs challenged by the Applicants were reasonably incurred by the Respondent and reasonable in amount.**

4. **The Respondent shall reimburse the Applicants the application and hearing fees in the total of £300 within 28 days**

Introduction

1. The Tribunal is asked to determine the payability and reasonableness of relevant costs incurred and to be incurred by way of service charges pursuant to an Application made under s.27A of the Landlord and Tenant Act 1985.

Relevant law

2. The relevant statutory provisions are set out in Appendix 1 to this decision.

The Property and Parties

3. Projection West is one of 3 buildings on a development. The building contains 44 or 45 flats (the parties were not sure). There is a central courtyard shared with Projection East. There is a ramp and steps to the front entrance foyer of the building. There are 8 storeys.

4. The First Applicant is Mr Choudrey, who is the leasehold owner of flat 19, a one bedroom flat. The Second Applicant is Mr Fitzsimons, who owns the leasehold to flat 26, which contains 2 bedrooms. Neither Applicant occupies their respective flats.

5. The Respondent was registered with freehold title on 28 January 2010 and is the Applicants' landlord.

6. The Applicants bring this Application to determine the payability and reasonableness of Service Charges for the years ending 2019 to 2024 inclusive.

The Leases

7. The lease for flat 19 is dated 20 November 2006, and that for flat 26 is dated 16 February 2007.

8. Under the leases, which are identical save for the Tenant's proportion, the lessee is required to pay a Service Charge on 31 March and 30 September of each year, followed by an adjustment payment.

9. The following are the most pertinent parts of the leases, in our consideration:

10. The demise of the flat includes both sides of the glass in the windows.

11. The First Applicant's proportion is 1.9% and the Second Applicant's proportion is 2.79% of the Landlord's relevant costs.

12. The Service Charge Year is the year ending on 31 March in each year.

13. By clause 4.3 the Landlord is to observe the covenants in the Seventh Schedule, which includes obligations to carry out decorations (para 1), to keep in repair and good condition the structural parts (para 2.1), to keep the common parts in good and substantial repair and condition (para 2.2) and to insure (para 9.1). These paragraphs are set out in full below.

14. Schedule 6 contains the following Service Charge machinery (so far as relevant):

    "1. Service Charges shall be sums equal to the proportions… of the aggregate Annual Service Charge Provisions for each Service Charge Year computed in accordance with this Schedule

    2. The Annual Service Charge Provisions in respect of each Service Charge Year shall be computed as soon as reasonably practicable prior to commencement of each Service Charge Year and shall be computed in accordance with paragraph 3 of this Schedule.

    3. The Annual Service Charge Provisions shall consist of a sum comprising:

    3.1 the reasonable expenditure estimated as likely to be properly incurred in the relevant Service Charge Year by the Landlord for the purposes mentioned in the Seventh Schedule; together with

3.2 a reasonable amount as a reserve for or towards those of the matters mentioned in the Seventh Schedule as are likely to give rise to expenditure after such Service Charge Year being matters which are likely to arise either only once or at intervals of more than one year including (without prejudice to the generality of the foregoing) such matters as the painting and repair of the Structural Parts and the Common Parts or the repair of the Conduits; and

3.3 a reasonable sum to remunerate the Landlord and/or its managing agents (if any) for their administrative and management expenses in respect of the Building (including any managing agent's fee) such sum if challenged by any lessee to be referred for determination by an independent Chartered Accountant appointed on the application of the Landlord by the President of The Institute of Chartered Accountants in England and Wales acting as an expert; but

3.4 reduced by such amount (if any) as the Landlord at the date of computation intends to draw from reserve during the Service Charge Year

4.1 after the end of each Service Charge Year the Landlord shall determine the Service Charge Adjustment calculated as set out in the next following sub paragraph

4.2 the Service Charge Adjustments shall be the amount (if any) by which the estimates under paragraph 3.1 above shall have exceeded or fallen short of the actual expenditures in the relevant Service Charge Year in accordance with the audited accounts referred to in paragraph 6 of this Schedule

4.3 The Tenant shall be allowed in subsequence {sic} Service Charge estimates/demands or shall on demand pay as the case may be the proportions of the Service Charge Adjustments

…

6. As soon as reasonably practicable after the end of a Service Charge Year the Landlord shall arrange for the audited accounts of the Service Charges in respect of each Service Charge Year to be prepared and shall supply a copy to the Tenant…"

15. Schedule 7 contains the Landlord's obligations, including:

"1. As often as may in the opinion of the Landlord to be necessary (acting reasonably) to clean prepare and decorate in appropriate colours with good quality materials and in a workmanlike manner all the outside rendering wood and metal work of the Building usually decorated (except to the extent that the same is the responsibility of individual lessees)

2.1 to keep the Structural Parts in good and substantial repair and condition

2.2 to keep the Common Parts in good and substantial repair and condition and appropriately decorated cleaned lighted and (if applicable) carpeted

…

9.1 to keep the Building (but not the contents of any flat therein) insured against loss or damage by fire lightning aircraft explosion earthquake storm tempest bursting or overflowing of water tanks apparatus or pipes flood escape of water or oil riot malicious damage civil commotion theft or attempted theft falling trees and branches and aircraft and other aerial devices or articles dropped therefrom collision accidental breakage of glass and sanitary ware and accidental damage to underground services and loss of ground rent and service charges and insurance rent for a period of three (3) years from the date on which the Building shall have been destroyed or so damaged as to render it unfit for occupation or use and such other risks as the Landlord shall reasonably think fit for a sum equal to not less than the full reinstatement value thereof and all architect's surveyor's and other fees necessary in connection therewith in some insurance office of repute and through such agency as the Landlord shall in its discretion (but acting reasonably) decide… and to produce to the Tenant on request to the policy of insurance and the receipt for the current premium…

…

13. To carry out all repairs to any other part of the Building for which the Landlord is liable and supply such other services for the benefit of the Tenant and the lessees of the other flats in the Building and carry out such other repairs and such improvements works and additions and to defray such other reasonable and proper costs (including the modernisation or replacement of plant and machinery) as the Landlord shall reasonably consider necessary to maintain the Building as a good class residential Building or otherwise desirable in the interest of good estate management and in the general interest of the Tenant and the lessees of the other flats in the Building"

The Background to the dispute

16. On 25 February 2022 the Respondent wrote to all leaseholders enclosing a budget for the service charge year to come. There was a considerable increase in the budget figure on the previous year, not least because of the inclusion of a "Cladding Remedial Repairs Project Provision".

17. This led to demands 2 days later for large sums of money from the Applicants, running into several £1000s.

18. The Respondent then began to send the arrears letters to the Applicants.

19. On 16 September 2022 solicitors for Mr Fitzsimons wrote to the Respondent's managing agents, Moreland Estate Management ("Moreland"), alleging that the Second Applicant had reached out to Moreland several times setting out his concerns, and requesting certain information, including detail of the provisional service charge demand, the estimated cost of work for which a provisional sum of £500,000 was quoted for cladding work, a request for the

audited annual accounts for the service charge years ending 2021 and 2022, clarity with reference to the service charge accounts to "internal redecoration project provision" and what had been spent under this item to date.

20. There was a response from Mr Friedrich for the Respondent on 31 October 2022 which the Applicants did not consider adequate.

21. Budgets then followed for 2023, and on 28 March 2023 the Respondent sent arrears letters to the First Applicant, and it is assumed the Second Applicant.

22. On 20 July 2023 a firm of solicitors instructed on behalf of the Applicants as well as another leaseholder, wrote to the Respondent complaining of its inadequate response of 31 October 2022. The letter threatened an application under section 27A of the Landlord and Tenant Act 1985. The solicitors requested a copy of the EWS1 form and a copy of the underlying report, a summary of fire safety works and timetable, evidence of funding by way of grant, a schedule of works, information as to what had happened to the cladding fund, details of actual expenditure on fire works, and audited accounts for the years ending 21, 22 and 23.

23. A chaser letter was sent by the solicitors on 16 August 2023. On 23 August 2023 the Respondent wrote a letter to the solicitors, apologising for the delay in responding, and enclosing certain documents, including the EWS1 form and PAS 9980 report. Only limited information about the cladding works was provided in the letter, to this effect:

    "It is understood the works are to commence within the next 12 months and it would seem that the works are to be fully funded by Homes England. The provisional funds within the budget for the year ending 31 March 2023 were revised from £500,000 to £250,000 due to the change in legislation and the final sums actually incurred are to be qualified {sic} in the year end accounts which we are hopeful will be available for circulation within the next 4 weeks."

24. On 23 August 2023 the Applicants' solicitors responded to say that no accounts had been included within the letter.

25. On 13 September 2023 the solicitors wrote to the Respondent again, to say they had not been given a summary of the remedial works, and no proof of funding, nor many of the other matters which had been requested. There was no response from the Respondent, so far as the Tribunal is aware.

26. On 24 November 2023 and 26 November 2023 the Applicants made 3 applications to the Tribunal: for an order under section 20C of the Landlord and Tenant Act 1985, for an order under paragraph 5A of Schedule 11 para 2 of the Commonhold and Leasehold Reform Act 2002, and for a determination under section 27A of the 1985 Act.

27. On 22 December 2023 the accounts for the years ending 2021, 2022, and 2023 were provided to the Applicants by the Respondent. A budget was also provided for 2024.

28. The Tribunal gave case management directions initially on 4 September 2024.

29. On 27 September 2024 the Respondents served on the Applicants the service charge accounts for the year ending 2024.

30. On 4 November 2024 the Respondent sought a variation to the timetable of directions, by way of extension of time for its documents, which the Tribunal granted on 5 November 2024.

The Hearing

31. The Applicants represented themselves in person, and Mr Paul Simon represented the Respondent. He is in house counsel and solicitor for the Moreland Property Group Ltd.

32. The Tribunal established the layout of the building. It then heard representations from the Applicants and the Respondents as to each line in the Scott Schedule which had been completed by the parties.

33. The First Applicant, having obtained his leasehold interest on 11 October 2019, accepted that he was not able to apply for a determination of the reasonableness and payability of service charges in respect of that year (but which comprised only two challenges, to the internal redecoration project provision (IRRP) and to window cleaning).

The Issues

34. The issues as defined were:

(1) Whether the above costs were reasonably incurred/ to be incurred (and to a limited extent whether services were to a reasonable standard);

(2) Whether the above costs were reasonable in amount;

(3) Whether an order under s.20C of the Landlord and Tenant Act 1985 and/or paragraph 5A to Sch.11 to the Commonhold and Leasehold Reform Act 2002 should be made;

(4) Whether the Applicant should be reimbursed the application and hearing fees.

Determination

<u>IRPP (all years)</u>

35. For the years ending 2019 to 2024, the Respondent has demanded of the lessees of flat 19 and flat 26 a sum which is described in each demand as "internal redecoration project provision". For the lessee of flat 19 the demand has been a total of £190 every year, and for the Second Applicant it has been £279 pa.

36. The Applicants contend that the communal areas were last decorated in summer 2018; that no formal letter has been provided explaining what the IRPP is for, and for how long it will be demanded. Further, no section 20 notices or estimates have been issued that specifically relate to the IRPP, and it is not separately included within the service charge accounts. As mentioned above, an explanation of this item had been sought by the solicitors for the Applicants previously, but there has been no satisfactory response, if any. In addition, Mt Fitzsimons said he had contacted the accounts person for Moreland (Mr Mark Muster) for an explanation, but had not received a clear answer.

37. The Respondent contends that the sum is recoverable pursuant to clauses 2.1, 3.2, 6th schedule para 3.2, and 7th schedule para 2.2, because it is a contribution towards a fund reserved for future internal redecoration of the common parts. The Respondent alleges that the balance is shown on the last page of each year service charge accounts. Mr Simon called it a sinking fund for future internal redecoration. It now stands at some £36,000.

38. However, a perusal of the accounts for each year reveals only a "sinking fund account", a "income & expenditure account" and a "water charges provision account". There is no separate reference to the IRPP in the breakdown of each of those headings on the final page of the accounts. Indeed, the accounts from time to time reveal expenditure made from each of the first 2 accounts, which cannot have been made for internal redecoration, because none had taken place since 2018. By way of illustration, in the year ending 2022 a sum of £22,236 was spent out of the "sinking fund account" for fire alarms.

39. Mr Simon was unable to assist the Tribunal as to why these sums were continuing to be collected, and when internal decoration would next take place which would justify the accumulation of these sums. Nor could he explain to the Tribunal why the annual sum being debited for flat 19 was £190 and £279 for flat 26.

40. The Respondent has not adduced any evidence of a cyclical maintenance programme, nor of a one-off internal redecoration project in the near future.

41. In all these circumstances, we cannot be satisfied that these sums demanded can be treated as "a reasonable amount as a reserve for or towards those of the matters mentioned in the Seventh Schedule as are likely to give rise to expenditure after such Service Charge Year being matters which are likely to arise either only once or at intervals of more than one year…"

42. We therefore determine, on present evidence, that the cost in each of the relevant years was not reasonably incurred, nor reasonable in amount.

43. The First Applicant should be credited with a sum of £950 (£190 for each of the 5 years, 2020 to 2024 inclusive); and the Second Applicant credited £1674 (£279 for each of the 6 years, 2019 to 2024 inclusive).

Window Cleaning (2019 at £2600; 2020 at £1300)

44. The Applicants contend that, since the windows inside and out are demised to the lessees, the only expenditure which might be reasonably incurred by the landlord would be window cleaning of common parts. Further, the Applicants contend that a reasonable annual charge for quarterly cleaning of communal windows (the 8 landing windows, foyer front and back entrance/exit glazing) would be £400 including VAT, based on 1 hour per quarter. Moreover, the Second Applicant pointed to photographic evidence which showed that the windows were not being adequately cleaned (later years only).

45. The Respondent contends that the clauses of the lease cited in relation to the IRPP apply with equivalent force here; that £2600 was spent against a budgeted sum of £2700, and that the invoices support the sum claimed. The accounts for this year do show the sum of £2600.

46. A perusal of the invoices for 2019 does indeed reveal a quarterly sum of £650 being charged for window cleaning, but there is absolutely no detail in any of the invoices. Mr Simon could not fill in the gaps for us.

47. In 2020 the sum dropped to £1300 (2 x £650). Mr Simon could not explain this reduction. Again there is no detail in the invoices, as to hours spent, or hourly rate, or extent of cleaning. The accounts do show the sum of £1300.

48. In the Tribunal's determination, a sum was reasonably incurred for the cleaning of the single landing window on each storey and the foyer glazing. The lease permits the same, as the Respondent contends.

49. As to a reasonable amount, the Second Applicant has no alternative quotations, but we bear in mind *Enterprise Developments Ltd v Adam* [2020] UKUT 151 (LC), which provides:

> "28. Much has changed since the Court of Appeal's decision in *Yorkbrook v Batten* but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach."

50. In the instant case, the sums appear extremely high and unreasonable for what the Landlord was entitled to do under the lease. The Applicants have established a prima facie case. The Respondent has been unable to justify the sums claimed. Indeed, Mr Simon, to his credit, appeared to accept the position, and he said he had general authority to agree a reduction to £400 p.a.

51. We agree with the parties that a sum of £400 per annum for window cleaning is a reasonable sum (£100 per quarter). We make no additional reduction for lack of quality of service, because there is no evidence of complaint about the windows, nor photographic evidence, for the years ending 2019 and 2020.

52. Accordingly, the First Applicant should be credited with £7.60 (his proportion of 1.9% of £400 for the year 2019).

53. The Second Applicant should be credited with £22.32 (his proportion of 2.79% of £800 total, for the years 2019-2020).

Building and Terrorism Insurance (2020: £16,637.39; 2023- £25,450.98; 2024 - £30,350.99)

54. The Applicants withdrew their challenge to this item, having been provided with the documentation by the Respondent during the course of these proceedings.

Year End Deficit 2021 (£823.06 for flat 19; £1208.60 for flat 26)

55. The Applicants did not need to pursue their challenge to this item, the Respondent having indicated in its Scott Schedule response that it was not pursuing the deficits for this year, the Applicants having been refunded the sums concerned during the course of these proceedings (on or about 18 October 2024) .

Common Parts Cleaning & Gardening (£9255 for 2021; £9135 for 2022; £10130 for 2023; £9750 for 2024)

56. It was accepted by the Applicants that the Respondent could charge for this heading under the lease, and that the invoices in the bundle total the amounts sought for each year. However, once again, they contain no detail as to what work was carried out, the hours spent or the hourly rate.

57. The Applicants mounted a 3 pronged attack in relation to this item:

    (1) Low cleaning standards in communal areas; monthly cleaning of skirting boards and window cills not carried out - therefore there should be a 10% reduction; in this regard Mr Fitzsimons relied on monthly visits to his flat;

    (2) No annual pressure washing of the front steps, ramp and wall. A reduction of £360 for each year was sought, being a reasonable sum which the

Second Applicant would himself charge, based on his being a landscape gardener himself;

(3) £400 reduction for absent/inadequate cleaning of communal windows.

58. For the last 2 years being challenged the Applicants also pointed to graffiti on the front of the building brickwork, for which a reduction of £300 pa was sought.

59. Lastly, they pointed to the fact that the invoices bear the name Marylebone Property Maintenance.

60. At this point the Tribunal referred the parties to CAM/26UB/LSC/2020/0052 (Flat 2, 38 Lea Road) a decision dated 20 May 2021, in which Mr Simon had appeared before the Tribunal representing a different company to the Respondent, but it was again a case in which the Moreland Property Group was involved. The Tribunal had found:

> *32. In answer to questions from the Tribunal, the Respondent confirmed that these invoices were internal invoices initially, sent by Moreland Estate Property Management Limited. The Respondent alleged that the cleaning would have been carried out initially by an employee of the company. The remuneration would have been based on time spent, but Mr Simon did not have the information to justify the times.*
>
> *33. He did confirm that after 14 March 2018 the cleaning and gardening was carried out by another company called Marylebone Property Maintenance Limited. The Tribunal was initially concerned about the interrelationship between the managing agents/ the Respondent and this company. However, Mr Simon explained that this company did not share any directors with Moreland Estate Management, but they had at one stage been in common ownership. He confirmed that after 4 June 2019 (the date when Marylebone Property Maintenance Limited were dissolved) invoices continued to be sent in error in the name of that company, but the reality on the ground was that the same person who originally did the work continued to undertake it, but as a sole trader. The Respondent accepted that there should be in existence a contract with that person, but that it had not been disclosed. The Respondent could not say why the later invoices were not on separate headed notepaper. Mr Simon accepted there were system failings on the part of the agents in this regard.*

61. Mr Simon candidly accepted before us that the above facts and explanations applied equally to the instant case. It was the same contractor, and the same set up for invoices. However, Mr Simon informed us, owing to a literacy issue

the contractor could not provide the invoices himself, so Moreland produced them. Mr Simon was unable to assist the Tribunal as to the quality of cleaning. He suggested that if a reduction were to be made, it should not be by way of lump sums, but an overall percentage deduction. He suggested 10%.

62. The Tribunal inquired why Mr Fitzsimon had not complained about the quality of cleaning in writing, and he cited "reporting fatigue", i.e. that complaints historically to Moreland had not been met with sufficient action. He said he found dealing with Moreland very difficult.

63. We accept the Applicants' evidence concerning the ramp. This cleaning ought to have been undertaken, as the photos from 2023-2024 show built-up grime on the steps and ramp, a leaking overflow at the bottom of the steps which has clearly been in existence for some time, and foyer glazing with bird guano drips over all the panels, dated February 2023, March 2023, November 2023, January 2024 and September 2024. The graffiti has been in existence more recently. We generally accept the Applicants' evidence with regards to the internal cleaning. We accept Mr Fitzsimon's explanation for lack of complaint.

64. We are therefore satisfied there should be a reduction. We agree with the Respondent that it is better phrased as a percentage deduction, albeit that is more of a broad brush approach. In our determination, using that brush, the percentage should be 15%.

65. The total for the 4 years is £38,270. A 15% reduction gives the following credits to the lessees:

(1) First Applicant: £5740.50 @ 1.9% = £109.07;
(2) Second Applicant: £5740.50 @ 2.79% =£160.16.

<u>Common Parts Electricity Supply (2021 - £12400; 2022- £12000; 2023- £12000; 2024- £18,000)</u>

<u>Water Charges Provision Account (2021 - £13200; 2022- £13200; 2023- £13200; 2024- £13200)</u>

66. The parties agreed that these items could be taken together.

67. The Applicants complained that the actual cost was significantly more than budgeted, and they had received no electricity nor water bills.

68. In respect to the water bills, the Applicants pointed to the Respondent's own correspondence, in which it had suggested that there was would be a limitation bar for recovery of outstanding charges for water by any supplier.

69. In the Applicants' Reply, they suggest a reduction of the reserve to a sum of £50,000 from its current standing of £117,550.

70. The Respondent's Scott Schedule explains that these sums had been demanded in respect of electricity and water pursuant to paragraph 3.2 of the 6th Schedule, to be held in reserve, in the event that any bill is presented in the future for the supply of those utilities to the common parts; the sums are held on trust and recorded in the accounts under "water charges and electricity provision". The Respondent contends that this prudent approach is taken so that if in the future bills are presented for payment, there is money to pay some or all of what is demanded, meaning that the impact of a large bill is mitigated.

71. Mr Simon assisted us, so far as he could, with his oral representations. He did not know who the electricity supplier is. He could not say for how long these reserves would continue to be collected. He explained that there would appear to have been a construction issue starting from the commencement of the development of the estate, which includes a hotel complex. Since inception, nobody has been able to find the electricity or water meter serving the common parts in Projection West. Keeping the sums in reserve shields the leaseholders from a claim not only by the suppliers, but also by the hotel or any neighbouring property which has the relevant meter and has been paying under mistake for the Respondent's electricity. The last bill for water was in 2010. The Respondent had made this decision based on the experience of its managing agents as managers of multiple properties. Mr Simon suggested that the sums demanded were based on Moreland's experience of what similar buildings pay, but he could not explain the dramatic increase in electricity provision in 2024. He accepted the Respondent may now have the possibility of a potential limitation defence He said that, as this is a commercial supply, there might not be any protection against so-called back-billing.

72. Mr Simon accepted the Respondent may now have the possibility of a potential limitation defence; and that the limitation period both in contract and restitution for a claim brought by a supplier or a neighbouring property is 6 years, although he suggested that a later date of knowledge might be relevant as to when the cause of action accrued.

73. We note that, as a general principle, the limitation period for a claim in unjust enrichment is 6 years from the date of accrual of the cause of action. That general rule, however, is varied by section 32(1)(c) of the Limitation Act 1980, which provides 2 alternative triggers for the commencement of the limitation period: (1) the date of actual knowledge of a mistake, and (2) the date of constructive knowledge of a mistake.

74. In *BAT Industries Plc & Ors v Inland Revenue & Anor* [2024] EWHC 195 (Ch), the High Court confirmed that the question is whether the mistake "*could*" with reasonable diligence have been discovered rather than whether it "*should*" have been. Claimants are required to show that they could not have discovered their mistake earlier than the date they put forward without taking

exceptional measures that they could not reasonably have been expected to take.

75. So far, no approach has been made to the Respondent since 2010 by any prospective claimant, whether supplier or neighbour. A claimant would have to leap the hurdle placed in front of it by the *BAT* case. There is much less of a risk with regards to any claim, if brought now, and certainly any claim reaching back before January 2019. By March 2019 there was already a provision for water of £10,350. There was none for electricity.

76. Given that it is still possible for a neighbouring property or a supplier to be able to bring a claim charges going back to 2019, the Tribunal, albeit with reluctance, is not inclined to determine that these reserve fund charges for the years ending 2019 to 2024 were unreasonably incurred or unreasonable in amount. We recommend that the sinking fund should stay at the level at which it stands currently, at £117,000. This will provide 6 years' protection in respect of potential electricity and water charges by third parties in the approximate sum of £10,000 per annum per utility.

77. Although the Tribunal cannot determine the position in relation to future service charges within this instant application, if the same issue were to return to the Tribunal in the future, and if the evidence were to be the same in relation to these service charges, whether estimated or actual, for 2025 or any year afterwards, the Respondent would be likely to be hard-pressed to justify any further contributions towards these reserve costs. We hope that the Respondent will now reconsider its budget with regard to any reserves for common parts electricity and water in 2025.

<u>Emergency Lighting (2021 - £6908.40, 2023 -£2747.51)</u>

78. The Respondent having provided a breakdown of costs under this head, the Applicants no longer pursued a challenge to this item.

<u>Fire alarms, extinguishers and fire safety (2021- £11,232.50, 2022- £2823.56)</u>

79. For 2021, the Applicants' written complaint was that the actual cost was significantly more than budgeted and that they did not have a breakdown of the costs for this item; nor were they given an explanation of the sum of £672 paid to the managing agent. During the hearing the Applicants clarified that they sought only to challenge the £672.

80. For 2022, the Applicants merely sought a breakdown of the costs. The challenge for 2023 was withdrawn.

81. In relation to the £672 in 2021, the Respondent relied on an invoice on page 197 of the bundle. The total sum is broken down into: checking of emergency

lights and log monthly (£60), checking the fire alarm weekly (£390) and checking the smoke events monthly (£222).

82. Mr Simon was unable to the assist the Tribunal as to what was included in the fire safety checks performed by RES Fire Protection Engineers, the invoices for which were also in the bundle.

83. The Tribunal would expect the monthly smoke vents checks to be included in RES's services. Accordingly, although we are satisfied the costs of the managing agents' weekly checks were reasonably incurred, we do not consider their monthly checks, totalling £222, were.

84. We therefore determine that a reasonable cost for the invoice is £450. This reduction gives the following credits to the lessees:

    First Applicant: £222 @ 1.9% = £4.22;

    Second Applicant: £222 @ 2.79% =£6.19.

85. As to 2022, the Tribunal had before it invoices totalling £1803.56 only (pages 227-242). Mr Simon could not justify the £1020 allegedly spent above that.

86. We consider that fire safety works were reasonably incurred in 2022, but only at a cost of £1803.56, given the missing invoices. The reduction of £1020 gives the following credits to the lessees:

    First Applicant: £1020 @ 1.9% = £19.38;

    Second Applicant: £1020 @ 2.79% =£28.45.

<u>Health & Safety (2021 -£4131; 2022 - £1100; 2023 - £4795)</u>

87. The Respondent having provided a breakdown of costs under this head for 2021, the Applicants no longer pursued a challenge for that year.

88. As for 2022, the Tribunal was provided with an invoice for £600 for a health, safety and fire risk assessment by 4Site Consulting.

89. The remaining £500 (ditto for 2023) is for an unnamed person of Moreland Estate Management acting as a "responsible person" for the purposes of the Regulatory Reform (Fire Safety) Order 2005. A letter dated 4 November 2011, unsigned, was relied on by the Respondent. Mr Simon was able to explain that, as in the previous Tribunal case in 2021 mentioned above, the relevant person was Mr Freilich. He was not able to explain what duties were in fact carried out by him, and why the sum was £500.

90. Although there was no 4Site report provided in the bundle, the Tribunal is prepared to allow the £600 claimed, on the basis of the invoice.

91. As to the Managing Agents' letter for 2022 and 2023, the Tribunal is not satisfied, without any proper evidence, that this sum was reasonably incurred or reasonable in amount. The reduction we make of £500 gives the following credits to the lessees for each year:

    First Applicant: £500 @ 1.9% = £9.50 (total £19);

    Second Applicant: £500 @ 2.79% =£13.95 (total £27.90).

Management Fees (2021 - £10,809; 2022 - £10,809; 2023- £11,133; 2024 - £11,967)

92. The Applicants' complaint was that the quality of management was not good enough; and their own experience shows that the Respondent has not fully engaged with leaseholders, including a failure to provide information or year end accounts until very recently, poor engagement in correspondence, and that they had permitted cleaning standards to decline. They therefore sought a reduction of 20% on this yearly cost.

93. The Respondent contended that the fee, which equates to an average of £240 per unit for a higher risk building of this nature, would generally be a reasonable amount. Mr Simon contended that these were only 2 leaseholders complaining. He said the Respondents would be willing to offer a 10% reduction on these lessees' pro rata contribution to the management fee.

94. The Tribunal agrees with the Applicants that the quality of services has not been to a standard to expected in a building which is properly managed. Where the quality of the services delivered by the agents themselves or others and/or the condition of the development is below normal expectations, the Upper Tribunal has accepted this as being indicative of the management function not being executed to a reasonable standard. In *Kullar and Prior Place Residents Association v Kingsoak Homes Ltd* [2013] UKUT (LC) the management agent's fees were reduced by 10% on account of the problems experienced in the block.

95. We agree that there should be a 10% reduction to the lessees, following the *Kullar* case as an example.

96. The credit for 2021 is therefore: 10% of £10809 = 1,080.90

    First Applicant: £1080.90 @ 1.9% =£20.54

    Second Applicant: £1080.90 @ 2.79% =£30.16

97. The credit for 2022 is: 10% of £10809 = 1,080.90

    First Applicant: £1080.90 @ 1.9% = £20.54;

    Second Applicant: £1080.90 @ 2.79% =£30.16.

98. The credit for 2023 is: 10% of £11,133 = £1,113.30

First Applicant:	£1111.33 @ 1.9% = £21.15
Second Applicant:	£1111.33 @ 2.79% =£31.06

99. The credit for 2024 is: 10% of £11,967= £1,196.70

First Applicant:	£1119.67 @ 1.9% = £22.74
Second Applicant:	£1119.67 @ 2.79% =£33.39

Professional Fees (2021 - £8965)

100. The Respondent having provided a breakdown of costs under this head, the Applicants no longer pursued a challenge to this item.

Fire Safety (2024- £7168.80)

101. The Respondent having provided a breakdown of costs under this head, the Applicants no longer pursued a challenge to this item.

General Repairs (2024- £1573)

102. The Respondent having provided a breakdown of costs under this head, the Applicants no longer pursued a challenge to this item.

Sinking Fund (2024 - £1000)

103. The Applicant's complaint is that by 2024 there was already a balance of £25,730 carried forward from 2023 in relation to what is described in the accounts as "sinking fund account", and from the accounts recently supplied for 2024, that sum had increased to £36,736. Another £1000 was simply not justified.

104. Mr Simon explained that there was a cladding project underway; Building Safety Regulator approval had been sought, and that works were hoped to start and carry on until mid 2026. This £1000 worked out as a charge of £22.73 per leaseholder. However, Mr Simon agreed that this was an educated guess as to reason for the existence of the sum in the accounts, and was not what was stated in the landlord's comments in the Scott Schedule.

105. The Tribunal is not satisfied that this was a sum which was reasonably incurred or reasonable in amount. The lease terms require specific circumstances for the collection of such sums, which are not satisfied here. We agree that there was a substantial amount already in the sinking fund. We disallow the sum in full. That results in a credit to the lessees as follows:

First Applicant:	£1000 @ 1.9% = £19;
Second Applicant:	£1000 @ 2.79% =£27.90.

Section 20C/paragraph 5A

106. Mr Simon for the Respondent having indicated to the Tribunal that the Respondent would not seek to recover its costs in relation to these proceedings through the Applicants' service charges, nor by way of an administration charge from the Applicants, the Tribunal is not required to make an order under these provisions, given the express concession.

Conclusions

107. The Applicants have been generally successful. We consider the Respondent should reimburse them the application and hearing fees in the total of £300 within 28 days.

108. The Tribunal concludes by thanking the parties for the sensible and reasonable concessions which were made during the course of the hearing, and their concise submissions, which has made the Tribunal's task that much easier.

Judge:

S J Evans

Date:

28/2/25

ANNEX – RIGHTS OF APPEAL

1. 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 at the Regional Office which has been dealing with the case.

2. The Application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the Application.
3. If the Application is not made within the 28-day time limit, such Application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the Application for permission to appeal to proceed despite not being within the time limit.
4. The Application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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.

Appendix 1

Landlord and Tenant Act 1985

Section 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.

Section 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 provisions 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.

Section 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.