FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/LSC/2023/0174**
Property	**:**	**(1) Flat 2 Vertex Tower and** **(2) Flat 73 Cavatina Point** **Creekside West, London, SE8 3FE**
Applicants	**:**	**(1) Christopher Lee** **(2) Gemma Jones**
Respondents	**:**	**(1) London & Quadrant Housing Trust** **(2) Creekside Village West Limited**
Type of application	**:**	**Service Charges – section 27A Landlord and Tenant Act 1985**
Tribunal	**:**	**Judge Timothy Cowen** **Mr Oliver Dowty MSc MRICS**
Date of Decision	**:**	**12 May 2025**

DECISION

Decision of the tribunal

(1) The Tribunal determines that the services charges for the years 2020-2023 are payable as demanded.

(2) The Applicants' applications for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 are refused.

REASONS FOR THE DECISION

The Property

1. This application relates to Vertex Tower and Cavatina Point which are purpose-built blocks of flats within a larger development known as Creekside.

The Application

2. The First Applicant is the long leaseholder of Flat 2 Vertex Tower. The Second Applicant is the long leaseholder of Flat 73 Cavatina Point. They have applied to this Tribunal under section 27A of the Landlord and Tenant Act 1985 for a determination of his liability to pay service charges for the service charge years 2020 to 2023 They have also applied for orders as to costs under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

3. In fact, the application was commenced solely by the First Applicant, but the Second Applicant was added by order of Judge Jack on 19 September 2023. The overall effect is that the application is now brought jointly by the two of them.

4. The current freeholder of the Creekside development estate is Adriatic Land 5 Limited. The freeholder is not a party to these proceedings.

5. In 2010, a previous freeholder granted a headlease to the First Respondent ("L&Q"). The management company under the headlease is the Second Respondent ("Creekside"). Under the terms of the headlease L&Q is liable to pay service charges to Creekside.

The Hearing

6. The hearing was conducted face to face at Alfred Place over the course of 14 and 15 October 2024. Following the hearing, there were two further rounds of written submissions as a result of further issues which became apparent during the course of evidence and submissions.

The Issues

7. In the application form, the Applicants stated that they were challenging (almost) all of the items in the service charge bills for the years in question. The basis of the challenge was said to be that none of the items had been evidenced as having been carried out or paid. The application form also contains a long list of complaints about lack of communication relating to service charges. The application form seeks "a thorough evaluation of the reasonableness of each line item in our service charge estimates" and various other remedies which are not within the jurisdiction of this Tribunal.

8. The Applicants' statement of case identified a number of additional issues relating to service charges as a whole.

9. By the time this matter came to hearing, the number of issues had proliferated and there was considerable argument about which of the

issues raised by the Applicants should properly be considered by the Tribunal.

10. It was important to define the issues before starting to hear submissions and evidence otherwise the scope of the hearing would have been impossible for the Tribunal and the parties to manage. After hearing extensive argument from both sides, we decided that the following issues were relevant and within our jurisdiction and that it was appropriate for the Tribunal to consider them:

    (A) **THE ESTIMATED v ACTUAL ISSUE** – whether, as a matter of fact, the service charge invoices sent by L&Q to the Applicants related to estimated service charges or actual service charges.

    (B) **THE TRANSLATION ISSUE** – whether what is charged by Creekside to L&Q is accurately and appropriately passed on to the Applicants.

    (C) **THE PAYABILITY ISSUE** – whether to disallow any items charged on the grounds that they were not items properly payable as service charges.

    (D) **THE VALIDITY OF DEMANDS ISSUE**– whether the service charge demands served on the Applicants were invalid for failure to include certain breakdowns and certification.

    (E) **THE APPORTIONMENT ISSUE** – whether the apportionment is fair and reasonable and whether it has been accurately applied.

    (F) **THE MANAGEMENT FEE ISSUE** – whether the amount charged in respect of management fee was reasonable and payable.

    (G) **THE SECTION 20B ISSUE** – whether some or all of the service charge demands served on the Applicants are effectively statute barred under section 20B of the 1985 Act.

11. In addition to those issues, the Applicants also sought to raise a question concerning section 22 of the 1985 Act. We decided that we do not have jurisdiction to consider any issues arising under that section.

12. Furthermore, during the hearing, the Applicants clarified that they are not challenging the reasonableness of the quantum of individual items. Rather, they were challenging the payability and reasonableness of the total service charge bill overall for the relevant years based on the points of principle identified above. A large part of their case is that they have had no way of assessing the reasonableness of individual items because they lacked evidence of how the service charges were assessed. The

resolution of the issues in this decision will resolve at least part of that problem.

13. After hearing argument from both sides on how to define the issues, we communicated our decision to them that we had defined the issues as above. We then proceeded to hear evidence and submissions on the issues themselves.

14. Consideration of issues A and B above largely turn on the Tribunal making findings of fact about how the service charge mechanism is operated by the Respondents. A great deal of the evidence and submissions went towards those findings. Those findings of fact also impact in varying degrees on the rest of the issues. We will therefore start by setting out our findings of fact as to how the service charge mechanism operates as between the parties. We will then turn to make our decision on each of the issues as identified above.

How the Service Charge Mechanism Works

15. A great deal of the issues raised in this case derive from the fact that the Applicants pay service charges to L&Q, who in turn pay service charges to Creekside. L&Q incur very little expenditure themselves (other than paying service charges to Creekside). Creekside (who carries out most of the work and who effectively sets the level of service charges) has no direct service charge relationship with the Applicants.

16. It is therefore necessary to form a clear picture of how the service charges under the headleases work, before being able to understand the basis of the individual flat service charges which are the subject of this application.

17. What follows consists of our findings of fact about the operation of the service charge mechanisms. It is largely derived from the oral evidence of Ms Maffei for L&Q and Mr Gibb for Creekside, both of whom were extensively questioned by the Tribunal and cross examined by the Applicants, together with the documents referred to during their testimony.

The Headlease Service Charges

18. L&Q is the headlessee under two headleases of specified plots in Vertex Tower and Cavatina Point each for 125 year terms commencing on 1 January 2008. Creekside is the Management Company under the headleases. By clause 4(1)(ii) of the headleases, L&Q covenants to pay service charges to Creekside being (amongst other things) the cost of Creekside complying with its obligations under clause 5 of the headleases to maintain, insure and provide various other services at the estate.

19. Service charges under the headleases are payable by L&Q by way of defined Annual Contribution comprising various specified percentages of

the costs of maintaining various parts of the estate payable in 2 instalments: one on 1 January and the other on 1 July in each year. The service charge year under the headleases is a calendar year. The mechanism set out in clause 5(6) of the headleases requires Creekside to prepare an estimate before 31 December of each year estimating the service charge expenditure (and other specified sums, such as reserve fund payments) for the next calendar year. Audited accounts of actual expenditure are then required to be available for inspection by L&Q after the end of the year in question.

20. That is a description derived solely from reading the headleases themselves. The evidence showed (and we find as a fact) that the service charges as between L&Q and Creekside operated as follows.

21. In December of each year ("Year A" for the purposes of this explanation), Creekside works out its budget of estimated expenditure for the following calendar year (Year B). That estimate is the split into 2 instalments (after application of the relevant percentages to form the Annual Contribution) which are demanded from L&Q and payable by L&Q on 1 January and 1 July of Year C.

22. Therefore, as between Creekside and L&Q, those are estimated service charges. The evidence showed (and we find as a fact) that as at the date of the hearing, no accounts of actual expenditure had been produced by Creekside in respect of costs incurred in any of the service charge years which are the subject of this application.

23. Therefore, with limited exceptions, the only demands made on L&Q for the whole of the relevant period of this application were demands for estimated service charges.

24. The exception consists of what the Respondents called "ad hoc one-off costs". These are costs for work done on facilities which relate only to specific individual flats, such as a door entry intercom system which needs repair or replacement. Creekside carries out that work and passes on the actual cost to L&Q. But Creekside does not include those costs in its service charge accounts or service charge budgets, because Creekside regards them as payable by the individual flat owner concerned. We heard that L&Q takes a different view, regards those costs as communal and spreads them across all its flat leaseholders in each block as part of the service charges payable by flat owners to L&Q. These "ad hoc one-off costs" are the only element of the service charges payable by L&Q to Creekside which are actual costs rather than estimates.

25. This detailed description of how Creekside calculates and demands service charges from L&Q (which is not and cannot properly be the subject of any application to this Tribunal) is by way of background so that it is possible to understand how L&Q calculates service charges payable by the Applicants.

26. The important point to take away from this is that all of the service charges paid by L&Q to Creekside during the relevant service charge years 2020-2023 are estimates by Creekside of their expenditure etc. Creekside have never provided accounts of their actual expenditure for those years and have never calculated any balancing payment in respect of those years.

The Underlease Service Charges

27. We have seen a copy of the following relevant underleases (both of which were originally granted on a shared ownership bass):

    a. An underlease of Flat 2 Vertex Tower granted by L&Q to Janet Broonfield on 5 April 2012 for a term of 125 years less 35 days commencing on 1 January 2008, and subsequently assigned to the First Applicant.

    b. An underlease of Flat 73 Cavatina Point granted by L&Q to the Second Applicant on 30 September 2011 for a term of 125 years less 35 days commencing on 1 January 2008.

28. The service charge provisions of each of those underleases are in the same terms namely:

    a. By clause 7, the Applicants covenanted with L&Q "to pay the Service Charge during the Term by equal payments in advance".

    b. Under Schedule 9, "Service Charge" is defined as: "all sums due under the terms of the Superior Lease including but not limited to the Annual Contributions defined in the Superior Lease so far as all sums are attributable to the Premises as apportioned by the Landlord from time to time and including an appropriate proportion of the costs expended by the Landlord in complying with its obligations under the Superior Lease and providing any services not covered by or payable under the Superior Lease."

29. It will be noted that there is no apportionment percentage fixed by the underleases themselves. Under the terms of the underleases, the proportion payable by the Applicants is to be set "from time to time" by L&Q and the proportion of Annual Contribution (or other sums due under the headleases) passed on from Creekside must be "attributable to" the individual flat which is the subject of the relevant underlease.

30. It will also be noted that the underleases contain no direction about how or when service charges are demanded by L&Q or how they are calculated.

31. We heard evidence (and we find as a fact) that the service charge mechanism adopted by L&Q as against the Applicants in fact was as follows. L&Q adopted a service charge year of 1 April to 31 March. This may have been to bring it into line with other properties they deal with.

There is nothing un the underleases preventing them from doing this, but it means in practice that the service charge years adopted by L&Q for the passing on of the Annual Contribution in the underleases was different from the service charge years specified for the same Annual Contribution in the headleases. This required a reconciliation to take place each year, required L&Q to carry out their own estimates and resulted in a significant time lag between the two.

32. Having selected that service charge year for the underleases, L&Q approached the task of how to pass on the Annual Contribution in the following way.

33. It is easier to explain this using an example year. During each underlease service charge year (say 1 April 2022 to 31 March 2023), the only amounts actually paid by L&Q to Creekside are the half-yearly instalment on 1 July 2022 and the half-yearly instalment on 1 January 2023 and any ad-hoc charges attributed by Creekside to individual leaseholders.

34. However, in advance of the year 1 April 2022 to 31 March 2023 and during the course of that year, L&Q does not yet know what it is going to have to pay to Creekside in that year.

35. L&Q demands monthly service charge instalments from the Applicants in advance. The monthly instalments in any given service charge year therefore have to be based on L&Q's estimates of what they are going to have to pay to Creekside in each the underlease service charge year (1 April 2022 to 31 March 2023).

36. This means that the monthly service charge instalments charged by L&Q to the Applicants (and other flat owners) is effectively an estimate of an estimate. It is L&Q's estimate of what Creekside's estimated service charges are going to be.

37. The way L&Q decide what each year's monthly service charge instalments are going to be is as follows. In December of each year L&Q calculate what the monthly payments are going to be for the service charge year commencing on 1 April of the following year. They do it this far in advance to give them enough time to deal with all the administration necessary to have everything in place before 1 April.

38. So, using the same example year as above, L&Q need to work out what monthly payments to charge to the Applicants during the year from 1 April 2022 to 31 March 2023.

39. They start by looking at the most recent annual budget they have received from Creekside (which relates to a calendar year) they then apply an uplift to allow for increase from past years to future years. This uplift varies and is itself an estimate – historically it has been no more than about 15%. To

that figure, L&Q add their expected management fee for the year, which is permitted under the terms of the underleases.

40. So applying this to our example year, in December 2021 L&Q were calculating what the monthly service charge instalments were going to be from 1 April 2022 to 312 March 2023. In December 2021 (as was the case in December of every relevant year) they had not yet received Creekside's estimated budget for the headlease service year 2022 (1 January 2022 to 31 December 2022) and therefore they did not know what Creekside were going to be charging for 1 July 2022, which is the first cost payable by them during the underlease service charge year of 1 April 2022 to 31 March 2023. They obviously also would not know what Creekside would be demanding for payment by L&Q on 1 January 2023 (which is the other payment date falling with the underlease service charge year 2022-2023).

41. In fact, in December 2021 the most recent budget which L&Q had received from Creekside was the budget for the calendar year 2021 and the most recent half yearly payments which L&Q had paid to Creekside were those payable on 1 January 2021 and 1 July 2021. That is the only information L&Q had, in December 2021, on which to base an estimate of how much they might be about to be charged by Creekside for payment by L&Q on 1 July 2022 and 1 January 2023. So for the underlease service charge year 2022-2023, L&Q would start with the half yearly payments paid to Creekside in 2021 and applied the estimated uplift to allow for inflation in property management costs. They then add to that their own management fee.

42. That calculation then gives them a figure of an estimate for what they expect to be paying on 1 July 2022 and 1 January 2023. The resulting yearly figure is then divided by twelve to produce a monthly payment.

43. So, during each underlease service charge year, the Applicants are paying monthly in-advance instalments which are based on an estimate of what Creekside are going to charge L&Q during that year.

44. The next stage therefore in relation to each underlease service charge year is for L&Q to revisit the Applicants' estimated monthly instalments once L&Q know the amount which they have actually been charged by Creekside during the relevant underlease service charge year.

45. That exercise is carried out by L&Q in September of the year following the start of each underlease service charge year. So, applying this to our example, the estimated monthly instalments were being paid by the Applicants from 1 April 2022 to 31 March 2023 and the balancing exercise would have taken place in September 2023. At that stage, L&Q had received their biannual bills from Creekside for the two half yearly dates which fall during the relevant underlease service charge years (in our example the half yearly Creekside invoices for 1 July 2022 and 1 January 2023 which fell due in the underlease SC year 1 April 2022 to 31 March

2023). L&Q then calculates how much that differs from the total of the monthly payments made by the Applicants and either demand a balancing charge or make a credit accordingly.

46. Once that balancing charge/credit has been paid, the Applicants will have paid their share of the amount actually paid by L&Q to Creekside in the relevant underlease service charge year together with L&Q's management fee together with any ad hoc individual charges which have been spread by L&Q across the block. That year is then closed as far as L&Q and the Applicants are concerned.

47. This forms the basis of the service charge bills sent to the Applicants.

Future balancing charges under the headleases

48. If at some point in the future Creekside produce accounts of their actual expenditure for any of the relevant years and demand a balancing charge from L&Q, then L&Q will pass that balancing charge on to the Applicants, because that balancing charge will be actual expenditure by L&Q to Creekside in whichever underlease service charge year it happens to be demanded. So, as between L&Q and the Applicants, that balancing charge will be treated as having been incurred in the year in which it is demanded from L&Q NOT as having been incurred in the Headlease service charge year to which the charges relate.

49. In other words, any invoice which L&Q are required to pay to Creekside are actual service charges as between L&Q and the Applicants, even if that invoice was an estimate by Creekside.

Summary of service charges mechanism

50. In summary, in respect of the years in question, all of the service charge demands made by Creekside against L&Q were in respect of estimated service charges as between Creekside and L&Q under the headleases. When these were first charged to the Applicants as monthly instalments, they were estimates by L&Q of what they expected Creekside to charge to L&Q – estimates of estimates. But when L&Q made payments of service charges to Creekside, they were estimates as between Creekside and L&Q, but they were also sums actually expended by L&Q and therefore as between L&Q and the Applicants, they were actual service charges and were charged to the Applicants as balancing charges.

51. We have not addressed any issues of reasonableness in the above description, because reasonableness was not in issue in the proceedings in relation to any of the service charges demanded by Creekside to L&Q and passed onto the Applicants as described above. We did not hear (and were not invited to hear) any evidence or submissions on the question of reasonableness of the estimated costs demanded by Creekside in respect of the years in question.

Decision on the defined issues

52. We now turn to the individual issues as defined above:

(A) THE ESTIMATED v ACTUAL ISSUE

53. As a result of our findings of fact above, it is clear and we have decided that:

    a. The monthly service charge instalments paid by the Applicants are estimated service charges.

    b. The balancing charge (if any), paid by the Applicants on or after the September following the end of each April-March service charge year, are the actual service charges because they are the amounts actually paid by L&Q to Creekside for the relevant services etc. The fact that as between L&Q and Creekside they are estimates is irrelevant to the Applicants' service charge rights and liabilities.

    c. Any balancing adjustment charge demanded by Creekside against L&Q in future will count as actual service charges as between L&Q and the Applicants and will be treated (as between L&Q and the Applicants) as costs incurred in whatever year they were actually payable by L&Q to Creekside. For clarity, there are no such payments for the period of the years which are the subject of this application.

(B) THE TRANSLATION ISSUE

54. The Applicants raised the question whether L&Q were faithfully passing on the service charges which they had paid to Creekside. We have set out above in detail how the system operated. We are satisfied that the combination of the monthly instalments of estimates together with the balancing charge a few months after each year acted to ensure that what was passed onto the Applicants accurately reflected what was being paid by L&Q to Creekside. We are also satisfied that the uplift of up to 15% applied by L&Q to the previously available budget in order to calculate the following years' monthly instalments was reasonable for the years in question in this application. The best evidence for that is that the balancing adjustments made by L&Q in around September of each year have been sufficiently modest to indicate that the preceding year's estimates were reasonably calculated. For clarity, our view of the reasonableness of the uplift applies only to the estimated monthly instalments for the years 2020-2023; it may be that 15% is too high in other years and it may be that an uplift of more than 15% s appropriate in other years.

55. The translation issue does not of course relate to the element of the service charges which comprise L&Q's own management fee, because that element is not passed on from Creekside.

(C) THE PAYABILITY ISSUE

56. This question related to items which were alleged to be not properly payable as service charges. The Applicants argued that costs incurred in relation to commercial units and costs of works done inside individual residential units were not properly recoverable as service charges. The Respondents agreed with that proposition as a matter of principle.

57. The Applicants went on to allege that a number of such items had been charged to them as part of their service charges.

58. Mr Gibbs of Creekside gave evidence on this issue. He explained the system by which those unrecoverable items are stripped out of the service charges before anything is charged to L&Q. He confirmed that this would have been done with respect to every relevant service charge year.

59. When the Applicants were asked to identify the items which they alleged to have been wrongly charged to them, it became clear what had happened. For reasons which are not entirely clear, the disclosure exercise ordered against L&Q and then Creekside in this case resulted in the Applicants being served with every invoice for every actual cost incurred on the estate by Creekside over the course of the relevant years. This had (understandably) misled the Applicants for two reasons. Firstly, these documents including invoices which would have been stripped out of the service charges by Mr Gibbs as described above, but this had not been apparent from the fact that they were part of a large-scale disclosure exercise. Secondly, we have made our findings above that none of these **actual** costs have yet formed the basis of any service charges demanded either of L&Q or the Applicants. These disclosed invoices are part of the raw data from which actual service charge accounts will be prepared by Creekside whenever they get round to carrying out that exercise. They are not the basis of any sums which have been charged to the Applicants in the relevant years.

60. Once the Applicants had heard the evidence of Mr Gibbs they did not dispute the truth of it.

61. For all the above reasons, we are satisfied that there are no identifiable non-payable items which have been passed onto the Applicants as service charges. There is therefore no reason to make any deduction on the grounds that any part of the service charge is not payable for that reason.

62. On the distinct question of works done inside individual residential units, we are satisfied that no such items have been charged to the Applicants as part of the service charges. There is one exception to this (mentioned above). L&Q took the view (contrary to the view of Creekside) that work done to the communal door entry system counted as part of the service charges payable by the Applicants and other flat owners, even if that involved work done on a door entry handset which is located inside an individual apartment. We have decided that this decision by L&Q was

within the reasonable range and we see no reason to disallow any element of the service charges in relation to that.

(D) THE VALIDITY OF DEMANDS ISSUE

63. The Applicants alleged that the service charge demands made against them were invalid. The basis of their submission was that the demands failed to include a breakdown of specific items and failed to include a certified budget by Creekside. The Applicants submitted that in the absence of those, the service charge demands were invalid and therefor ethe service charges demanded therein were not payable.

64. They were unable to identify any statutory provision which required that information to be included in a service charge demand and we were also unaware of any such statutory provision. The Applicants were also unable to point to any provision in the leases of the flats to that effect.

65. Instead, the Applicants relied on the decision in *Brent London Borough Council v Shulem B Association Ltd* [2011] EWHC 1663 (Ch) which decided in that case that a service charge demand which failed to specify certain details was invalid. But that decision was based on the wording of a specific clause in the lease in that case and that element of the *Shulem* case could not be applied generally nor to this lease in particular. We therefore reject the Applicants allegation that the service charge demands for the relevant years were invalid as a result of alleged failure to include specified information.

(E) THE APPORTIONMENT ISSUE

66. The starting point in relation to apportionment is the wording of the Applicants' underleases. Apportionment is mentioned in the definition of "service charge" in Schedule 9 of the underleases, the relevant part of which says: "…as apportioned by the Landlord [L&Q] from time to time…".

67. This means that L&Q have complete discretion under the terms of the lease to set the apportionment for each flat, but the exercise of that discretion is subject to the Tribunal's jurisdiction in section 27A of the 1985 Act to determine whether L&Q's apportionment is reasonable under section 19 of the 1985 Act.

68. The Applicants' original case on apportionment can be summarised as follows. L&Q said that they had chosen to apportion service charges based on the floor area of each individual apartment as a proportion of the total area of the flats in each block. The Applicants reasonably submitted that service charges calculated that way should result in each flat in the same block paying the same service charges per square metre. The Applicants showed, by reference to a number of examples in the bundle, that different flats in the same block were paying different amounts per square metre. This suggested either (a) that the apportionment was not as stated by L&Q or (b) that L&Q were not calculating the service charges correctly in accordance with the stated apportionment.

69. L&Q's answer to this challenge was straightforward. They reminded the Tribunal that the apportioned annual contribution payable under the Creekside headlease was not the only element of the Applicants' service charges. There was also a management fee (see below), which was charged as a flat fee of £170 to each flat. There were also other fixed fee elements added to the service charge bill, such as car park charges. These were dependent on whether or not the apartment in question had an allocated car parking space. The service charges paid by each flat were therefore comprised of a floor-area-percentage apportioned element and a fixed fee element. That would have the mathematical effect of making the service charges per square metre different for apartments of differing sizes.

70. The Applicants conceded that this would be a fair and reasonable method of apportioning service charges. However, at the hearing the Respondents had not produced its apportionment calculations for the relevant years. In other words, it was not possible to see whether they had in fact applied the fair and reasonable method which they claimed to be using. The Tribunal was therefore unable to determine at the hearing whether the service charges, as charged, were payable for the purposes of section 27A of the 1985 Act. For that reason, we ordered L&Q to file and serve further documents after the hearing in support of their apportionment calculations, and we gave the Applicants the opportunity to respond in writing.

71. They produced a schedule of apportionment calculations for the year 2022-2023 for each of the Applicants' buildings. As a result of these calculations, we were satisfied that the apportionment of the Creekside service charges was carried out as claimed by the Applicants.

72. However, these schedules raised a new issue, namely that the car parking charges were not (as originally claimed by L&Q) a flat rate, but rather that car parking charges varied between blocks. In particular, each of the 22 car park space owners in Cavatina Point pays £256.66 for their space and in Vertex Tower each of the 9 car park space owners pays £133.26. Cavatina Point, as a whole, pays £5,646.47 towards the costs of the car parking spaces, while Vertex Tower, as a whole, pays only £1,199.37 towards the costs of the car parking spaces. We gave further directions for written submissions on that issue and each side filed and served their written submissions.

73. L&Q's solicitors explained in their written submissions that the car parking charges are an element of the estimated amounts which were demanded by Creekside against L&Q in the relevant years. In other words, the car parking charges are separated out from the rest of the service charges before they are passed onto the individual leaseholders. This was in order to distinguish those leaseholders who have a car parking space from those who do not. L&Q's solicitors explained that there was a discrepancy in the car parking charges for the year 2022-2023 which was corrected in the following year. This explains the anomaly which appeared for that year. The amount of the anomaly spready over the course of the last period of 6 years amounts to £18. As a result, the Applicants were in

fact being undercharged for car parking over the course of the relevant years.

74. The Applicants' submissions in response did not dispute any of these specific figures. Instead they, understandably, regarded L&Q's position on car parking charges as a further example of the historic lack of transparency and lack of accurate breakdowns. We sympathise with the Applicants in that respect, but (a) it is not our function to carry out a complete audit of service charges over several years based on an allegation of general lack of transparency after the hearing has concluded, or at all, and (b) our request for further submissions was limited to the specific issue of apportionment of car parking charges and we expressly stated that we would not consider submissions on any other issue.

75. In essence, therefore, for the purposes of this apportionment issue, we are able to find that:

    a. Car parking charges were simply passed on from Creekside to L&Q as actual amounts which had been paid by L&Q

    b. It was reasonable to distinguish between flats with car parking spaces and flats without.

    c. The car parking element did not affect the apportionment of the rest of the service charges, about which we have already made findings above.

(F) THE MANAGEMENT FEE ISSUE

76. We heard evidence (and found as a fact above) that the actual management fee charged by L&Q for its work was added to the service charges demands made against the Applicants and other flat owners. The Applicants submitted that the level of these management fees was unreasonable and therefore not payable in the amount charged.

77. Ms Maffei for L&Q gave evidence about the work which was done by L&Q and for which the management fee was charged. Because of the system described above, L&Q's management is restricted to the analysis of costs and invoicing passed onto them by Creekside. L&Q do not carry out any works themselves. Their work also involves liaising with leaseholders and liaising with Creekside's managing agents. In addition, L&Q operates a revenue team for collecting service charges and for chasing and enforcing late and unpaid service charges. She gave evidence that they charge a flat rate of £170 per unit per year.

78. We regard that flat fee as a reasonable amount for the work done in relation to each flat per year. In addition, to check the reasonableness of this amount, we considered it as a percentage of the annual service charge amount payable by the Applicants, for the purposes of comparison. It

amounts to approximately 3% of the typical annual service charges amount (which varies between flats as discussed under apportionment above) over the course of the relevant years. Using the knowledge, experience and expertise of this Tribunal we regard that level as reasonable, given that L&Q were doing a lot less work that managing agents would do in an ordinary bipartite lease, and given that they nevertheless had some administrative work to do as set out above.

(G) THE SECTION 20B ISSUE

79. The Applicants submit that none of the service charges for the relevant years are payable at all, because they are statute barred under section 20B of the Landlord and Tenant Act 1985, which provides:

> "(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
>
> (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

80. In essence, the Applicants' case on this issue is that the costs were incurred by Creekside in providing services and carrying out works more than 18 months before the service charges which included those costs were demanded against the Applicants.

81. The primary questions to ask are therefore as follows:

    a. What are the "relevant costs" in this case?

    b. When were they "incurred"?

    c. When was the demand for those costs (or written notification) served on the Applicants?

82. The first of those questions was addressed by the Upper Tribunal in the context of a three tier lease (leaseholder-intermediate landlord-superior landlord) in the case of *Westmark (Lettings) Ltd v Peddle* [2017] UKUT 449. The Tribunal in that case decided that where costs are originally incurred by the superior landlord for carry out works or providing services, it is only the point when the intermediate landlord becomes liable to pay its contribution to those costs that time begins to run with respect

to the individual leaseholders' service charges. In other words, in relation to the Applicants' service charges, the "relevant costs" are the sums demanded by Creekside to L&Q, **not** the sums paid by Creekside to the various contractors etc for the works and services.

83. It follows that the answer to the second question is that those "relevant costs" were "incurred" by L&Q on the date when they were payable by L&Q to Creekside.

84. The answer to the third question is a question of fact. We are satisfied that in each relevant service charge year, L&Q followed the procedure set out in detail above. So in relation to this issue, the "relevant costs" were "incurred" by L&Q on 1 January and 1 July of each year (say,1 July 2022 and 1 January 2023), which is when their service charges were payable to Creekside. Service charges which included estimates of those "relevant costs" were then initial demanded against the Applicants in February 2022 for payment in monthly instalments over the period April 2022 to March 2023. Then (once they knew the true amount of the January 2023 payment to Creekside), L&Q carried out a balancing exercise in September 2023 and demanded a balancing charge from the Applicants in the same month, September 2023.

85. It follows that the latest date on which a demand was made for costs incurred for any given underlease service charge year is the September immediately following the end of that service charge year. The September balancing charge demand related to costs "incurred" by L&Q in January of the same year and in July of the previous year. Therefore the longest gap between the costs being "incurred" by L&Q (say 1 July 2022) and the date when they demanded a contribution to those costs by way of balancing charge against the Applicants (September 2023) was less than 18 months.

86. We were provided with examples of each of these demands:

- a demand dated 15 February 2021 for monthly instalments due April 2021 to March 2022; and
- a demand dated 6 September 2021 for a balancing charge in relation to the underlease service charge year April 2020 to March 2021.

87. We are satisfied that the same exercise was carried out with the same timing (give or take a day) for each of the relevant service charge years.

88. It follows that none of the demands in the relevant years was served on the Applicants more than 18 months after the "relevant costs" were "incurred" and so section 20B does not bar any of the service charges in the relevant years from being payable.

Conclusion

89. In essence, this application was largely prompted by a lack of understanding of how the service charge process works on this estate, particularly with respect to the relationship between superior landlord, intermediate landlord and leaseholders. Almost all of the Applicants' points were resolved after lengthy explanatory evidence was given by the Respondents' witnesses. In many cases, once the Applicants understood how the system operated, they conceded that the process was fair and reasonable.

90. Following the hearing and the subsequent submissions, there is no evidence from which we could conclude, on the balance of probabilities, that any specific service charge item or category of items was not reasonable or otherwise not payable. We cannot simply apply an overall discount on the basis that the service charges are too high.

91. As a result of our resolution of all the issues of principle above, we are therefore satisfied that all of the service charges for the relevant years are payable within the meaning of section 27A of the Landlord and Tenant Act 1985.

Section 20C Costs

92. The Applicants attribute the need for this application to an historic lack of transparency and a failure to provide breakdowns. Although we encourage all landlords to be as clear and transparent as possible to avoid conflict, it is not clear what reasonable and practical level of transparency or breakdowns would have helped here. We formed the impression, during the hearing, that the structure of title and buildings and interlocking leasehold covenants were not straightforward and that this was no fault of any of the parties.

93. Although the Applicants have achieved a clearer understanding of how the service charges operate, they have not succeeded in establishing that any of the service charges are not reasonable or payable. Many of the issues of principle they raised were wrong as a matter of law. We see no reason to deprive the Respondents of the ability to recover their costs of these proceedings as part of the service charges in the normal way. We therefore make no order under section 20C of the Landlord and Tenant Act 1985, nor under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002.

94. For all the above reasons, we have made the order set out above.

Name: Judge Timothy Cowen **Date:** 12 May 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 regional office which has been dealing with the case.

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.

If the application is not made within the 28 day time limit, such 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 such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).