FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00MX/LSC/2025/0612**
Property	**:**	**40 Uplands House, Four Ashes Road, Cryers Hills, High Wycombe, HP15 6DY**
Applicant	**:**	**Mrs Christine Harpin**
Representative	**:**	**In person**
Respondent	**:**	**Uplands High Wycombe LLP**
Representative	**:**	**Mr Green, counsel**
Type of application	**:**	**For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Tribunal members	**:**	**First-tier Tribunal Judge K Neave** **Mr R Thomas**
Venue	**:**	**Remote hearing by CVP**
Date of decision	**:**	**30 July 2025**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the following disputed sums are payable by the Applicant in respect of the service charges for the year ending 31 December 2023:

a. In respect of the "deficit brought forward" from 2022, no sum is payable by the Applicant.

b. In respect of grounds maintenance, the sum payable by the Applicant is her share of £25,865.95.

c. In respect of the Respondent's costs of maintaining and managing the district heating and hot water system and the HIUs, the sum payable by the Applicant is her share of £2793.00.

(2) The tribunal makes the determinations as set out under the various headings in this Decision.

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that none of the Respondent's costs of the tribunal proceedings may be passed to the lessees named in the Applicant's application through any service charge.

(4) The tribunal determines that the Respondent shall pay the Applicant £327.00 within 28 days of this Decision in respect of the reimbursement of the tribunal fees paid by the Applicant.

The application

1. By an application dated 29 October 2024, the Applicant tenant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the service charges payable by her under the terms of her lease in respect of the service charge year ending 31 December 2023.

The background

2. The background to this matter is set out in the 289 page hearing bundle and the 6 page supplementary bundle prepared by the Applicant. We were also provided with a copy of the 2023 service charge accounts during the course of the hearing. We have considered these documents in detail.

3. 40 Uplands House, the property that is the subject of this application, is a one bedroom flat in a recently converted block. Neither party requested an inspection of the flat or the block and the tribunal did not consider

that any inspection was necessary nor proportionate to the issues in dispute.

4. The Applicant is the lessee of 40 Uplands House under the terms of a lease dated 9 December 2022 for a term of 125 years from 9 December 2022 ("the Lease"). The Respondent is the Applicant's immediate landlord. Under the terms of the Lease, the Respondent is required to provide services and the Applicant is required to contribute towards their costs by way of a variable service charge. The relevant terms of the Lease are set out in more detail below.

The hearing and the issues

5. At the hearing, the Applicant attended in person and the Respondent was represented by Mr Green, counsel. We are grateful to them both for their helpful submissions and assistance.

6. The parties agreed at the outset of the hearing that the following issues remained in dispute and required resolution:

    (i) Whether the terms of the Lease permitted the Respondent to include a deficit in the service charge accounts for the year ending 31 December 2022 as expenditure in the service charge accounts for the year ending 31 December 2023.

    (ii) Whether it was reasonable for the Respondent to contract with AreaEquity Construction Limited as a "middle man" in respect of the grounds maintenance at Uplands House, or whether it should have contracted directly with the sub-contractors who actually carried out the maintenance work.

    (iii) Whether the management fee charged by the Respondent in respect of the district heating and hot water distribution service and the heat interface units in the individual flats was correctly described in the invoices and whether the sums charged are recoverable under the terms of the Applicant's lease and/or are reasonable.

    (iv) Whether an order under section 20C of the Landlord and Tenant Act 1985 ought to be made.

7. We heard oral evidence from the Applicant, who adopted her statement of case as her evidence in chief. She was cross-examined by Mr Green. No written or oral witness evidence was adduced by the Respondent. The

Applicant and Mr Green both made helpful submissions. We reserved our decision.

8. Having heard evidence and submissions from the parties and having considered all of the documents provided, the tribunal makes determinations on the various issues as follows.

The tribunal's decision and reasons

The 2022 deficit

9. The 2023 service charge accounts make provision for what is described therein as a "*deficit brought forward*" of £7473.00. The Applicant explained in her oral evidence that, though there is provision in her lease for the Respondent to demand a balancing charge at the end of a service charge year if its actual expenditure is lower than its budgeted expenditure, this is not what the Respondent does in practice. Instead, the Respondent "rolls over" the service charge deficit and includes it in the accounts for the following year.

10. The Applicant raised this matter in her statement of case and in her scott schedule. The Respondent did not provide any response to the Applicant's assertions on this issue. Nor did we hear any evidence from the Respondent on the point. We accept, having considered the Applicant's clear, straightforward and unchallenged evidence that the sum described in the 2023 service charge accounts as a "*deficit brought forward*" of £7473.00 is the amount by which the actual service charge expenditure at year end 31 December 2022 exceeded the budgeted expenditure for that year.

11. The mechanism by which service charges are to be demanded under the terms of the Applicant's lease is set out in paragraph 2 of schedule 4, which states:

> "*2.1 The Tenant shall pay the estimated Service Charge for each Service Charge Year at the commencement of the Service Charge Year on or before the Service Charge Payment Dates by standing order or by any other method that the Landlord from time to time required by giving notice to the Tenant.*
>
> …
>
> *2.3 If, in respect of any Service Charge Year, the Landlord's estimate of the Service Charge is less than the Service Charge, the Tenant shall pay the difference on demand*".

12. We were not directed to any provision of the Applicant's lease which would allow the Respondent to bring forward a service charge deficit to the following service charge year's accounts or expenditure, and indeed Mr Green's submission on the point was that he understood that the issue was conceded by the Respondent (though he had no instructions that would allow him to make any such concession on the Respondent's behalf).

13. Having considered the terms of the Applicant's lease, we find that in circumstances where the actual service charge expenditure exceeds the service charge budget in a service charge year the Respondent is required to issue a balancing demand if it wishes to recover the deficit from the tenants of the block. It is not entitled to include the deficit as an item or expense in the service charge accounts for the following service charge year.

14. We accordingly find that the Applicant's share of the "deficit brought forward" of £7473.00 in the accounts for the year ending 31 December 2023 is not payable by her.

Grounds maintenance

15. The service charge accounts record that the actual expenditure for grounds maintenance at Uplands House in 2023 was £30,247.00.

16. The following facts are not in dispute:

    (i) In 2023, the Respondent instructed AreaEquity Construction Limited to carry out the grounds maintenance at Uplands House.

    (ii) There is a connection between the Respondent and AreaEquity Construction Limited in that the sole director of AreaEquity Construction Limited is Mr Fiorenzo Stocco, who is also a director of Area Uno Limited and Uplands HW Limited, the two corporate members of the Respondent.

    (iii) AreaEquity Construction Limited did not carry out any maintenance work itself. It sub-contracted works to third parties. It did not charge any management fees for so doing.

17. The Applicant's case is that the only effect of instructing AreaEquity Construction Limited was to incur a VAT charge of £4381.05 which was passed to the leaseholders via the service charge account. This was unnecessary and unreasonable. She asserts that the Respondent could simply have instructed the third party contractors directly, given that the

Respondent and AreaEquity Construction Limited are linked to each other through Mr Stocco and that Mr Stocco is the leading light of both companies. There was no evidence that AreaEquity Construction Limited had any particular expertise in grounds maintenance. Instructing the third parties directly would have saved the VAT charge because the sub-contractors were not VAT registered.

18. The Respondent's response was that:

    (i) AreaEquity Construction Limited is VAT registered and therefore is required to charge VAT on its services; and

    (ii) the sub-contractors who carried out the grounds maintenance in 2023 were in fact VAT registered.

19. The Respondent did not otherwise engage in its response to the Applicant's scott schedule with her submission that the Respondent could have instructed the third party contractors directly. We heard no evidence about the Respondent's reasons for engaging AreaEquity Construction Limited (especially in circumstances where the Respondent also employs a managing agent to manage Uplands House) nor about whether AreaEquity Construction Limited has any particular expertise in grounds maintenance work. In his submissions, Mr Green suggested that the leaseholders of Uplands House have the additional benefit of any insurance held by AreaEquity Construction Limited if grounds maintenance is carried out negligently, and also of their supervision of the work carried out by the sub-contractors.

20. We have carefully considered the sub-contractors' invoices in the hearing bundle which related to grounds maintenance work. We find that, despite what the Respondent says, the invoices for the work done by Gray's Arborist in 2023 do not include a charge for VAT. The columns on the invoices where a VAT charge would appear are empty and the invoices do not identify a VAT number. Other gardening invoices (such as invoices for expenditure at plant nurseries, for example) do carry VAT, but we accept that the Applicant has given credit for these VAT charges in her calculations.

21. We do not agree that the Respondent has demonstrated that the Applicant has obtained any real benefit from the involvement of AreaEquity Construction Limited. There was no evidence of any inspections of the work completed and in any event, such checks would ordinarily be and ought in our judgment to have been carried out by the Respondent's managing agent. We were not shown any insurance policy that the leaseholders might benefit from, and in any event we are not persuaded that this justified the instruction of AreaEquity Construction Limited. We were given no clear explanation about why the Respondent or its managing agent could not have instructed the contractors directly.

22. In light of the paucity of evidence provided by the Respondent, we agree with the Applicant that it was not reasonable for the Respondent to instruct AreaEquity Construction Limited to effectively act as a middleman in the carrying out of grounds maintenance. We also agree that the only consequence of instructing AreaEquity Construction Limited has been to incur a VAT charge of £4381.05 that would otherwise not have been payable by the leaseholders. For the reasons set out above, we find that this is not reasonable.

23. We accordingly find that the sum payable by the Applicant for grounds maintenance in 2023 is her share of £25,865.95 (being £30,247.00 - £4381.05).

The heating management charges

24. All of the flats in the block benefit from a district heating and hot water system. Heating and hot water is received into each flat through a heat interface unit (HIU). The sum in dispute under this heading is £10,350, which comprises of the sums demanded under the following invoices:

    (i) Invoice SI-68 dated 31 March 2023 for "Landlord management fee to deal with heating & hot water district distribution service" from 1 January 2023 – 30 June 2023 - £4600.00.

    (ii) Invoice SI-69 dated 31 March 2023 for "Landlord HIU inspections & maintenance check" from 1 January 2023 to 30 June 2023 - £1150.00.

    (iii) Invoice SI-84 dated 4 July 2023 for "Landlord management fee to deal with heating & hot water district distribution service" from 1 July 2023 to 31 December 2023 - £4600.00.

25. The Applicant challenged this expenditure on the following grounds:

    (i) The invoices were not for the services described, but were in fact a "re-invoice" of other charges levied by AreaEquity Construction Limited for spare parts for the heating system which have been stockpiled by the Respondent. Invoices for the spare parts in 2023 have been disclosed to the Applicant but did not appear in the service charge accounts.

    (ii) It is unclear what work was done by the Respondent in order to justify the fees charged, especially given that in 2023 the flats in the block had recently been converted, 10 were unsold and many others were still

under warranty. The Applicant suspects that some of the works carried out in 2023 by the Respondent were snagging works which ought to have been fixed by the developer or addressed under the new build warranties in place.

(iii) The HIUs serving each flat are located inside the flats, and the Respondent would have to gain access to the flats in order to carry out any inspection and maintenance of them. The Applicant is unaware, having spoken to other tenants in the block, of any inspections carried out by the Respondent in 2023. Certainly, no inspection was carried out in her flat. In any event inspection and maintenance work would need to be carried out by a qualified person. The Respondent does not, to the Applicant's knowledge, employ any such qualified person and there were no invoices from an engineer or other qualified person in 2023 for the cost of carrying out any such inspection or maintenance work.

26. We consider that all of these points call for an explanation from the Respondent. On the face of it, it is surprising that the Respondent is carrying out inspections and maintenance of the HIUs if it does not employ anyone with an appropriate qualification to do so. We accept the Applicant's clear and straightforward evidence that no inspections were carried out in her flat in 2023 and that she is unaware of any inspections being carried out in other flats in the block. In the circumstances, we consider that the Respondent is required to explain what work was actually carried out when it conducted a "Landlord HIU inspections & maintenance check" for which a fee of £1150.00 was charged. We also agree with the Applicant that an explanation is required about what further management of the heating and hot water system was conducted by the Respondent in 2023, over and above the general management of the block carried out by its appointed managing agent.

27. There was no written or oral evidence provided by the Respondent and its case is therefore confined to what is said in its response to the Applicant's scott schedule. In that document the Respondent denied that the invoices are "re-invoices" of other charges levied by AreaEquity Construction Limited for spare parts. The Respondent otherwise makes the general assertion that the charges are "*reasonably incurred and therefore would be reasonably recoverable from the leaseholders who benefit from the hot water and heating system*" and that "*despite the properties being unoccupied it is still imperative to undertake preventative maintenance to the heating and hot water systems in all flats whether they are occupied or not, this reduced the likelihood of a wider issue in the whole system*".

28. Further, the Respondent relies on clause 1.1 and paragraphs 6.4 and 6.5 of schedule 4 of the Applicant's lease which provide that:

"*1.1. Heat Charge: the costs of providing Heat through the Heat Installations and the Heat Interface Unit to the Property including any Standing Charge and based on actual usage for each Flat determined through meter readings, where appropriate, and where no meter reading is available, a fair and reasonable estimate determined by the Landlord or by any Heat Supplier take into account the network heat loss.*

…

"sch.4 para. 6.4 To pay on demand the Heat Charge

sch.4 para. 6.5 To pay on demand and indemnify both the Landlord and Heat Supplier in respect of all costs charges and expenses incurred by the Landlord and/or the Heat Supplier in managing repairing making good renewing and/or reinstating any damage or disrepair to the Heat Installations caused or contributed to by any act neglect or default (including failure to comply with clause 8.5 below) of the Tenant or the Tenant's family or licensees or any other person under the control of the Tenant".

29. We have considered these points carefully, however we do not consider that the Respondent has adequately addressed the points raised by the Applicant. Beyond the general assertions set out above, the Respondent has provided no detail of what management, maintenance (preventative or otherwise) or inspections have been carried out in order to justify the fees charged.

30. As to the terms of the Lease referred to above, in our judgment paragraph 6.4 of schedule 4 of the Lease entitles the Respondent to recover from the Applicant her share of the cost of actually providing heating to the individual flats, not the cost of maintaining or managing the service. Even if we are wrong about that, it remains the case that the Respondent has not adequately addressed the questions raised by the Applicant about what work has been done to justify the charges made. The terms of the Lease do not in our judgment require the Applicant to pay whatever sum is demanded by the Respondent without question or explanation.

31. Paragraph 6.5 of schedule 4 of the Lease applies only if damage has been caused to the heat installations by the Applicant or her licensees (etc.). The Respondent advances no such case in these proceedings.

32. In light of our findings set out above, we do not consider that the terms of the Lease relied on by the Respondent take its case much further.

33. The Applicant concedes that some work will properly have been done by the Respondent in 2023 in respect of the management and maintenance of the district heating and hot water system and the HIUs. She suggests that the management fee demanded be reduced substantially to reflect her points set out above, which we have found have not been adequately answered. In light of the paucity of evidence produced by the Respondent to justify the management and maintenance fees demanded and doing our best with the information and submissions that were available to us, we agree with the Applicant that a reasonable sum for the Respondent's costs of maintaining and managing the district heating and hot water system and the HIUs in 2023 is the sum that she identifies in paragraph 19 of her statement of case, namely £2793.00.

34. Having made this finding, we do not consider it necessary to determine whether the invoices referred to above related to the services described in the invoice or to other charges levied by AreaEquity Construction Limited.

35. We accordingly find that the sum payable by the Applicant for the Respondent's costs of maintaining and managing the district heating and hot water system and the HIUs in 2023 is her share of £2793.00.

Other matters

36. The Applicant queried whether the provision at paragraph 1(b)(ii) of part 2 of schedule 7 of her lease that the "Service Costs" include "*the costs, fees and disbursements reasonably and properly incurred of…accountants employed by the Landlord to prepare and audit the service charge accounts*" means that the Respondent must engage an accountant to audit the service charge accounts.

37. In our judgment, the Respondent is not required to have the service charge accounts audited as a condition precedent to payment of the service charges. The Applicant's lease does not impose any particular requirement for audited service charge accounts to be prepared before payment of the service charge is due. In our judgment, paragraph 1(b)(ii) of part 2 of schedule 7 of the Lease simply means that, if the Respondent wishes to have the service charge accounts audited, then it may do so and recover the costs from the leaseholders via the service charge.

Application under s.20C and refund of fees

38. In light of our findings set out above and given that the Applicant has been substantially the successful party in this application we determine that the Respondent should reimburse the Applicant the sum of £327 in respect of her application and hearing fees within 28 days of the date of this decision.

39. The Applicant applied, on her own behalf and also on behalf of the leaseholders listed in her application, for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account our determinations above, if legal costs are recoverable under the terms of the Applicant's lease by way of service charge (and we make no finding on contractual recoverability) we consider that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. As set out above, the Applicant was substantially the successful party in these proceedings, and the Respondent did not adequately address the points that she raised in her statement of case and scott schedule.

Name: Judge K Neave **Date:** 7 August 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).