FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Tribunal case reference	**:**	**CAM/26UG/LIS/2024/0010**
Property	**:**	**Flat 1, Yule House, Redland Way, Bricket Wood, St Albans, AL2 3FX**
Applicant	**:**	**Mr J. Costello**
Representative	**:**	**Mr L. Gregori**
Respondent	**:**	**Hanstead Park Management Company Limited**
Representative	**:**	**Gateway Property Management Limited**
Type of application	**:**	**Liability to pay service and administration charges (sections 27A and 20C Landlord and Tenant Act 1985; paragraphs 5 and 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002)**
Tribunal members	**:**	**Judge Hunt** **Dr J. Wilcox FRICS**
Date of hearing	**:**	**21 July 2025 (remote hearing)**
Appearances at hearing	**:**	**Mr L. Gregori (for the Applicant)** **Mrs K. Coleman (for the Respondent)**
Date of decision	**:**	**22 August 2025**

DECISION

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1. On the execution of the Lease on 30 July 2021, an "interim" service charge was payable by the Applicant in the sum of £184.07 on account of costs to be incurred by the Respondent for the service charge year to 31 March 2022. It was paid.

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2. The Respondent amended the service charge year such that it ended instead on 31 December 2021. For this service charge year to 31 December 2021, the "final" service charge payable by the Applicant was £3.45. It was deducted from the £184.07 paid, leaving £180.62 of the "interim" service charge to the Applicant's credit. This sum of £180.62 is no longer payable.

3. For the year ending 31 December 2022, a service charge of £21.15 was payable on account of administration costs and insurance. This service charge was paid out of the Applicant's £180.62 credit, leaving £159.47 to the Applicant's credit. Unless it has since been used to settle any further service charges for which the Applicant is liable, this sum of £159.47 should be reimbursed or deducted from future service charges due.

4. For the year ending 31 December 2022, a "second" service charge was demanded via the Respondent's managing agent. None of this "second" service charge was deducted from the Applicant's £180.62 credit (as it then stood). It was paid by separate contribution. This "second" service charge demanded is payable in full, subject to the following deductions.

    a. The balancing charge of £188.66 demanded on 23 May 2023. This balancing charge, as adjusted on account of the Tribunal's other findings, will only be payable upon service on the Applicant of an accountant's certificate specifying the service charge payable by him for the year ending 31 December 2022, as required by the Lease.

    b. The Applicant's proportion of the window cleaning charge of £720. Only £144 of this sum is a relevant cost to be taken into account in the calculation of his service charge.

    c. The Applicant's proportion of the account management fee of £1,569. None of this sum is payable by the Applicant.

    d. The Applicant's proportion of the bank charges of £80. None of this sum is payable by the Applicant.

5. None of the £660 administration charges sought from the Applicant are payable as they were not validly demanded. None of these administration charges will be payable even if validly demanded.

6. No part of the Respondent's costs incurred, or to be incurred, in connection with these proceedings is to be charged to the Applicant, whether as a service or an administration charge.

7. The Respondent must pay to the Applicant the sum of £165 in reimbursement of Tribunal fees paid.

REASONS

Introduction

1. The Applicant is the leaseholder and occupier of premises known as Flat 1, Yule House, Redland Way, Bricket Wood, Saint Albans, AL2 3FX (the "Property"). It is part of a new housing development comprising both leasehold and freehold properties, totalling 139 units of accommodation. The Respondent is a company that manages the Property and the wider housing development within which it is situated (the "Estate") in accordance with the terms of the Applicant's lease (the "Lease"), which was executed on 30 July 2021. The Lease provides that the Applicant must contribute to the Respondent's costs of managing the Estate, by way of service charge.

2. On 1 March 2022, the Respondent appointed Gateway Property Management Limited ("Gateway") as managing agent to manage the Estate on its behalf. Via Gateway, the Respondent has demanded numerous service charges from the Applicant, beginning 14 March 2022. The Applicant also paid an interim initial service charge (the "Initial Service Charge") directly to the Respondent on the execution of the Lease. The Applicant has challenged all of the service charges demanded from and/or paid by him referable to accounting periods up until 31 December 2022.

3. The Applicant did not pay all of the service charges demanded from him. The Respondent took steps to recover those unpaid service charges and charged the Applicant various administration charges in relation to those steps. The Applicant also challenges those administration charges.

4. The Applicant has challenged the charges on numerous bases. Firstly, and principally, he submits that his Initial Service Charge has not been properly accounted for in accordance with the terms of the Lease. He also challenges other charges on the basis that some of the demands for payment were invalid (and therefore that no payment was due), and that he is not liable for certain other individual charges because they

have been unreasonably incurred. By the time of the hearing, certain matters had been agreed between the parties, although relatively few.

5. The issues for the Tribunal to decide are solely whether the service charges are payable and, if so, in what amount. In order to undertake this analysis, it had to establish how the service charge provisions in the Lease operate. During that exercise, the Tribunal realised, as will be explained, that its task was complicated by the fact that the terms of the Lease relating to service charges have not been properly respected by the Respondent. This has resulted in an unexplained "overpayment" by the Applicant that has largely been overlooked by the Respondent. This was the Applicant's main concern and it was a valid one. The "overpayment" dates back to 2022. It may have been credited against service charges incurred since then; the Tribunal does not know. All it must determine is the service charges payable for periods up until 31 December 2022; it was not appropriate to make determinations as to what may have occurred in years since. The Tribunal was mindful of its limited jurisdiction but also of its overriding purpose of seeking to resolve the parties' dispute as effectively as it can, whilst pursuing its objective of doing so fairly, at proportionate expense to all and with appropriate use of its special expertise. It has accordingly assessed what should be done to regularise the parties' position. It has no power to order these steps to be taken but clearly expects the parties to collaborate in their implementation, in line with their own obligation to co-operate with the Tribunal.

6. The Tribunal heard from both parties and considered a file of documents agreed between them, extending to 2 lever-arch files. It is grateful to both for their evidence and submissions.

Relevant Law

7. The Landlord and Tenant Act 1985 provides a statutory framework for the management of service charges imposed by a landlord on a tenant. Section 18 provides a broad definition of "*service charge*" and "*relevant costs*". Section 30 provides a broad definition of "*landlord*", including "*any person who has a right to enforce payment of a service charge*", such as the Respondent in this case.

8. Section 19 limits the amount of "*relevant costs*" that can be recovered through a service charge, as follows.

   "***19. Limitation of service charges: reasonableness***

   (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly".

9. In relation to "interim" service charges, section 19 (2) provides as follows.
   "*(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*".

10. Section 20B provides that relevant costs that were incurred more than 18 months before any demand for payment are not payable by a tenant.

11. Section 27A explains how service charge disputes are to be resolved. It provides as follows, so far as is relevant.
    "***27A. Liability to pay services charges: jurisdiction***

    (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".

12. The Commonhold and Leasehold Reform Act 2002 provides a similar statutory framework for the management of administration charges imposed on a tenant of a dwelling. The framework is contained in schedule 11 to that Act. Paragraph 1 of the schedule provides a definition of "administration charge", which includes sums payable by a tenant in respect of any failure to make payments to any other party to their lease when they fall due and sums payable in connection with a breach of covenant or condition in their lease.

13. Paragraph 2 is as follows.

    "***2. Reasonableness of administration charges***

A variable administration charge is payable only to the extent that the amount of the charge is reasonable".

14. Paragraph 4 requires demands for administration charges to be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges. The precise wording of that summary of rights and obligations is laid down in the Administration Charges (Summary of Rights and Obligations) (England) Regulations 2007. If this requirement is not complied with, a tenant is entitled to withhold payment of the administration charge demanded.

15. Paragraph 5 explains how administration charge disputes are to be resolved. It provides as follows, so far as is relevant.

"***5. Liability to pay administration charges***

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made".

16. Part VI of the Landlord and Tenant Act 1987 prescribes information that must be furnished to tenants of dwellings, including relating to service and administration charges. Section 47 provides as follows (so far as relevant).

"***47. Landlord's name and address to be contained in demands for rent etc***

(1) Where any written demand is given to a tenant of premises to which this part applies, the demand must contain the following information, namely—

(a) the name and address of the Landlord…

(2) Where—

(a) a tenant of such premises is given such a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) [not relevant here] *any part of the amount demanded which consists of a service charge or an administration charge ("the*

relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant".

17. Section 60 defines "landlord" less broadly than in the Landlord and Tenant Act 1985, as simply "*the immediate landlord*".

18. Section 20C of the Landlord and Tenant Act 1985 provides that a landlord's costs in connection with legal proceedings, such as the application before this Tribunal, can be excluded from a service charge:

    "***20C. Limitation of service charges: costs of proceedings***

    (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal or the First-tier Tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

    ...

    (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances".

19. A similar provision in relation to administration charges is found at paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002.

20. Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 allows the Tribunal to order a party to reimburse another party for any Tribunal fees paid.

The Lease

21. The Property is part of a new housing development. The main issue in dispute concerns the service charge paid by the Applicant at the very outset of the parties' relationship. The Respondent applied part of this Initial Service Charge to costs it incurred in the year prior to the execution of the Lease. Several of the Applicant's concerns arise out of a lack of clarity about the origin of the costs incurred by the Respondent, concern at his Initial Service Charge having been used to settle "historic" costs and, more generally, at the Respondent's alleged failure to properly account for the Interim Service Charge in line with the requirements of the Lease. These and other issues raised depend largely on the correct interpretation of the Lease.

Accordingly, at the outset, it is important to record and explain some of its provisions, which are not the most clearly expressed.

22. The Lease is a tri-partite agreement between the Applicant, the landlord/developer (Linden Wates (Bricket Wood) Limited, the "Landlord") and the Respondent as manager of the Estate. The Landlord grants the Lease of the Property to the Applicant in exchange for a premium. The Respondent commits to undertaking all the maintenance and upkeep of the Estate, including of the structure and common parts of Yule House. The Applicant agrees to contribute to the costs of that throughout the Lease's term by way of service charge.

23. This tri-partite relationship is expressed in the Lease as follows. Clause 3 provides that the Applicant will "*observe and perform the obligations … set out in the Seventh Schedule*". For the purposes of this case, that means paying the Service Charge and the Respondent's costs of recovering any unpaid charges. The precise wording is important in some respects, so will be recorded in more detail below.

24. The "Service Charge" is defined as "*the monies actually expended or reserved for periodical expenditure by or on behalf of the [Respondent] or the Landlord at all times during the Term in carrying out the obligations specified in the Fifth Schedule (including those incurred in the performance of the obligations set out in Part 1 of the Fifth Schedule and the sums referred to in Part 2 of the Fifth Schedule*".

25. The "Term" is defined as "*999 years from 1 January 2021*".

26. Clause 4 provides that the Landlord will "*observe and perform the obligations … set out in the Eighth Schedule*". These obligations include, so far as relevant, that the Landlord will perform the duties required of tenants of Yule House in relation to any flats that are not yet leased. For instance, contributing to the Service Charge.

27. Clause 5 provides that the Respondent will "*manage the Maintained Areas in accordance with the scheme of management set out in this Lease … and to undertake the works and services set out in the Fifth Schedule*". It is important to begin by explaining what constitutes the "Maintained Areas", which are described in the Fourth Schedule. The schedule is split into different "parts", each describing a distinct shared area of the Estate. The first area is the widest, being the part of the Estate shared between all of the leaseholders and freeholders on the Estate. The second area is, essentially, the shared external spaces serving Yule House (and other properties). It is referred to as the "Grounds". The third area comprises the common parts of Yule House itself.

28. Clause 7.8 of the Lease explains the logical consequence of this "split": the leaseholders and freeholders on the Estate are expected to contribute to the management of parts of the Estate dependent on their usage or benefit of the same. Thus, everyone on the Estate contributes to the management of the first, widest area (presumably through service charges as far as the leaseholders are concerned and rentcharges as far as freeholders are concerned). Only those who use or benefit from the Grounds contribute to their management costs (which will include the leaseholders of Yule House). Only the leaseholders of Yule House will contribute to the costs of management of the building itself.

29. The Tribunal notes from the 20 July 2022 "*Statement of Anticipated Service Charge Expenditure*" (which the Tribunal will refer to as the "2022 Budget") that this "split" definition of the Maintained Areas is reflected in the service charge accounts for the development. The Applicant in fact contributes to three distinct service charge accounts in differing proportions. The first relates to the costs of management of the Estate, to which he contributes 0.7194%. This amounts to 1/139th of the overall cost, which makes sense in light of the 139 units of accommodation on the Estate. In other words, each leaseholder and freeholder contributes equally to these costs. The second account relates to the costs of management of the Grounds, to which the Applicant contributes 1.4493%. The Tribunal is unclear about the origin of this apportionment, but it is not in dispute in this case, so little more can or should be said. The third account relates to the costs of management of Yule House itself, to which the Applicant contributes 6.25% (1/16th of the overall cost). There are 16 flats in Yule House, so each leaseholder contributes an equal share to the cost of its management. Having no evidence relating to prior service charge periods, the Tribunal found that this apportionment had been in place since the outset of the Lease.

30. The service charge demands and statements of account served on the Applicant are less helpful to him as they refer mostly simply to "Service Charge" and therefore do not allow the Applicant to understand how his contributions are "allocated" to the costs of management of each of the Maintained Areas. Only one service charge demand, dated 20 July 2022, specifically referred to the "Block Cost", which presumably relates specifically to the costs of management of Yule House itself. Be that as it may, the 2022 Budget provided the Applicant with relevant information on how his service charge was apportioned.

31. The Lease makes provision only for one "Service Charge" to be paid, so there is nothing inherently objectionable about a single demand for payment being made relating to all service charge accounts. It follows logically from the Lease and definition of the Maintained Areas that the Respondent may well decide to operate

separate accounts for different areas of the Estate for administrative simplicity, but there is nothing that requires it to provide any further breakdown when serving service charge demands.

32. The Respondent's obligations in respect of the Maintained Areas are outlined in "Part 1" of the Fifth Schedule. Broadly and unsurprisingly, the main obligation is to manage and maintain all of the Maintained Areas, including Yule House. Little is in dispute, but the Tribunal highlights the following particular obligations, which are relevant to its determination:

    "*1. Keeping the Maintained Areas properly repaired maintained…*

    9. To keep in good and substantial state of repair condition…:

    9.1 The main structure and exterior of [Yule House]…

    9.4 So far as practicable to keep clean … the common halls passages landings staircases…

    9.6 So far as practicable and so often as it shall think necessary to clean the exterior of the communal windows of [Yule House]…

    9.8 To maintain any necessary fire alarm systems and fire equipment in [Yule House]…

    9.9 To … carry out any necessary Health and Safety Audits and fire risk assessments from time to time as may be necessary

    10 Not later than Five (5) years after the sale and purchase of the last Dwelling on the Estate … to commission a planned maintenance survey to enable the [Respondent] to allocate reserves within the service charge budget for future costs".

33. As foreshadowed in the definition of Service Charge, the Fifth Schedule also contains a "Part 2" that does not contain obligations. It details the costs of performing such obligations that will be included within the Service Charge. This part has two sections. Section 1 – "*The [Respondent's] expenses, outgoings, other heads of expenditure and administration*" – records as follows, so far as relevant.

    "*1. The expenses incurred by the [Respondent] in carrying out its obligations under this Schedule including the costs of carrying out inspections and tests and the cost of periodic valuations for insurance purposes (which for the avoidance of doubt may include an insurance valuation undertaken by a RICS qualified surveyor…*

    2. The cost of employing contractors or managing agent to carry out any of the [Respondent's] obligations under this Lease…

3. The fees and disbursements paid to any surveyor or managing agent employed by the [Respondent] in respect of the management of the Maintained Areas in connection with the collection of the rents service and other charges…

4. The fees and disbursements paid to any accountant solicitor or other professional in relation to the preparation auditing or certification of any account of the costs expenses outgoings and matters referred to in this Schedule…

5. All other expenses (if any) incurred by the [Respondent] in or about the maintenance and proper and convenient management and running of the Maintained Areas…

7. Such sum as shall be estimated by the managing agent or if none by the [Respondent] (whose decision shall be final) to provide a reserve to meet part or all of all sums or any of the costs expenses outgoings and matters mentioned in the foregoing paragraphs which the managing agent (or if none the [Respondent]) anticipate will or may arise such calculations to have regard to the monies at any time standing to the credit of such reserve fund

8. A reasonable sum for administrative expenses and where no managing agent is appointed management expenses to be retained by the [Respondent]…".

34. Part 2, section 2 – "*Costs applicable to any or all of the previous parts of this Schedule*" – records as follows, so far as relevant:

"*5. Providing inspecting … any other equipment and providing any other service or facility in connection with the Maintained Areas which in the opinion of the [Respondent] it may become reasonable to provide*
6. All other reasonable and proper expenses (if any) incurred by the [Respondent]:
6.1 in and about the maintenance and proper and convenient management and running of the Estate including … any expenses incurred in rectifying or making good any inherent structural defect in any part of the Maintained Areas (except in so far as the cost therefor is recoverable under any insurance policy for the time being in force or from a third party who is or who may be liable therefor)
6.2 as to any legal or other costs reasonably and properly incurred by the [Respondent] … arising out of any lease … or any claim by or against any Tenant…".

35. As can be seen, the creation of "reserve funds" is provided for both in relation to Estate maintenance (paragraph 10 of part 1 to the Fifth Schedule) and the Respondent's costs and expenses of management (paragraph 7 of section 1 of part 2 of the Fifth Schedule). The Respondent has a broad discretion in relation to both, but

the Lease requires it to make a specific decision to create a reserve fund and allocate funds to it.

36. The specific wording of the Applicant's obligations, as outlined in the Seventh Schedule, include:

    "*1.3 To pay to the [Respondent] the Tenants Proportion (including the provision for future expenditure) as certified in the certificate referred to in paragraph 5 of the Sixth Schedule issued as soon as conveniently possible after the expiry of each Service Charge Year*

    1.4 Upon the completion of the Lease to pay to the [Respondent] a proportion of the Interim Service Charge from the date of this Lease to the next date for payment

    1.5 To pay to the [Respondent] the Interim Service Charge in advance on the relevant payment dates in accordance with the provisions of the Sixth Schedule on account of the [Applicant's] liability for payment of the Tenants Proportion

    1.6 Upon the certificate being issued as aforesaid to pay to the [Respondent] any shortfall between the Interim Service Charge and the Tenants Proportion so certified and any overpayment by the [Applicant] shall be credited against future payments due from the [Applicant] to the [Respondent]...

    3.2 To pay the legal costs and separate administration costs of the [Respondent] incurred in connection with the recovery of unpaid arrears of sums due to the [Respondent]...".

37. The "Interim Service Charge" is defined as "*such sum to be paid on account of the Tenants Proportion in respect of each Service Charge Year as the Landlord or the [Respondent] may from time to time specify*", acting fairly and reasonably.

38. The "Tenants Proportion" is defined as a "*fair proportion of the Service Charge*", taking account of the contributions of others towards the Estate management. The apostrophised term "Tenant's Proportion" is used in parts of the Sixth Schedule (as will be recorded below) which is plainly more grammatically correct. The latter will be adopted in the remainder of this decision (save when transcribing directly from the Lease). In effect, the Tenant's Proportion amounts to the aggregate of the different contributions the Applicant makes to each of the three service charge accounts. It refers to the precise monetary figure that the Applicant is required to pay.

39. The "Service Charge Year" is defined as "*a period commencing on 1 April in each year and ending on 30 September of the following year or such other annual period*

as the Landlord or [Respondent] may in its discretion from time to time determine as being that in respect of which the accounts for the Development are made up". Clearly, there is some error in this definition as 1 April – 30 September is not a "year". The Tribunal determined that the reference to "30 September" was a typographical error and should read "31 March". The reference to the "following year" would make far more sense in that case and having accounting periods that broadly align with the fiscal year is not unusual. The period was clearly of a "year" and not 6 or 18 months. Additionally, as will be seen below, paragraph 6.1 of the Sixth Schedule references "April" before "October", indicating that the intended "Service Charge Year" would commence in April, not October. It is worth noting that this is how the Applicant understands his Lease, according to his statement of case. This point is not of major significance but is of some relevance to the Tribunal's conclusions about the Initial Service Charge.

40. Although the Respondent is at liberty to change the Service Charge Year at any point, at the time of its execution, the Lease confirmed that it was 1 April 2021 – 31 March 2022. It is clear that the Respondent then determined the Service Charge Year would be altered to a calendar year ending 31 December. It decided to do so during the course of 2022, writing to the Applicant on 22 September 2022 to confirm as much (although the decision had been made some months previously). It was entitled to do so. The 2022 Budget was prepared on the basis of a service charge period of "*1 Jan 2022 – 31 Dec 2022*". Peculiarly, the Respondent's service charge accounts for 2022 state that they only address the "*period from 1 March to 31 December 2022*". It was unclear to the Tribunal why, or what difference this might make – it was provided with no invoices for the period 1 January – 28 February 2022 so concluded there had been no expenditure during those months. The Lease only allows the Respondent to change the Service Charge Year to an "*annual period*", so concluded that is what it had done. Accordingly, the relevant accounting periods for the purposes of these proceedings became 1 January – 31 December 2021 and 1 January – 31 December 2022.

41. As referenced in the Seventh Schedule, the Sixth Schedule addresses the payment of the Interim Service Charge and the calculation of the Tenant's Proportion as follows (taken out of order to aid legibility). Unfortunately, it does not sit very well alongside the Seventh Schedule, duplicating some parts of it, and not adopting the same terminology "Interim Service Charge", but neither are of any consequence.

> "*3. If the [Applicant] shall at any time during the Term object to any item of the Service Charge … then the [Applicant] shall refer the matter in dispute for determination … PROVIDED THAT any such objection by the [Applicant] shall not affect the obligation of the [Applicant] to pay to the [Respondent] the Tenant's*

Proportion in accordance with this Schedule and after the decision … any overpayment by the [Applicant] shall be credited against future payment due from the [Applicant] to the [Respondent] under the terms of this Schedule

5. An account of the Service Charge (distinguishing between actual expenditure and reserve for future expenditure) for the period to the end of the current Service Charge Year and for each subsequent Service Charge Year throughout the Term shall be prepared as soon as is practicable and the [Respondent] shall then serve on the [Applicant] copies of such account and the accountant's certificate

6. The [Applicant] shall pay to the [Respondent] the Tenant's Proportion in manner following that is to say

6.1 In advance on the 1st day of April and on the 1st day of October in every year (or any other date as shall be notified to the [Applicant] in writing by the [Respondent] at any time) one half of the Tenants Proportion as estimated from time to time by the [Respondent] for the forthcoming year…

6.2 Within twenty one days after the service by the [Respondent] on the [Applicant] of a certificate in accordance with Paragraph 5 of this Schedule for the period in question the [Applicant] shall pay to the [Respondent] the balance [between the Tenants Proportion and the Interim Service Charge received] as certified by the said certificate during the said period and any overpayment by the [Applicant] shall be credited against future payments due from the [Applicant] to the [Respondent]

2. The certification of the accountant referred to in paragraph 5 [above] shall … be binding on the [Respondent] and the [Applicant] unless manifestly incorrect and an omission in such certificate of any expenditure incurred in the year to which it relates does not preclude the inclusion of that expenditure in any subsequent certificate".

42. Several issues in dispute turned on the correct interpretation of the service charge provisions, so the Tribunal will address how they operate.

43. Firstly, the Respondent must estimate the funds that will be required to allow it to perform its obligations in any service charge year (i.e. an estimate of the Service Charge). An example of this is the 2022 Budget. If any reserves are intended to be generated, this estimate must include provision for that (the 2022 Budget made such a provision). The Respondent must then determine what would amount to a fair contribution towards this estimate from the Applicant (this is the Interim Service Charge). This Interim Service Charge amounts to an estimate of what will ultimately be due for the year (i.e. the Tenant's Proportion). The Interim Service Charge must be paid in two equal instalments on 1 April and 1 October of each year (or as notified

by the Respondent). Upon executing the Lease, the Applicant must pay the Initial Service Charge, which is a proportion of the Interim Service Charge from the date of execution of the Lease to the next payment date (in this case, 1 October 2021).

44. At the end of each service charge year, the Respondent must prepare accounts of the Service Charge (explaining what was actually spent and what sums have been allocated to any reserve fund). These accounts must be prepared "*as soon as practicable*" and a copy sent to the Applicant. The copy of the accounts must be accompanied by "*the accountant's certificate*". The Lease provides no definition of what this certificate is, but refers to it several times. This certificate establishes the exact sum the Applicant must contribute to the Service Charge (i.e. the Tenant's Proportion). If the Interim Service Charge paid is less than the Tenant's Proportion certified to be due, the Applicant must make up the shortfall within 21 days (this is typically referred to as a "balancing charge"). If the Interim Service Charge paid is greater, the "overpayment" will be credited against future payments due to the Respondent.

45. There was significant dispute at the hearing about what constitutes the "accountant's certificate". The Respondent submits that it is an "accountant's report of factual findings" (such as that provided alongside the 2022 accounts). The Applicant submits it is a personalised breakdown of his required "final" contribution to the Service Charge for the year (i.e. the Tenant's Proportion) and a statement confirming the difference with the Interim Service Charge paid.

46. The Tribunal determined that the Applicant's interpretation was correct. Paragraph 1.3 of the Seventh Schedule is clear that the Tenant's Proportion will be "*certified in the certificate*". Paragraph 1.6 again refers to "*the Tenants Proportion so certified*". Paragraph 5 of the Sixth Schedule is not abundantly clear, but refers to the "*account*" as distinct from "*the accountant's certificate*". However, paragraph 6.2 of this schedule once again clearly refers to the "*Tenants Proportion payable to the [Respondent] as certified by the said certificate*". Although not directly relevant, clause 7.5.2 of the Lease states "*the certificate of the Tenant's Proportion may be validly served by email…*". Taken together, it is clear that the "accountant's certificate" must, at the least, specify the Tenant's Proportion as a numerical figure stipulating the "final" service charge payable by the Applicant for the year. The document referred to by the Respondent makes no reference at all to the Tenant's Proportion. In fact, nor do the accounts, whether in generic terms as a percentage of the Service Charge or as a specific monetary sum (as is required by the Lease). The accounts only provide details of the overall income and expenditure over the year on each of the Maintained Areas, without providing any detail of the Applicant's direct contribution towards the Service Charge.

47. The Tribunal concluded not only that this was the correct interpretation of the Lease, but also a fairly widely-established and logical provision. A tenant has little knowledge of, or control over, service charges demanded from them. The requirement for an accountant to review the expenditure on an estate and provide an explanation of the tenant's personal contribution to that expenditure provides the tenant with some knowledge of, and reassurance about, the matter. It also provides exactly the sort of information that might have prevented much of the present dispute coming before the Tribunal and would certainly have made the Tribunal's decision far more straightforward.

The Issues

48. The parties had helpfully agreed a "Scott Schedule" detailing the matters in dispute. The Tribunal is grateful to the parties for this, but not all issues were fully addressed within it. The Tribunal determined to address, firstly, the main and most difficult issues in dispute, i.e. matters relevant to the Initial Service Charge, before dealing with the other matters raised in turn. When it needed to establish any facts, the Tribunal did so on the balance of probabilities in light of the available information.

The Service Charges

1. <u>The Initial Service Charge and Company Administration Costs – Facts</u>

49. The first matter in dispute, on analysis, involved several inter-related issues. They will be addressed together. Although the sum actually in dispute is relatively small (£184.07), it is a complex matter and took considerable time to analyse and determine.

50. The Lease was executed on 30 July 2021. The Applicant was asked to pay £184.07 on account of his Initial Service Charge (as required by paragraph 1.4 of the Seventh Schedule). He paid it. In accordance with the excerpt of the completion schedule he received, this charge related to the period 30 July 2021 to 30 September 2021, which correlates to the date the following instalment of the Interim Service Charge would fall due – 1 October 2021.

51. At the outset of the hearing, it was very unclear what costs this Initial Service Charge actually contributed towards.

52. The Respondent explained that the Initial Service Charge contributed principally to "administration" costs. It described these "administration" costs as fees the

Respondent was due to pay, firstly, for arranging relevant filings with Companies House and, secondly, for entering details about the Estate properties on Gateway's computer system in preparation for Gateway being appointed the Respondent's managing agent on 1 March 2022. The latter fee was stated at the hearing to be a one-off charge of (currently) £25 + VAT per property. The Tribunal was informed that the actual maintenance of the Estate and Yule House was at this point being provided by the Landlord "free of charge" (although of course it was not "free", simply factored into the prices paid to the Landlord for the properties and leases on the Estate). This is understandable, as some of the properties were either under construction or still registered in the Landlord's name and they would have benefitted from construction warranties. The Landlord may well have continued to have workmen on site. It would have been responsible for a fair contribution to the Estate management costs in any event, so it simply provided the requisite maintenance itself.

53. Invoices show what Gateway had charged the Respondent on account of these two heads of "administration" costs. The first invoices were dated 31 December 2020. £312 (£260 + VAT) had been charged for "*Property Set Up*" fees. £1,176 had been charged as a "*Yearly Company Administration Fee*". The Respondent explained that this constituted a £588 yearly fee for each of 2019 and 2020 (£588 x 2 = £1,176).

54. On 31 December 2021, further invoices were raised charging "property set up" fees of £528 (£440 + VAT) and a yearly company administration fee of £588. On this date, a "*Yearly Dormant Accounts*" fee of £144 and "*Yearly Filing Fee*" of £13 were also charged by Gateway.

55. On 31 December 2022, the "property set up" fee charged was £864 (£720 + VAT), the company administration fee remained £588, the "dormant accounts" fee had risen to £174 and the filing fee remained £13.

56. The basis on which the invoices were charged was unclear. As Gateway was appointed company secretary of the Respondent on 6 May 2021, the Tribunal concluded the 2021-2022 administration fees (save for the "property set-up" fees) arose from that role. Prior to this point, the Tribunal found that Gateway must have been acting simply as "consultant" in respect of the Respondent's Companies House filings. In relation to the "property set up" fees, until its appointment as managing agent on 1 March 2022, it must have charged these fees as some form of "managing agent in waiting".

57. Having reviewed Companies House records, the Tribunal noted that the only filing that took place in 2019 was the application for registration of the Respondent, accompanied by the Respondent's memorandum and articles of association. The

Respondent did not submit that any of these documents were prepared by Gateway so the Tribunal found these had been prepared separately, likely by the two solicitors who were named its initial directors.

58. In light of all of the above, the Tribunal concluded that the £588 administration fee was a fixed yearly fee that did not reflect the amount of work actually undertaken by Gateway.

59. As to the cost of the "property set up" fee, it could not have been £25 + VAT per property at the relevant times, as no exact multiple of that sum would result in the fees charged. The Tribunal concluded it was therefore £20 + VAT at all relevant times.

60. To support its explanation of where the Initial Service Charge was spent, the Respondent referred to the service charge accounts for the period ending 31 December 2022. In an appendix to those accounts, a "management company reconciliation" was provided. This was a simple summary recording the fees that had been invoiced by Gateway (as described above) as "expenditure", and the sums received on the execution of each lease (and possibly each freehold transfer) as "income". £4,009 "income" had been received in 2021, which included the Applicant's contribution of £184.07. This income has been described and treated by the Respondent as "completion income".

61. By 31 December 2022, there was a positive balance on the "completion income account" of £3,774. This arose after receipts of £9,649 between 2020 and 2022 and expenditure of £5,875 on Gateway's fees and insurance over that period.

62. This insurance was public liability insurance that was purchased via Abaco Insurance Brokers Limited on 7 March 2022 for the period 1 March 2022 – 28 February 2023, for a premium of £1,475. As can be seen from the 2022 Budget, this insurance related to the Estate and was not specific insurance related to Yule House.

63. This £3,774 "completion income balance" was separately recorded in the "*notes to the service charge accounts*" under a heading "Reserve Funds" with the title "Management Company Funds". This "reserve fund" was recorded as distinct from any reserve fund relating to the Estate, Grounds or Yule House (for none of which, by year end 2022, any reserves had been set aside). The Respondent submitted it was a "reserve fund" destined "*to cover future management company administration costs*", which are essentially the fees Gateway charge for its secretarial function. However, this does not align with the 2022 Budget, where these "administration" costs were recorded as an Estate cost (contributions to which would presumably come from an "Estate reserve fund", not any other "bespoke" reserve). Despite

featuring in the 2022 Budget, these administration fees and the cost of the Estate insurance were not subsequently referred to in the 2022 service charge accounts, save in the "management company reconciliation" appendix. These costs were in fact paid for out of the "completion income".

64. The Lease only provides for the creation of a "reserve fund" when properly included within the Service Charge on the basis of an estimate of the costs it would be intended to cover. Although the Respondent has a broad discretion about the creation of reserves, which can be for both Estate maintenance costs and management costs, there is no specific provision for a reserve to be created exclusively destined to "company administration" costs. As the 2022 Budget made clear, these are costs that form part of the Estate service charge. The Tribunal considered that the funds were better described as simply standing as a balance to the Respondent's current account, with no specific destination, rather than forming part of any specific "reserve fund". The reference to the funds being allocated to a "reserve" was not mentioned anywhere in the main body of the service charge accounts. The Tribunal concluded the funds were simply referred to as such by Gateway for administrative convenience.

65. For completeness, reflecting that the Landlord retained responsibility for maintenance originally, 1 October 2021 came and went without any further service charge being demanded from the Applicant. The first service charge demand the Applicant received came from Gateway on 14 March 2022, relating to the period 1 March 2022 – 30 June 2022 (more details will be provided when addressing the next issue).

Company Administration Costs – Conclusions

66. The Applicant had submitted, firstly, that his Initial Service Charge had not been accounted for and that he had no idea where it had gone. Secondly, he submitted that it was both excessive and/or allocated to costs for which he was not liable. Thirdly, he submitted that the funds should have been credited towards subsequent service charges demanded from him.

67. On their face, strictly speaking, only the second matters were ones within the Tribunal's jurisdiction. Having considered those matters in detail, the Tribunal concluded that the third matter did also fall within its jurisdiction, to an extent.

68. The first matter was, in truth, one for the Respondent to explain to the Applicant. That has now happened. In summary, the Initial Service Charge funded the Respondent's "administration" costs: the consultancy/secretarial fees charged by Gateway and Gateway's "property set up" fees. Additionally, they contributed

towards the Estate insurance for 2022. After taking account of these costs, a significant balance remained. The remaining balance simply stood on the Respondent's current account in 2022, although the Respondent considered it a "reserve fund".

69. As to the second matters, the Tribunal dealt quickly with the first: the complaint that the Initial Service Charge was excessive. With the benefit of hindsight, the Initial Service Charge does appear high. The Applicant's "property set up" fee amounted to £24 (inclusive of VAT). His share of any annual secretarial fee(s), even multiplied over 3 years, would not come close to the difference with the £184.07 he was charged. This is precisely how a surplus of £3,774 was allowed to accumulate. However, the Applicant specifically agreed to pay this sum on executing the Lease and it was not manifestly excessive when considering the management of the Estate was due to transition to the Respondent who was not yet familiar with the related costs. The Tribunal therefore concluded there was no basis on which to find the agreement was somehow invalid or that the Initial Service Charge was unreasonable in amount.

70. In relation to the other matters, the Tribunal made three initial observations.

71. The first is that the origin of the "completion income" is very unclear (save that £184.07 was provided by the Applicant). If it was only from the 38 leasehold flats on the development, some must have paid considerably more than the Applicant (the "completion income" received of £9,649 considerably exceeds 38 x £184.07 = £6,994.66). The estimated Service Charge, to which this "completion income" was supposed to be relate, was also very unclear, as was how that figure had been determined. The Respondent has provided no clarity or transparency on these issues.

72. The second observation is that it is a clear breach of the Lease for the Respondent not to have provided any accounts for the 2021 Service Charge Year, whatever its end date, be that 31 December 2021 (as the Tribunal determined it was), 28 February or 31 March 2022. The 2021 accounts therefore should have been drawn up sometime in early- to mid- 2022. They were not. Providing such "accounts" in a summary appendix entitled "Management Company Reconciliation" to the 2022 service charge accounts is not what the Lease envisages.

73. Equally importantly, no accountant's certificate certifying the Applicant's "final" service charge for the 2021 year (his "Tenant's Proportion") has been prepared. Gateway's rather surprising submission on these issues, in light of its allegedly significant engagement with the Respondent since 2019, including the preparation of its accounts, was that it was not managing agent at the time so has no further information about any income or expenditure prior to 1 March 2022.

74. The third observation, which will be explained more fully below, is that the Respondent appears to have run two service charge accounts for the Applicant "in parallel" in 2022. The first had been credited with the Initial Service Charge, the second was created by Gateway on its appointment as managing agent on 1 March 2022 and failed to take account of the first. The Respondent and/or Gateway have essentially treated the Initial Service Charge as somehow different to any other service charge contribution. They had no basis for doing so; the Lease only provides for one service charge to be payable. The effect is that service charges have been demanded from the Applicant by Gateway, on the Respondent's behalf, despite the Respondent already holding service charge funds received from the Applicant. Furthermore, certain costs continued to be deducted from the Applicant's Initial Service Charge in parallel with the new demands being made, which very much confuses matters. In order to make any sense of this situation, the Tribunal will address each of the Applicant's "two service charge accounts" separately.

75. It is agreed by the parties that the Applicant paid his Initial Service Charge. The Tribunal found that, based on the accounts it had access to, it was applied (at least in part) in settlement of Gateway's invoices, including those from 2020 (the income in 2020 was insufficient to cover all of the expenditure). The Tribunal therefore needed to determine whether the Applicant was required to contribute to those invoices.

76. The first invoices dated from 31 December 2020. It transpires that they refer to work allegedly done in 2019 and 2020. The Applicant says that the sums cannot be charged to him on account of section 20B of the Landlord and Tenant 1985. The Tribunal dismissed this submission on the basis that, firstly, no actual demand was made (the service charge was paid in accordance with the terms of the Lease, on its execution). Secondly, the funds had in any event been "demanded" by the Lease and provided within seven months of Gateway's invoices.

77. However, the Tribunal accepted that the Applicant was not required to contribute to these costs by way of a service charge for the simple reason that the Lease does not provide for it. It should not be assumed the Applicant agreed to the service charge merely by dint of executing the Lease and payment; it is abundantly clear he had no real idea what those funds would be used for.

78. It is important to stress first of all that the Initial Service Charge is nowhere in the Lease referred to as "completion income" or any form of specific service or other charge reserved for any particular purpose. This may well help explain the Applicant's general confusion around this point and the destination of the funds. The

payment is referred to in the Lease in paragraph 1.4 of the Seventh Schedule as "*a proportion of the Interim Service Charge from the date of this Lease to the next date for payment*". That is exactly how it was portrayed and calculated in the Applicant's completion statement. Accordingly, there is no reason to treat this Initial Service Charge as anything other than an Interim Service Charge being contributed pursuant to the Lease.

79. As to the requirements of the Lease, the Term began on 1 January 2021. The Respondent's accounts record that the invoices were settled in accounting year 2020 and were referable to that year ("*Total management company expenditure in year*"). Accordingly, the fees charged by Gateway were not "*actually expended or reserved for periodical expenditure … during the Term*" (as per the definition of Service Charge in the Lease). The Tribunal therefore concluded that the Applicant's covenants as to payment of a service charge simply do not apply to this pre-Term expenditure.

80. Moreover, paragraph 1.4 of the Seventh Schedule of the Lease clearly states that the Applicant is only required to pay a proportion of the Interim Service Charge due for the period in which the Lease was executed (in this case, 1 April – 30 September 2021, which was referable to the Service Charge Year 1 April 2021 – 31 March 2022). Indeed, that is all that he was charged according to the completion statement. Paragraph 6.1 of the Sixth Schedule is of the same effect, although it fails to adopt the defined term "Interim Service Charge". This 2020 administration cost was due to be accounted for in the previous service charge year, ending at the latest on 31 March 2021. No accounts or evidence have been produced for that period to show otherwise. Were these costs to have been payable by anyone, it would have been those contributing to the Service Charge that year, including possibly the Landlord (in accordance with the principles reflected in the Eighth Schedule and/or as its fair contribution as freeholder of whatever parts of the Estate had not by that point been sold), not the Applicant.

81. Further still, the contractual basis on which the Respondent relies in submitting that this sum is payable is the rather nebulous paragraph 8 of section 1 of part 2 of the Fifth Schedule of the Lease. "*A reasonable sum for administrative expenses…*". It was far from clear to the Tribunal that this term obviously encompassed the costs of employing consultants to prepare (or not, as was the case for 2019) filings for Companies House. However, the Applicant accepted that it could, so the Tribunal did not consider the matter further. What the Tribunal did not accept was that this paragraph could be read, without making it expressly clear, that the obligation to contribute to these costs applied also to consultancy fees incurred in previous years, both prior to executing the Lease and to the start of its stated Term. As, in effect,

those consultancy fees had been "stored up" since 2019, it was especially important for the Lease to be clear about that and it was not. On an objective reading of the service charge provisions of the Lease, they provide that expenditure during any Service Charge Year is to be settled by those contributing to that Service Charge that year. That is precisely what the provisions governing the Tenant's Proportion achieve: if an Interim Service Charge is insufficient, a balancing charge is applied. So, the deficit created in 2020 by having insufficient "completion income" as against the expenditure on Gateway's fees was to be made good after the preparation of the 2020 accounts by those contributing to the 2020 Service Charge (including, where applicable, the Landlord), not by seeking contributions from future leaseholders, such as the Applicant (unless of course the Lease were to provide otherwise).

82. Accordingly, for all and any of these reasons, the Tribunal found that none of these "administration" costs from 2020, incurred prior to the commencement of the Lease, were costs to which the Applicant could be required to contribute.

83. In light of this finding, the Tribunal did not need to determine whether those costs had been reasonably incurred. Had it needed to, it would have decided that only the "property set up" fees had been. The Applicant's main submission was that very little work was actually required in these early years. The list of tasks the Respondent outlined in its statement of case certainly did not reflect the reality of what was required. Firstly, the Tribunal was not satisfied that any work was done in 2019 warranting a fee, save for the "property set up" process. Perhaps for this reason, no invoices were issued for over a year. Secondly, very little was done in 2020 (save in relation to the "property set up" process). Agreeing a fixed fee of £588 for administration costs when the work required is minimal is not reasonable. The directors of the Respondent at the time were both solicitors and they had incorporated the company. They would or should have been aware of the minimal work required and able to perform the task without instructing a consultant. The £588 cost therefore was not reasonably incurred. As to the "property set up" fees, with the managing agent not due to take over management of the Estate until 1 March 2022, it is arguable that it was not reasonable to incur these fees years prior. However, the Tribunal accepted the fees themselves are not especially objectionable and that the issue is really a matter of timing, not substance. Clearly there was some agreement Gateway would take over management at some point, so these costs were reasonably incurred.

84. As to the 2021 and 2022 costs, the analysis is different. Gateway performed some tasks in both years as demonstrated by Companies House records. The Respondent's directorship changed in May 2021. Gateway took on the role of company secretary at the same time. Importantly, all work was conducted within the applicable Service

Charge Year and all costs were referable to each year. The work was not invoiced until 31 December of each year. The Tribunal concluded that the £588 company administration fees were therefore reasonably incurred and payable under the terms of the Lease. Likewise the applicable "property set up" fees.

85. However, it was not reasonable for the Respondent to accept to pay Gateway an additional £144 (and then £174) for filing dormant accounts (which is not an onerous task and had been done in 2020 at no additional cost). Although Gateway may not have physically filed those accounts in 2020, it said that it had prepared them. The Tribunal accepted that the £13 filing fee was an additional charge incurred. Although the Tribunal was rather unimpressed at this sum having been claimed in addition to what is a sufficiently generous general administration fee, it did not conclude that it was unreasonably incurred. Accordingly, for both 2021 and 2022, the £13 filing fee was also reasonably incurred and payable by way of service charge. The additional dormant account fees were not reasonably incurred and are not payable.

86. The Tribunal lacked any information about the 2021 service charge budget, estimates, accounts and/or about how these administration costs had been apportioned to the Applicant. However, it is now unlikely that any accounts will be prepared for 2021 or an accountant's certificate provided and the Tribunal has sufficient information to determine what service charge was payable by the Applicant.

87. In doing so, it noted that in the 2022 Budget the administration costs were shared equally across the Estate. It found that the same apportionment should be applied for 2021 costs. 1/139th of the £588 administration fee, £13 filing fee and £528 "property set up" fees amounted to £8.12. This sum would be apportioned in accordance with the part-year for which the Applicant was responsible for paying the Service Charge (30 July – 31 December 2021 = 155 days). Such an apportionment is the clear implication from the Initial Service Charge being a proportion of the Interim Service Charge. £8.12/365 x 155 = £3.45. Accordingly, for 2021, a service charge of £3.45 was payable by the Applicant.

88. For 2022, as mentioned above, the Respondent in effect operated two service charge accounts for the Applicant. The Applicant's contribution to these administration charges, together with Estate insurance, were charged to the first. Once again, although no accountant's certificate has been provided, the Tribunal is able to determine what the "first" service charge payable by the Applicant for this year amounts to. Adopting a similar calculation methodology to above and noting that the "property set up" fees this year were £864, £21.15 was payable (£588 + £13 + £864 + £1,475 = £2,940; £2,940/139 = £21.15).

89. The Tribunal therefore determined that, at the end of 2022, £159.47 remained to the Applicant's credit on his "first" service charge account (£184.07 - £3.45 - £21.15).

90. The final matter before the Tribunal was whether this sum should have been put towards future service charge demands, as submitted by the Applicant. He says they should have been credited against the sums demanded from him by Gateway in relation to his "second" 2022 service charge account. The Respondent says that the sum was allocated to a "reserve". The Tribunal noted that the Lease allows for "reserve funds" to be created, but it has concluded this sum was not in fact placed in any formal "reserve". The Lease provides that a reserve would result from a "*sum as shall be estimated by the managing agent or if none by the Respondent … to meet part or all of the sums … which the managing agent (or if none the [Respondent]) anticipate will or may arise*". In accordance with the operation of the service charge provisions in the Lease, this "estimate" must be the product of some genuine process, typically made at the outset of any Service Charge Year. Indeed, that is exactly what happened in the 2022 Budget. It is important to do so, as otherwise the origin of funds in the "reserve" may not match the appropriate apportionment between the contributing parties. In this case, allocating the "completion income balance" to an Estate reserve, ignores that the leaseholders likely contributed the lion's share of that balance, which is designed to fund Estate management costs that are equally split amongst all 139 freeholders and leaseholders. Whenever such "reserve" is drawn upon, the freeholders would end up in effect contributing less than the leaseholders, which is obviously unfair and a breach of the Lease. The Tribunal determined in this case that no proper process whatsoever existed for the allocation of this "completion income balance" to any formal reserve. It is not in accordance with the Lease for the Respondent to decide that any unallocated sum should simply be allocated to a reserve of its choosing.

91. Rather, the Lease is clear that this sum of £159.47 (or, in fact, £180.62 as it stood at the end of 2021) is to be considered an "overpayment" and credited towards future sums due from the Applicant to the Respondent (and not simply by way of allocation to a "reserve"). The situation would have been clarified had the Respondent complied with its obligations under the Lease to provide an accountant's certificate to the Applicant specifying his "final" service charge for 2021 (i.e. his Tenant's Proportion).

92. This finding and lack of an accountant's certificate creates some difficulty for the Tribunal. As that certificate has not yet been provided, no "overpayment" has yet been established in accordance with the Lease's terms. However, years have now elapsed and it is relatively clear that none will ever be provided. What then is to become of the Applicant's credit balance? The Tribunal concluded that, in these circumstances, taking account of section 19(2) of the Landlord and Tenant Act 1985,

its jurisdiction to determine whether a service charge is payable extends to determining whether an "interim" service charge has ceased to become payable once the "final" service charge for the relevant year is established.

93. As the Tribunal has determined the "final" service charge payable for the 2021 service charge year was £3.45, the remaining "interim" service charge of £180.62 is now no longer payable. However, in reality, £21.15 of that sum has in fact paid part of the Applicant's 2022 service charge. That leaves only £159.47 of the "interim" service charge that is no longer payable.

94. It is possible that since 31 December 2022, yet more of that sum has been used to pay certain service charges. The Tribunal has no information about this, so it is a matter about which the parties must cooperate. If the sum remains in the Respondent's account, whether in a purported "reserve fund" or otherwise, clearly it can be credited directly to the Applicant or reimbursed to him with little further consideration. If that purported "reserve fund" has been spent in whole or part, the Respondent must explain to the Applicant, ideally by way of accountant's certificate(s), on what it has been spent and in what proportion the Applicant was expected to contribute (presumably it is on Estate expenditure, so 0.7194%). Whatever contribution has been made, he should be credited or reimbursed the difference with the £159.47 otherwise standing to his credit.

95. The Tribunal cannot order these steps be done, but it is the logical consequence of its findings and its determination that £159.47 of the Initial Service Charge is now no longer payable.

2. <u>Service Charge Demands – Facts</u>

96. A general concern of the Applicant was that service charge demands were not made in accordance with the dates specified in the Lease and that notice had not been provided of any changes.

97. The Tribunal has already noted that the Respondent is permitted to amend the dates of the Service Charge Year and did so after the Lease was agreed to align with a calendar year. The service charge payment dates were therefore due to change to 1 January and 1 July of each year.

98. After the execution of the Lease in July 2021, the first service charge demand was made on 14 March 2022 for the "part period" 1 March 2022 to 30 June 2022. As explained above, this ignored the balance already standing to the Applicant's credit. On 10 June 2022, the sum sought for that "part period" service charge was adjusted

higher and a "Half Yearly" instalment of the 2022 Interim Service Charge was sought, referable to the period 1 July – 31 December 2022. A further service charge demand was issued on 20 July 2022 related to the "Block Cost" (presumably on account of the Yule House service charge). This was also for the period 1 July – 31 December 2022. All of these charges were paid, all ignoring the balance that already stood to the Applicant's credit.

99. After the 2022 accounts had been prepared the Respondent noted a shortfall in income received as opposed to expenditure. It therefore demanded a balancing charge of £188.66 for the period 1 March – 31 December 2022 on 23 May 2023. Once again, this ignored that the Applicant had a credit balance, which, as is now clear, would have covered most of this charge. This balancing charge was not paid and remained unpaid until the sum was requested directly from the Applicant's mortgagee, who paid it.

Service Charge Demands – Conclusions

100. The Applicant submitted that, as the service charge demands did not correspond to the payment due dates stipulated in the Lease, the demands were invalid. The Tribunal rejected that submission. Paragraph 1.5 of the Seventh Schedule requires the Applicant to make payments on the "*relevant payment dates in accordance with the provisions of the Sixth Schedule*". Paragraph 6.1 of the Sixth Schedule stipulates those payment dates as 1 April and 1 October "*(or any other dates as shall be notified to the Tenant by the Respondent in writing at any time)*". The Lease does not say that notification needs to be made prior to any demand being issued. There is no reason why the demand itself could not constitute the requisite notice. The Respondent amended the Service Charge Year (as entitled to do so by the Lease without notice) and accordingly amended the dates for payment of the Interim Service Charge by notice via the subsequent demands. The change would have been obvious enough from the first demand and unequivocal from the second and third.

101. Of course, the demand from March 2022 was not for half of the Interim Service Charge as would strictly be required by the Lease; it was logically reduced due to the change in accounting period. That change was permitted in the Lease and it follows that consequential amendments would be permitted also.

102. The Applicant raised a second objection, on the basis that the address of the Landlord was not provided on the service charge demands, meaning that the service charges were not due in accordance with section 47 of the Landlord and Tenant Act 1987. However, the Tribunal noted that that section only suspends payments that are

due "*from the tenant to the landlord*". The Respondent did not satisfy the more restrictive definition of "landlord" in that Act, so the section has no application.

103. However, the Tribunal recalls its finding above about the requirement to provide the Applicant with an accountant's certificate specifying the "final" service charge due from him for each Service Charge Year (i.e. the Tenant's Proportion). This was not provided. According to paragraphs 1.3 and 1.5 of the Seventh Schedule, which line up entirely with the provisions of the Sixth Schedule, any balancing charge is only due 21 days after receipt of the accountant's certificate specifying it is due. As that certificate has never been provided, the Applicant is under no obligation to pay the balancing charge of £188.66 demanded on 23 May 2023. This service charge is therefore not currently payable and, unless a certificate is now provided, never will be. As it has in fact been paid by his mortgagee, it should either be reimbursed to the Applicant or credited to him.

3. <u>2022 Health and Safety Inspection – Facts</u>

104. The Respondent took over active management of the Estate with effect from 1 March 2022. Prior to then, the Landlord had assumed this responsibility (as explained above). With effect from the same date, the Respondent appointed Gateway as its managing agent. On 22 March 2022, on the Respondent's behalf, Gateway arranged a "health and safety / fire inspection". A relatively detailed report was produced, including photos, highlighting issues encountered and recommended remedial action.

105. An invoice was raised on 22 March 2022 in the sum of £720.

<u>Conclusions</u>

106. The Lease provides for the Respondent to keep the Maintained Areas properly maintained and "*to carry out any necessary Health and Safety Audits and fire risk assessments from time to time as may be necessary*" (paragraph 9.9 of part 1 of the Fifth Schedule). Section 1 of part 2 of that schedule provides for the cost of inspections to be recoverable from the Applicant.

107. The Applicant submitted that the fee charged was excessive bearing in mind the Estate had only recently been developed and in light of the few developed areas that fell under the Respondent's responsibility.

108. The Tribunal understood the Applicant's concerns, but noted that the inspection was not restricted to the developed areas of the Estate. It also addressed the state of

the "natural" areas of the Estate, including wooded areas and relevant bodies of water. Just because the Estate had recently been developed did not mean that it would contain no relevant health and safety risks. Indeed the report demonstrated that it did.

109. The Tribunal had no alternative quotes against which to gauge the cost of the inspection and did not find it obviously excessive considering the size of the Estate. Accordingly, the Tribunal found that this charge was reasonably incurred and payable in full.

4. Gateway Signage – Facts

110. The Respondent determined to install a sign bearing the name and contact details of its managing agent – Gateway – at a cost of £264.43, invoiced on 5 July 2022. Signage already existed on the Estate, but not at the precise location where the sign was installed.

Conclusions

111. The Lease provides the Respondent with considerable discretion as to works and expenses incurred in the proper and convenient management of the Estate and as to the provision of equipment that it is reasonable to provide. The Tribunal determined that this could include the installation of new signage, where appropriate. This was a one-off expense that was not obviously unreasonable, both in nature and amount. Accordingly, the Tribunal found that this charge was reasonably incurred and payable in full.

5. 2022 Yule House Insurance – Facts

112. In addition to the Estate insurance referred to above, the Respondent purchased buildings insurance relating to Yule House in the annual sum of £3,823.04 for the period 1 July 2022 to 30 June 2023 (Gateway only took over management responsibility for Yule House on 1 July 2022). An appropriate proportion was charged to the Applicant up until the year end 2022.

113. The insurance had been procured through a broker and was based on a reinstatement value of £3,346,737.95 that had been provided by the Landlord (who had been responsible for building Yule House).

Conclusions

114. There was no dispute that insurance was required, but the Applicant was dissatisfied at the reinstatement valuation that had been used in establishing the premium. He submits that an independent valuation, prepared by a "RICS-qualified surveyor" (as envisaged in paragraph 1 of section 1 of part 2 of the Fifth Schedule to the Lease), would have been preferable because the value provided by the Landlord was a construction, rather than reinstatement, value.

115. The Tribunal determined that the Respondent has some discretion as to the precise terms of the insurance obtained and the reinstatement valuation to adopt; the reference to a RICS-qualified surveyor is not mandatory. It sought a figure from the Landlord, based on the costs of building Yule House. This was likely to be at least as realistic and reliable as any independent valuation, and incurred no additional cost, so the Tribunal determined that the valuation used was reasonable. The Tribunal had no alternative quotes demonstrating the premium was excessive, accordingly, the Tribunal found that this charge was reasonably incurred and payable in full.

6. <u>Site Inspections – Facts</u>

116. The Respondent arranged regular site inspections of the Estate, for which it received invoices in the sum of £144 on both 13 July 2022 and 11 November 2022.

<u>Conclusions</u>

117. There was no dispute between the parties that regular inspections are appropriate and provided for in the Lease. The Applicant's concern was that such inspections would typically be included within a managing agent's general management fee and should not be "outsourced" at greater cost.

118. The Tribunal found there was some force to the submission, but also that it must review each situation on the facts. In this case, Gateway has chosen to charge separately for inspections. This is in the context of a management fee of £60 per unit, which in the Tribunal's expert view is towards the lower end of what it is reasonable to charge for a development of this nature.

119. The Respondent submitted that Gateway's charging structure has been designed with transparency in mind. The Tribunal noted that lack of transparency is a regular concern that leaseholders raise, and transparency should not be discouraged. Bearing in mind the level of management fee charged, it was perfectly reasonable and appropriate to treat inspections as outside the scope of general management and to invoice separately for them. Accordingly, the Tribunal found that these sums were reasonably incurred and payable in full.

7. Bin Store Maintenance – Facts

120. The door to the bin store at Yule House has required numerous repairs since 2022, all charged to the leaseholders of Yule House. The Applicant provided an account with photos to support his view that the door frame is not fit for purpose and should be considered a defect. The Tribunal had insufficient evidence to make any firm findings about this issue. Additionally, for reasons that will become clear, it determined it was not relevant to the issue before it, which was only the reasonableness of repairs undertaken in late 2022. It therefore needed not make any determination about it.

121. The first repair to the bin store included within service charge year 2022 was conducted on 28 October 2022, to allow smooth opening and closing. It was part of a number of repairs conducted on that date, for a total sum of £234, all detailed in an invoice dated 1 November 2022 (p.438 of the file).

122. The second repair was conducted on 16 November 2022, to replace a broken lock, said by the Applicant to be due to the poor design of the door. The invoice was in the sum of £265.50.

123. Further, similar, works were undertaken on 14 December 2022 at a cost of £362.96.

Conclusions

124. These listed incidents of repair appear to be the only occasions in 2022 when repairs to the bin store had been required. The Applicant submits that the repair costs were unreasonably incurred as the only proper remedy was to replace the doors and frame entirely, which are allegedly unfit for purpose. That may or may not be the case. It is certainly arguable in the Tribunal's view.

125. However, the Tribunal was mindful that it must consider the position as it was in late 2022. No repairs had been required between March and October. There was no reason for the Respondent to have considered the matter further until then. Even after an isolated first repair, there would be no obvious reason to do so. By the time of the second repair in November, there would have been more cause to investigate. By the time of the third repair, required within a short period of time, it was clear to the Tribunal that further investigation would have been warranted. However, this was in December 2022, at the end of the service charge year under scrutiny.

126. The Tribunal determined that it was plainly reasonable for the Respondent to address the immediate issues that required repair on each listed occasion. It determined therefore that the costs had been reasonably incurred and were payable. However, by late December 2022 further investigation was warranted. If the matter remains unresolved and returns to the Tribunal in relation to subsequent service charge years, no doubt this issue and what, if anything, was then done by the Respondent will be considered further.

8. Dry Riser – Facts

127. The dry riser in Yule House was installed during its construction. According to an email exchange between Gateway and the installer (pp.455-457 of the file), it had been tested by the installer in March 2021 and was found to be operational. Its warranty expired in March 2022. The Tribunal had no reason to find otherwise.

128. When a service was scheduled in October 2022, it could not take place as the drain valve had seized. A replacement was required. The Respondent first sought to have the issue rectified under warranty, but, as explained above, it had expired. It therefore arranged a repair at a cost of £252.

Conclusions

129. The Applicant did not dispute that the dry riser was a fire safety measure the cost of maintenance of which can be charged to him. However, he submitted that the issue arose due to want of monitoring by the Respondent allowing the warranty to expire.

130. The Tribunal found there was no evidence to support this view. It was certainly unfortunate timing but the Respondent was in no way responsible for the valve seizing. It was required to arrange its repair and did so, after first seeking (although unsuccessfully) to arrange for it free of charge from the installer. There was nothing unreasonable about that, quite to the contrary. Accordingly the charge was reasonably incurred and is payable in full.

9. Cleaning – Facts

131. There are common parts and six communal windows in Yule House. The Respondent arranged for the common parts to be cleaned twice a month and the windows bi-monthly from July 2022 onwards, pursuant to a contract with Airwaves Facilities Management Limited (“Airwaves”). Airwaves attended Yule House to conduct both the cleaning and window cleaning.

132. Invoices and site visit forms were included in the file from p.407 onwards. They show that cleaning occurred twice a month for 4 or 5 hours on each visit, at a cost of £290.80 per month. Window cleaning took place bi-monthly at a cost of £240 per visit, allegedly taking 5 hours on each visit.

Conclusions

133. The Applicant disputed both the cleaning and window cleaning costs. At the hearing, it became clear that one of the reasons he disputed the cleaning charges was because he had originally been provided with an incomplete set of invoices. Once that was provided, he remained concerned that the cost was £96 more expensive per month than alternative providers.

134. The Tribunal had no good evidence of the alternative quote. In any event, it was not convinced that a £96 difference per month meant that the Respondent's actions were necessarily unreasonable. Of course, if the Applicant wishes to engage with the Respondent to encourage them to appoint alternative and cheaper cleaners, he is free to do so. If they refuse without good reason, he would have a better case.

135. However, it was clear to everyone at the hearing, including the Respondent, that a charge of £200 plus VAT for 5 hours' work to clean 6 windows was manifestly excessive and unreasonable. The Respondent submitted that the window cleaning may have been part of the general cleaning work. The Tribunal noted that that was not reflected in the documents and preferred the documentary evidence.

136. The Applicant runs a cleaning business. He said that he cleaned the communal windows at Yule House and that it took him less than an hour for an internal and external clean. That sounded perfectly plausible to the Tribunal. Although it had no alternative quotes available, it determined that the £240 cost for a 5-hour visit was plainly not reasonably incurred. A reasonable sum would be to allow 1 hours' work on each attendance. Doing its best from the evidence available, the Tribunal determined that it would allow £48 for window cleaning (£240 / 5).

137. Accordingly the Tribunal concluded that the cleaning charges of £290.80 per month were payable in full. However, the window cleaning charges were not reasonably incurred. Only £48 per visit (£144 total) is to be considered a relevant cost for the purposes of calculating the Applicant's service charge.

10. Account Management Fee

138. The Respondent conceded this issue prior to the hearing, so the Tribunal did not consider the matter further. None of the account management fee of £1,569 that forms part of the Estate service charge is payable by the Applicant.

11. Accountancy Fee

139. The Applicant was concerned about how an accountancy fee could be charged in advance of the preparation of accounts. The Respondent explained that this was its practice to ensure the costs were taken into account in the corresponding service charge year. The Applicant made no further submission. The Tribunal saw nothing unreasonable about the Respondent's approach so found the charge to be payable in full.

12. Bank Charges

140. The Respondent conceded this issue prior to the hearing, so the Tribunal did not consider the matter further. None of the bank charges of £80 that forms part of the Estate service charge is payable by the Applicant.

13. Postal Charges – Facts

141. Gateway invoiced the Respondent £392.35 on 31 December 2022 on account of "Postage" costs for the year 1 March – 31 December 2022. The Respondent explained at the hearing that the term "postage" is unhelpful as it is not simply a charge for stamps. It primarily addresses the administrative work involved in arranging and sending out post. The Applicant made a valid point that stamps do not attract VAT so the invoice may be incorrect. However, this is not inconsistent with the Respondent's explanation of the nature of the charge as primarily administrative. The Respondent accepted that a clearer explanation of these costs would be appropriate in future. The Tribunal accepted the Respondent's evidence.

Conclusions

142. Similarly to a point made above, the Respondent was keen to stress that its charging model is based on a lower general management fee accompanied by a series of further costs that are detailed and charged separately for the purposes of transparency.

143. The Tribunal noted, as above, that lack of transparency is a regular concern that leaseholders raise. Transparency should not be discouraged. Bearing in mind the level of management fee charged (£60 per unit), it was reasonable to invoice

administrative costs as separate to general management fees. Accordingly, the Tribunal found that this sum was reasonably incurred and payable in full.

14. Emergency Phone Service – Facts

144. The Respondent engaged JEC Adiuvo UK Limited ("Adiuvo") to provide an emergency phone line to Yule House residents 24 hours per day at an annual cost of £290.37. This cost is derived from a wider agreement with Adiuvo to cover several estates under Gateway's management.

145. The Applicant submitted that this cost was excessive as he had contacted Adiuvo via LinkedIn in March 2025 for a quote. It had stated it could provide the service for a "*Block*" at a price of "*£4.75 + VAT per Unit, per Annum with a minimum monthly spend of £175 + VAT*".

Conclusions

146. The Tribunal was mindful that it did not have the full information about the Adiuvo service. The only invoice available was from Gateway, after an internal apportionment of a wider contract. On the other hand, the alternative Adiuvo quote was not especially helpful as the minimum monthly spend would not have been met at Yule House – the actual total annual cost of the service was cheaper than the cost of just 2 months at the minimum monthly fee quoted.

147. Ultimately, the Tribunal accepted that it was not unreasonable to provide such a service and it would fall within the broad management discretion provided for in the Lease. The Tribunal was a little uncomfortable with the lack of transparency provided by the Respondent in relation to its wider arrangement with Adiuvo, but determined that the Applicant had not shown the cost of the service was excessive. It was not obviously so either. Accordingly, the Tribunal found that this sum was reasonably incurred and payable in full.

15. Administration Charges

148. The Respondent had charged the Applicant £660 by way of administration charges relating to his non-payment of the balancing charge referred to above. At the hearing, the Respondent accepted that the demands for payment were not accompanied by a summary of rights and obligations relating to administration charges. It accepted that it was a statutory obligation to do so in accordance with paragraph 4 of schedule 11 to the Commonhold and Leasehold Reform Act 2002.

149. Accordingly, the Applicant has always been entitled to withhold payment of these administration charges and they are not currently payable.

150. Putting aside the issue of the validity of the demands, the Tribunal determined that the administration charges are not payable in any event. The unpaid service charge to which they were related was the balancing charge for 2022. That balancing charge was not payable for the reasons given above. It was therefore not reasonable to incur administration charges in pursuing payment. Accordingly, no amount of the administration charges was reasonable and none of them are payable. For the avoidance of doubt, they will not become payable even if validly demanded.

151. For completeness, the Tribunal did not find that paragraph 3 of the Sixth Schedule to the Lease was relevant. That paragraph explains that the Applicant should pay service charges pending any determination of their reasonableness. Although he may have found them unreasonable also, the Applicant has refused to pay the charges because he considered them not to be due at all, not because he intended to challenge their reasonableness (although he has in fact done that as well). In relation to the other charges challenged before this Tribunal, he paid them prior to bringing these proceedings so has complied with the requirement. Once again, the Tribunal understands that the administration charges have in fact been paid by the Applicant's mortgagor. If so, the sum should either be reimbursed to the Applicant or credited to his service charge account.

Costs

152. The Applicant has succeeded with his application in several significant respects, but not in many others. However, it is quite clear that the Applicant's complaint very much originated in the Respondent's failure to provide the requisite service charge accounts and accountant's certificate for 2021. Through those, the Respondent may have been able to explain to the Applicant what his Initial Service Charge was used for and identify that it had largely served no purpose. The balance would then have been offset against future service charge demands, as the Lease envisaged. This and related issues took up the vast majority of the Tribunal's deliberations. Without this failure, it is likely that these proceedings could have been avoided entirely. The Tribunal notes that the Respondent has fully participated in the proceedings and made certain minor concessions where appropriate. However, overall, the Tribunal determined that it would be just and equitable to allow the Applicant's application under section 20C of the Landlord and Tenant Act 1985. No part of the costs of these proceedings are to be borne by the Applicant.

153. The Applicant also requested an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, which would be of similar effect. It would prevent the Respondent from seeking to impose an administration charge referable to the costs of these proceedings. For similar reasons, the application is allowed because the order is justified.

154. The Tribunal therefore orders that no part of the Respondent's costs in connection with these proceedings are to be charged to the Applicant.

155. As to the reimbursement of Tribunal fees, the Applicant has been successful in the core elements of his application which justified him bringing these proceedings. However, in doing so, the Tribunal found that the Applicant had raised several allegations about relatively trivial matters that stood little chance of success. These matters added nothing to the application and unnecessarily prolonged the proceedings for all concerned. The Tribunal was satisfied that it should order the Respondent to reimburse part of the Tribunal fees incurred, but that the Applicant should also bear some of the cost of the proceedings. The Tribunal decided that the Respondent should reimburse the Applicant £165 (50% of the £330 fees incurred).

Judge Hunt

22 August 2025