



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

Case reference : **BIR/44UF/LIS/2024/0011**

Property : **Various Properties situated at Queensway Court, Queensway, Leamington Spa, Warwickshire, CV31 3LS**

Applicants : **As set out in the attached schedule**

Representative : **Mr A Mindham and Mr F Mindham**

Respondent : **Orbit Group Limited (1)
Orbit Housing Association Ltd (2)**

Representative : **Shakespeare Martinu**

Type of application : **An application in respect of the liability to pay and reasonableness of service charges under section 27A of the Landlord and Tenant Act 1985 (1)
An application for an Order under section 20C of the Landlord and Tenant Act 1985 (2)
An application for an Order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (3)**

Tribunal members : **Judge C Goodall
V Ward BSc Hons FRICS – Regional Surveyor**

Date and place of hearing : **Paper determination**

Date of decision : **06 January 2026**

DECISION

Background

1. Queensway Court, in Leamington Spa, is a residential facility owned by Orbit Housing Association Ltd and / or Orbit Group Ltd with 178 self-contained apartments let to individuals over the age of 55. The Applicants are all occupiers of an apartment.
2. There are two forms of tenure. Ninety apartments are let on long leases for a term of 125 years commencing in 2014. The remaining eighty-eight apartments are let on weekly assured tenancies which include an obligation to pay a variable service charge. The Tribunal notes that these numbers differ from those provided by the Applicants, who say there are 65 apartments let on long leases and 113 on weekly tenancies. The Tribunal prefers the figure of 90 long leases as that is the number given in the First Respondent's lease. The disparity is not of any significance.
3. The application to the Tribunal was dated 4 June 2024. The challenge was to service charges levied in the 2022/23 service charge year (being 1 April 2022 to 31 March 2023). The grounds were (in part) that Applicants who moved to Queensway Court during or after the commencement of that service charge year should pay a different proportion of the service charge than those who were already occupiers of apartments ("the apportionment issue").
4. For that reason, and following a Case Management Conference held on 17 February 2025, the Applicants were classified into four groups, being:
 - a. Category A – those lessees holding a long lease who purchased the lease prior to the commencement of the 2022/23 service charge year;
 - b. Category B – those lessees holding a long lease who purchased the lease during the 2022/23 service charge year;
 - c. Category C – those lessees holding a long lease who purchased the lease after the 2022/23 service charge year;
 - d. Category D – weekly tenants of an apartment at the Property.
5. In fact, the Applicants have not pursued the apportionment issue except in respect of Category B Applicants and two Category D Applicants. As will be apparent in this decision, the Tribunal has rejected any argument that there can be differential treatment of the liability to pay service charges by the Category B Applicants and has declined to make a decision on the apportionment issue raised by the two Category D Applicants, so the distinction between different categories of lessee effectively falls away.
6. It is however important to maintain a distinction between lessees and tenants, so the list of Applicants on the schedule is now simply divided into lessees and tenants, who we describe in this decision as the Lessee Applicants and the Tenant Applicants. References to the "Applicants" encompasses both categories.
7. Because it became apparent during our deliberations that the Lessees Applicants' landlord is Orbit Group Ltd and the Tenant Applicants' landlord is Orbit Housing

Association Ltd, we order, pursuant to Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 that Orbit Housing Association Ltd be added as a Second Respondent in the proceedings. Although this is a late decision, the Second Respondent has confirmed that it consents to this Order.

8. The 17 February 2025 directions stated that the Tribunal was prepared to determine the application on the basis of the written representations from the parties, unless any party requested an oral hearing. None have done so, and we have accordingly determined the application on the basis of the representations made in the 867 page hearing bundle supplied to us. We have occasionally referred to pages in that bundle in this decision, to assist the parties, which are normally given in square brackets.
9. In making this determination, we point out again (the original point was made in the 17 February 2025 directions) that there are no challenges to the amounts of expenditure on services contained in the demands made to the Applicants. The issues relate to process and statutory compliance.
10. This document states the decisions we have made on the application and the reasons for them. We commence by setting out the lease provisions for both lessees and tenants, as it is essential to identify the obligations that the Respondents have in relation to the processes for demanding service charge payments. We will then set out a chronology of the processes by which the Respondents determined the 2022/23 service charge. Both of these sections should be regarded as background information on which we will base our determinations. We will then consider each challenge raised by the Applicants and determine it. Finally, we will deal with costs issues.

The Leases

Lessees – the headlease

11. Orbit Group Ltd itself is the lessee of a headlease dated 4 August 2014 for 250 years, originally from Heart of England Housing Association Ltd. That company transferred its interest to Orbit South Housing Association Ltd in 2020. Orbit South Housing Association Ltd changed its name to Orbit Housing Association Ltd in 2021. Thus, Orbit Housing Association Ltd (the lessor under the headlease) is a subsidiary of Orbit Group Ltd (the lessee under the headlease).
12. The apartments demised by the headlease are the ninety apartments demised on long leases. All the Lessee Applicants hold underleases derived from the headlease.
13. The headlease contains provisions requiring Orbit Group Ltd to pay service charges to the lessor, now Orbit Housing Association Ltd, and it provides a mechanism for the determination and collection of those charges.
14. Definitions relevant to the service charge provisions in the headlease are:

“1.1.1 “Account Year” means a year ending on 31 March.

1.1.2 “Authorised Person” means the individual nominated by the Landlord to estimate expenditure in relation to the Service Provision in accordance with Clause 6.3.

1.1.3 “The Building” means the building of which the Property forms part and each and every part of the Building and any other areas the use and enjoyment of which is appurtenant to the Building, whether or not within the structure of the Building.

...

1.1.6 “CHP” means the communal heating and hot water plant which provides the Building with heating and hot water and the apparatus plant equipment service installations building management systems (if any) and meters associated with it, or other central boiler installation in place from time to time to serve the Building.

...

1.1.8 “Common Parts” means those parts of the Building (whether or not within the structure of the Building) to be used in common by any of the Tenant, other tenants and occupiers of the Building, the Landlord, and those properly authorised or permitted by them to do so, and “Common Parts” includes (but not without limitation) the atrium and entrance hall, corridors, lobbies, staircases, lavatories, access ways, passages, lifts, courtyards, external pavements and footpaths, the refuse areas, the cycle stores and loading areas, service road or driveway, residents garden and Landscaped Areas and other such amenities intended to be provided by the Landlord for the benefit of the Shared Ownership Apartments and all other flats within the Building, but excluding any such parts as may be within the Property.

1.1.9 “Communal Facilities” means the communal facilities provided within the Building and currently comprising a laundry room, communal lounge, restaurant, activities room, buggy store and any other areas of the Building which the Landlord in its absolute discretion may change vary or designate from time to time as being used by the Tenant for such purpose in common with the occupiers of the other parts of the Development but for the avoidance of doubt shall exclude any part of the Building which is subject to a lease tenancy licence or other arrangement with a third party.

...

1.1.13 “Estimated Utilities Charge” means the landlord’s estimate of the Utilities Charge that will be payable by the tenant during a Utilities Charge Period in respect of the Shared Ownership Apartments.

...

1.1.20 “Management Charge” Means the sums payable by the Tenant pursuant to the provisions of schedule 5

1.1.21 “Outgoings” means (in relation to the Property) all existing and future rates, taxes, charges, assessments, impositions and outgoings whatsoever (whether parliamentary or local) which are now or may at any time be payable, charged, or assessed on property, or the owner or occupier of property.”

...

1.1.27 “Service Charge” means the Specified Proportion of the Service Provision in respect of each of the Shared Ownership Apartments.

1.1.29 “Service Provision” means the sum calculated in accordance with Clause 6.3, Clause 6.4 and Clause 6.5.

...

1.1.32 “Specified Proportion” means (in respect of each Shared Ownership Apartment) one hundred and seventy eighth share (1/178th).

...

1.1.36 “Utilities Charge” means a fair and reasonable proportion in respect of each Shared Ownership Apartment of the Utilities Costs.

1.1.37 “Utilities Charge Account Date” and Wellbeing Charge Account Date” means 1 April in each year of the Term or such other date or dates in each year of the Term as the Landlord may, by written notice to the Tenant, stipulate.

1.1.38 “Utilities Charge Period and Wellbeing Charge Period” means the period commencing on the commencement of the Term and expiring on the first Utilities Charge Account Date and Wellbeing Charge Account Date and thereafter the period from and excluding one Utilities Charge Account Date and Wellbeing Charge Account Date up to and including the next Utilities Charge Account Date and Wellbeing Charge Account Date.

1.1.39 “Utilities Charge Statement and Wellbeing Charge Statement” means the statement to be provided to the tenant under Paragraph 9 of Schedule 4.

1.1.40 “Utilities Costs” means the cost of providing energy through the CHP and the CHP Conducting Media for all water electricity and gas which shall be supplied to the Development (including for the avoidance of doubt the Heating Services) and the costs incurred by the Landlord directly or indirectly for such additional services as the Landlord may reasonably consider may generally enhance the quality of life of the residents of the scheme.”

15. The Property is defined in the headlease in Schedule 1. Paragraph 1 of that Schedule provides that the Property comprises the “ninety (90) Shared Ownership Apartments within the Building”. The apartment numbers are then set out.

16. Clause 3.3 of the headlease provides:

“3.3 Outgoings

3.3.1 To pay Outgoings

3.3.2 To pay the management charge in respect of each shared ownership apartment pursuant to the provisions of schedule 5

3.3.3 To pay to the Landlord the Service Charge in respect of each Shared Ownership Apartment in accordance with the provisions of clause 6.

3.3.4 To pay to the Landlord the Estimated Utilities Charge and the Estimated Wellbeing Charge at times and in the manner specified in Schedule 4.

3.3.5 To refund to the Landlord on demand (where Outgoings relate to the whole or part of the Building or other property including the Property) a fair and proper proportion attributable to each Shared Ownership Apartment such proportion to be conclusively determined by the landlord (who shall act reasonably).”

17. Clause 3.11 is headed “Landlord’s right of inspection and right of repair. It provides a right of inspection of the demised property for the Landlord, with a right to serve notice of any disrepair, and a right to enter the demised property to carry out the repairs. Clause 3.11.4 is a covenant to pay on demand all expenses incurred by the Landlord as a result to the exercise of these rights.
18. Clause 3.16 is a covenant by the lessee to pay the Landlord’s costs of repair of the Building or the Common Parts which have been necessitated or contributed to by any act, default, or neglect to the lessee.
19. Clause 4 of the headlease contains landlord’s covenants. Of relevance are clauses 4.2, 4.3, 4.4 and 4.6. Clause 4.2 is a covenant to insure. Clause 4.3 is a covenant to repair redecorate and renew the structure of the Building (including the Common Parts and the Communal Facilities). Clause 4.4 is a covenant to keep the Common Parts adequately lit. Clause 4.6 is a covenant to provide staff to carry out certain duties.
20. Clause 6 of the headlease provides:

“6 SERVICE CHARGE PROVISIONS

6.1 Covenant to pay

The Tenant covenants with the Landlord to pay the Service Charge in respect of each Shared Ownership Apartment during the Term by equal payments in advance on the first day of each month.

6.2 When calculated

The Service Provision in respect of any financial year shall be calculated before the beginning of the Account Year and shall be calculated in accordance with Clause 6.3.

6.3 How calculated

The Service Provision shall consist of a sum comprising the expenditure estimated by the Authorised Person as likely to be incurred in the Account Year by the Landlord for the matters specified in Clause 6.4 together with:

6.3.1 an appropriate amount as a reserve for or towards the matters specified in Clause 6.4 as are likely to give rise to expenditure after such Account Year being matters which are likely to arise either only once during the then unexpired term of this lease or at intervals of more than one year including (without limitation) such matters as decoration of the exterior of the Building (the said amount to be calculated in a manner which will ensure as far as reasonably possible the Service Provision shall not fluctuate unduly from year to year); but

6.3.2 reduced by any unexpended reserve already made pursuant to Clause 6.3.1.”

6.4 Service Provision

The relevant expenditure to be included in the Service Provision shall comprise expenditure reasonably incurred by the Landlord in connection with the repair, management, maintenance and provision of service for the Building and shall include (without prejudice to the generality of the foregoing):

6.4.1 the costs of and incidental to the performance of the Landlord's covenants contained in Clauses 4.2, 4.3, 4.4 and 4.6;

6.4.2 the costs of and incidental to compliance by the Landlord with every notice, regulation or order of any competent local or other authority in respect of the Building (which shall include compliance with all relevant statutory requirements);

6.4.3 all reasonable fees, charges and expenses payable to the Authorised person, any solicitor, accountant, surveyor, valuer, architect or other person whom the Landlord may from time to time reasonably employ in connection with the management or maintenance of the Building including the computation and collection of rent (but not including fees, charges or expenses in connection with the effecting of any letting or sale of any premises) including the cost of preparation of the account of the Service Charge in respect of each Shared Ownership Apartment and if any such work shall be undertaken by an employee of the Landlord then a reasonable allowance for the Landlord for such work;

6.4.4 any Outgoings assessed, charged, imposed or payable on or in respect of the whole of the Building or in the whole or any part of the Common Parts; and

6.4.5 the payment of the Management Charge pursuant to the provisions of Schedule 5

6.4.6 any administrative charges incurred by or on behalf of the Landlord including but not limited to:

- (a) the grant of approvals under this Lease or any Shared Ownership Lease or applications for such approvals;
- (b) the provision of information or documents by or on behalf of the Landlord;
- (c) costs arising from non-payment of a sum due to the Landlord; and/or
- (d) costs arising in connection with a breach (or alleged breach) of this Lease;

6.4.7 all other reasonable and proper expenses (if any) incurred by the Landlord in connection with the maintenance and proper and convenient management and running of the Development including in particular any improvement to the Development or services that the Landlord in its absolute discretion thinks will be to the benefit of the Development and the tenants and other occupiers of the Development including the establishment and maintenance of a reserve and/or sinking fund

6.5 Adjustment to actual expenditure

As soon as practicable after the end of each Account Year the Landlord shall determine and certify the amount by which the estimate referred to in Clause 6.3 shall have exceeded or fallen short of the actual expenditure in the Account Year and shall supply the Tenant with a copy of the certificate and the Tenant shall be allowed (or as the case may be) shall pay immediately following receipt of the certificate the Specified Proportion of the excess or the deficiency.

6.6 Landlord to contribute to reserve in respect of unlet parts

The Landlord will for the period that any flats in the Building (but excluding for the avoidance of any doubt the Shared Ownership Apartments) are not let on terms making the tenant liable to pay a service charge corresponding to the Service Charge payable under this Lease provide in respect of all such flats a sum equal to the total that would be payable by the tenants of such flats by way of contribution to the reserve referred to in Clause 6.3.1 and the said reserve shall be calculated accordingly. ...”

21. Schedule 4 of the headlease provides:

Schedule 4

Payment of the Utilities Charge and Wellbeing Charge

1 The Landlord will notify the Tenant before or during any Utilities Charge Period and Wellbeing Charge Period of the Estimated Utilities Charge and Estimated Wellbeing Charge payable by the Tenant in respect of each Shared Ownership Apartment during that Utilities Charge Period and Wellbeing Charge Period.

2 The Tenant must pay the Specified Proportion in respect of each Shared Ownership Apartment of the Estimated Utilities Charge and Estimated Wellbeing Charge within 21 days of the Landlord serving notice on the Tenant of the Estimated Utilities Charge and Estimated Wellbeing Charge;

3 The Landlord may allow the Tenant to elect to pay the Estimated Utilities Charge and Estimated Wellbeing Charge by 12 equal monthly instalments on the first day of each month in the relevant Utilities Charge Period and Wellbeing Charge Period if the Tenant notifies the Landlord in writing of the Tenant's election to do so within 21 days of the Landlord notifying the Tenant of the Estimated Utilities Charge for that Utilities Charge Period and Wellbeing Charge Period, PROVIDED THAT any such concession the Landlord may give to the Tenant to pay the Estimated Utilities Charge and Estimated Wellbeing Charge by monthly instalments shall not waive the Landlord's right to require payment from the Tenant in accordance with paragraph 2 above;

4 In respect of the Utilities Charge Period and Wellbeing Charge Period during which this Lease is granted, the Estimated Utilities Charge Period and Estimated Wellbeing Charge Period in respect of each Shared Ownership Apartment will be apportioned on a daily basis from the date of this Lease until the next date on which payment is due and the Tenant must make the first payment on the date of this Lease;

5 The Landlord may revise the Estimated Utilities Charge and Estimated Wellbeing Charge for the relevant Utilities Charge Period and Wellbeing Charge Period in the event that the Landlord anticipates that the Utilities Costs and or Wellbeing Charge Costs differ from the previous estimate;

6 If the Landlord revises the Estimated Utilities Charge and Estimated Wellbeing Charge in respect of any Shared Ownership Apartment upwards the Tenant must pay the excess amount within 21 days of written demand.

7 If the Utilities Charge and or Wellbeing Charge in respect of any Shared Ownership Apartment exceeds the Estimated Utilities Charge and Estimated Wellbeing Charge in any Utilities Charge Period and Wellbeing Charge Period the Tenant must pay the difference to us within 21 days of receipt of the Utilities Charge Summary and Wellbeing Charge Summary;

8 If the Utilities Charge and or Wellbeing Charge in respect of any Shared Ownership Apartment is less than the estimated charge in any charge period, then the difference will be credited against the next payment of Utilities Charge and or Wellbeing Charge (where appropriate) (or if the Lease has come to an end it will be repaid to the Tenant);

9 Within six months of the end of the Utilities Charge Period and Wellbeing Charge Period the Landlord will supply the Tenant with a Utilities Charge

Statement and Wellbeing Charge Statement containing a summary of the Utilities Costs and Wellbeing Charge Costs that have been incurred in the Utilities Charge Period and the Wellbeing Charge Period in relation to which Utilities Charge and Wellbeing Charge has been, or will be, paid or demanded and showing the proportion of those costs paid or payable by the Tenant. The Utilities Charge Statement and Wellbeing Charge Statement shall be certified by a chartered accountant who shall be appointed by the Landlord and in the absence of manifest error or omission shall be final and binding between the parties to this Lease to the maximum extent allowed by law.”

Lessees - underlease

22. Each Lessee Applicant has an underlease for 125 years from 2014. The landlord is Orbit Group Ltd.
23. The underleases contain no provisions requiring the payment of a service charge and / or specifying contractual arrangements for demanding one. The First Respondent instead relies upon a covenant:

“3.3 Outgoings.

3.3.1 To refund to the Landlord on demand all sums incurred by the Landlord (in so far as they relate to the Premises) pursuant to Clauses 3.3.1 to 3.3.5 (inclusive) of the Headlease.

3.3.2 To reimburse the Landlord on demand the sums incurred by the Landlord (insofar as they relate to the Premises) pursuant to Clauses 3.11.4 and 6.1 of the Headlease, and

3.3.3 To reimburse the Landlord in respect of any costs charges or expenses payable by the Landlord to the Superior Landlord in respect of the Premises pursuant to Clause 3.16 of the Headlease where such costs charges or expenses are as a result of the neglect or default of the Leaseholder.”

Tenants

24. There is a disagreement between the parties as to the terms under which the apartments occupied by weekly tenants have been let. The Applicants representatives say [285] that the sample tenancy in Appendix B of their Statement of Case is the applicable tenancy. The Respondents say that there are five forms of weekly tenancy in use. Which Tenant Applicant lets on which form of tenancy is set out on page [653] of the bundle. We accept the Respondents evidence.
25. The relevant provisions relating to the service charge in the Applicants Appendix B tenancy are:
 - a. An initial amount is inserted into the tenancy agreement for service charge;
 - b. Clause 1.6 contains the following text:

“We aim to notify you in writing at least one month in advance of the beginning of the Service Charge Year (normally at the same time as the Net Rent review) of our reasonable estimates of the service charge for the next service charge year. This notification will specify the date from which the amount of service charge you are to pay on account is payable. ...”

- c. Clause 2.4.3 than applies in relation to variations to the service charge:

2.4.3 Variable Service Charge

(a) You will be charged a variable Service Charge for the Services listed in Schedule 2 of this Tenancy. This means the Service Charge will vary according to our costs or estimated costs, incurred or to be incurred in connection with matters for which the Service Charge is payable.

(b) Your Service Charge will be based on reasonable estimates of the cost to us of providing the Services listed in Schedule 2 of this Tenancy. These costs shall be estimated for each Service Charge Year taking into account the reasonable costs incurred during the previous Service Charge Year, estimates for future Service Charge Years, in addition to allowances for any surplus or deficit of Service Charge from previous Service Charge Years.

(c) You shall pay the estimated Service Charge to us on account of the actual Service Charge weekly in advance in accordance with clause Your Rent is made up of Net Rent, Service Charge and Other Charges (for providing the Other Services (as listed below)) added together which at the Start Date are above. The estimated Service Charge shall replace those sums previously payable to us in providing the Services under this Tenancy.

(d) We aim to notify you in writing at least one month in advance of the beginning of the Service Charge Year (normally at the same time at the Net Rent review) of our reasonable estimates of the Service Charge for the next Service Charge Year. The notification will specify the date from which the amount of Service Charge you are to pay on account, is payable.

(e) We shall have the right to revise the estimated Service Charge at any time during a Service Charge Year. We may, for example, exercise this power to increase the amount of the Service Charge payable by you if there is a corresponding increase in the amount payable by us. We aim to notify you at least one month in advance of any change to the estimated Service Charge and the notification will specify the date from which the amount of Service Charge you are to pay on account, is payable.

(f) The estimated Service Charge may also be revised if there is a change to the Services provided under this Tenancy.

(g) If we fail to notify you as set out above, then until such notification you shall continue to make payments in accordance with the last notified estimate. However, a failure to provide the notifications described above will not amount to any waiver of our rights and you will be required to pay the full Service Charge during the remainder of the Service Charge Year.

(h) The actual Service Charge shall be ascertained at the end of the Service Charge Year and you will be provided with a statement of account annually and as soon as may be practicable after the end of the Service Charge Year.

(i) The difference between the estimated Service Charge and the actual Service Charge will be set out in your annual statement of account.

(j) If the estimated Service Charge is less than the actual Service Charge we may carry forward any such difference to the next Service Charge Year.

(k) If the estimated Service Charge is in excess of the actual Service Charge the overpayment shall be carried forward to the next Service Charge Year.

(l) The statement of account will be accompanied by a summary of:

- the relevant details and figures forming the basis of the calculation of the actual Service Charge; and
- your obligations and rights in relation to service charges.

(m) We may also include within the Service Charge such sums as appear to be reasonable to be applied towards a renewal fund in respect of any unusually heavy costs, both foreseen and unforeseen which would be required to be borne by the Service Charge.

26. The Applicants Appendix B form of weekly tenancy is *Tenancy Type 3* (being an Assured Non-Shorthold Social Rent – Orbit Housing Association Ltd tenancy) of the 5 types the Respondents say exist.
27. The other four types are described in the witness statement of Tristan Hopper, Property Charges Operations Manager for the Respondent) as follows:

Tenancy Type 1

1.1 Tenancy

The tenancy is a fixed term assured shorthold tenancy for a period of 5 (five) years.

The tenancy is an affordable rent tenancy. For more detail on affordable rent tenancies, you should consult our affordable rent policy.

The Total Weekly Rent charged may be up to 80% of the local market rent of the Property. Market rent means the rent that could be demanded for the Property in the competitive open market for a property of equivalent size and location. We establish the market rent for the Property and may charge up to 80% of this figure.

The term rent within this Agreement refers to just the rent element. Where the Agreement shows Total Weekly Rent, this includes the rent and variable service

charge but excludes other additional charges shown within your agreement. The amount you have to pay for including any additional charges on top of your Total Weekly Rent is shown as 'Total Weekly Payment'.

1.6 Rent and variable service charge

The payment of Total Weekly Rent and other charges that form your Total Weekly Payment are due in advance on the Monday of each week. Where the first Monday falls less than seven days from the start of the tenancy the initial rent payable shall be calculated on an apportioned daily basis. Thereafter the weekly sums below shall be payable.

The payments due weekly for your property are detailed below, or as varied from time to time in accordance with this Agreement.

Weekly rent £146.37
Weekly variable service charge £ 19.21
Total Weekly Rent £165.58
Weekly support charges:
Scheme-based support charge £ 18.00
Emergency Alarm charge £ 0.00
Weekly heating charge £ 7.30
Weekly water charge £ 1.08
Weekly Council Tax charge £ 0.00
Total Weekly Payment £191.96

The variable service charge is made up of the services listed in Appendix A.

For the avoidance of any doubt, any rent, variable service charge, support charge or other charges which make up your Total Weekly Payment are your personal responsibility and you must make sure all such payments are made in full in accordance with this Agreement.

The Total Weekly Payment must be paid in advance every Monday. We can change your Total Weekly Payment without your consent in line with the Variable Service Charge, Supporting Charge and other charges section of this Agreement.

If your payment is to be made monthly, it must be paid monthly in advance and, regardless of the method of payment or the frequency of payments you choose to use, it is your responsibility to ensure that you maintain advance payments at all times.

You have agreed to pay or reimburse us for any payments and/or arrears due under any former tenancy agreement or license with the Association. A copy of the payments due is shown in Appendix B.

2.3 Variable service charge, support charge and other charges

a) Appendix A have been calculated on the basis of how much we expect the services provided to cost during this financial period taking into account the

reasonable costs incurred during the previous year, estimates for future years, and allowing for any surplus or deficit from the previous accounting periods.

b) We may increase or decrease your variable service charge (if one applies to you) at any time if we give you at least one month's notice in writing, but we will not do so more than once a year unless there is a change in the services provided. We may vary, add to, suspend or cancel any service charge items listed in Appendix A (which may increase or decrease your variable service charge) but will provide you with notice of any changes to your services or charges.

c) In addition to the rent and variable service charge, we will charge for support services provided or other charges shown in this Agreement on the basis of reasonable costs incurred during the previous year and estimates for future years. We will give you one calendar months' notice of any changes to these charges by writing to you at the property.

d) If the Property is subject to funding for scheme based support services or emergency alarm (Lifeline) services, you agree to accept and pay for these services.

e) If you receive a service currently paid for by funding, but during the term of this Agreement your circumstances change and you are no longer entitled to the funding or have a reduced entitlement, you still will be responsible for the full payment due for this service.

Tenancy Type 2

Payment for the property

The payments due weekly for your property are detailed below, or as varied from time to time in accordance with this Agreement.

The payments due weekly for your property are detailed below, or as varied from time to time in accordance with this Agreement.

Weekly rent: £115.12

Weekly variable service charge: £38.80

Total Weekly Rent: £153.92

Weekly support charges:

Scheme-based support charge: £15.66

Emergency Alarm charge: £0.00

Weekly heating charge: £12.53

Weekly water charge: £2.48

Weekly Council Tax charge: £0.00

Total Weekly Payment: £184.71

The variable service charge is made up of the services listed in Appendix A.

For the avoidance of any doubt, any rent, variable service charge, support charge or other charges which make up your Total Weekly Payment are your personal

responsibility and you must make sure all such payments are made in full in accordance with this Agreement.

The Total Weekly Payment must be paid in advance every Monday. We can change your Total Weekly Payment without your consent in line with the Variable Service Charge, Supporting Charge and other charges section of this Agreement.

1.1 Increasing Rent and Service Charges

A) The initial rent payable under this tenancy is set out at the beginning of this agreement and will change.

B) We may increase the rent under this tenancy not more than once every fifty two weeks. The exception to this is during the first twelve months of the tenancy when we may increase the rent on or after the first Monday which falls in the first April following the commencement of the tenancy. Further increases will take place not earlier than 52 weeks from any previous increase.

C) At least one month before the date of any increase, we will send you a Notice clearly setting out the amount of the increased rent. You must then pay the full amount set out in the Notice. This amount will then be the next weekly rent until the next increase date unless you and we agree otherwise in writing.

D) At all times when your tenancy is subject to regulatory guidance by the Social Housing Regulator (currently the homes and Community Agency) we will take notice of any maximum rent increase guidance current at the date such increase is notified to you.

E) The First-Tier tribunal (formerly known as the Rent Assessment Committee) shall have jurisdiction to set rent in relation to any proposed rent increase under this tenancy.

1.3 Variable Service Charge, Support Charge and other charges

(i) In addition to the rent, we may charge for variable service charges. The details provided in Appendix A have been calculated on the basis of how much we expect the services provided to cost during this financial period taking into account the reasonable costs incurred during the previous year, estimates for future years, and allowing for any surplus or deficit from the previous accounting periods.

We may increase your variable service charge (if one applies to you) at any time if we give you at least one month's notice in writing, but we will not do so more than once a year unless there is a change in the services provided. We may vary, add to, suspend or cancel any service charge items listed in Appendix A (which may increase your variable service charge) but will provide you with notice of any changes to your services or charges.

(ii) In addition to the rent and variable service charge, we will charge for support services provided or other charges shown in this Agreement on the basis of reasonable costs incurred during the previous year and estimates for future

years. We will give you one calendar months' notice of any changes to these charges by writing to you at the property.

(iii) If the property is subject to funding, for scheme based support services or emergency alarm (Lifeline) services, you agree to accept and pay for these services. If you receive a service currently paid for by funding from a 3rd party, but during the term of this Agreement your circumstances change and you are no longer entitled to the funding, have a reduced entitlement, or the funding is withdrawn, you still will be responsible for the full payment due for this service.

Tenancy Type 4

Payment for the property

The payment of rent and other charges is due in advance on the Monday of each week.

Rent, variable service charges are payable over 52 weeks per year. Support charge and other charges are payable over 52 weeks per year. There are 0 non-collectable weeks each year.

The payments due for your property are detailed below, or as varied from time to time in accordance with this Agreement.

Weekly rent £108.55

Weekly variable service charge £ 32.24

Weekly heating charge £ 6.68

Weekly electric charge £ 6.00

Weekly water charge £ 2.94

Weekly care charge £ 13.00

Weekly activity charge £ 5.00

Total weekly payment £174.41

The variable service charge is made up of the services listed In Appendix A. For the avoidance of any doubt, any weekly rent, weekly variable service charge, support charge or other charges are your personal responsibility and you must make sure all such payments are made in full in accordance with this Agreement.

Changes in rent and other charges

(1) (i) The weekly rent, variable service charge, support charge or other charges must be paid in advance every Monday. We can change your rent, variable service charge, support charge and other charges without your consent. If payment is to be made monthly, it must be paid monthly in advance.

(ii) In the first year of this agreement we may increase or decrease the rent with effect from the first Monday in April following the start of this tenancy. We will give you at least one calendar month's notice in writing of such changes. Where your tenancy start date is less than one month before the increase, this Tenancy Agreement Is deemed to be the advance written notice.

(iii) We may review and subsequently increase the variable service charge, support charge or other charges with effect from the first Monday in April each year.

(iv) We will give you one calendar month's notice of any changes to these charges by writing to you at the property.

Variable Service Charge, Support Charge and other charges

(3) (i) In addition to the rent, we may charge for variable service charges provided either on the basis of reasonable costs Incurred during the previous year or estimates for future years.

We may increase your service charge (if it applies) at any time if we give you at least one month's notice in writing, but not more than once a year unless there is a change in the services provided. We may vary, add to or cancel any service charge items listed in Appendix A after consultation with you.

Tenancy Type 5

General terms

The payment of Total Weekly Rent and other charges that form your Total Weekly Payment are due in advance on the Monday of each week. Where the first Monday falls less than seven days from the start of the tenancy the initial rent payable shall be calculated on an apportioned daily basis. Thereafter the weekly sums below shall be payable.

Payment for the property

The payments due weekly for your property are detailed below, or as varied from time to time in accordance with this Agreement.

Weekly rent £124.36
Weekly variable service charge £ 19.21
Total Weekly Rent £143.57
Weekly support charges :
Scheme-based support charge £ 18.00
Emergency Alarm charge £ 0.00
Weekly heating charge £ 7.30
Weekly water charge £ 1.08
Weekly Council Tax charge £ 0.00
Total Weekly Payment £169.95

The variable service charge is made up of the services listed in Appendix A.

For the avoidance of any doubt, any rent, variable service charge, support charge or other charges which make up your Total Weekly Payment are your personal responsibility and you must make sure all such payments are made in full in accordance with this Agreement.

The Total Weekly Payment must be paid in advance every Monday. We can change your Total Weekly Payment without your consent in line with the Variable Service Charge, Supporting Charge and other charges section of this Agreement.

If your payment is to be made monthly, it must be paid monthly in advance and, regardless of the method of payment or the frequency of payments you choose to use, it is your responsibility to ensure that you maintain advance payments at all times.

1.1 Increasing Rent and Service Charges

A) The initial rent payable under this tenancy is set out at the beginning of this agreement and will change.

B) We may increase the rent under this tenancy not more than once every fifty two weeks. The exception to this is during the first twelve months of the tenancy when we may increase the rent on or after the first Monday which falls in the first April following the commencement of the tenancy. Further increases will take place not earlier than 52 weeks from any previous increase.

C) At least one month before the date of any increase, we will send you a Notice clearly setting out the amount of the increased rent. You must then pay the full amount set out in the Notice. This amount will then be the next weekly rent until the next increase date unless you and we agree otherwise in writing.

D) At all times when your tenancy is subject to regulatory guidance by the Social Housing Regulator (currently the homes and Community Agency) we will take notice of any maximum rent increase guidance current at the date such increase is notified to you.

E) The First-Tier tribunal (formerly known as the Rent Assessment Committee) shall have jurisdiction to set rent in relation to any proposed rent increase under this tenancy.

1.3 Variable Service Charge, Support Charge and other charges

(i) In addition to the rent, we may charge for variable service charges. The details provided in Appendix A have been calculated on the basis of how much we expect the services provided to cost during this financial period taking into account the reasonable costs incurred during the previous year, estimates for future years, and allowing for any surplus or deficit from the previous accounting periods.

We may increase your variable service charge (if one applies to you) at any time if we give you at least one month's notice in writing, but we will not do so more than once a year unless there is a change in the services provided. We may vary, add to, suspend or cancel any service charge items listed in Appendix A (which may increase your variable service charge) but will provide you with notice of any changes to your services or charges.

28. The Respondent has provided a breakdown of the type of tenancy held by each of the Tenant Applicants [653]. We accept this analysis. The Applicants representative has not provided any contradictory data.

The processes followed for the 2022/23 service charge and / or utility services demands

29. The narrative for this section is primarily taken from the witness statement of Gabriela Pasciak, a Senior Property Charges Officer employed by Orbit Group Ltd. We have prepared the narrative in the light also of the Applicants Statement of Case. The narrative should be treated as our findings of fact.
30. Ms Pasciak's evidence is that the service charge year operated for the Property is 1 April – 31 March. In November / December of each year, work starts on the preparation of budgets for the next year for each scheme operated by the Respondent. The budget for Queensway Court 2022/23 service charge year was issued to service charge payers on 15 February 2022.
31. The Respondents practice is to issue a 2 – 3 page document called either a "Budget Statement" or a "Year End Statement" setting out the year it relates to, referring to Queensway Court, and listing, line by line, the costs to be incurred or actually incurred in the running of the Property under three headings – Estate Costs, Block Costs, and Core Costs. Total expenditure figures are given with a column also identifying the cost per individual apartment for that item. At the end, personal costs for the individual apartments' own supplies for water, electricity and heating are provided, as is a calculation of the costs for any personal care provided to the lessee or tenant. There appears to be no distinction made in the Statements between lessees and tenants. An individual reconciliation is set out at the end showing the sum due from the particular lessee or tenant for whom the Statement is prepared. The Statements appear to be accompanied by a Statement of Rights and Obligations, as required by section 21B of the Act. The recipients of the Statements are clearly expected to pay the monthly or weekly sums shown in the Statement, and so we consider that the Statements should be treated as a service charge demand.
32. The total budget for the Property for 2022/23 in the 15 February 2022 Statement was set at £398,774.18 for the 178 apartments; there is no distinction between the overall costs for Lessee Applicants and Tenant Applicants. That overall sum is divided between Estate Costs of £172,909.45, Block Costs of £161,333.75, and Core Costs of £64,530.98. Within the Block Costs is a charge of £11,890.67 for gas, and £26,250.28 for electricity.
33. The two elements of the service charge of particular concern to the Applicants are the charges for electricity and gas. The witness statements supplied by the Respondent show that none of the apartments have individual meters. All electricity and gas is supplied communally. Each Applicant is charged a proportion of 76.23% of the total bill, based on the size of their apartment. These charges are shown at the end of the budget statements for each individual apartment. A further 22.41% of the total bill is included within the Block Costs element of the overall service charge. The balance is paid by commercial organisations that also make use of the Property.

34. During 2022/23, three particular problems arose with the utility bills:
- a. There was an unusual and substantial increase in the cost of electricity and gas;
 - b. The electricity bills were incorrect in that VAT had been charged at 20% as against the correct rate of 5% and a charge had been made for the Climate Change Levy which should not have been applied. The actual bills were also not produced by the supplier until 15 November 2023 and not processed by the Respondent until December 2023;
 - c. The gas supplier contract had moved in the year from Corona Energy to Total Gas and Power. The Respondent had not noticed that bills for the months of February and March 2023 had not been received.
35. To prepare service charge payers for the likely action that would need to be taken in the light of the substantial cost increases in utility costs, in November 2022 the Respondents issued a letter (called a cost-of-living letter) to all payers which included the following paragraph:
- “We would also like to make you aware that the service charge you are currently paying was calculated before we experienced the impact of the rising costs of energy and therefore, we expect there will be budget deficit for energy for 2022-23 that we will need to recover.”
36. The Respondent issued end of year accounts for 2022/23 on 24 January 2024. Overall, these accounts showed the year outturn was expenditure of £427,830.78, creating a deficit of £29,029.60 against the budgeted expenditure.
37. The 24 January 2024 Statement however contained errors. £61,720.36 for electricity had been included. These costs had incorrectly included VAT at the wrong rate and a charge for the Climate Change Levy. The correct bills had in fact been received, but it had been too late to include them in the end of year accounts. £41,375.07 had been charged for gas. The Respondent concedes this did not include the bills for February and March 2023. The February bill had been received on 20 March 2023, and the March bill on 24 April 2023.
38. Consequently, the Respondent decided to issue amended final Statements for 2022/23 on 1 May 2024. These were issued with an explanatory letter saying that the Respondent had “identified an error” in the original year end account without stating what the error was. The impact was to reduce the service charge.
39. There were four changes to the accounts in the 1 May 2024 Statements. Electricity cost reduced to £53,305.30 from £61,720.36 due to removal of excess VAT and Climate Change levy. The gas charge increased from £41,375.07 to £47,332.40 due to the inclusion of the February (but not the March) bill. Repairs reduced to £8,888.95 from £9,765.27, and staff costs reduced from £119,730.36 to £113,284.15.

40. In respect of the March 2023 gas bill (to remind readers – received on 24 April 2023), the Respondent decided to include this charge in the 2023/24 service charge year rather than to add it to the changes it was making to the 2022/23 year end accounts re-issued on 1 May 2024. Ms Pasciak said [728] that:

“35. What normally happens on the year end accounts transactions, is that we would have the bill for February 2023 and accrual would be made for March 2023 in line with the February bill. However, it did not happen, and it was not noticed at the time of preparation of 2022- 2023 year end accounts.

...

37. On the revised year end accounts 2022-2023 that we issued on the 1st May 2024, we included February 2023 gas bill. However, we could not include March 2023 bill as it would mean residents of Queensway Court would have deficits higher than on the original end of year statements 2022-2023 that we issued in January 2024.”

41. A schedule has been provided by the Respondents at [810] which includes in the fifth column the amount each Applicant has been billed for the March 2023 gas bill within the 2023/24 service charge demands. The amounts range from £101.52 to £173.72.

The issues the Tribunal has been asked to determine - Discussion

42. The Applicants have put forward four specific grounds challenging the service charges levied:
- a. The first ground was originally expressed as two grounds, being (a) that the Respondent's is in breach of its contractual obligations set out in the lease and tenancy agreement and (b) that the Respondents have not issued valid demands. In their final Statement of Case, the Applicants have dealt with these two points together, but now express this element of their case as a three-fold challenge, so far as we can ascertain:
 - i. In relation to lessees, the Lessee Applicants argue that the service charge machinery in or referable to their leases has not been complied with.
 - ii. In relation to tenants, the Tenant Applicants argue that the end of year service charge demands for payment of any deficit were not produced as soon as was reasonably practicable. The sums claimed, they say, are therefore not payable.
 - iii. Thirdly, they both also claim that the 24 January 2024 year end statement was “grossly inaccurate” and that it was reckless to issue it.
 - b. The second ground is that the March 2023 gas bill is not payable as section 20B of the Landlord and Tenant Act 1985 applies so as to make it not payable.

- c. The third ground is that some of the gas costs incurred in 2022/23 exceeded the sums demanded under the specific heading for gas in the budget demand dated 15 February 2022, and the **excess** expenditure must be demanded within 18 months under section 20B, and was not, so that it is not payable.
- d. The fourth ground is that occupiers who moved to the Property during the service charge year 2022/23 should only have to pay a proportion of service charge (and any shortfall in the service charge) for the period of their occupancy during that year.

43. We consider each ground in turn.

Paragraph 42(a)(i) - Breach of contractual obligations - lessees

- 44. The costs for service charges that the Respondent may claim from the Lessee Applicants are set out in clause 3.3 of the underleases. That sum is the expenditure the First Respondent expends that falls within the description of costs set out in clauses 3.3.1 – 3.3.5 in the headlease. In essence, those costs are the costs set out in clause 6.4 of the headlease and the payments for utilities set out in Schedule 4 of the headlease. No argument has been made by the Applicants that any of the costs included in the Statements are not within the categories of cost that may be demanded from Applicants for service charges or utility charges.
- 45. The Lessee Applicants rely upon clauses 6.5 (in relation to service charges) and paragraph 9 of Schedule 4 (in relation to utility costs) of the headlease to make their case that the process by which service charge costs demanded are a breach of the First Respondent's obligations. Their case is that the charges demanded in the Statements dated 24 January 2024 and 1 May 2024 were in breach of the requirements for them to be provided "as soon as reasonably practicable" (for service charges under clause 6.5) and within 6 months (for utility charges under Schedule 4 para 9). Furthermore, they claim that accounts for service charges should have been certified under clause 6.5 and utility costs should have been certified by a chartered accountant under Schedule 4 paragraph 9.
- 46. We disagree with this argument. The Applicants own leases contain no provisions requiring that sums demanded be certified or demanded within any particular time. None of the Lessee Applicants are parties to the headlease. They are not owed the duties accepted by the lessee of the headlease within it. There is no basis for the Lessee Applicants to rely on contractual provisions they are not owed.
- 47. It is of course correct that if payment of charges is contractually dependent upon compliance with certain procedures, failure to comply with those procedures may result in a Tribunal finding that the charges are not payable. But the only procedures that must be complied with by Orbit Group Ltd in relation to demands for service charges and utility costs from the Lessee Applicants is that they must be demanded; that is the requirement in clause 3.3 of the underleases. There is no other contractual machinery that the First Respondent must comply with.

48. We find that valid demands were made on 15 February 2022 for the forthcoming 2022/23 year, and on 24 January 2024 and 1 May 2024 in respect of the end of year reconciliation.
49. We therefore reject the argument that the Respondent is in breach of the underleases in making the demands contained in the Statements dated 27 January and 1 May 2024.

Paragraph 40(a)(ii) - Breach of contractual obligations - tenants

50. The Tenant Applicants' argument is that paragraph 2.4.3(h) of the tenancy agreement puts a time limit on the provision of notification of the final charges for any service charge year. The limit is that the notification must be provided "as soon as may be practicable after the end of the Service Charge Year". Somewhat boldly, the Tenant Applicants assert that this must mean within 6 months.
51. In fact, this provision only appears in one form of tenancy agreement, namely Tenancy Type 3. The other Tenancy Types do not have a specific reference to the time within which notification of the year end position is required. The argument under this heading therefore only applies to the four Applicants on Tenancy Type 3 forms of tenancy.
52. The Tenant Applicants have sought to make a case, in paragraphs 92 – 103 of their Statement of Case, to support the allegation that the Respondent failed to comply with clause 2.4.3(h). They have in effect explained how the process of producing year end accounts could have been speeded up significantly.
53. However, we do not accept that the allegation is established. The Property is a large and complex scheme with varying tenures and the services include both compulsory and voluntary service provisions. Our experience is that preparation of final accounts for such a large residential complex does take time. For 2022/23 it took ten months. We do not consider that period to be excessive. If we are wrong, we would say that even if the delay in production of year end accounts was a breach of the contractual provision in Tenancy Type 3, it is far from automatic that the consequence would be that the demands issued late would be determined to be invalid. Time was not of the essence in Tenancy Type 3, and we have not received argument on the consequences of a breach.
54. We do not accept that the Second Respondent has failed to demand service charges within time.

Paragraph 42(a)(iii) – Gross inaccuracy and recklessness

55. Even if a Tribunal were to find that the 24 January 2024 Statement was "grossly inaccurate and reckless", that does not necessarily make it invalid. In the Respondents Statement of Case, reference is made to *The Mayor and Burgesses of the London Borough of Brent v Shulem B Association Limited* [2011] EWHC 1663 (Ch) ("*Brent*") at paragraph 43, where Mr Justice Morgan was required to decide whether a demand for service charges under a specific contractual clause in the lease was a valid demand. One criticism of the demand had been that it

was for sums greater than the landlord's true entitlement. Mr Justice Morgan said:

“43 The final point which arises in relation to clause 2(6) relates to the correct treatment of a demand which is for a specified amount which is in excess of the lessor's true entitlement under clause 2(6). The amount demanded by a lessor may be too high for any number of reasons. The landlord may have made a mathematical error in computing the amount of its expenses or the due proportion or the result of multiplying one by the other. The lessor may have included costs which are not recoverable under clause 2(6) although that fact does not appear on the face of the demand. If, for whatever reason, the figure specified in the demand is in excess of the lessor's underlying entitlement, is the demand formally invalid? This type of problem is likely to arise frequently. A typical case would be where a lessor serves a demand for a specified sum, the lessee does not pay all or any part of the demand, the lessor sues for the sum stated in the demand, the matter is investigated in court proceedings as a result of which it emerges that the lessor's entitlement is to a smaller sum. In such a case, does the court dismiss the lessor's claim because there is no prior demand for the smaller sum as determined by the court or does the court give judgment for the smaller sum? In my judgment, the court should give judgment for the smaller sum on the basis that the original demand was formally valid but cannot entitle the lessor to recover the specified sum unless the lessor has an underlying entitlement under clause 2(6) to that sum.”

56. What can be derived from this quote is that errors in a demand do not invalidate the demand. In fact, the High Court recognised reality by accepting that errors do occur, perhaps frequently. But any sum demanded in error cannot be adjudicated to be due to the landlord. In this case, the Statement of 1 May 2024 corrected the errors identified by the Respondent in any case (save for the omission of a claim for the March 2023 gas bill).

57. Our view is therefore that there is nothing in this point for the Applicants.

Paragraph 42(b) – March 2023 gas bill and section 20B

58. Section 20B provides:

20B Limitation of service charges: time limit on making demands.

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

59. We have identified the factual matrix applying to the March 2023 gas bill above. In summary, it was known by the Respondents before issuing the 1 May 2024 Statements that no charge was included for gas supplied in March 2023 within the final accounts for 2022/23, despite the Respondents operating accrual accounting and despite having added the February 2023 gas bill into the 1 May 2024 Statements. It is true that the invoice for the March bill was not received until 24 April 2023, but the exact amount was therefore already known to the Respondents prior to issuing the 1 May 2024 Statements. Instead, the March 2023 gas bill was added to the 2023/23 service charge Statements issued on 27 November 2024.
60. Section 20B(1) requires identification of a date on which a service charge is “incurred”, and a date on which it is then “demanded”. In *Burr v OM Property Management Ltd* [2013] EWCA Civ 479, the Court of Appeal established that costs are not “incurred” on the mere provision of services or supplies to the landlord or management company, but only when they are quantified or crystallised by the presentation of an invoice (or other demand for payment) or the making of a payment. In *Ground Rents (Regisport) Ltd v Dowlen* [2014] UKUT 144 (LC), the Upper Tribunal decided that the relevant date on which a cost was incurred was the date of invoice. Therefore, in this case, the cost was incurred on the date of the invoice, being 24 April 2023. On the evidence of Ms Pasciak, it was not demanded until 27 November 2024, being more than 18 months after it had been incurred.
61. Our determination is that the Applicants are not liable to pay their respective proportions of the March 2023 gas bill. Our understanding is that the amount each has been charged has already been calculated by the Respondent and is shown in the blue column in the table appended to Ms Pasciak’s witness statement at page [810] of the bundle. Those amounts are duplicated in Appendix 1 to Mr Hoppers witness statement at page [374] of the bundle.
62. We must address the Respondents’ argument that section 20B(2) may save the Respondents from a finding that section 20B applied. We do not agree that it would. In *Brent* it was held that a section 20B(2) notification must state a figure for the costs incurred by the landlord which it intends to recover from the service charge payers. We have not seen or had pointed out to us any document that might be construed as an adequate section 20B(2) notification. The cost-of-living letter sent in November 2022 would not qualify as it was merely a general warning of increased costs and did not specify an amount that could have been further demanded. There is therefore no basis upon which the Respondents can claim that section 20B(2) saves them from the consequence of our determination above.
63. We point out that the Respondents could have avoided our conclusion in paragraph 61 above by including the March gas invoice in its amended Statements dated 1 May 2024 (we found the offered reason for its decision not to do that unconvincing), or including a paragraph in the May 2024 letter informing the Applicants that they would each be liable to pay a specific additional sum for the March gas bill when it was demanded from them in November 2024.

Paragraph 42(c) – End of year costs exceeded sums collected through the Statement dated 15 February 2022 and were not then demanded until 1 May 2024.

64. In the Upper Tribunal case of *Holding & Management (Solitaire) Limited v Miss Stephanie Sherwin* [LRX/67/2009], the President said at paragraph 22”

“... One possible application of [section 20B\(1\)](#) in relation to these provisions of the lease would be to treat as “the relevant costs taken into account in determining the amount” of the balancing charges the whole of the actual expenditure for the year, since that is what the Maintenance Adjustment is expressed to relate to. The reality, however, is that the balancing charges simply reflect the costs incurred after the amounts of the advance payments received by the landlord for the year in question have been used up, and in my judgment it is those costs, therefore, that are material for the purposes of [section 20B\(1\)](#) so that the tenant would not be liable to pay a balancing charge in respect of any of such costs as were incurred more than 18 months before the demand. Any amount that was payable and was paid as an advance payment would be unaffected. ...”

65. That case concerned the question of how section 20B applied to balancing charges where sums collected on account were insufficient to discharge the costs incurred in a service charge year. In principle, the Applicants’ have an arguable case that there was income collected on account through the 15 February 2022 Statements that had been used up at some point during the 2022/23 year, so any liability on the part of the Applicants to pay more towards those costs would be extinguished as a result of the application of section 20B unless the demand for additional funds was made within 18 months of the new liabilities being incurred.
66. We have determined above that the 24 January 2024 Statements were valid demands for balancing charges for the shortfall in the 2022/23 service charge year. We are therefore looking back 18 months to 24 July 2022, slightly under 4 months into the 2022/23 service charge year, to see whether service charge expenditure had at that point exceeded the sums demanded on 15 February 2022.
67. If the costs are taken in the round, our view is that it would be extremely unlikely to be the case that budgeted costs had been exceeded by 24 July 2022. After all, the budgeted total expenditure was £398,774.18 and the actual expenditure was £427,830.78. On a straight line basis, it is inconceivable that the collection of some 93% of the final costs would have been inadequate to cover the costs incurred in the first third of the service charge year.
68. However, the Applicants case is that it is incorrect to look at the overall position. They say that the Tribunal must look at exhaustion of budgeted provision on a line by line basis, so that if provision for any single line of budgeted expenditure is spent early in the service charge year, the portion of that expenditure not included as part of the budget counts as expenditure which must be demanded within 18 months to avoid it falling foul of section 20B.
69. The specific point made by the Applicants under this head relates to the cost of gas. It appears to be a separate argument from the argument concerning the

March 2023 gas bill. Using the 1 May 2024 Statements, the Applicants have calculated that taking the gas budget in isolation, the point at which the gas contribution in the 15 February 2022 budget was exhausted, was at the end of June 2022. They claim that an example calculation for apartment 174 shows a payment of £151.47 would not be payable due to section 20B. They freely acknowledge that calculations cannot be carried out on this basis for every Applicant because they do not know the appropriate multiplier for every apartment.

70. In our view, we are unable to make a determination on this element of the Applicants' case. Firstly, we are not persuaded that assessment of the point at which the collected budget is exhausted should necessarily be conducted on a line by line basis. It seems to us that there may well be excess collection of budgeted sums on other lines that might balance off any shortfall on any one line of expenditure. We are not sure that the Applicants should be absolved of liability to contribute towards actual costs through exhaustion of one expenditure line if there is an excess of collected service charge on other lines. We would require more detailed submissions and legal exposition before reaching a final determination. Secondly, our view that the 24 January 2024 Statement was a valid demand for the excess of expenditure over income for 2022/23 will change the calculations materially. And thirdly, we would of course require to be provided with the data needed to complete calculations, the methodology of which we do not fully follow.
71. We are though unable to dismiss this argument. But at this point we decline to make a determination on it. We grant leave for the Applicants to continue to pursue this particular issue. If they indicate their intention to do so within 28 days of this determination, we will issue further directions for additional submissions, and would be likely to require to hear oral evidence and submissions on it.

Paragraph 42(d) – Applicants moving to Queensway House in the 2022/23 year

72. On the list of Applicants produced following the Case Management Conference in February 2025, there are two such Applicants who are lessees rather than tenants, being the lessees of apartments 13 and 106. According to the Applicants Statement of Case, there are two Applicants who are tenants who also fall within the category of tenants who moved to Queensway Court during 2022/23, namely the tenants of apartments 79 and 123.
73. The Respondent has not responded to the Applicants' case regarding tenants in this category despite it being reasonably clear from paragraphs 168 – 175 of the Applicants Statement of Case that an issue was being raised in respect of apartments 79 and 123.
74. We deal with each category of Applicant separately.

Lessees

75. A purchaser of a long leasehold interest in land enters into a contractual relationship with the lessor. It is a long established principle of land law that the current tenant can be required to comply with the terms of the tenancy, including payment of rent and service charge (i.e. the burden of the tenants covenants in the lease falls upon the last assignee / current tenant).
76. This principle is reinforced by section 3 of the Landlord and Tenant (Covenants) Act 1995, which provides:

“3 Transmission of benefit and burden of covenants.

(1) The benefit and burden of all landlord and tenant covenants of a tenancy—

(a) shall be annexed and incident to the whole, and to each and every part, of the premises demised by the tenancy and of the reversion in them, and

(b) shall in accordance with this section pass on an assignment of the whole or any part of those premises or of the reversion in them.

(2) Where the assignment is by the tenant under the tenancy, then as from the assignment the assignee—

(a) becomes bound by the tenant covenants of the tenancy except to the extent that—

(i) immediately before the assignment they did not bind the assignor, or

(ii) they fall to be complied with in relation to any demised premises not comprised in the assignment; and

(b) becomes entitled to the benefit of the landlord covenants of the tenancy except to the extent that they fall to be complied with in relation to any such premises.”

77. For this reason, solicitors for a purchaser of a long lease should as a matter of good conveyancing practice ensure that the current service charge is up to date and should ensure that if there is a likelihood of a claim for a shortfall in service charge arising due to underpayment of service charge in the past, a sum of money is withheld from the purchase price to cover the liability for the shortfall / arrears.
78. We therefore agree with the Respondent who argued that the Category B Applicants are liable to pay the whole of the service charge demanded for 2022/23 irrespective of the date of acquisition of their leases.

Tenants

79. New tenants during 2022/23 should not in principle have been asked to pay the service charge for a period of time before they become tenants. They do not become liable for past breaches by previous tenants as they take a brand new tenancy rather than taking an assignment from the previous tenant. Unfortunately, the documentation available to us to determine whether they

have been asked to pay the liabilities of a previous tenant, is wholly inadequate. We would need to see the actual tenancy agreements and such documentation as exists to establish what sums the tenants have been asked to pay, have paid, and to what period the sums paid relate.

80. The Applicants' representative has referred us to the case of *Circle Thirty Three Housing Trust Limited v Segovia* [2009] UKUT 203 (LC). We agree that this case is authority for the proposition that unless there are clear words in the tenancy allowing it, a landlord may not ask a new tenant to pay the liabilities of a previous tenant.
81. We cannot make much more progress on this issue. We are hopeful that having set out the principles, the parties would be able to agree how this issue should be resolved. If they cannot, the two Tenant Applicants in this category may apply for a further determination by notifying the Tribunal within 28 days of this decision that a further ruling is required. The Tribunal would at that point issue further directions for the making of that determination.

Summary

82. We determine:

- a. That the Statements dated 24 January 2024 and 1 May 2024 are valid demands for the payment of service charges as set out in them;
- b. That the Applicants are not liable to pay the whole sums claimed from them in the demands made in Statements dated 27 November 2024 in so far as those demands include a contribution towards the March 2023 gas bill. They only have to pay the balance after the gas bill contributions are deducted. They are thus each entitled to a credit of the amount shown in the fifth column of the attachment to the witness statement of Ms Pasciak at page 810 of the bundle and duplicated in Appendix 1 of the witness statement of Mr Hopper at page 374 of the bundle;
- c. That lessees who purchased their leasehold apartments during 2022/23 are liable for the service charges for the whole of that year if there are amounts for periods prior to their purchases which remain unpaid by their sellers;
- d. That we are unable to make a determination on the issues of:
 - i. Whether section 20B of the Act precludes any recovery of gas charges over and above the sum budgeted for gas in the 15 February 2022 Statements; and
 - ii. Whether new tenants during 2022/23 have been asked to pay irrecoverable charges during that year;

both issues being potentially subject to further decisions if the parties wish to pursue them.

Costs

83. An application for an Order under section 20C of the Landlord and Tenant Act 1985 and an application for an Order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 has been made by the Applicants.
84. We do not wish to reach a final decision on those applications until (a) all outstanding issues have been resolved and (b) without inviting the parties to make representations based on the actual decisions we have made. Accordingly, those applications are adjourned for 28 days. If all outstanding matters are at that point resolved, we invite the parties to make written submissions on the costs applications within 14 days thereafter. If they are not, the costs applications will remain adjourned until the outstanding matters are resolved.

Appeal

85. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
First-tier Tribunal (Property Chamber)

Schedule of Applicants

Lessee Applicants

APPLICANT	Name/s
1	(Estate of) Hazel Andrews
2	Keith Elshaw Angela Elshaw
3	Robert Voss
4	Keith Lester Christine Lester
5	Patricia Davis
6	Joanna Leeder
7	Jill Mundy
8	Susan Gibbins
9	Susan German Diana Roberts
10	Iris Spencer
11	Violet Douglas
12	Arthur Botterill Christine Botterill
13	Joan Cassidy Keith Cassidy
14	Don Homes
15	Godfrey Eden Joy Eden
16	Susan Hollins
17	David Wilson Valerie Wilson
18	Marjorie Lawson
19	Christine Ingall
20	Pamela Osborne
21	Derek Perryman Christine Perryman
22	Margaret Minty
23	Joan Wiltshire
24	(Estate of) Geoffrey Hazenberg
25	Wendy Cane
26	Elizabeth Evans (Executor of the estate of Eira Evans)
27	Christopher Plummer Yvonne Plummer
28	June-Mary Davies and the Estate of David Charles Davies
29	Karen Williams (Executor of the Estate of Muriel Evans)
30	Ken Wiggett Jean Wiggett
31	Ernest Jones Margaret Jones
32	Susan Ryan
33	Felix Mindham Antony Mindham
34	Lilani Hurn
35	Howard Aspinall
36	Christopher Samuel
37	Joyce Hatwood
38	James Sheriden
39	Richard I'anson
40	Phillip Kingzett Maria Kingzett

Tenant Applicants

41	Margaret Bicknell
42	Janice Allan
43	Barbara Lording
44	Joan Josephine Aitkin
45	Tammie Dunn Robert McCann (beneficiaries of Joyce McCann)
46	Peter Bowell Lesley Bowell
47	Lynda Read
48	Sandra Hunter
49	Carolyn Bush
50	Mary Evelyn Hewitt
51	William Gunthorpe
52	Colin Townsend Jacqueline Townsend
53	Christine Falconbridge
54	Patricia Rimmer
55	Joyce Baker
56	Jennifer Surridge
57	Thelma Sheasby
58	Trevor Rothwell
59	(Estate of) Michael Colledge
60	James Miller Ann Miller
61	John Daly
62	Gareth Meades Deborah Meades
63	Stephen Neale
64	Henrietta Shadforth
65	Marcia Nemeth Norman Toomey
66	Geoffrey Cook Ann Cook
67	Terence Askew
68	Tegwen Burford
69	Jean Dooley
70	Howard Trillo
71	Robert Morgan
72	David Rheams Patricia Shinkwin
73	Amanda Hunt
74	Margaret Hall
75	Mary Genower
76	Leslie Bradley Doreen Bradley
77	Anne Bufton