



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

Case number : **MAN/ooDA/LSC/2023/0077**

Property : **16 & 18 The Gateway Leeds LS26 0RT**

Applicants: : **Ms Paul and Ms Woloszczak**

Respondent: : **The Gateway (Rothwell) Limited**

Tribunal Members : **K M Southby (Judge)
J Gittus (Expert Valuer Member)**

Type of Application : **S27A Landlord and Tenant Act 1985
S20C Landlord and Tenant Act 1985
Paragraph 5A of Sch 11 CLRA 2002**

**Date and venue of
Hearing** : **13 and 21 May 2025 at
Leeds Employment Tribunal**

DECISION

DECISION

- A. In respect of the service charge years from 2021 to 2023 inclusive, the Respondent has failed to comply with the requirements under section 47 Landlord and Tenant Act 1987 and s21B Landlord and Tenant Act 1985 and therefore no service charge is payable by the Applicant to the Respondent until such deficiencies are rectified through reservice of the demands.**
- B. In the event that the deficiencies in the service charge demands are rectified the service charge payable by the Applicant to the Respondent is as shown in the Schedule to this Order**
- C. The Tribunal orders under s20C Landlord and Tenant Act 1985, that all costs incurred by the Respondent in connection with these 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 Applicants.**
- D. The Tribunal orders under 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 that all charges incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any administration charge payable by the Applicants.**

REASONS

Preliminary and background

Background

1. The Tribunal has received an application under s27A of the Landlord and Tenant Act 1985 for determination of the reasonableness and payability of service charges for the years 2021, 2022 and 2023 in respect of flats 16 and 18, The Gateway, Rothwell, LS26 0RT (“the Property”).
2. The Landlord of the Property is MPM Estates Limited. The Application is made against the Management Company The Gateway (Rothwell) Limited.
3. The Applicants Ms Paul and Ms Woloszczak attended the property inspection and hearing of this matter at Leeds Employment Tribunal on 13 May 2025. There was no attendance from the Respondent.
4. Having satisfied itself that the Respondent had been properly served with the information relating to the hearing, the Tribunal concluded that it was in the interests of justice to proceed in the absence of the Respondent. In reaching

this conclusion the Tribunal was mindful of the history of non-compliance by the Respondent with the previous Directions of the Tribunal and the lack of engagement of the Respondent with previous Tribunal requests. As a consequence, the Tribunal concluded that it was proportionate and in the interests of justice to proceed to determine the matter rather than cause additional delay by adjourning this matter.

5. The Applicants have also made an application for an order under section 20C of the 1985 Act for an order preventing the Respondent from recovering costs incurred in connection with the proceedings under section 27A as part of the service charge. They have also indicated that they wish to make a corresponding application under Paragraph 5A of Sch 11 CLRA 2002 in respect of administration charges (if any).

Inspection

6. The Tribunal carried out an inspection of the Common Parts at The Gateway on the morning of 13 May 2025. Ms Paul and Ms Woloszczak attended. There was no attendance from the Respondent.
7. The Tribunal found flats 16 and 18 to be within one block of a two-block complex which is known as The Gateway (“the Property”). The Property comprises two three-storey brick-built blocks of apartments, with 12 2-bedroom apartments in each block. The blocks are set within grassed communal grounds. The Tribunal observed the building to have a largely well-maintained car park, clean carpeted entrance lobby and internal staircases, and the external areas to have been recently mown.

Hearing

8. The Hearing took place at Leeds Employment Tribunal. Ms Paul and Ms Woloszczak attended and were not represented. Their witnesses were Ms Kelly and Ms Trout.

There was no attendance from the Respondent.

Documents

9. There were some significant omissions within the documentation before the Tribunal.
10. The Tribunal issued directions in this matter on 12 April 2024. These included a direction that

Within 28 days (beginning with the date of these directions) the Respondent must send to the Applicants copies of all relevant service charge accounts and budgets for the years in dispute (the accounts should be audited and certified where so required by the lease), together with copies of all relevant notices and demands for payment.

Within the same period, the Respondent must also send to the Applicants a statement showing the total service charges it believes to be payable by each Applicant for each year in dispute and explaining (by reference to the lease) the basis on which those charges have been applied, calculated and apportioned.

*The Respondent **must** at the same time confirm in writing to the Tribunal that it has complied with the above directions.*

11. The Respondent did not comply with these directions. As a consequence, the subsequent directions which were contingent upon the provision of this financial information were also compromised.
12. In subsequent directions dated 16 August 2024 it is noted by the Tribunal that it was understood that the Respondent had provided copies of all relevant service charge accounts for the years in dispute. In fact, this does not appear to have been the case, and they do not appear before the Tribunal in the bundle provided to us. The Applicant appears to have been provided with company accounts for the Management Company, rather than Service Charge accounts, and permitted access to view other documents and take limited copies at a meeting on 30 August 2024. There therefore does not appear to have been compliance by the Respondent with the original directions.
13. The documents before the Tribunal are a bundle prepared by the Applicants comprising 182 pages.
14. In addition, the Applicants sought to provide by way of late evidence the accounts with which they had been provided by the Respondent and copy service charge demands. These accounts were:
 - The Gateway (Rothwell) Financial Statements 2021 prepared by Enterprise Accounting
 - The Gateway (Rothwell) Ltd Report and Financial Statements 31 December 2021 prepared by Milton and Co
15. As these were both relevant and were all documents which were both generated by the Respondent and should already have been provided by the Respondent the Tribunal concluded that there was no prejudice to the Respondent in the Tribunal admitting this information by way of late evidence and considering it as part of the totality of the evidence.
16. The Tribunal considered all of the evidence before it even if we do not specifically refer to it.
17. The Tribunal was mindful that there were significant gaps in the documentation provided to the Tribunal. These are discussed in the course of the Tribunal's reasoning below. The Tribunal considered whether it was appropriate to adjourn this matter of our own volition to seek additional information. We noted that the evidence of Ms Kelly and Ms Trout, both of whom are accounting/audit professionals was that when they had inspected the accounts information, they were unable to make sense of it and reconcile

the information. We also note that this information has been requested on multiple occasions by the Applicants and by the Tribunal and we have no confidence that a further repetition of the request would be any more likely to be successful and would be more likely simply to cause further delay. We concluded that the absence of documents provided by the Respondent either indicates that any such documents do not exist, or that if they do exist they do not assist the Respondent, as were they to do so, it seems to us more likely than not that Mr Hammond would have provided them to the Applicants to explain his position, or to the Tribunal to assist us in understanding his position. He has not done so, has not contributed a bundle of any kind to assist the Tribunal and we conclude that it is not proportionate for us to adjourn this matter to attempt to fill in the gaps created by the Respondent's decision not to engage with the Tribunal process.

18. We note that it was potentially open to us to bar the Respondent from taking further part in the proceedings due to their non-compliance with the Tribunal's directions, and to proceed to summarily determine all issues against the respondent. However, in our view it would be fair, just and proportionate to consider the Respondent's statement of response together with the documents provided and to determine the issues before us, and therefore we have not chosen to bar the Respondent.

The Leases and the service charge machinery

19. The Tribunal was provided with copies of the Lease.

Service Charge is defined as meaning "*the Interim Charge, the Maintenance Charge and the Supplemental Interim Charge more particularly described in part one of the Sixth Schedule*"

20. An obligation on the Tenant to pay the Service Charges in accordance with the provisions of the Sixth Schedule is set out in paragraph 16 of the Third Schedule.
21. Within the Sixth Schedule the following provisions are of particular relevance:

"The Tenant's Proportion" is defined as 1/24 of the Service Costs

"Service Costs" means *the expenditure liabilities and overheads paid or incurred by or on behalf of the Management Company in complying with their obligations as set out in Part Two of this Schedule*.

Law

22. Section 27A (1) of the 1985 Act provides:

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.*

23. The Tribunal is “the appropriate tribunal” for these purposes, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

24. The meaning of the expression “service charge” is set out in section 18(1) of the 1985 Act. It means:

... an amount payable by a tenant of a dwelling as part of or in addition to the rent–

- (a) *which is payable, directly or indirectly, for services, repairs, maintenance, improvements, or insurance or the landlord’s costs of management, and*
- (b) *the whole or part of which varies or may vary according to the relevant costs.*

25. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

26. “Relevant costs” are defined for these purposes by section 18(2) of the 1985 Act as:

the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

27. Section 20B(1) of the 1985 Act provides:

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.

28. Section 20B(2) provides an exception from this principle for cases where, during the initial 18-month period, the tenant has been given written notice that the costs in question have been incurred and that he or she will subsequently be required to contribute to them.

- 29. Section 21B of the 1985 Act requires that a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges and gives the Secretary of state the power to prescribe the form and content of such a summary. This is contained in the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (England) Regulations 2007 which applies to demands made on or after 1st October 2007.
- 30. Where no summary is provided with a demand for a service charge then a tenant may withhold payment and any provisions of the lease relating to non-payment or late payment do not have effect (s21B(3) and (4)).
- 31. S47 of the Landlord and Tenant Act 1987 requires the landlord's name and address to appear on any "written demand" given to a tenant/leaseholder. A demand is defined as "a demand for rent or other sums payable to the landlord under the terms of the tenancy".
S60(1) defines "landlord" as "the immediate landlord".

The Issues

- 32. The Tribunal has used the list of issues as identified by the Applicants in their statement of case [page 79 and 83], although for the purposes of this decision we have addressed them in a slightly different order. These were confirmed to be:
 - 1. Accounts
 - 2. Management Fee
 - 3. Sinking Fund
 - 4. Communal Cleaning
 - 5. External Window Cleaning
 - 6. Landscape Maintenance/Gardening
 - 7. External Maintenance
 - 8. Internal Maintenance
 - 9. Communal Electricity
 - 10. Owner Meeting Charge
 - 11. Insurance
 - 12. Alarm
 - 13. Safety and General

Initial Observations

- 33. The Tribunal has been provided with Service Charge demands from 2022. The Applicants gave oral evidence that these demands have consistently been in this form throughout the relevant period and are sent by email. They are not accompanied by any additional information other than a covering email attaching the demand.

34. The Tribunal found the oral evidence of Ms Paul and Ms Woloszczak to be persuasive on this point, and we accept it. We note that the Service Charge demand refers to The Gateway (Rothwell) Ltd, i.e. the Management Company, but not to MPM Estates Limited, the Landlord. As such the service charge demands are not compliant with s47 of the Landlord and Tenant Act 1987. In addition, the demands have been sent without the necessary statement of Rights and Obligations required in accordance with s20B of the Landlord and Tenant Act 1985. For both of these reasons the service charges demanded are not payable by the tenants to the Landlord unless and until those deficiencies are rectified.
35. It follows that the sum payable by way of service charge for the years 2021, 2022 and 2023 is currently zero.
36. However, as these deficiencies are remediable if the demands are properly formulated and properly served, in our view it would be unhelpful to the parties were we not to proceed to determine the reasonableness and payability of the service charges for the relevant years in the event that they have been properly demanded and served.

Accounts

37. We first considered the issue of accounts because it impacts upon much of the remainder of the concerns raised by the Applicants.
38. The Applicants query the following charges:

2021 - £563 [page 70]
2022 - £688 [page 74]
2023 - £688 [page 78]
39. There is no dispute that fees for preparation of accounts are recoverable through the service charge under the terms of the lease. Whilst the sums referred to above appear to us to be a potentially reasonable sum for the preparation of service charge accounts by accountants for a Property of this size and complexity with 24 apartments, there is no evidence before us that any such work has been carried out, let alone that it has been carried out to a reasonable and satisfactory standard such that the tenants are able to understand how their money is being spent, and therefore in our view these sums are not reasonably incurred and are not payable.
40. The charges are recorded on the Certificates of Service Charge Expenditure as sums paid out by the Management Company, for accounts services, which it could reasonably be anticipated would include both the certification of the service charge budget and reconciliation and the preparation of the Service Charge Accounts.
41. No invoices from Accountants for rendering this service are provided. No Service Charge Accounts have been provided. The Certificates of Service Charge Expenditure are signed on behalf of the Management Company. They have not been signed by an accountant despite this being a requirement under

the terms of the Lease (paragraph 4.2 of Schedule 6). Nor have the accountants provided a certificate stating that the summary of Service Costs set out in the Certificate is a fair summary and that the Service Costs are sufficiently supported by accounts receipts and other documents which have been produced to him or them. The only accounts with which we have been provided are for 2021 and do not appear to be service charge accounts, rather they appear to be the company accounts for The Gateway (Rothwell) Limited prepared in accordance with the provision of the Companies Act 2006. If we are incorrect about this and these are in fact the service charge accounts, then they do not match the certificate of service charge expenditure for 2021 [page 70] and therefore do not reflect what the tenants have been asked to pay or provide clarity on how tenants' money is being spent.

42. At page 152 there is a table for 2021 which sets out what appears to be actual expenditure across the various service charge categories and a reconciliation process between budgeted expenditure for each heading and actual expenditure. This is referred to in the additional questions sent to the Respondent [page 99] as the accountant's breakdown of the spend certificate although we have no means of knowing whether this was indeed prepared by an accountant and whether or not it is supported by invoices.
43. At page 180 Mr Milton responds to a series of questions posed by the tenants concerning the service charges at The Gateway [page 99]. In response to Question 1 which refers to the 2021 certificate showing a shortfall of £1757.64, Mr Milton responds that he has no knowledge what certificate is being referred to or who prepared it. Mr Milton [page 105] subsequently clarifies this answer and refers to a book keeper preparing a budget and also refers to a cash flow exercise, transfer of funds and to accounts being prepared using the principles of UK GAAP which is also potentially consistent with these accounts being company accounts rather than service charge accounts. It is clear from Mr Milton's response that he is not preparing or overseeing the preparation of service charge accounts for The Gateway. Indeed the evidence before us is that nobody is doing so. As a consequence, the tenants are unable to establish how their money is being spent and whether it is being appropriately managed and protected, they are unable to be confident that sums recovered from insurance claims have been properly allocated to the service charge account. We found the oral evidence provided by Ms Kelly and Ms Trout, both of whom have professional audit or accountancy expertise to be particularly compelling and persuasive in this regard. Both reported having tried to understand the documentation which they were shown at the August 2023 meeting and being unable to reconcile or understand the information which was being shown to them.
44. We do not suggest that there is anything fraudulent taking place, we have no evidence which leads us to any such conclusion, rather, this opacity in the paperwork leads us to conclude that the charge for 'accounts' is not reasonable in the context of the actual level of service provided to the tenants. In our view the absence of clear financial information is so problematic and such a significant omission that no fee is payable for accounts.

Sinking Fund/Reserve Fund

45. It is not disputed by the Applicants that there is provision under the lease for sums to be collected through the Service Charge to be put towards a 'Reserve Fund' as referred to in the lease. This is referred to in the Service Charge Budgets and Certificates as a 'Sinking Fund'.
46. These terms appear to be being used interchangeably by the Respondent although they might be expected to be managed rather differently – for example a Reserve Fund might be administered so as to smooth out the annual running costs, so that the sums put towards the Reserve Fund are largely used to address additional day to day running costs incurred during the previous year. In contrast a sinking fund might be expected to reflect sums being accumulated over time to reflect forward planning over multiple years such as a schedule of works for forthcoming major expenditure.
47. For the reasons set out above, due to the paucity of financial information, it is not possible to establish how the fund is being used or administered, or how much has accumulated in the Reserve Fund. Nor can it be seen how this fund is protected and ring-fenced, and whether therefore it is necessary or reasonable for additional funds to be provided.
48. A figure is provided in the 2021 accounts that the sinking fund is at £5000. Note 7 to the 2021 accounts states '*Part of the bank balances of £12,264 represent a sinking fund of £5K the remainder being allocated to day to day working capital.*' Ms Woloszczak informed the Tribunal that her understanding from Mr Milton was that the sinking fund was capped at £5000. There is no cap on the Reserve Fund set within the terms of the lease. Mr Hammond states [page 120] that he does not believe there to be a cap on the Sinking Fund. He states, '*I must stress that the sinking fund is used as working capital so the amount in the bank account will vary at the date of checking the account.*' This gives rise to the possibility that sums paid by tenants into the Reserve Fund have not in fact been allocated for the purpose for which they were collected. We have no visibility on whether or not this is the case and no visibility on what amount from the Reserve Fund has been allocated towards any shortfalls. No such allocation is visible in the Service Charge Certificates which simply show money being collected to be allocated towards the Sinking Fund, not money distributed from the Sinking Fund. This is the type of transaction which we would have expected to have been apparent had there been properly prepared service charge accounts.
49. Mr Hammond states [page 98] '*The sinking fund is included in the regular account and not set aside in its own account. We use the sinking fund as working capital and get interest on the whole account.*' If this were the case we would have expected to see interest appear in any of the bank statements provided to us within the bundle [page 151 – Dec 2021; page 159 – May 2022; page 177 – February 2023] or that interest would appear in the Certificate of Service Charge Expenditure as a negative figure offsetting expenditure. It does not. We conclude that Mr Hammond is either mistaken about the Reserve Fund attracting interest or is choosing not to assist either the Applicants or the Tribunal in providing clarity and accuracy about the workings of the service charges at the Gateway. We also note that at page 107 Mr Hammond states

that once the accountant has completed the 2024 accounts a sinking fund figure will be provided. No such figure has been provided either to the Tribunal or to the Applicants.

50. Again, we see no evidence of financial dishonesty in respect of these accounts, however the Respondent is reminded that money paid into service charge accounts by tenants is to be held on trust as it is money belonging to the tenants and they are entitled to understand what it is being used for. As far as the sinking fund is concerned we agree with the Applicants that they can have absolutely no confidence what these sums have been used for, where they have gone, and whether or not they are reasonably required in the context of medium to long term planning for the Property. For this reason, whilst we agree that a sinking fund is both allowable under the lease and a sensible element of forward planning for everybody's benefit, we cannot conclude that these specific sums are reasonable, reasonably incurred and payable in the context of the absence of meaningful information from the Respondent. As a consequence, we disallow them in their entirety.

Management Fees

51. It does not appear to be disputed that management fees are recoverable through the service charge under the terms of the lease.

52. The Applicants query the following charges:

2021 - £2880 [page 70]
2022 - £3415 [page 74]
2023 - £3713 [page 78]

53. There is no information provided as to how the Management Fee is calculated, what if any service level agreement there is over and above the requirements of the Management Company under the terms of the lease. It does not appear that the Management fee is a specific percentage of the total service charge expenditure, as this varies from year to year from 18.91% in 2021, 21.62% in 2022 and 19.88% in 2023. We are provided with no explanation of the basis for these charges.

54. In the absence of any assistance in this regard from the Respondent we have considered what evidence we have as to the extent to which The Gateway was being managed at the relevant time.

55. There is no doubt that there was some management taking place – contractors were being paid, service charge demands, albeit non-compliant ones, were being sent out, service charges were being collected, forecasts and certificates of service charge expenditure were being prepared and reconciliations between the different years were being calculated. Whilst the identity of precisely who was carrying out this work is somewhat opaque with Adele Newton and Dantell Consulting Services involved, it is nevertheless clear that some management was occurring.

56. We considered Part 2 of Schedule 6 of the Lease which sets out the Obligations of the Management Company. We also considered the Respondent's reply to Applicant's Case [page 94] other written evidence within the bundle and the oral evidence of Ms Woloszczak, Ms Paul, Ms Kelly and Ms Trout, all of whom we found to be reliable, balanced and persuasive witnesses.
57. We accept the evidence of Ms Woloszczak that there were no site visits from the Management Company in 2021 until she rang 'Adele' in August 2021. Whilst Mr Hammond states [page 95] that he has personally visited the site on numerous occasions, he provides no evidence that he has done so in a capacity which led to active oversight, or management of the site. We note that Mr Hammond [page 94] notes that Adele agreed that the site was not at the standard required in August 2021 which leads us to prefer the evidence of Ms Woloszczak that there was very limited if any onsite management from the Management Company in 2021.
58. We accept the evidence of the applicants that there were no site visits in 2022 and the evidence of Ms Kelly that tenants were told that there would be monthly site visits in 2023, leading to an increase in the management fee for that year, but that only one such visit took place and there was no longer a telephone number for tenants to make contact with the management company.
59. We also accept the evidence of Ms Woloszczak and Ms Paul that there were unresolved issues for prolonged periods, including an external light remaining on, a loose manhole cover, poor standards of workmanship in jobs completed on site with jobs having to be redone due to poor quality of work, and lack of oversight of tasks which were not being carried out to the full extent for which they were being invoiced. We accept the evidence of the Applicants that the vast majority of jobs on site were allocated to Mr Sidebottom, irrespective of his specific level of expertise at the task. There is no evidence that the Management Company attempted to seek alternative quotations for works in order to ensure that tenants were paying a reasonable amount. We also note that [page 160] Mr Sidebottom appears to have been paid to oversee external contractors onsite in addition to the tenants paying a management fee. This leads us to conclude that the level of management taking place was below the standard which could reasonably be expected. For the reasons set out above we have therefore deducted 25% of the management fee charged, as in our view given the poor level of service this percentage is not reasonably incurred and not payable.

Communal Cleaning

60. The Applicants query the following charges:
 - 2021 - £3240 [page 70]
 - 2022 - £3240 [page 74]
 - 2023 - £2703 [page 78]
61. The Applicants do not dispute that internal cleaning is recoverable through the service charge under the terms of the lease, nor do they dispute that some

cleaning was done of the communal areas during the period in question. The Applicants provided oral evidence to the Tribunal of the nature and frequency of this cleaning. This was consistent with the photographic and documentary evidence contained within the bundle which included photographs of areas which had remained uncleansed for a prolonged period [pages 111 to 115], text message exchanges from July and November 2022 raising concerns about the cleaning [page 110] and confirmation from Mr Hammond [page 94] that it was accepted that cleaning was not at the desired standard. We accept the Applicants' evidence that in 2021 Mr Sidebottom attended once a fortnight and carried out vacuuming for approximately 15 minutes per block, being 30 minutes in total. We accept their evidence that his work did not extend beyond vacuuming and that he did not, for example, wash skirting boards, doors, door handles or internal window frames or use other cleaning products.

62. We note that Mr Sidebottom has invoiced for £255 of internal cleaning on 31 January 2023 and 31 December 2023 [page 167 and 170] being full vacuum, windows paintwork on 5 separate occasions in January 2023 and 'cleaning works to communal areas' on 5 occasions in December 2023. Each individual charge of £51 per visit would suggest that Mr Sidebottom spent approximately an hour in each block on five occasions in January and December, including in the period between Christmas and New Year without any of the witnesses being aware of it, notwithstanding that some of them are on site the majority of the time. We find this to be implausible and the witnesses' oral evidence to be more persuasive than the invoices provided by Mr Sidebottom and we are not persuaded that he carried out the work for which he has invoiced to the extent for which he has charged.
63. Having accepted the evidence of the Applicants, we have therefore calculated that Mr Sidebottom spent approximately 13 hours carrying out internal cleaning at The Gateway in 2021. We have determined that a reasonable amount for this, and therefore the amount payable by the Applicants is £270 for the year, rather than the £270 per month charged by Mr Sidebottom. We have disallowed the remainder of the amount accordingly as not being reasonably incurred.
64. In 2022 we accept the evidence of the Applicants that cleaning changed to weekly after May 2022 although a few weeks were missed, but that the duration and nature of the cleaning, being approximately 15 minutes vacuuming per block remained the same. We have used a relatively broad-brush approach here and concluded that on the basis of the evidence from the Applicants approximately half of 2022 was cleaned at the same rate as 2021, and the other half of the year at double the frequency. On this basis we calculate that a reasonable sum for internal cleaning for 2022 is £405.
65. In 2023 we accept the evidence of the Applicants that weekly vacuuming occurred throughout the year at approximately 15 minutes per block per visit and therefore we have allowed £540 for the year as being reasonably incurred and payable by the Applicants.

External Window Cleaning

66. The Applicants query the following charges:

2021 - £222 [page 70]

2022 - £222 [page 74]

2023 - £202 [page 78]

67. The Applicants do not dispute that external window cleaning is recoverable through the service charge under the terms of the lease. They dispute that it has ever taken place, stating that they have never observed anyone cleaning the external communal windows, or cleaning those communal windows which open from the inside. We accept the evidence of Ms Paul and Ms Woloszczak from 2021 onwards and Ms Kelly and Ms Trout in addition from 2022 onwards and we consider that it is highly likely that one or other of them would have seen a contractor on site carrying out this task during this time had it taken place, not least because some of the witnesses worked from home during some or all of the relevant period. In particular we find it surprising that none of the witnesses would have observed cleaning of the outside of windows at the end of 2023 [page 173] given that by that point in time they had been in protracted correspondence with the Respondent about the level of service being provided on site. We find it more likely that this cleaning did not take place.

68. We also find this absence of cleaning to be consistent with the photographic evidence of a spider's nest on the external window [page 113]. We have considered the statement from Mr Hammond that Mr Sidebottom keeps his cleaning poles on site, and whilst we do not dispute that this may be the case, we do not find this to be compelling evidence that actual cleaning has taken place and we prefer the evidence of the Applicants in this regard.

69. As we are not persuaded that this work has been carried out, the cost has not been reasonably incurred and is therefore not payable. We have disallowed this amount in its entirety.

Landscape Maintenance/Gardening

70. The Applicants query the following charges:

2021 - £1832 [page 70]

2022 - £1800 [page 74]

2023 - £2237 [page 78]

71. The Applicants do not dispute that landscape maintenance and gardening is recoverable through the service charge under the terms of the lease. They query the amount charged given that tasks such as ivy removal and hedge cutting are charged separately under the heading external maintenance and therefore this charge relates solely to grass cutting. The Applicants also state that they are unhappy that £150 is paid to Mr Sidebottom on a standing order basis when landscape maintenance was only carried out for part of the year.

72. We accept the oral evidence of Ms Paul and Ms Woloszczak that mowing the area took approximately 2 to 2.25 hours to complete and that Mr Sidebottom attended from late March until October coming on average fortnightly throughout. This is consistent with the Tribunal's inspection the Tribunal, where we observed the grassed areas to be both reasonably extensive and complex in their layout including areas of grass extending around the roadside of the Property between one block and the front wall. We concluded that approximately 2 hours of landscape maintenance would be required to keep this area tidy.

73. Whilst this work was paid on a standing order basis, we nevertheless note that Mr Sidebottom invoiced for gardening maintenance in December 2023 for three visits in November and December. It is unlikely that regular mowing was required at this time of year and the work done is not specified. There is considerable ambiguity amongst the invoices provided as to which tasks are allocated to 'outside maintenance' and which to 'landscape maintenance/gardening'. Having accepted the oral evidence of the Applicants in preference to the evidence of the Respondent we have concluded that it is not proportionate for us to attempt to unravel precisely what was or was not done when and to which heading it was allocated. Had the Respondent wished to assist the Tribunal in doing so he has had ample opportunity to provide such clarification. Therefore, in the absence of any other information of when the work was carried out, precisely what that work was or what, if any, additional work was carried out over and above the mowing, we have estimated on the basis of the evidence before us that Mr Sidebottom attended the site approximately 16 times each year for 2hrs 15 minutes, which is 36 hours of work. We have applied a rate of £25/hour to this work to reflect the cost of garden contractors and the fact that equipment was provided by Mr Sidebottom to complete the work. This gives a sum of £900 which in our view has been reasonably incurred and is therefore payable.

External Maintenance

74. The Applicants query the following charges:

2021 - £3057.55 [page 70]
2022 - £2758.10 [page 74]
2023 - £2963.69 [page 78]

75. The Applicants do not dispute that external maintenance is recoverable through the service charge under the terms of the lease. They query what works have given rise to these charges.

76. As referred to above the evidence from Ms Kelly and Ms Trout was particularly compelling in respect of the opacity of the financial information relating to these charges. We are mindful that we have not been provided with a complete set of information upon which to base our findings, but we are persuaded by the evidence of Ms Kelly and Ms Trout, that notwithstanding their specific financial knowledge, the works done giving rise to these charges remained unclear.

77. It is however clear and accepted by the Applicants that some external maintenance work was carried out throughout the relevant period. Ms Kelly reports seeing the rebuilding of a gatepost and guttering being cleaned, albeit an incomplete job was carried out which she had to query. Ms Woloszczak gave evidence that ivy removal took place by a Mr Crilley, although the invoice appears to have passed through Mr Sidebottom. Ms Woloszczak also gave evidence of tasks such as turning the bins round which were being done by Mr Sidebottom which were in her view unnecessary, and since Mr Sidebottom has no longer been involved in carrying out tasks at The Gateway, such items have not been completed with no detriment to the functionality for tenants and no difficulties for the refuse collection.

78. Again, for reasons of lack of complete information we have had no alternative but to estimate what we consider to be the sum reasonably incurred and payable. We have reduced the amount charged to the service charge account under this heading by 50% on the basis that we are not persuaded that all of the works which were invoiced were carried out, and nor are we persuaded that all of the works which were carried out were necessary. Had the Property been subject to adequate management and oversight it seems to us likely that this would not have occurred. Equally had the account for the Property been properly prepared or provided to the Tribunal it is possible that we could have arrived at a figure with a greater degree of precision, however given the circumstances of non-cooperation by the Respondent, the charges made are unable to be substantiated by the Respondent and rather than seek to dig further we consider that this broad brush approach is just fair and proportionate in the circumstances and is based upon the information with which we have been provided. We therefore disallow 50% of the charges for external maintenance in 2021, 2022 and 2023.

Internal Maintenance

79. The Applicants query the following charges:

2021 - £931 [page 70]
2022 - £630.91 [page 74]
2023 - £542.02 [page 78]

80. The Applicants do not dispute that internal maintenance is recoverable through the service charge under the terms of the lease. As per the external maintenance charges above, they query what works have given rise to these charges.

81. We note that the communal areas subject to internal maintenance are relatively limited. We noted from our inspection a poorly completed adjustment to the door closing mechanism and we accept the Applicants' evidence of poorly carried out lock repairs. We accept that lightbulbs in the communal areas require changing. We observed there to be 12 light fittings in the communal areas in each block, 4 on each floor, together with battery powered smoke detectors and plug sockets on each floor.

82. We note that the Applicants query the number of lightbulbs for which they have been charged, citing a total of 95 light bulbs across 3 years including 45 light bulbs in 2021, 24 in 2022 and 25 in 2023.
83. It is possible that some of these relate to external lights rather than just internal lighting, as the specification in the invoicing is at best ambiguous.
84. As above we have out of necessity taken a broad-brush approach noting that the Applicant has raised valid queries about the reasonableness and payability of the service charges relating to internal maintenance and the Respondent has not provided information to support those charges. However, rather than disallow the totality of these charges we have concluded that it is more likely than not that some internal maintenance including the changing of light bulbs took place during this period. As above, we have reduced the amount charged to the service charge account under this heading by 50% on the basis that we are not persuaded that all of the works which were invoiced were carried out, and/or necessary. We consider that this broad-brush approach is just fair and proportionate in the circumstances and is based upon the information with which we have been provided. We therefore disallow 50% of the charges for internal maintenance in 2021, 2022 and 2023.

Communal Electricity

85. The Applicants dispute the charge of £3107.52 for communal electricity in 2023 on the basis that it was much higher than previous years and the Management Company had failed to take action in respect of an exterior light which was on permanently. We note that this is likely to have been charged at a commercial rate and therefore not subject to domestic price capping when electricity charges rose significantly in 2023. We think it is unlikely that the external light significantly increased this figure, and we have already taken the absence of management into account under management fees above, we therefore leave this figure unchanged and allow it in full.

Owner Meeting Charge

86. The Applicants dispute the charge of £180 for the cost of the venue for the Residents' Meeting in 2023. They do not dispute that the meeting took place, or that a venue was provided for it. The concern appears to largely arise from the absence of communication about this charge. Whilst we agree that clarity of communication would have been helpful in this situation we find that this charge is recoverable through the service charge under the terms of the lease and we find it to be both reasonable in amount and reasonably incurred and therefore we conclude that it is payable in full.

Insurance

87. The Applicants query the following charges:

2021 - £2794.16 [page 70]
2022 - £2942.21 [page 74]
2023 - £3774.78 [page 78]

88. The applicants do not dispute that the cost of insurance is recoverable through the service charge under the terms of the Lease. We note that under the terms of the lease the Management Company is obligated to obtain buildings insurance, directors' and officers' insurance and employers liability insurance. In their statement of case the Applicants do not appear to be querying the amount that they pay for the insurance premium and no alternative quotations are provided. Nor do they suggest that the building is not insured, rather they query why an Employer's Liability certificate is displayed in the communal areas [page 150] when in their view the Management Company has no employees.
89. We note that Mr Hammond states [page 98] that the correct insurance is in place, but does not offer any evidence of such, or clarification to the Applicants or the Tribunal. This is unhelpful. However, nevertheless we consider that paragraph 6.2 of Part Two of Schedule 6 of the lease provides the explanation which the Applicants were seeking as to why this insurance is in place. Despite the absence of clarification from Mr Hammond we conclude that given that Employer's Liability Insurance is correctly in place, it is more likely than not that the Property is correctly insured as Mr Hammond asserts. The premiums paid have not been challenged and we consider them to be both reasonable and reasonably incurred and therefore payable in full.
90. We note that there is a query raised by the Applicants about what they perceive to be a discrepancy in the amount paid for insurance. They refer to the sum of £3794 showing in the accounts for insurance in 2021, and the service charge certificate showing £2794 with no explanation for the discrepancy. It seems to us that since the accounts are the company accounts for the Management Company, which clearly has its own premises – as per the meeting venue – then the most likely explanation for this is that this is a different insurance premium for the company premises and is not related to the service charge at all. We see no evidence that the tenants have paid the sum of £3794, and we have disregarded this figure for the purposes of our determination, other than to note that the gaps in the financial information and the utter disinterest of the Respondent in attempting to clarify the Applicants' entirely legitimate queries has led to unnecessary correspondence, confusion and time spent unravelling what should have been an extremely straightforward process of answering basic accounting questions.

Alarm and Safety and General

91. As with the query about the insurance above, the figures queried by the Applicants in respect of the Alarm and Safety and General arise from the 2021 accounts which in our view do not relate to the service charge. There is no alarm at the Property. There is no suggestion in the certificate of service charge expenditure that the tenants have paid towards an alarm through their service charge. We conclude that these accounts relate to the Management Company itself and that these accounts are not the service charge accounts, and therefore the sums being queried have not been paid by the Applicants and are not relevant to our determination of what is a reasonable service charge.

Costs

92. We note that the Applicants have made an application under s20C, that the Landlord's costs in connection with these proceedings should not be added to the service charge account. Whilst the Landlord's lack of engagement with the process makes it unlikely that any significant costs have been incurred, we nevertheless note that the Applicants have been successful to a significant extent and we make an order under s20C accordingly.
93. For the same reasons we consider it to be just and equitable to make a corresponding order under Paragraph 5A of Sch 11 CLRA 2002 extinguishing the Applicants' liability to pay an administration charge in respect of litigation costs (if any).

Schedule A

Item	Amount charged (£)	Amount allowed (£)
2021		
Accounts	563	0
Sinking Fund	800	0
Management Fee	2880	2160
Communal Cleaning	3240	270
External Window Cleaning	222	0
Landscape Maintenance/Gardening	1832	900
External Maintenance	3057.55	1528.78
Internal Maintenance	931	465.50
Insurance	2794.16	2794.16
Alarm	0	0
Safety and General	0	0
	Total charged for 2021	Total payable for 2021
	£16319.71	£8118.44
2022		
Accounts	688	0
Sinking Fund	800	0
Management Fee	3415	2561.25
Communal Cleaning	3240	404
External Window Cleaning	222	0
Landscape Maintenance/Gardening	1800	900
External Maintenance	2758.10	1379.05
Internal Maintenance	630.91	315.46
Insurance	2942.21	2942.21
Alarm	0	0
Safety and General	0	0
	Total charged for 2022	Total payable for 2022
	£16274.22	£7601.97
2023		
Accounts	688	0
Sinking Fund	800	0
Management Fee	3713	2784.75
Communal Cleaning	2703	540
External Window Cleaning	202	0
Landscape Maintenance/Gardening	2237	900
External Maintenance	2963.69	1481.85

Internal Maintenance	542.02	271.01
Communal Electric	3107.52	3107.52
Owner Meeting Charge	180	180
Insurance	3774.78	3774.78
Alarm	0	0
Safety and General	0	0
	Total charged for 2023	Total payable for 2023
	£20,911.01	£12,768.90

Rights of appeal

Appeals in respect of decisions made by the FTT.

A written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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