FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/22UJ/LSC/2023/0055**
Property	**:**	**1-36 Amberry Court, Harlow, Essex CM20 2PX**
Applicant	**:**	**The Original Amberry Court Residents Association**
Representative	**:**	**Sara Hymas and Rachel Cochrane**
Respondents	**:**	**Can Prop Limited**
Representative	**:**	**Olivia Chaffin-Laird of counsel**
Type of application	**:**	**Application for a determination of liability to pay and reasonableness of service charges**
Tribunal	**:**	**Judge A. Arul** **Mr J. Francis QPM**
Date of hearing	**:**	**27 May 2025**
Date of decision	**:**	**27 August 2025**

DECISION AND REASONS

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Decisions of the Tribunal

(1) The Tribunal determines that, for the purposes of section 27A of the Landlord and Tenant Act 1985, there are no refunds of service charges due to be paid to the Applicant, of individual leaseholders, as claimed.

(2) The application for an order under section 20C of the Landlord and Tenant Act 1985 is refused.

(3) There was no formal application for an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 but, in any event, it is refused.

(4) The Tribunal does not make an order requiring reimbursement of Tribunal fees.

REASONS

The Application

1. By an application dated 30 August 2023, the Applicant and individual leaseholders seek a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to the liability to pay and reasonableness of service charges for the property at 1-36 Amberry Court, Harlow, Essex CM20 2PX ("the Property"). The relevant part of the application before the Tribunal at the hearing related to the service charge year 2023/2024. There is also an application for an order under section 20C of the Act limiting the Respondent's ability to seek the costs of these proceedings via a service charge.

2. On 9 October 2024, the Tribunal gave Directions in this matter. The issues before the Tribunal at that time included a challenge to charges for major works, non-receipt of audited accounts for the 2022/2023 service charge year and a dispute over the 2023/2024 service charges.

3. On 18 February 2025, the Tribunal gave further Directions which noted (following extensive correspondence between the parties and the Tribunal) that several issues had been resolved between the parties and only the dispute over the 2023/2024 service charges remained. These Directions described the position as effectively starting the process afresh.

4. Both sets of Directions contained the usual warnings in the following form:

   If the applicant fails to comply with these directions the tribunal may strike out all or part of its case pursuant to rule 9(3)(a) of the 2013 Rules.

If the respondent fails to comply with these directions the tribunal may bar it from taking any further part in all or part of these proceedings and may determine all issues against it pursuant to rules 9(7) and (8) of the 2013 Rules.

Non-compliance could also result in the tribunal making a determination on costs pursuant to rule 13 of the 2013 Rules.

5. The critical dates in the 18 February 2025 Directions were for the Respondent to send to the Applicant service charge information by 12 March 2025, the Applicant to send to the Respondent various documents by 26 March 2025 including a Scott Schedule and witness statements, the Respondent to respond by 16 April 2025 and the Applicant to send a brief supplemental reply by 23 April 2025. The Applicant was to prepare a bundle for use at the hearing by 2 May 2025.

6. The Respondent wrote to the Tribunal on 17 April 2025 alleging non-compliance and seeking a strike out of the application. This was considered by a procedural chair who directed on 23 April 2025 that the Applicant explain its position by 28 April 2025. The issue of compliance was then left to be determined at the hearing.

<u>The Hearing</u>

7. The hearing took place remotely using the CVP platform.

8. The Applicant residents' association was represented by two residents, Ms Hymas and Ms Cochrane. The Respondent was represented by Ms Chaffin-Laird of counsel.

9. There were others in attendance throughout the hearing. These were Emma Ip and John Call from the Applicant and Philip Saunders and Edward Saleh from the Respondent.

10. The documents before the Tribunal comprised several separate pieces. For the Applicant, there was a bundle of some 59 pages. There was no Respondent's bundle but there were several exhibits to a witness statement. There was a skeleton argument from Ms Chaffin-Laird.

11. The Tribunal had before it written statements from several individuals on behalf of the Applicant. These were not all in the required format or verified by a statement of truth. These was: (1) an unsigned statement from Ms Hymas of flat 33, (2) an email from Gemma Williams, the daughter of Nigel McGhee of flat 5, (3) an email from Kinga Szabo of flat 29, (4) an unsigned letter from Ludmila and Mihail Andries of flat 11, (5) a statement or presentation in the form of pictures accompanied by written narrative, unsigned, undated and from persons unknown but said to be from flats 7 and 12. It is noteworthy that flat 5 does not appear in the Scott Schedule. It was not clear that Ms Ip or Mr Call were interested in any of the flats which appear in the Scott Schedule although, in any event, neither had submitted a witness statement or other evidence.

12. The Tribunal had before it two written statements from Philip Saunders, a director of the Respondent, which were accompanied by six exhibits comprising bundles of miscellaneous correspondence and documents.

13. Finally, the Tribunal had the application form, a sample lease and a Scott Schedule, the latter being a table with columns as per the Directions with comments from the Applicant, responses from the Respondent, replies from the Applicant and a space for the Tribunal's findings.

14. No inspection of the Property was requested, and the Tribunal did not consider that one was necessary to determine the issues.

15. The Tribunal decided that it did not need to hear live evidence from witnesses. For the Applicant, only Ms Hymas was present and the statements provided appeared to be on more general points about the management (or alleged lack of) relating to the Property rather than specifically on the service charge year in question. For the Respondent, whilst Mr Saunders' statement provided helpful background information and clarification, there was little that he could likely add in oral evidence that would assist the Tribunal. A critical point here was that the Respondent accepted that certain major works had not proceeded so credits were due to leaseholders and much of his exhibits contained documents relating to this which largely spoke for themselves. Nonetheless, Ms Chaffin-Laird made clear that he was present and able to give evidence if required.

The Issues

16. The primary issues to be determined in this case were:

    (i) A determination under section 27A of the Act in respect of the service charges payable for the year 2023/2024, in particular whether the relevant charges are payable under the lease(s) and are reasonable; and

    (ii) Whether an order under section 20C of the Act and/or paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the "2002 Act") should be made. It is noted that the latter is not expressly sought in the application form (i.e., an order to reduce or extinguish the tenant's liability to pay an administration charge in respect of litigation costs).

17. The application form alleges that major work charges have been applied to the leaseholders' accounts without a valid process under section 20 of the Act being followed and that the budget statement for 2023/2024 is inflated. The leaseholders have also not received audited accounts for 2022/2023. These matters were not in issue at the hearing. In summary, it had been conceded that a valid process had not been followed and the relevant accounts had been provided since the proceedings commenced.

18. The remaining issue is that the Applicant seeks refunds of sums said to have been paid as service charges for 2023/2024. It was made clear by

the Tribunal that it can only look at the liability for, and fairness of, those charges. The effect of its determination might well be that charges should, or should not, have been made, but it could not make an order requiring repayment.

19. The Respondents position was, broadly, that it accepts that some credits are due back to leaseholders, principally following the discontinued process under section 20 of the Act. However, there were insufficient funds to make all the payments. There was said to be around £400,000 arising in refunds, some of which had been made. There were errors by the previous managing agent, HLM Property Management, for example having overpaid some and not paid others. The Respondent considered that it was lawful to apply credits to accounts rather than make actual payments, to the extent that it had not already done so and had insufficient funds by which to now do so.

20. There were several preliminary issues raised by the parties in addition to the primary issues identified above. The Tribunal determined these and gave its decision on each after a short adjournment. These decisions and reasons are summarised as follows:

21. <u>The correct applicant</u>

(i) The application was brought by Ms Hymas and Ms Cochrane. The Respondent raised the question of whether a qualifying majority of leaseholders had agreed to the application being made on their behalf by the Applicant residents' association (and, indeed, whether the residents' association was properly constituted in law). The Respondent said it had asked for a board minute or similar evidence. None was made available to it, but in any event there was no evidence as to the inception of the Application residents' association before the Tribunal. Ms Hymas stated that the residents' association was formed due to absence of necessary works, and this was done upon legal advice. She did not elaborate as to how and on what basis this was done.

(ii) The Tribunal did not have before it sufficient evidence from either party as to the status of the Applicant. We were not able to resolve the issue without further evidence. Given that there were individual leaseholders from the relevant flats in attendance, or written statements from them, we were satisfied that we had sufficient jurisdiction to determine payability and reasonableness of service charges.

22. <u>The correct respondent</u>

(i) Lyn Walker and Paul Adler are named in the application. It was a matter of public record that Mr Adler, along with Mr Saunders, are directors of the Respondent company, Can Prop Limited. It was common ground, or, in any event, we accept Mr Saunders' evidence, that the freeholder is Can Prop Limited. It was also common ground

that there had been a change of managing agent from HLM Property Management to Woodward Property Management Company.

(ii) The Tribunal had received a letter dated 22 November 2024 in which solicitors acting for the Respondent indicated that Ms Walker was an employee of the former managing agent.

(iii) We considered it fair and just to allow the Applicant to amend the application to reflect the current actual freeholder Can Prop Limited and the current managing agent Woodward Property Management Company. There was no prejudice to the Respondent in circumstances where it had proceeded on this basis throughout the proceedings. It would be disproportionate to dismiss the application solely based on a disparity in names. It would be unfair on Mr Saunders and Ms Walker for there to be personal liability on them, were there to be no amendment.

23. Late documents

(i) The position regarding the filing and service of documents was unsatisfactory in many respects.

(ii) The Directions had not been properly complied with by the Applicant. The Applicants evidence was only sent to the Respondent on 21 May 2025, being outside of the timescales required. This had a knock-on effect on the Respondent's ability to comply; its position is more fully explained in the second statement of Mr Saunders.

(iii) Those documents produced by the Applicant were not initially in a paginated bundle as directed. There were also documents upside down or otherwise not clearly or conveniently legible. There were many documents which were not of direct assistance to the issues.

(iv) The Tribunal was able to make sense of the documents, despite them being in some disarray. Whilst inconvenient, all parties had the others' documents, had time to review them and could fairly participate in the proceedings. We were not minded disallowing admission of any document or striking out the application. The strike out seemed us to be a disproportionate outcome when there had been at least some attempt to comply. The parties were invited to make any further submissions which they wished to on this at the submissions stage of the hearing. In the event, the issue of strike out was not revisited.

24. Witness statements

(i) As indicated earlier in this decision, the Tribunal decided that it did not need to hear live evidence to from witnesses.

(ii) There were deficiencies in some of the statements, as identified earlier in this decision.

(iii) The Tribunal decided to admit the statements which were in the bundles and invited the parties to address in submissions the weight and the relevance. In respect of the Respondent's statements, no adverse submissions as to admissibility or relevance were made. In respect of the Applicant's statements, it was submitted that they should be disregarded as they were not in the proper form, but in any event, they added very little of relevance.

25. Following these determinations, the parties clarified that the figures set out in the Scott Schedule were largely agreed. We therefore determined that we would hear submissions from both sides on: (1) whether the lease(s) do allow for credit rather than actual payment and/or whether there have been individual instances of agreement to accept a credit, (2) the relevance or not of the absence of audited accounts.

26. The parties were invited to make submissions as they wished, time and relevance permitting, but were reminded that general dissatisfaction or speculation about what any service charge audit will bring was not something that the Tribunal was in a position to make determinations on.

<u>The Property and Lease</u>

27. The Respondent is the registered freehold proprietor of the land known as 1-36 Amberry Court, Harlow, Essex CM20 2PX.

28. Amberry Court comprises 36 flats across three blocks, together with some garden areas which we were told comprises about one acre.

29. The Applicant is a residents' association. The hearing was concerned with refunds of service charge said to be due to flats 7, 10, 11, 12, 14, 17, 28, 29 and 33 and a 'year end deficit' applied across all flats.

30. We were provided with a sample lease for flat 21 dated 25 August 1982 and made between (1) Bar Limited and (2) Philip Colin Lewis and Eileen Mary Lewis. It was common ground that this contained similar provisions to the other flats; the service charge percentages payable under each lease apparently vary slightly, but that difference was not pertinent for the purposes of these proceedings.

31. Clause 4 of the sample lease contains the material provisions for the service charge, which are as follows:

THE LESSEE HEREBY FURTHER COVENANTS with the Lessor that the Lessee will in respect of every Maintenance Year pay the Maintenance Contribution to the Lessor by equal instalments on the rent day immediately preceding the Maintenance Year and on the subsequent rent day(s) in the Maintenance Year together with the rent hereinbefore reserved Provided that in respect of the first Maintenance Year the Maintenance Contribution (subject to any adjustment as provided in paragraph 4 of Part I of the Fourth Schedule) shall be the sum specified in Part G of the Sixth Schedule and the Lessee shall on the

execution hereof pay a due proportion thereof in respect of the period from the Commencement Date to the rent day next following AND if any Maintenance Contribution or any part thereof shall remain unpaid for fourteen days it shall bear interest at the rate of Three per centum above the Base Rate of Barclays Bank Limited for the time being from the date due until payment.

32. Clause 6 contains the Lessor's maintenance obligations, it not being necessary to repeat those provisions for the purposes of the issues in this matter.

33. The Fourth Schedule contains the detailed mechanism for calculating and administering the Maintenance Contribution, which is as follows:

THE FOURTH SCHEDULE above referred to

PART I

Computation of annual maintenance provision

1. the annual maintenance provision in respect of any Maintenance Year (hereinafter called "the Annual Maintenance Provision") shall be computed not later than the expiration of two months immediately following the commencement of the said Maintenance Year and shall be computed in accordance with paragraph 2 hereof

2. the annual Maintenance Provision shall consist of a sum comprising the expenditure estimated as likely to be incurred in the Maintenance Year by the Lessor for any of the purposes mentioned in Part II of this Schedule.

3. as soon as practicable after the end of each Maintenance Year the Lessor shall procure that the accounts for that Maintenance Year shall be audited by an accountant in accordance with the provisions of the Housing Finance Act 1972 (as amended) and such audited account for each Maintenance Year shall be conclusive of the amount of the Annual Maintenance Provision or the amount of any adjustment thereof for the Maintenance Year

4. upon receipt of the audited account the Lessor shall deliver a copy thereof to the Lessee and shall notify the Lessee of the amount by which the estimate under 2 above shall have exceeded or fallen short of the actual expenditure in that Maintenance Year and the Lessee shall be allowed or shall pay (as the case may be) the proportion appropriate to the Demised Premises of the excess or deficiency

5. the Lessor shall procure that there shall be open to inspection by the Lessee during ordinary business hours at the office of the Surveyor in every period of three months ending on the last day of the fifth month after the expiration of each Maintenance Year during the term of this Lease (other than in the first year of this demise) copies of the accounts relating to the Maintenance Account for the proceeding Maintenance

Year provided that the Lessee shall give to the Surveyor not less than fourteen days' written notice of his desire to see such copies.

PART II

Expenses incurred by Lessor to be re-imbursed by the Maintenance Contribution

1. the performance by the Lessor of its obligations in Clause 6(A) of this Lease

2. the employment and remuneration of a Surveyor or Estate Agent to manage the Lessor's Property and to carry out such other duties as may from time to time be assigned to him by the Lessor or are otherwise imposed on him by the provisions of this Lease

3. the stocking tending keeping clean and tidy and the general cultivation and maintenance of the gardens grounds yards forecourts footpaths and roads which form part of the Retained Property

4. effecting insurance against the liability of the Lessor to third parties and against such other risks and in such amount as the Lessor shall think fit (but not against the liability of individual tenants as occupiers of the flats in the Building)

5. effecting insurance against loss of or damage to any lift or to any boilers, radiators, pipes, valves, pumps and other apparatus for the supply of hot water or heating in the Lessor's Property or against the liability of the Lessor arising from the use thereof in such sum as the Lessor thinks fit and of any contract or agreement for the repair maintenance or replacement of any such lift or hot water or heating apparatus

6. employment of full time or part time staff (whether resident or not) and paying all outgoings taxes and other. expenses incurred in relation thereto and providing and supplying such other services for the benefit of the Lessee and the other tenants of flats in the Building and carrying out such other repairs and such improvement works and additions and defraying such other costs (including the modernisation or replacement of plant and machinery) as the Lessor shall in its discretion consider necessary. to maintain the Building as block of residential flats or otherwise desirable in the general interests of the tenants

7. all legal and other costs incurred by the Lessor other than those relating to the recovery of ground rent (as distinct from Maintenance Contribution) (a) in the running and manage-ment of the Building and in the enforcement of the covenants conditions and regulations relating thereto contained in the leases granted of the flats in the Building including the auditing of the accounts of the Maintenance Account and (b) in making such applications and representations and taking such action as the Lessor shall reasonably think necessary in respect of any notice or order or proposal for a notice or order served under any

statute or order regulation or bye-law on the Lessee or any underlessee of the Demised Premises or on any tenant or underlessee of any other of the flats in the Building or on the Lessor in respect of the Lessor's Property or all or any of the flats therein

8. keeping the entrance halls staircases and passages in the Building and used in common by any of the tenants and occupiers of the flats therein and all conduits now laid or hereafter to be laid in or upon the Building or any part there- of (other than those serving exclusively individual flats therein) in good repair condition and decoration and keeping the common parts aforesaid suitably lighted and cleaned.

34. The Sixth Schedule contains provisions specific to each lease, such as the term, rent payable and service charge contribution, it not being necessary to repeat those provisions for the purposes of the issues in this matter.

35. Paragraph 1 of the leases define key terms. Maintenance Year means the 12 month period ending on the date in the Sixth Schedule – for present purposes, 25 March in each calendar year. Maintenance Contribution means the proportion set under Part C of the Sixth Schedule for each flat of the aggregate annual maintenance provision (as determined under Part 1 of the Fourth Schedule).

The Law

36. The law applicable in the present case is as follows:

37. Section 19 of the Act states the following:

19.— Limitation of service charges: reasonableness.

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

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

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

   and the amount payable shall be limited accordingly.

2. *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.*

   ....

38. The Tribunal's jurisdiction to address the issues in section 19 is contained in section 27A of the Act, which states the following:

27A Liability to pay service charges: jurisdiction

(1) An application may be made to [the appropriate tribunal]2 for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to [the appropriate tribunal] for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

39. In construing the meaning of words used in the leases, the Tribunal is concerned to identify: *"What a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean"*. In making this determination the Tribunal must focus: *"on the meaning of the relevant words...in their documentary, factual and commercial context."* (Lord Neuberger in the case of *Arnold v Britton* [2015] UKSC 36 at [15]).

<u>The Applicant's case</u>

40. Ms Hymas confirmed that the figures in the Scott Schedule were agreed, apart from item 17. Item 17 should have read £2,420.70 rather than £240.70. This was confirmed by the Respondent.

41. It was suggested by the Respondent that flats 11 and 28 had agreed to accept credits on their account rather than actual refunds but Ms Hymas maintained that this was not the case. She said that the respective leaseholders would not be part of these proceedings had they agreed.

42. It was confirmed that flats 10 and 17 accepted the accuracy of the credits due to them.

43. It was noted that the Respondent had provided bank accounts in the bundle but had not issued all the credits. The accounting is not the leaseholders' responsibility.

44. When put to her, Ms Hymas accepted that the credit entries, for example on the statement for 9 September 2024 in respect of flat 33 (Applicant's bundle, page 41) were not in fact demands for payment. She maintained that it was for the Respondent to reconcile.

45. The problems with the management of the site were repeated, for example issues relating to the electricity. We were told (in submissions) that there had been ten years of limited activity, meaning the site was a 'dump'. There was also reference to the absence of audited accounts and, for example, that the leaseholders had not seen evidence relating to asbestos. The leaseholders are happy to pay for an audit of the accounts.

46. Ms Hymas clarified that the Applicant was not asking the Tribunal to look at individual items of expenditure. It was conceded that the professional fees had been removed from the latest signed accounts (see below).

<u>The Respondent's case</u>

47. The Respondent relied upon two witness statements from Mr Saunders and their exhibits. Its position was, broadly, that it accepted that some credits were due back to leaseholders, principally following the discontinued process under section 20 of the Act. However, there were

insufficient funds to make payments; largely due to some leaseholders not having paid either service charges or repaid sums overpaid to them (by HLM); or both.

48. The Respondent maintained that all relevant accounts had now been disclosed and that the credits were the only remaining issue. On this basis the Respondent submitted that there was nothing for the Tribunal to determine. We took this to mean that, since it accepted certain credits were due to be repaid, the Tribunal need not determine that issue and could only confirm the sums, rather than go further and make any order for repayment. In any event, repayment to some leaseholders was hindered by failure of others to repay overpayments or service charges per demands made.

49. The Respondent asserted that, of the nine residents claiming a refund, four have received a credit and are happy with the credit sitting on file against future service charge (flats 10, 11, 17, 28). We were invited to take a permissive interpretation of paragraph 4 of Part 1 of the Fourth Schedule to the leases, such that 'allowed for' permits a credit rather than mandatory repayment.

50. The Respondent confirmed that only one leaseholder had repaid sums paid to them in error. The remaining four leaseholders are in arrears themselves with the effect no sums are due and owing to them. Indeed, we were told the sum owed by them was c.£21,000, which would be useful for ongoing costs such as the current block insurance premium.

51. With regards professional fees, it was submitted that they were reasonable, being sums incurred in instructing a chartered surveyor to undertake a detailed specification of works to be carried out.

52. With regards the year end deficit and poor accounting, these are duplicative; in any event it was submitted that the Respondent did not understand how a deficit is an actionable claim by a tenant.

53. The point was made that the leaseholders bemoan the condition of the Property but the arrears are significant. We were referred to an email dated 21 February 2025 which highlights the difficulties caused if leaseholders do not pay service charges. The Respondent highlighted that the site is not a small one, for example the garden is one acre, there are three separate blocks with five entrances. The inference being that it needs regular cashflow to be properly maintained.

The Tribunal's determination

54. The Tribunal is required to determine the question of what a fair sum for service charges for the Property should be for the 2023/2024 service charge year.

55. The first part of the application was made on the basis that no valid notice pursuant to section 20 of the Act had been served in relation to planned major works. We had some documentation relating to a survey

carried out in relation to those works, but it is not necessary for the purposes of this decision to deal with them in detail. In broad terms, they principally related to overhaul of the roof. The effect of the Respondent accepting a defect with the section 20 process is that no service charge was payable in respect of those planned works. This was accepted by the Respondent with the effect that refunds were authorised. The authorisation of refunds was acknowledged by the Applicant in a letter dated 15 October 2024.

56. The amount of the refunds was calculated incorrectly by the then managing agent, HLM. The sum of £400,000 failed to account for £50,000 which had already been paid out to some leaseholders. This resulted in an overpayment to those leaseholders and, consequently, insufficient funds being available to pay all credits arising. In the meantime, further service charges demands have been made which has meant that, for individual flats, any credit has either been extinguished or has reduced. Ms Chaffin-Laird's skeleton argument included figures against each flat for current arrears or credit balances. As we did not have sight of all service charges demands which give rise to those figures, we have adopted the position as at 9 September 2024 when statements were issued to leaseholders and which were provided to us in the bundle. Since we cannot order repayment, and our function is to determine reasonability and payability of service charges, it is only necessary for us to determine whether credits for the failed section 20 process have been properly applied; not necessarily what has happened after that time.

57. We were shown a Barclays bank statement in the name of Bartley Management Limited which showed a number of credits. Taking this, and the other evidence and submissions heard, we make the following findings in respect of each flat.

    (i) Flat 7. The refund claimed is £744.61. The Respondent says that the leaseholder was in fact overpaid £1,557.28. There is a statement dated 9 September 2024. The entries recorded include an invoice for the section 20 costs and a corresponding credit (to a higher value), both on 9 May 2024. There is then a cash refund shown on the statement of £2,773.75 which corresponds with the Barclays statements showing that a payment was made to the leaseholder on 28 May 2024 for £2,773.75. This left a balance from an outstanding invoice of 4 April 2024 together with an unpaid invoice of 23 August 2024. The sum of £744.61 is therefore a balance due to the Respondent as at 9 September 2024, not a payment due back to the leaseholder. There is a statement in the form of a presentation with photographs and narrative from these leaseholders, who also own flat 12. The statement does not directly address any of the issues relating to credits and debits.

    (ii) Flat 10. The refund claimed is £5,791.26. We were shown a credit note in this sum, dated 9 May 2024. Due to later charges, we were told that the leaseholders are currently in credit in the sum of £4,228.86; we had no statement showing this. We had no witness

statement or other evidence showing that the leaseholders want the money back. As we have noted above, the credit appears to have been reduced by further service charges which have not been paid. It is common ground that a credit of at least £4,228.86 exists and we find accordingly. We cannot say whether it is more than this without understanding the leaseholder's position in relation to later service charges which have been applied against the original credit balance of £5,791.26. We deal with the question of payment below.

(iii) Flat 11. The refund claimed is £4,759.90. We were shown a credit note in this sum, dated 9 May 2024. Due to later charges, we were told that the leaseholders are currently in credit in the sum of £2,596.21; we had no statement showing this. We have a witness statement from these leaseholders in the form of a letter. The statement does say that they have asked for repayment of the credit balance and also states 'nothing clear until today'. The Respondent stated that the leaseholders had agreed to hold the sums as a credit against future charges. The letter might suggest something was agreed at the time of the writing it but that is not clear. We were not able to resolve that difference on the available evidence, without those leaseholders attending for their evidence to be tested in questioning. However, as we have noted above, the credit appears to have been reduced by further service charges which have not been paid. It is common ground that a credit of at least £2,596.21 exists and we find accordingly. We cannot say whether it is more than this without understanding the leaseholders' position in relation to later service charges which have been applied against the original credit balance of £4,759.90. We deal with the question of payment below.

(iv) Flat 12. The refund claimed is £746.87. The Respondent says that the leaseholder was in fact overpaid £1,562.24. There is a statement dated 9 September 2024. The entries recorded include an invoice for the section 20 costs and a corresponding credit (to a higher value), both on 9 May 2024. There is then a cash refund shown on the statement of £2,750.63 which corresponds with the Barclays statements showing that a payment was made to the leaseholder on 28 May 2024 for £2,750.63. This left a balance from an outstanding invoice of 4 April 2024 together with an unpaid invoice of 23 August 2024. The sum of £746.87 is therefore a balance due to the Respondent as at 9 September 2024, not a payment due back to the leaseholder. There is a statement in the form of a presentation with photographs and narrative from these leaseholders, who appear to also own flat 7. The statement does not directly address any of the issues relating to credits and debits.

(v) Flat 14. The refund claimed is £375.98. The Respondent says that the leaseholder was in fact paid £1,557.28 and that they have acknowledged being overpaid. There is a statement dated 9 September 2024. The entries recorded include an invoice for the section 20 costs and a corresponding credit (to a higher value) both on 9 May 2024. There is then a cash refund shown on the statement

of £2,300 which corresponds with the Barclays statements showing that a payment was made to the leaseholder on 23 May 2024 for £2,300. This left a smaller credit balance which was absorbed by an unpaid invoice on 3 June 2024. There is then a further unpaid invoice of 23 August 2024. The sum of £375.98 seems to correspond with the amount of the 23 August 2024 invoice. It was not explained how else it was arrived at. Plainly, as that invoice was not paid, it cannot be repayable. It seems that there remains a balance of £376.64 due to the Respondent as at 9 September 2024, not a payment due back to the leaseholder.

(vi) Flat 17. The refund claimed is £2,420.70. As noted above, this was incorrectly recorded as £240.70 in the Scott Schedule. We were shown a credit note in this sum dated 9 May 2024. Due to later charges, we were told that the leaseholders are currently in credit in the sum of £1,443.62; we had no statement showing this. We had no witness statement or other evidence showing that the leaseholders want the money back. As we have noted above, the credit appears to have been reduced by further service charges which have not been paid. It is common ground that a credit of at least £1,443.62 exists and we find accordingly. We cannot say whether it is more than this without understanding the leaseholder's position in relation to later service charges which have been applied against the original credit balance of £2,420.70. We deal with the question of payment below.

(vii) Flat 28. The refund claimed is £2,975.81. This is the end total, expressed as a negative figure, shown in a statement issued on 9 September 2024. The Respondent accepts that a credit was due and has applied this to the account. The statement record an invoice for the section 20 costs and a corresponding credit (to a higher value) both on 9 May 2024. This credit has been further reduced by invoices raised on 3 June 2024 and 23 August 2024. The Respondents say that the leaseholder has asked, via their daughter, for the balance after these entries (£2,975.81) to be applied to the account against future charges. The Applicant says that there is no daughter, although we were referred to an email purporting to be from the leaseholder's daughter. It is common ground that a credit of £2,975.81 exists and we find accordingly. We deal with the question of payment below.

(viii) Flat 29. The refund claimed is £372.71. The Respondent says that the leaseholder was in fact overpaid £4,058.46. There is a statement dated 9 September 2024. The entries recorded include an invoice for the section 20 costs and a corresponding credit (to a higher value), both on 9 May 2024. There is then a cash refund shown on the statement of £4,058.46 which corresponds with the Barclays statements showing that a payment was made to the leaseholder on 28 May 2024 for £4,058.46. This left a balance from an outstanding invoice of 4 April 2024 together with unpaid invoices of 3 June 2024 and 23 August 2024. The sum of £372.71 seems to correspond with the amount of the 23 August 2024 invoice which is £372.61. It was

not explained how else it was arrived at. Plainly, as that invoice was not paid, it cannot be repayable. It seems that there remains a balance of £1,103.27 due to the Respondent as at 9 September 2024, not a payment due back to the leaseholder. There is a statement in the form of a letter from this leaseholder. The statement does not directly address any of the issues relating to credits and debits.

(ix) Flat 33. The refund claimed is £377.22. The Respondent says that the leaseholder was in fact overpaid £1,370.24. There is a statement dated 9 September 2024. The entries recorded include an invoice for the section 20 costs and a corresponding credit (to a higher value), both on 9 May 2024. There is then a cash refund shown on the statement of £1,370.24 which corresponds with the Barclays statements showing that a payment was made to the leaseholder on 29 May 2024 for £1,370.24. This left a balance from an unpaid invoice on 4 April 2024. There are then further unpaid invoices of 3 June 2024 and 23 August 2024. The sum of £377.22 seems to correspond with the amount of the 23 August 2024 invoice. It was not explained how else it was arrived at. Plainly, as that invoice was not paid, it cannot be repayable. It seems that there remains a balance of £1,116.90 due to the Respondent as at 9 September 2024, not a payment due back to the leaseholder. There is a statement in the form of a letter from this leaseholder. The statement does not directly address any of the issues relating to credits and debits.

58. There is a further claim for all properties relating to a 'Y/E deficit' of £369.84. This seems to be a duplication of another entry on the Scott Schedule for the same sum labelled as 'Dispute of Current Service Charge'. It seems to us that this is merely an amount reflecting expenditure exceeding budget. We cannot see any legal basis for this sum to be claimed by the leaseholders; it is not a sum which they have paid. Insofar as it appears to broadly reflect the sum invoiced to leaseholders on 23 August 2024 (in slightly varying amounts, no doubt based upon their differing Maintenance Contribution proportions) there was no challenge to the sum claimed. This is because there was no challenge to individual expenditure items which led to that deficit, save the professional fees, which were removed for the purposes of the accounts signed by the directors on 4 February 2025. Even if there were such a challenge, given no leaseholder had paid the invoice, and none of those who had effectively paid it by way of reduction of a credit balance had raised a direct challenge to it, there was no basis to say that it was not properly chargeable or reasonable in amount.

59. Unless and until the leaseholders have been provided with audited accounts, strictly speaking under paragraph 4 of Part 1 of the Fourth Schedule, the Respondent cannot recover service charges. There appears to be a breach of paragraph 3 of Part 1 of the Fourth Schedule in not providing audited accounts for service charge year 2023/2024. We recognise that leaseholders do not always wish for audited accounts, since, ultimately, they bear the cost. There seems to have been a historical practice for this Property of not insisting upon this. We have

not considered any argument that the right to audited accounts has been waived by passage of time. There was a suggestion from the Respondent that this was the case, but we did not hear evidence or full argument on the point. Subject to that, the leaseholders have asked for audited accounts for 2023/2024 so that they can consider individual items of expenditure.

60. The issue of payment back to leaseholders of credits appearing in their individual service charge accounts is separate. We find that a balancing payment is not due. Paragraph 4 of Part 1 of the Fourth Schedule only applies where there has been an audited account but, in any event, provides that any shortfall can be allowed for. We interpret 'allow for' in the aforementioned passage of the leases to mean providing a credit, rather than a right to an immediate repayment. This gives it an ordinary meaning of making provision or providing scope for, which is passive rather than a positive act of repayment. Although this does not preclude a consequent payment, it does not compel it.

61. In respect of those flats who have been overpaid or are otherwise in arrears, we note that, whilst there is no provision in the leases for an offset of credits, it is reasonable to apply an offset not least given our interpretation of paragraph 4 of Part 1 of the Fourth Schedule. We further observe that clause 2 of the leases does require rents to be paid 'without deduction', limiting the ability of the leaseholders to themselves apply an offset.

62. The second part of the application relates to the lack of audited accounts and a challenge to the 2023/2024 accounts. This relates to professional fees in the sum of £21,401, namely the fees of a chartered surveyor who was instructed to prepare a detailed specification for the major works, specifically roof repairs. The roof repairs are not proceeding at the present time. There is a planning application to erect an additional storey to the building, which will obviate the need for repairs. The accounts signed by the directors on 4 February 2025 were an amended set where we could see that the professional fees in question had been reduced to £0. We were told by the Respondent that any payments made will be refunded if planning permission is granted. It is of note that the accounts provided at the time that the application was commenced did in fact include the sum of 21,401 as an item of expenditure.

63. As to the applications under section 20C of the Act, there were limited submissions on the point and we do not have evidence of actual costs incurred or an indication of whether the Respondent in fact seeks to recover any such costs via the service charge. It seems to us that, for the matters before us relating to alleged repayments, some of these claims were not reasonable in circumstances where the statements appear to have been misread and there was no sum due – for example, flat 33. Furthermore, in some instances there were in fact net arrears. We do note that, in four instances, there continues to be a credit and it was reasonable to seek an interpretation of paragraph 4 of Part 1 of the Fourth Schedule of the leases. Notwithstanding this, our view is that it

was plainly reasonable for the Respondent to defend the continued application insofar as it related to credits. Accordingly, it does not appear just and equitable to make an order under section 20C in respect of any costs incurred.

64. No particular administration charge had been identified by the Applicant (or sought by the Respondent) for costs of these Tribunal proceedings. Further, the Applicant did not seek any order under paragraph 5A of Schedule 11 to the 2002 Act, albeit that may be borne out of lack of appreciation of the effect of those provisions. On this basis, we make no order under paragraph 5A but this does not preclude a new application for such an order if any such administration charge is sought in future.

65. The Applicant did not seek reimbursement of the tribunal fees it had paid. In any event, the Applicant has not been successful. Further, whilst we were not minded to strike out the application for want of compliance with Directions, we have regard to the fact that this has likely caused additional time and cost, or at least inconvenience, to the Respondent. Accordingly, no order for reimbursement is made.

Name: **Judge A. Arul** **Date:** **27 August 2025**

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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

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

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

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