FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**HAV/00HE/LSC/2025/0600**
Property	**:**	**Lodges at Hustyns Resort, St Breock, Wadebridge, Cornwall PL27 7LG**
Applicant	**:**	**The lodge owners set out in appendix 1 to this Decision**
Representative	**:**	**Mr Leb of counsel**
Respondent	**:**	**Aston Management International Limited**
Representative	**:**	**Mr McKie of counsel**
Type of application	**:**	**For the determination of the liability to pay service charges**
Tribunal members	**:**	**Judge R Percival** **Mr M Woodrow MRICS**
Venue and date of hearing	**:**	**The Tribunal Centre, St Catherine's House, 5 Notte Street, Plymouth PL1 2TS** **8 and 9 December 2025**
Date of decision	**:**	**30 March 2026**

DECISION

Decisions of the tribunal

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

(2) The Tribunal makes the directions set out in paragraph 192.

(3) The Tribunal makes no orders under section 20C of the Landlord and Tenant Act 1985 or paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002.

The application

1. The Applicants seek determinations pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years from 2018 to 2024.

2. Copies of the legislation referred to in this decision and other sources of free legal information are set out in appendix 2 to this decision.

The background

3. The properties are lodges in the Hustyns Resort, near Wadebridge in Cornwall. There is a broader estate of about 30 acres of mixed woodland and parkland. On the estate are 28 lodges, and a hotel or former hotel, the Hustyns Hotel and Spa.

4. In its current form, the estate was developed in the early 2000 by an international company concerned with hotels and time share resorts, Club La Costa. Via subsidiaries, the lodges were refurbished and furnished, and long leaseholds sold, with an immediate lease back agreement. The relevant subsidiary sub-lessee (Hustyns Leisure Limited – HLL) used the lodges as holiday accommodation, undertook their repair and maintenance, and paid annual rent to the long leaseholders equivalent to around 6% of the purchase price.

5. The property was put up for sale in 2016, and the leaseback agreements were successively terminated for a period thereafter. The Respondent acquired the estate. In 2020, the Respondent and lodge owners cooperated to obtain planning/change of use permission allowing unrestricted residential occupation of the lodges.

6. On 20 December 2024, the Respondent divested itself of the estate.

7. There is a considerable procedural history in relation to this application. We do not consider it necessary or desirable to repeat it at length. By the

time of hearing, the important point is that the Respondent had been barred from taking further part in the proceedings in relation to each of the service charge years under consideration, save for 2023, as a result of repeated failures to make disclosure as required by directions issued by the Tribunal.

8. We understand one of the lodges to be held as a freehold property. Our jurisdiction is limited to leasehold service charges. This decision does not determine any charges made on the basis of freehold covenants.

The leases

9. The leases have various dates between 2006 and 2008, and are for terms of 999 years. They are all to the same effect. The original landlord was Hustyns Developments Limited, another subsidiary of Club La Costa. The leaseback arrangements (with HLL) were terminated between 2016 and 2019. The Respondent acquired the freehold interest in January 2018.

10. Among the definitions in clause 1 is that of the Common Parts:

> "all common parts within the Estate together with any future additions thereto including those parts (if any) of the Estate that comprise the external lighting, accessways, roads, paths, linkways, entrance areas, gates, boundary structures, security facilities (including CCTV), garden areas, patio areas, planters, grassed areas, landscaped areas, trees, water and other utility meters, service media, water tanks, sewage plant and equipment, pumping stations and boosters which serve the Common Parts but excluding any area included in this demise or another Lodge now or to be built on the Estate in the future and excluding for the avoidance of any doubt Hustyns Hotel and Spa and the leisure facilities at Hustyns Hotel and Spa".

11. The service charge proportion is defined as "a fair and reasonable proportion in the Landlord's reasonable discretion of the costs incurred from time to time in providing the Services" (clause 1); and "service charge" is defined as

> "for the first full Accounting Year and for the next and each subsequent Accounting Year such sum as shall be certified by the Landlord as being a reasonable estimate of the expenditure likely to be incurred by the Landlord by way of Service Charge for the Services during such Accounting Year"

12. The accounting year is the calendar year.

13. The Services are defined in clause 1 as those set out in part 1 of schedule 2. Paragraphs 1 and 2 specify the maintenance, repair, cleaning, lighting etc of the Common Parts; and "providing gas, electricity, water and

sewerage supplies (including utility costs and meter and standing charges) to serve the Estate". Other obligations include insurance of the common parts and service installations.

14. Paragraph 5 incorporates the landlord's obligations under schedule 3 (Landlord's covenants) insofar as they relate to the estate, common parts and service installations. Those obligations in turn include to provide Estate Services (enigmatically defined in clause 1 as "the services"), and various free-standing obligations in respect of insurance.

15. Paragraph 11 (of schedule 2, part 1) provides for setting aside funds "to include but not limited to the provision of a sinking fund".

16. Other obligations include providing security services apparatus (paragraph 13), employing people in relation to the other obligations in general, and including for the proper management of the common parts and service installations (paragraph 10). A specific provision allows for the payment of a list of professionals (paragraph 14) and "a qualified accountant for the purposes of preparing and auditing the accounts in respect of the Service Charge" (paragraph 18).

17. Paragraphs 16 specifies "[a]ll rates, taxes, duties, charges, assessments, and outgoings whatsoever (whether parliamentary, parochial, local or of any other description) assessed, charged or imposed upon or payable in respect of the Common Parts or any part thereof".

18. The tenant covenants to pay the service charge proportion in advance, in equal sums on the usual quarter days (25 March, 24 June, 29 September and 25 December) (clause 6.1).

19. By the original clause 6.11, the tenant covenanted not use or allow the use of the property as a main or principal residence, or for commercial activity etc, except as holiday accommodation. Following the change in planning permission/use class in 2020, the leases were varied to remove this obligation. While we were not provided with a copies of the deeds or a specimen, there was a schedule showing when they were executed in respect of each lodge.

20. There is provision in schedule 3, which contains the landlord's covenants, for reconciliation, via a landlord's covenant to submit a written summary of actual costs. The detailed provisions are set out below at paragraphs 65 to 69.

21. Clause 6.17 requires the tenant to pay costs incurred by the landlord

> "incidental to the preparation and service of a notice under section 146 of the Law of Property Act 1925 or incurred in or in contemplation of proceedings under sections 146 or 147 of that Act or of proceedings on account of arrears of Rent and/or Service Charge for forfeiture of this lease or for the recovery or

attempted recovery of those arrears, notwithstanding forfeiture is avoided …"

22. Under the heading "notices", clause 12 provides:

> "A demand for payment notice or other document required or authorised to be served or given under this Lease shall be in writing and shall be deemed to be sufficiently served:
>
> 12.1 in the case of service on the Tenant if addressed by or on behalf of the Landlord to the Tenant by name or by the designation of "the Tenant" and sent by first class post or by hand to or left for the Tenant at the Property or in accordance with clause 11.3.
>
> 12.2 … [similar provision for service on landlord]
>
> PROVIDED THAT in the case of service by recorded delivery service shall be deemed to have been effected forty eight hours after posting …".

Clause 11.3 provides that the tenant appoints the tenant's solicitor as its agent for service "of any notices or proceedings relating to this lease".

The hearing

Introductory

23. Mr Leb of counsel represented the Applicants. Mr Conway of the Applicants' solicitors, Prince Evans Solicitors attended. Mr McKie represented the Respondent.

24. We were provided with two bundles and numerous other documents. The Applicants' trial bundle comprised 4,966 pages. The Respondent's bundle was 1,080 pages long. There were two bundles because the parties were not able to agree the contents of a single bundle.

25. The Applicant provided 28 witness statements from the Applicants. It was agreed by the time of the hearing that we would hear oral evidence from three: Mr Lemon, Mrs Nourse and Mr Ilett. For the most part, the other witness statements were confirmatory of the evidence given in those of these three applicants.

26. For the Respondent, we heard evidence from Mr Gupta, the director, at the material time, of the Respondent (Aston Management International Limited – "Aston") and of the sometime managing agents, Hustyns CA Management Ltd (HCA); Mr Wilding, who had been the UK director for Costa La Sol, the (relevantly) original developer; and Mr Taylor, of a company providing communications equipment to the estate. In the event, we need not refer to the evidence of the latter two witnesses.

Preliminary issues

27. Mr Leb made preliminary applications to add certain additional applicants, and to extend the barring of the Respondent to include 2023.

28. The Respondent had initially indicated that it would be making a significant number of preliminary applications. However, at the hearing Mr McKie, having explained that he had been instructed at short notice, indicated that he would not be pursing the preliminary applications, save one to strike out Mr Ilett's witness statement and associated report.

29. We note that most of the applications sought by Mr Gupta, when acting in person, appeared clearly misconceived on their face. Mr McKie told us that Mr Gupta had been acting as a litigant in person and had had recourse to an AI agent in preparing his submissions. Mr McKie indicated that he would not be adopting the submissions or the case citations associated with them.

30. We adjourned after hearing the submission from both sides, and gave our conclusions orally, without substantive reasons. We now set out those reasons, with an outline of the arguments.

31. Addition of Applicants: An application had been made on 3 December 2025 to add four Applicants. In respect of the first three, the Applicants' solicitors had asked for them to be added or substituted for previous Applicants in May, and had been told it would be done administratively. Later, it transpired that it had not, and the solicitors were advised that an application was necessary. The fourth, Infinite Horizon Properties Ltd, were previous owners of one of the lodges, and had been inadvertently overlooked. All four had provided witness statements in the bundle.

32. Mr McKie did not object to the additions, but (in respect of Infinite Horizon Properties) noted that some latitude was being extended to the Applicants, and a similar approach should be taken to procedural issues in respect of the Respondent. He confirmed that he was not intending to argue that the addition of the company meant that the previous barring order did not apply so far as that Applicant was concerned, one of the submissions that Mr Gupta had said, before Mr McKie was instructed, would be made at the hearing.

33. We allowed the application to add the additional applicants. Given that all had already provided witness statements, their inclusion as Applicants was no more than the correction of a technical omission, and did not prejudice the Respondent.

34. Further barring of the Respondent: On 5 November 2025, Regional Judge Whitney and Regional Surveyor Clist gave further directions (the ninth set of directions), following a case management hearing.

35. In those directions, the Respondent were subject to a limited barring order (Tribunal Rules (First-tier Tribunal)(Property Chamber) Rules 2013, rule 9) in the following terms:

> "[the Respondent is] limited to challenging the issue of service charge demands and the reasonableness of the items challenged in the service charge year for 2023. The Respondent is barred from adducing any evidence supporting the reasonableness of any charges in any other service charge year the subject of this dispute" (paragraph 13).

36. The directions went on to provide that if the Respondent failed to send to the Tribunal their statement of case by 14 November 2025, they would be subject to a general bar from taking further part in the proceedings.

37. Mr Leb's case was that they had failed to do so, and so either the automatic barring anticipated by the direction made on 5 November 2025 was effective, or we should order the general barring of the Respondent.

38. What appears to have happened was that a document entitled statement of case was served in time (late on 13 December), and with it there was a link to a substantial bundle of exhibits (about 1,200 pages). However, for technical reasons, the bundle was not able to be accessed by the Applicants' legal team, and responses from the Respondent to complaints about access were ignored or not dealt with promptly.

39. We accept Mr Leb's submission that this situation produced difficulties for those instructing him, as it was not possible to provide his thirty plus clients with the bundle, for them to digest it and to give instructions in relation to them. As a result, the Applicants' reply was not able to fully engage with the Respondent's case.

40. We also accept Mr McKie's submission, however, that to totally bar the Respondent at this stage would be a disproportionate sanction. At the time, the Respondent was self-representing through Mr Gupta, and the failure, if failure it was, was not clear cut, in that the statement of case itself had been delivered in time.

41. We accordingly rejected Mr Leb's application.

42. Mr Ilett's report and witness statement: Mr Ilett is an Applicant. He is also a chartered accountant specialising in forensic accounting. A report produced by him entitled "Review of the service charges and common area accounts year ending 31 December 2023", which states it is updated to 17 November 2024, is attached to the Applicants' statement of case. It is 46 pages long. Mr Ilett's witness statement is one of those endorsed by the other Applicants. It is 34 pages long, and exhibits a further 1,151 pages of material.

43. Although the application to exclude the material referred to both the report and the witness statement, Mr McVie concentrated on the report, which, he argued, was in substance an expert's report. No permission had been given for expert reports. The report was in a form appropriate for an expert's report. It gave opinions. But, Mr McVie argued, Mr Ilett was not independent, and it was impossible for us to rely on it as an independent, expert report. It should be excluded.

44. Mr Leb argued that Mr Illett was not being put forward by the Applicants as an expert. The Tribunal, he argued, often took evidence from witnesses with expertise who were not proffered as experts in the litigation sense.

45. We agreed with Mr Leb's submissions. The Tribunal is not confined by strict rules of evidence, and may – and frequently does – allow non-expert opinion evidence to be given by any witness. Mr McKie's submissions come close to arguing that Mr Ilett's evidence should be excluded *because* he had relevant expertise, and opined on the basis of it.

46. We refused the application to exclude the report, or all of the evidence, of Mr Ilett.

The substantive hearing: our approach

47. We heard substantial oral evidence from Mrs Nourse, Mr Lemon and Mr Ilett for the Applicants and Mr Wilding (who was interposed earlier for reasons of convenience), Mr Gupta and Mr Taylor for the Respondent, over the full two days listed for the hearing. Thereafter, we made directions providing for the exchange of written submissions by way of final submissions, from the Respondent and then the Applicant. The final submission, Mr Leb's, was received on 4 January 2026, in accordance with our directions.

48. The evidence and submissions raise both legal and evidential/factual issues. We do not think it helpful or convenient to seek to summarise the witness evidence contained in over 6,000 pages and nearly two full days of oral evidence. Rather, we deal with the issues in turn, under headings derived from the parties' final submissions, drawing on both submissions and evidence as necessary to make our decisions. The parties' written final submissions used headings that differed between them. We have used them as a starting point, but order the headings differently again in this decision.

49. We start with an issue raised only in the submissions, described by Mr Leb as the commercial premises argument, a jurisdictional challenge. We then consider the validity of the service charge demands, both contractually and in regulatory terms, and the validity of new demands made in April 2025. We consider the relevance of the time limit for

demanding service charges in section 20B of the 1985 Act and then turn to consider the reasonableness of service charge demands made in respect of 2023. We conclude that we are unable to determine the service charges for 2024, save to the extent that they include a demand for service charges in relation to certain sewerage works.

The "commercial premises" argument

50. Mr McKie raises this issue in the context of other arguments. He argues, first, in the context of a break-down in the sewerage plant serving the estate, that we do not have jurisdiction because it happened before "any of the lodges converted to residential." The same argument is made in relation to the application of the consultation requirements in section 20 of the 1985 Act to some of the lodges in relation to the sewerage major works, the application of sections 47 and 48 of the Landlord and Tenant Act 1987 and the requirements in section 21B of the 1985 Act.

51. The Respondent refers to a document which was called during the hearing the deed cut-off date table. It appears as an appendix to the Respondent's statement of case, dated 14 November 2025 (but headed "Respondents reply to statement of case and application for determination of a preliminary issue and for strike-out"). The table was produced for another purpose, but does show the dates on which (we infer), following the change of use permission allowing full time residential use of the lodges, a deed of variation was made to remove a restriction on full time residential occupation in the leases. The dates shown are in 2021 and 2022. This, we take it, is the date in respect of each, or most of, the lodges, became "residential" rather than "commercial", in Mr McKie's terminology.

52. The argument is, therefore, that before the time that it became possible for a person to live in a lodge full time, the lodges were commercial premises, used for holiday homes, and not within the jurisdiction of the Tribunal, which is limited to residential leaseholdings.

53. Mr Leb argues that the Tribunal's jurisdiction is founded in the definition of "service charge" in section 18 of the 1985 Act, concentrating on the phrase in sub-section (1) "a tenant of a dwelling".

54. A tenant includes a sub-lessee (he cites *Heron Maple House Ltd v Central Estates Ltd* [2004] L&TR 17 for the proposition, which seems to us to be so evident it does not require authority).

55. As to "dwelling", Mr Leb refers to the definition in section 38 of the 1985 Act:

> "dwelling" means a building or part of a building occupied or intended to be occupied as a separate dwelling, together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it".

56. The definition does not import an only or principal home requirement, so a holiday home may also be a "dwelling" (*Phillips v Francis* [2010] L&TR 28), Mr Leb submits, also arguing that definitions in the Housing Act 1988 and the Rent Act 1977 are of little assistance, given their distinct purposes.

57. We agree with Mr Leb. Since the date of his written submissions, the Court of Appeal judgment in *Cloisters Business Centre Management Co Ltd v Anvari* [2026] EWCA Civ 17 has been handed down, in which the Court undertakes a review of the use of the word "dwelling" in the 1985 Act and more generally.

58. The word "does not have a precise or fixed meaning. Its meaning depends upon context; and in particular the policy of the enactment in which it appears: *R (N) v Lewisham LBC* [2014] UKSC 62, [2015] AC 1259 at [45] (ii)" ([24]). Endorsing Mr Leb's approach, the Court states that definitional requirements relevant where security of tenure is an issue are not helpful in considering the 1985 Act usage – "The underlying policy is to provide a tenant with a way of challenging unreasonable service charges levied by his landlord. It is to protect him in his pocket rather than in his home."

59. In that case, the Court of Appeal found that a unit in a business centre expressly let as "offices (and ancillary residential use)", which was in fact being used as store rooms, came within the term "dwelling" for the purposes of the service charge provisions in the 1985 Act.

60. We add that Mr McKie's argument was that protection as a business tenancy under Landlord and Tenant Act 1954 and as a "dwelling" under the 1985 Act were mutually exclusive. The Court in *Cloisters Business Centre* expressly finds the contrary at [44], unless tenancies protected under the 1954 Act are expressly excluded, as they are, for instance, in respect of sections 1, 3A and 11 of the 1985 Act.

61. We reject McKie's argument that we are excluded from considering service charge demands before each lodge became available for full time residential use.

Validity of demands – the requirements of the leases

62. As a preliminary to consideration of the validity of the demands, it is helpful to briefly set out how the demands should work under the lease.

63. The accounting year is the calendar year (there is provision for it to be changed, but it is clear that the Respondent operated on a calendar year basis).

64. As set out at paragraph 20 above, the Service Charge is defined as the landlord's reasonable advance estimate of costs.

65. The tenant covenants to pay "the Service Charge Proportion", "at the times and in the manner set out in this Lease without any counterclaim deduction or set-off…". It appears that the term "Service Charge" and "Service Charge Proportion" (which, despite its capitalisation, is not defined) are used synonymously in the lease, probably as a result of some typographical or similar error.

66. The more detailed tenant's covenant, in clause 6, is "to pay the Service Charge Proportion in advance in equal amounts on the Payment Days …".

67. The payment days are defined in clause 1 as the quarter days – 25 March, 24 June, 29 September and 25 December.

68. The mechanism is further elaborated in schedule 3, which contains the landlord's covenants (but also, as will be seen, a consequential covenant by the tenant):

> "1.6.1 as soon as convenient after the expiry of each Accounting Year commencing with the Accounting Year now current there shall be prepared and submitted to the Tenant a written summary ("the Statement") setting out the actual cost of providing the Services for that Accounting Year. The Statement will be certified by a qualified chartered accountant as being in his opinion a fair summary and sufficiently supported by the accounts receipts and other documents produced to him and any other occupiers or users of the Estate"

69. Immediately thereafter, and as the only other provision bearing the same decimal level as sub-paragraph 1.6.1, is the provision for reconciliation after the figures for actual expenditure become available:

> "1.6.2 a surplus of payments of the Service Charge shall be refunded or carried forward as the landlord shall think fit and the Tenant covenants separately with the Landlord to make good any shortfall in payments due on demand"

70. Thus provision is made for reconciliation in paragraph 1.6.2, surpluses being refunded or carried over, deficits demanded. In both cases, the sub-paragraph makes provision for specific covenants by both landlord and tenant.

71. At paragraph 1.5, the landlord covenants to keep "proper books of accounts" in relation to expenses and receipts of service charges.

72. So the way that the lease envisages the system working is for the landlord to produce an estimated sum for expenditure in an accounting year. There is no specific time specified, but presumably it should be around the start of the year, and in any event before 25 March, the first payment day.

73. The estimated service charge is then to be paid in quarterly instalments on the quarter days.

74. Then, "as soon as convenient after the expiry of each accounting year", a statement is prepared, certified by chartered accountants and submitted to the tenants. The landlord covenants to refund or carry forward any surplus, and the tenant covenants to "make good any shortfall in payments due on demand".

Validity of demands: contractual – clause 12

75. Clause 12 of the lease is reproduced at paragraph 22 above. A number of the demands for estimated charges were exhibited. They comprise an invoice on headed paper, emailed to the recipient, and claiming a certain amount for Q1, Q2, Q3 or Q4, or sometimes a combination of them. The term used on these invoices to identify to what they related was generally "common areas fees". They were served, and stated to be due, at about the same intervals as the quarter days, but not, generally, on them.

76. A set of "common area accounts" covering the years from 2018 to 2024 were served on the Applicants during the course of 2024. The dates varied between year and Applicant, but initial versions of the years between 2018 and 2023 were sent in July and October, and a final version in December.

77. It is accepted by the Respondent that none of these demands were served in accordance with the requirements of clause 12 (although Mr McKie argues that this does not make them invalid, an argument we consider below).

78. On 4 April 2025, the Respondent re-served the accounts and demands for 2018 to 2023 with demands, and an estimated demand, based on a budget, for 2024. These also included the statutorily required notices and documents (see below).

79. The Applicants accept that the formalities of clause 12 were adhered to in relation to this document. But Mr Leb argues that the Respondent was not in a position to serve them, as it was no longer the landlord, having divested itself of the property in December 2024. We consider this argument below.

Validity of demands: contractual – schedule 3, paragraph 1.6.1

80. As we set out above, schedule 3 lists the landlord's covenants generally, and paragraph 1.6.1 relates to the end of year statement. The obligation set out in the second sentence of that paragraph in the schedule requires certification of the statement, as to which the qualified chartered accountant, must opine that the statement is a fair summary, and sufficient supported by accounts etc.

81. No common areas accounts – to use the terminology used at the hearing – were provided to the Applicants from 2018 to 2024 until 2024, when they were produced, apparently as a result of this dispute. Except for those relating to 2024 (presumably to be considered a budget), for each year from 2018, two versions were sent, the first either in October or July, the second in December. The two versions were, to varying extents, different (in respect of which we broadly accept the evidence of Mr Ilett's witness statement, which was not substantially contested).

82. Subsequently, on 4 April 2025, a further set of demands and statements were served. Since it is these documents, and these documents alone, that were certified by chartered accountant, they clearly must be the "statement" required by schedule 3, paragraph 1.6.1.

83. Immediately following sub paragraph 1.6.1 is paragraph 1.6.2 (set out at paragraph 20 above), which provides for the reconciliation process, providing for the treatment of surpluses or deficits in the estimated service charges paid.

Conclusions as to contractual validity

84. We consider compliance with clause 12 first, then the position in relation to schedule 3, paragraph 1.6.1.

85. In one of his skeleton arguments for the hearing, the Mr McKie argues that it is not correct that the demands not being served in accordance with clause 12 renders them invalid for our purposes.

86. Mr McKie argues that the Court of Appeal in *Benwell Road RTM Company Limited v Davies* [2025] EWCA Civ 368, [2025] 1 WLR 4645 made it clear that the FTT can decide the reasonableness and payability of a service charge before a demand is made.

87. That case was concerned with whether an administration charge for non-payment could be charged (and adjudicated on by the Tribunal), which itself depended on the question of when the tenant fell into arrears of service charges. The passage quoted by Mr McKie is merely a reflection of the future-looking jurisdiction enjoyed by the Tribunal under section 27A(3). The existence of that jurisdiction does not mean that a service charge payable on demand is not required to be demanded. In fact, this case is a clear illustration of the fact that, even if the Tribunal does find a service charge reasonable in advance, it does not become payable until properly demanded.

88. Mr McKie does not return to the issue in his closing submissions, but we assume that the Respondent relies on the April 2025 demands as curing the defect in relation to the reconciliation process in respect of 2023 and the estimated service charge for 2024.

89. Mr Leb submitted that the service of what purported to be a statement in respect of 2023 and an estimated charge for 2024 in April 2025 was not valid, because at the time of the demand, the Respondent was not the landlord.

90. It was Mr Gupta's evidence, contained in an additional witness statement made in satisfaction of a direction from the Tribunal to establish that Aston was the correct respondent. In that witness statement, Mr Gupta asserted that Aston had agreed with Lomac Limited, the purchaser, that the right to collect service charge arrears was not to be assigned to the purchaser, but retained by Aston. He exhibited a contractual term, under the heading "special conditions" (we understood as exceptions to a standard form contract, which stated

> "All sums due from the Occupational Tenants in respect of service charges, major works and ground rent to the date of completion shall belong to the Seller who will be entitled to take all necessary steps to recover payment."

91. In cross-examination, Mr Gupta said that it was not his understanding that this term only covered service charges that had already been demanded.

92. The way that Mr Leb put the argument in his closing submission was that the contractual obligation to pay the service charge in clause 6 of the lease was to only pay service charges to the landlord, and that it followed that they could only be demanded by the landlord.

93. We reject this, as a matter of construction of the lease. It is apparent from the way in which we consider the lease intends the estimated service charge and the subsequent reconciliation to take place that the obligation is owed to the person who is, at the relevant time, the landlord. On sale of a freehold, the parties can choose whether to retain that structure, or whether the rights of the seller should pass to the buyer (see below for what we consider to be the default position). In this case, Mr Gupta's evidence is that the contract made express provision, and the right to "all sums due" as service charges was retained by Aston. The natural meaning of "all sums due from [the tenants]" is, we consider, wide enough to include un-demanded service charges. That must, indeed, have been the intention of the parties in respect of the final year before completion, 2024, because the reconciliation process could not have taken place by the time of completion, which was before the end of the year. Any reconciliation deficits could not have been demanded yet. If that is the case, then if, in respect of other service charges, the assignment of the benefit to Aston otherwise was only for demanded service charges, the drafting would have had to make that clear. It is improbable that the parties would use the same phrase to refer to different things in different years.

94. As to the use of the word "landlord" in relation to our jurisdiction, section 30 of the 1985 Act provides that "'landlord' includes any person who has the right to enforce payment of a service charge". For the reasons we give above, that included Aston.

95. However, in his final submissions, Mr Leb added an argument in relation to the Law of Property Act 1925, section 136, which provides:

> "(1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice—
>
> (a) the legal right to such debt or thing in action;
>
> (b) all legal and other remedies for the same; and
>
> (c) the power to give a good discharge for the same without the concurrence of the assignor:
>
> …"

96. We note in passing that there are a few references to this section in the bundle, but all appear to relate to a (purported) assignment of the rights from Aston to HCA, the company set up by Mr Gupta to manage the lodges. We agree with Mr Leb's argument that these make no difference to the issues before us, as even if there was a successful assignment to HCA, any claim under it would be parasitic on Aston's entitlement.

97. A notice under section 136 is a notice under "this Act" in section 196, and we have no evidence of any notice, whether compliant with section 196, (as interpreted by *London Borough of Southwark v Akhtar* [2017] UKUT 0150 (LC), [2017] L&TR 36, an authority we must follow), or indeed otherwise, having been given by Lomac, the assignor, to the Applicants. Mr Leb's argument is that without such notice, section 136 of the 1925 Act does not facilitate the legal transfer of the rights to the service charge to Aston.

98. We note that on the face of the 4 April 2025 notice itself, the Respondent states that Aston "retains the contractual entitlement to pre-sale arrears under the sale agreement".

99. We reject Mr Leb's submission.

100. Section 136 deals with assignment of debts/things in action. The first question is whether what happened in relation to the contract for sale was an assignment of entitlements to Aston that would otherwise rest with Lomac (the pre-condition to Mr Leb's argument), or a decision not

to assign an entitlement that, without more, would have rested with Aston (which was also expressed positively in the contractual snippet provided in evidence).

101. We did not have the benefit of extended submissions from both sides on the question. Our conclusion, however, is that the effect of Landlord and Tenant (Covenants) Act 1995, section 23(1) is that the benefit of the service charge covenants before the completion date would, had the contract been silent, remain with the Aston. The terms of section 23(1) are as follows:

> "Where as a result of an assignment a person becomes, by virtue of this Act, bound by or entitled to the benefit of a covenant, he shall not by virtue of this Act have any liability or rights under the covenant in relation to any time falling before the assignment."

102. Lomac became entitled to the benefit of the service charge covenants of the Applicants on completion, but that did not include rights which arose under the covenant in relation to the time before completion. The "rights" would include the right to now exercise the substantive rights. The parties went further than that, however, and expressly provided for Aston to continue to have the benefit of the pre-completion covenants. That belt and braces provision was not a separate assignment of a debt or things in action, and thus did not engage section 136 of the 1925 Act.

103. Our conclusion at this stage is therefore that none of the demands for either estimated or (such as there were) for reconciliation deficit payments relating to the years 2018 to 2022 were properly served, in that they did not accord with the requirements of clause 12. They were emailed, not sent by post or left at the property. Mr McKie's argument from section 27A(3) of the 1985 Act does not contradict that conclusion. They are accordingly not payable.

104. We should make it clear that no argument was made for another basis of validity, such as whether an estoppel by convention arose, and it is not appropriate for us to raise it of our own initiative. It is rare that it is appropriate for the Tribunal to do so, a position which has recently been emphasised in *Sovereign Network Homes v Hakobyan* [2025] UKUT 115 (LC), [2025] 1 WLR 3782. It is particularly unlikely to be appropriate for us to do so in a case where both sides are represented by counsel.

105. On the other hand, the demand served in April 2025 was validly served according to clause 12, and their validity was not affected by section 136 of the 1925 Act

106. We now turn to the requirements of schedule 3, sub-paragraphs 1.6.1 and 1.6.2.

107. First, by any measure, the production of what the Respondent considers to be the definitive versions in April 2025 was not "as soon as convenient after the expiry" of each year concerned. However, no point was taken by Mr Leb as to whether time should be considered to be of the essence, and it is not appropriate for us to consider it of our own initiative.

108. Rather, the Applicants' core point, as set out in Mr Leb's closing submissions, is that the actual certificate provided in respect of all years was as follows:

> "In order to assist you to fulfil your duties under the Lease Agreement dated 07 December 2006, we certify that we have prepared the expenditure report of Hustyns Common Area for the year ended 31 December [relevant year] as set out on page 3-4 from the accounting records and from information and explanations you have given us."

109. That, Mr Leb submitted, was merely a certificate to the effect that the accountants had prepared the relevant accounts. It did not certify that they were a fair summary or that they had sufficient documentary support. He submitted that the Respondent was not entitled to raise any service charge demands in default of properly signed off accounts, which these were not. This we take to constitute a claim that correct certification was a condition precedent to liability for service charge demands. Were that not so, it would not be relevant whether the certification was correct or not.

110. Mr McKie argued that the common area accounts were clear, and were prepared by a firm of chartered accountants. It would have been clear to the Applicants what service charges were being claimed.

111. The lease makes the certified statements the precondition to the reconciliation process set out in paragraph 1.6.2. That sub-paragraph contains both a covenant that the landlord, if there is surplus, it "shall be refunded or carried forward as the Landlord shall think fit", and an express provision that "the Tenant covenants separately with the Landlord to make good any shortfall". The service of the certified statements is the gateway to the operation of the covenants themselves, on both parties, which achieve reconciliation.

112. Counsel did not cite case law in respect of the issue of whether the certified statement was a condition precedent to the obligation to pay service charges on reconciliation. Woodfall, *Landlord Tenant*, at paragraph 7.179, explains that there is no general rule that provision of a certificate or statement is *not* a condition president. It is, rather, a question of the construction of every lease (citing *Morshead Mansions v Mactra Properties* [2013] EWHC 223 (Ch) and *Urban Splash Works v Ridgway* [2018 UKUT 32 (LC)).

113. In this case, as we have set out above, the service of the certified statement is "the contractual route" (*Leonora investment Co v Mott Macdonald* [2008] EWCA Civ 857) to the covenants of landlord and tenant constituting the reconciliation process. The result is that the covenants consequent upon, or constituent of, reconciliation do not arise until the service of the certified statements from 2018 to 2023 in December 2024.

114. We conclude that in this lease, provision of the certified statement is a condition precedent to the validity of a demand under the tenants' covenants to make good a deficit, following reconciliation.

115. It follows that there was no even purported final statement, giving rise to the deficit covenant, until those served (not in accordance with the lease) in April 2025.

116. As to those, we have set out Mr Leb's argument that the certificate was not adequate. The schedule specifies two elements requiring certification.

117. We doubt Mr Leb's submission in relation to the requirement that the accounts were "supported by the accounts [etc]". The Respondent's accountants assert that the accounts have been prepared "from the accounting records and from information and explanations you have given us". We consider that certifying that the chartered accountants had, in fact, prepared the accounts implies that the documentary support were sufficient. If it were not, they would not have prepared them.

118. More difficult is Mr Leb's submission in relation to whether they constitute a "fair summary". We are not persuaded that the reference to fairness is intended in a normative or qualitative sense that would amount to a substantive protection of the tenants. What must be fair is the summary of the "statement", and the statement is to set out "the actual cost of providing the Services for that Accounting Year". We note that the terms of the clause are similar to those of section 21 of the 1985 Act, which refer in section 21(6) to certification that the "summary" of costs set out in section 21(5) is fair (we note the complexity of determining what version of section 21 is in force for general purposes, for which see Tanfield Chambers, *Service Charges and Management* (5th ed), 19-03). As with the lease term, we think the word "fair" is to be construed as something like "an accurate and balanced short account of the costs", rather than a guarantee of substantive fairness in the normative sense.

119. So on the one hand, the certification requirement can perhaps be seen as essentially a formal requirement. It is a requirement that the accountants have done what they should do (ensured an accurate and balanced statement).

120. On the other hand, however, we do not think we can go so far as to *imply* a certification that it is a fair summary from the fact of certification itself, as we feel able to do in relation to the documentary requirement. Thus, on balance, and not without some reluctance, we conclude that the formalities required by schedule 3, paragraph 1.6.1. have not been adhered to.

121. Accordingly, the production of the certified statement is a condition precedent to the obligation on the tenants to make good a deficit; and the certificate provided by the Respondent's accountant is not sufficient to satisfy the requirement set out in schedule 3, paragraph 1.6.1.

Validity of demands: regulatory

122. It was agreed that the demands, when made, did not comply with sections 47 and 48 of the Landlord and Tenant Act 1987 as to the name and address of the landlord required to accompany a service charge, and the general requirement for an address for service. Nor did they comply with the requirements of section 21B of the 1985 Act, that a summary of tenants' rights and obligations accompany a service charge demand.

123. It is also agreed that the effect of both defects is suspensory – the obligation to pay the service charge is suspended until the proper regulatory requirements are met. When they are, the obligation on the tenant to make payment arises.

124. The demands made in April 2025 were compliant with both sets of obligations. We reject Mr Leb's argument that the Respondent was not at the time "the landlord", and thus not able to provide the requisite materials, for the same reasons as we rejected the parallel submission in relation to compliance with clause 12.

125. Accordingly, the April 2025 demands bring to an end the suspension of the obligation on the Applicants to pay service charge demands made without them.

The effect of our conclusions

126. Our conclusion is that the 4 April 2025 re-service was valid under clause 12 of the lease, and was effective to lift the suspensory effect of the failures adhere to the statutory requirements (sections 46 and 47 of the 1987 Act, section 21B of the 1985 Act).

127. However, we conclude that the re-service was not valid in that it did not adequately comply with schedule 3, paragraph 1.6.1. The result of that is that any demands to make good a deficit on reconciliation are not valid, including the demands made on 4 April 2025. The certification requirement is not a condition precedent to interim or advance demands

(ie what the leases define as "the service charge"), and does not affect their validity.

128. However, the re-service was intended to rectify the invalid previous demands for each of the relevant years. It did so in the context of also serving the "expenditure statements" for each year, as for reconciliation. Since the interim demands had been (invalidly) demanded, and (often) paid, we think it appropriate to consider that constructively the re-demands cured, in the sense of standing in the place of, the invalid interim demands, as well as the deficit demands (where they were made). It would be wholly artificial to construe them as standing only in the place of the reconciliation statements/deficit demands, as if there had been no interim demands (albeit invalid) and payments at any time.

Section 20B of the 1985 Act

129. If we are right in our conclusions in relation to validity above, section 20B of the 1985 Act is not relevant to deficit demands on reconciliation, but is relevant to interim demands.

130. If we are wrong about the invalidity of demands for deficit demands, then section 20B is relevant to them as well.

131. Section 20B(1) of the 1985 Act provides that if relevant costs taken into account in calculating a service charge were "incurred" more than 18 months before a (valid) demand was served, a tenant is not liable to pay those charges based on those costs (absent a notice under section 20B(2), and it was not submitted that any such notice was ever given).

132. A cost is *generally* "incurred" when an invoice is tendered: *Burr v OM Property Management Ltd* [2013] EWCA Civ 479, [2013] 1 WLR 3071. In this case, some of the demands are in reality Aston charging the tenants for the time of its employees. There would of course be no invoice tendered to Aston by the employees in relation to such costs. And this is not a case of an invoice being presented by a managing agent to a freeholder (which might represent the time of an employee or be calculated in some other way). The invoice provided by Aston to the tenants to demonstrate the charge is not an invoice for a service provided to Aston, but simply the way in which Aston demonstrated or accounted for the employee's time in charging it in the service charge. The cost itself was incurred by Aston when Aston paid the employee the salary subsequently sought to be recovered in the service charge. Thus it is the payment of salary that is the moment at which a cost is "incurred" for the purposes of section 20B in relation to these charges.

133. The way in which section 20B relates to interim service charges has some complexity. The section does not apply to estimated service charges at the point when they are properly demanded in advance. The position then is that "section 20B of the Act has no application where (a)

payments on account are made to the lessor in respect of service charges, and (b) the actual expenditure of the lessor does not exceed the payments on account, and (c) no request by the lessor for any further payment by the tenant needs to be or is in fact made": *Gilje v Charlegrove Securities Ltd* [2003] EWHC 1284 (Ch), [2004] L. & T.R. 3, [20], per Etherton J. If this were the case generally, then section 20B would bite, but only on the deficit demands (and thus if we are wrong about their validity). The (total) deficits for the years from 2018 to 2022 on the basis of the December 2024 demands are helpfully set out – we think, without controversy – in a spread sheet supplied by Mr Ilett, which is familiar to the parties

134. However, if either the estimated (or of course, deficit) demands were validly made after the 18-month period following the dates on which the costs were incurred, then section 20B *would* apply generally: *Skelton v DBS Homes (Kings Hill) Ltd,* [2017] EWCA Civ 1139, [2018] 1 WLR 362, distinguishing *Gilje*.

135. The result is that section 20B of the 1985 Act is effective to prevent collection of costs incurred more than 18 months before 4 April 2025, if validly demanded.

136. This is true independently on both bases that we have found – the contractual invalidity and the suspensory effect of failure in respect of the regulatory requirements. If we are wrong about one of them (but only one of them) the effect remains the same.

137. The demands made on 4 April 2025 rendered valid demands for interim service charges during the 18 month period contractually valid and section 20B allows for their collection. The raising of the suspensory effect of the regulatory requirements operates in the same way in respect of valid demands. Any costs incurred on or before 4 October 2023 are not payable by the tenants.

Reasonableness: 2023

138. In accordance with our findings in relation to validity, we now consider the reasonableness of service charges based on costs incurred after 4 October 2023.

139. In relation to 2023, we are only concerned with costs incurred in, broadly, the last quarter. However, when it is not clear when an invoice was served, and thus when a cost was incurred, we will consider those costs. We set out below how we require the parties to deal with any indeterminacy in the resulting final figures.

Reasonableness: VAT

140. One general point relates to the purported charging of VAT by the Respondent.

141. We note that we do not think that the argument before us engaged the specific issue dealt with in *Ingram v Church Commissioners for England* [2015] UKUT 495, [2015] L&TR 6, which related to the VAT treatment of the costs of staff employed by a managing agent. The observation by the Deputy President, Martin Roger KC in that case that "[t]he VAT treatment of service charges is not straightforward and is not well understood" does, however, appear apt here, too.

142. The Respondent relied on a letter provided by HMRC's VAT Written Enquires Team responding to a query from Mr Gupta about adding a 20% uplift described as VAT to the gross bills (ie including the VAT added by the supplier) comprising the relevant costs for service charge purposes.

143. The letter was exhibited. It is dated 22 February 2022. This headed is "Recharge of utilities". It refers to paragraph 11.7.6 of VAT Notice 742, which deals with land and property. That paragraph is in fact in the section relating to landlords of commercial premises, and is headed "electricity, lighting and heating". However, the corresponding paragraph in relation to residential landlords (headed "landlord or property management company supplying additional services to occupants"), paragraph 12.3, appears to be to similar effect.

144. The particular passages in the letter that the Respondent relied on were the following:

> "As to whether you should remove the VAT charged to you by the utility company before recharging these costs to the individual lodges, that is a business decision for you to make. It is not a matter for HM Revenue & Customs.
>
> If you can recover the VAT charged to you by the utility company as input tax, then recharging the gross amount to the lodges effectively means you are making a 20% profit on the transaction. Recharging the net amount means that the transaction is cost neutral to you."

145. The Respondent also produced a "memorandum" by accountants Armstrong Watson dated 6 November 2024, who had been engaged to advise on the treatment of VAT. Unlike (we think) the HMRC letter, this advice took into account the role of HCA in managing the common areas. In a discussion headed "managing agent – accounting for the service charge", the accountants appear to take the same position:

> "It is a commercial decision whether to charge VAT on top of the costs incurred ie charge an amount that is not cost neutral."

The accountants go on to make the point that they are not commenting on whether the leases allow such a recharge.

146. The VAT on the invoice constituted the input tax to the Respondent (or, possibly, where the invoice was in the name of HCA, to HCA). Both the Respondent and HCA were registered for VAT, and so they could reclaim the input tax.

147. As we understood it, the Respondent concluded that the "commercial decision" approach entitled him to add 20% as VAT to the gross invoices he paid, and, accordingly, to make that much in (additional) "profit".

148. We accept that, as far as the tax regime is concerned, the Respondent had a choice in the matter. But the fact that there *was* a choice means that the extra 20% charged was, ex hypothesi, not actually *tax* at all, and so it was misleading to label it as VAT, to the extent that the Respondent or HCA did so.

149. The question then becomes whether the additional 20% charge was mandated by the lease. As Mr Ilett put it in his witness statement, the issue is not one of tax accounting, but one of accounting under the leases.

150. The Respondent did not argue that it was an independently justifiable charge under the leases. He assumed, on the basis of what he had been told by HMRC (and subsequently by Armstong Watson), that he was "entitled" to charge it, and so he did. We note that at least Armstrong Watson expressly said that they could not advise as to whether it was chargeable under the lease and that legal advice should be sought.

151. It does not appear to us that there is any possible basis in the leases for adding a charge described as, but not constituting, VAT to the service charges. That Mr Gupta was advised that he was "entitled" to do so cannot be a reasonable basis for making such a charge where it was otherwise un-mandated by the leases. It was not payable.

152. Accordingly, it should be taken as read that this additional "VAT" charge should be subtracted from any remaining service charge demand items which are payable, and which included this additional charge.

Reasonableness 2023/section 20B

153. The headings under which we deal with the service charge elements are broadly taken from Mr Leb's final submissions, as representing the Applicants' final case.

154. The first point is that the extra 20% claimed as VAT should be removed from all element of the demand to which it was applied.

155. Reserve fund: In common with the other years under consideration, a charge of £12,000 (in total) was made as a contribution to a reserve fund. However, Mr Gupta's evidence was that a reserve fund did not exist. We

did not understand the Respondent to defend this element of the service charge in the light of Mr Gupta's evidence. It was therefore agreed that the charge under this heading for 2023 is not payable.

156. Insurance: The evidence was that insurance was initially procured for a period of 31 January 2023 to 30 January 2024. That policy was cancelled on 22 May 2023 (Mr Ilett's evidence being that Mr Gupta accepted that the first policy covered the hotel as well as the lodges), and replaced with another policy, also running for a year. It appears, therefore, that both possible premiums paid in relation to 2023 must have been incurred before the cut-off date of 4 October 2023, in that they must have been paid before the insurance was effective, or at any rate, shortly thereafter if there was provision for payment on credit. The upshot is that the cost of insurance up to May 2024 is irrecoverable.

157. Electricity: Taking the cost from Mr Ilett's report, the total cost charged was originally stated as £97,701 and then subsequently (September 2024) as £105,814.

158. There were no invoices produced. Rather, Mr Gupta provided the tenants with a calculation of electricity costs on the basis of assessments of usage by the various appliances consuming electricity in respect of the common areas. By far the largest component was the electricity used by the sewerage plant. Second is that consumed by the lights provided in the common areas (ie outside). Lesser components were communications equipment, the fish pond and water feature and the ground team's usage.

159. The assumption is that the electricity usage in the common area is not separately metered, but paid as part of a global electricity bill.

160. The first point is that the Respondent must demonstrate that the invoices for electricity consumption in 2023 post-date the cut-off date. If they do not, no electricity costs are chargeable as service charges.

161. Mr Ilett recalculated the costs according to Mr Gupta's methodology. The figure he arrived at for the cost of the sewerage plant were very similar to those of Mr Gupta (Mr Ilett has £91,244, Mr Gupta £91,205). Mr Ilett's report expresses some scepticism about the pumps operating constantly, and is unclear as to the location of the sewerage plant. Mr Ilett also points to the much lower estimates for electricity usage in 2020, when the comparable overall figure was given in a budget as £23,904.

162. Mr Ilett does not give an alternative figure for sewerage plant consumption. That there is a sewerage plant, and that it uses electricity, is clear. That the Respondent has not produced any invoices is unfortunate. But our conclusion is that the Applicants have not raised a prima facie case of unreasonableness in relation to this aspect of the charge for electricity (aside from the extra VAT issue).

163. In his report, Mr Ilett also recalculates the figures for lighting, using the basis which Mr Gupta says he used. Mr Ilett's figure for lighting in 2023 is £8,131, rather than Mr Gupta's figure of £12,136. Mr Gupta has not provided any explanation for the difference, and nor has the Respondent produced a worked-out calculation that contradicts Mr Ilett's. Accordingly, we follow Mr Ilett's.

164. Mr Ilett's evidence was that the (higher powered) spotlights were on the hotel grounds, near the swimming pool, not in, or relating to, the common area. Removing these (using Mr Gupta's methodology) reduced the total to £6,108.

165. Mr Ilett's evidence (largely in his report) was that he had come to his own conclusions about the number of lights actually working, and excluded some as not within the common area. Together, the result was that he argued that the total should be reduced by 50%. In his final submissions, Mr Leb argued that the total should be divided by four.

166. We accept Mr McKie's criticism of Mr Ilett's evidence insofar as his observations of the lights were taken on a single day (and in 2024). However, we also conclude that Mr Gupta's methodology is obviously flawed. It assumes that all lights are operational all of the nighttime, including those that Mr Ilett claims are located in the hotel grounds, and which function on movement sensors. We remove them from the total above, but this acts as a further criticism of Mr Gupta's methodology.

167. While Mr Ilett's 2024 inspection is no more than a snap shot, as Mr McKie argues, it is nonetheless all we have to go on. Mr Ilett broadly found about 126 working lights, and about 50 not working. That amounts to about 30%. We accept this figure as an appropriate basis for reducing the assumed cost by that amount on the basis that it represents the proportion of lights not working, so not consuming electricity.

168. The reasonable figure for lighting costs in 2023 is £4,275. As stated, the 20% extra VAT component must also be removed.

169. The other figures are comparatively lower, and Mr Ilett's report essentially asks for more information before endorsing or criticising them. In sum, we think that (VAT removal apart), they stand.

170. Water: The total charge for the year is given at £35,034. Mr Ilett has added the four invoices provided to give a figure of £25,598.

171. Of the invoices relevant to 2023, the first two are dated before the cut-off date (22 February 2023, for water used between 27 August 2022 and 22 February 2023, for £16,936 and 11 July 2023, for water used between 23 February 2023 and 22 May 2023, for £3,016).

172. That relating to supply from 23 May to 29 November 2023 is dated 6 February 2024 (and is for £15,081). The final invoice appears to have been omitted from the bundle, but is set out in Mr Ilett's report. He does not give the date, but it must be after the cut-off date. It relates to supply between 30 November 2023 and February 2024, and Mr Ilett calculates that the relevant sum for usage in 2023 is £2,526.

173. The result is that £17,607 is payable. This figure does *not* include the extra 20% VAT component.

174. Professional fees – accountancy: a charge of £400 per month was originally made for these costs. In a letter dated 25 August 2024 addressed to the lodge owners, Mr Gupta agreed to limit the claim to £100 plus VAT. While it is difficult to see how matters such as Aston's "company compliance paperwork with HMRC" is chargeable under the lease, the agreement has been made and this is sum that Mr Leb contended for in his closing submissions.

175. There were (near enough) three months in 2023 before the cut-off date, so £300 are payable.

176. Night security: VAT was charged on this sum, and this may raise a different issue to the general extra 20% VAT uplift. The night security staff are employed by Aston, not HCA (which in any event did not manage the property in 2023). Accordingly, the VAT position is that dealt with by the Deputy President in *Ingram v Church Commissioners for England* [2015] UKUT 495, [2015] L&TR 6. The costs of employees of the freeholder are not VAT chargeable (unlike the cost of employees of a managing agent).

177. The total charge contended for under this heading was £22,445. This is said to be 50% of the costs of the staff. In the 25 August 2024 letter to lodge owners, Mr Gupta referred to the security staff as being based in the hotel, and monitoring CCTV in a facility there. Mr Ilett's evidence was that there were two part time staff who, between them, covered the whole week. He viewed the CCTV facility. There were 33 CCTV cameras, of which four covered the common area. The rest were confined to the hotel and spa. From this, he suggested that a proper divide between hotel and the lodges would give a 12% allocation to the lodges.

178. There was conflicting evidence about whether the night security team undertook patrols. Mr Gupta said that they were supposed to do so every two hours in oral evidence. The evidence from Applicants was that there were no patrols of the common area. Mrs Nourse, for instance, said that there had been patrols at one time, but that they ceased some months after she and her husband purchased the freehold of their lodge in May 2021. It may be that when Mr Gupta referred to two-hourly patrols, he was referring to patrols of the hotel and its immediate grounds.

179. On balance, we prefer the evidence of Mrs Nourse and the other Applicants. If there were patrols of the common area at an earlier time, it appears that they had ceased, at least as a regular occurrence, by 2023.

180. The derivation of Mr Ilett's percentage is perhaps a little too neat. The value to the Applicants of the CCTV cameras showing the main entrance and the main drive is probably greater than the value of some of the cameras internal to the hotel is to the Respondent, so a simple assessment by number of cameras relating to the two classes of area is not necessarily appropriate. Nonetheless, the dominant nature of the night security activity was, it appears, concentrated on the hotel. It is necessary an exercise in approximation, but taking a broad view, we consider that a split of 75%/25% is reasonable.

181. However, the salaries of the two night security staff, which form the basis of this figure, will have been paid on a weekly or monthly basis, and payment by their employer constitutes the point at which the costs were incurred. Accordingly, the figure falls to be reduced to a quarter of the annual figure to exclude costs incurred before the cut-off date.

182. Accordingly, removing VAT, substituting a value of 25%, and limiting the costs to those incurred after the cut-off date, the reasonable figure for night security is £2,338.

183. Rates: The service charge demand included a figure for rates at 15% of the rates bill levied by the local authority. In his final submissions, Mr Leb argues that "any amount attributable to the common area land is assumed to be negligible". We doubt that any non-domestic rates should fall to be payable in respect of the common area servicing the residential lodges. In any event, no defence of this charge was made by the time of the hearing. No such contribution is payable.

184. Resort manager: The Respondent charged £19,353, which is stated to be 50% of the cost of this post-holder. There was no general challenge to the charging of the manager's salary to the service charge. Rather, the challenge was to the percentage charged.

185. The Applicants' case, as put by Mr Ilett in his report, proceeds by an analysis of the costs constituting the other items in the service charge demand on the basis of how much time the manager would have spent in relation to each item. The details of this analysis were not put to Mr Gupta in cross-examination, but the overall tenor of his answers in relation to it was that a 50% split was broadly fair. He did say that the extra VAT uplift had been applied to the figure.

186. We do not accept the basis of Mr Ilett's analysis. We do not think that the time spent by a property manager will necessarily mirror, or indeed have any determinate relationship with, the amount of money spent on

elements of the property. On the other hand, we do not have any evidence from the manager (Mr Gupta said in evidence that the manager did not wish to give evidence) as to the balance of his or her job. On a broadly common sense level, it seems to us likely that the manager would spend more time on the hotel and spa, a substantial facility for the operation of which he or she will have had direct, every-day responsibility, than for the common area and relations with the lodge owners. Approximating, we think that no more than a third of the time of the manager can reasonably be attributed to the common area and relations with the lodge owners.

187. However, as a salary cost, it would have been incurred by the Respondent when the manager's salary was paid. Thus it is only recoverable for the final quarter of the year.

188. Recalculating the figure on the basis of a third of the full salary, removing the extra 20% VAT uplift, and then dividing that by four gives a charge of £2,688.

189. Other charges: On the Applicants' final case, as set out in Mr Leb's final submissions, the other charges only fall to be reduced by the extra 20% VAT uplift. Given our conclusions as to the validity of the demands, the cut-off period also applies. This applies to charges for the telephone land line, professional fees other than for accountancy, the gardeners and other property costs (ie other costs under that heading in the demand not otherwise dealt with here).

190. Following our general approach, where a charge is based directly on salary costs, those costs are incurred when the employee is paid, so that the cost recoverable are those for the final quarter of the year. Where the costs are set out in an invoice from a supplier, it is the date of that invoice which is the date on which the costs were incurred.

191. Final ascertainment of uncalculated costs: It follows from the above that it is not possible for us to come to a final, certain sum for the service charge payable in respect of 2023, on the assumption that section 20B is in play. That would require the ascertainment of the dates of invoices and/or calculation of the timing of wage payments which are not available to us. The determinate ascertainment of the relevant figures should, however, be a mechanical process of identifying the invoices etc and applying the approach we set out above to them in what is essentially a minor sweeping-up exercise.

192. We see no reason why the parties cannot agree those sums between themselves in a short period. Accordingly, we direct

(1) that the Applicants nominate a representative (for instance, one of their number or a professional representative) and inform the

Respondent the identity and contact details of that representative within 14 days of this decision being sent to the parties;

(2) that within 21 days of the sending of this decision to the parties, the Respondent must send to the Applicants' representative any invoices received after the cut-off date (4 October 2023) which he considers should be taken into account in determining the final service charge for 2023, and a failure to send such invoices will constitute an acceptance that no relevant invoice was received before the cut-off date;

(3) within 35 days of this decision being sent to the parties, the parties must send to the Tribunal a statement setting out what they agree constitute the 2023 service charges to be. That document will constitute a settlement of any remaining disputes in relation to the service charge for 2023;

(4) if the parties cannot agree as set out in the direction above, both parties must within 35 days of this decision being sent to the parties provide reasons for their failure to agree to the Tribunal. The Tribunal will then make a final determination of any dispute on the papers.

193. We have made an appropriate revision to the time limit for an application for permission to appeal below. A party may, of course, apply for permission to appeal before that time limit elapses if it wishes to appeal other parts of our decision.

Reasonableness 2024: what can we determine?

194. 2024 in general: Mr Leb, in his final submissions, correctly observes that there is nothing in law that prevents us from determining future service charges. A challenge to the service charges for 2024 was entered as a future year in the original application form. He invites us to do so on the basis that the budget for 2024 is based on the accounts for 2023, and that to arrive at a figure for 2024, we should apply the figure for CPI inflation to the figure for 2023. The latter figure is what Mr Leb submitted we should find, based on Mr Ilett's detailed analysis, perhaps with a further discount to reflect the deterioration of services towards the end of 2024, when the Respondent was in the process of selling the estate.

195. Mr McKie's final submissions appear to us to assume that 2024 is not in issue.

196. While we accept Mr Leb's position that we have jurisdiction to make a finding for 2024, for which we have a budget, but no demand, we do not consider that we can reasonably do so. Apart from Mr Leb's invitation to conduct a purely mathematical operation on the previous year's service charge, we have not been presented with a detailed case to the effect that the service charge will not be payable or reasonable.

197. In these circumstances, we do not consider that we can accept Mr Leb's invitation. In the first place, there may be different considerations that apply, or will apply, to a demand for the 2024 service charge. Accordingly, we cannot be confident that our conclusions in relation to 2023 will necessarily follow through to a demand for service charges in relation to 2024. Further, given the way that we have determined the service charges for 2023, there is currently no simple figure to which we can apply an inflation multiplier; and it is not obvious, without further information, how we could transfer our conclusions from 2023 to 2024 – how, for instance, should be treat the May to May insurance premiums?

198. On the other hand, we do not think it would be right to conclude that the Applicants have not proved a prima facie case of unreasonableness/non-payability, such that we should make a positive determination that the service charge is payable and reasonable. Rather, we think the appropriate course is for us to decline to determine the issue in this decision (subject to the exception set out below), leaving it open to be determined, if necessary, in the future.

199. Extraordinary sewerage works: There is one exception to this approach, in that we have at our disposal all that is necessary to deal with a demand, or purported demand, that was made during 2024. That relates to what were described by the Respondent as extraordinary sewerage works.

200. There were extensive works required in relation to the sewerage system largely in 2021 to 2022. An invoice (in the normal, invalid form) was sent to lodge owners relating to what are described as extraordinary sewerage works on 26 June 2024. It was accompanied by a schedule of invoices.

201. This appears to be the only demand for these costs. It is invalid in the same way and to the same extent as the earlier demands. Arguably, it is more so, as it is not compliant at all with the system of an estimated interim or advance service charge followed by reconciliation. It does not appear to us to have been repeated in the (part) valid demands issued on 4 April 2025.

202. Accordingly, it is not payable.

203. Nor is it open to the Respondent to now re-demand them. The demand was accompanied by a schedule of invoices. The last of these is one of the staff time invoices issued by Aston, dated 1 June 2024, which relates to 34 months' worth of a fraction of a salary, presumably therefore really going back 34 months from 1 June 2024. The second to last is one for a solicitor's firm dated 10 May 2024. The last date on which the first could have been claimed with a valid demand would have been 30 November 2025 (even if the invoice date had been the point at which the claimed salary cost was incurred, which it is not); that for the solicitor would have been 9 November 2025.

204. Even if the sums had been re-demanded in April 2025, we do not think the solicitors' bills would have been chargeable, as they appear to relate to defence advice in relation to a possible criminal charge against the Respondent. We do not think that could be covered by either of the two provisions relating to legal costs in the leases. The first (clause 6.17) relates to legal costs of notices under section 146 of the Law of Property Act 1925 or proceedings to recover arrears. The second (schedule 2, part 1, paragraph 14) allows for the allows recovery of the cost of a list of professionals, including solicitors, where they are "reasonably necessary in connection with the maintenance and upkeep of the estate". Neither can cover criminal defence solicitors.

205. Nor do we think any but a marginal amount of the 34 months of a salaried employees time would have been recoverable, even on this hypothesis. At most, four months and four days would have been after the cut-off date for the 4 April 2025 demands, had it been included. We also doubt whether the costs of the Respondent in liaising with the Environment Agency would have been recoverable in any event.

Applications for additional orders

206. The Applicants originally sought orders under 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of the passing on of litigation costs under either the service charge or as administration charges.

207. As the Respondent is no longer the landlord, it would appear that it can now not make either service charge demands or demands for administration charges. We have explained above why we consider that the Respondent was able to make service charge demands after divesting itself of the freehold interest in the estate. But that cannot extend to service charges or administration charges arising after 20 November 2024. Accordingly, we do not consider it necessary to make the orders. Had that not been case, in the light of the level of success enjoyed by the Applicants, we would have made the orders for the full amount of any such costs, under both powers.

Rights of appeal

208. 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 Southern regional office. The application should be on form RP-PTA, which is available on the Tribunal's website, or by application to the case officer.

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

210. If the application is not made within the 28 day time limit, the 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 these reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

211. The application for permission to appeal must identify the decision of the Tribunal to which it relates, 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.

Costs applications

212. If either party wishes to make an application for costs under Rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, that party must send or deliver an application on form Order 1 to the Tribunal and to the other party within 28 days after the date on which this decision is sent to the parties (rule 13(4) and (5)).

213. If an application is made, the Tribunal will issue directions for its determination.

Name: Judge R Percival **Date:** 30 March 2026

APPENDIX 1: THE APPLICANTS

Lodge number	Applicant
1,9 and 11	Margaret Denise Houston
2	Gary Lionel Beglin and Janine Louise Beglin
4	Gavin Henry Rennie and Muriel Ruth Annette Rennie
5	Stephen Thomas Larard
6	Brian Farrell and Aedamar O'Rourke
7	Patricia Ann Grant, Graham Awart Keith Grant, Joanne Elizabeth Harvey and Christopher John Burton
8	GG-922-819 Limited
10	Thomas Barrie Lemon and Rosemary Ann Lemon
12	Michael Charles Smedley and Alison Craig Smedley
16	Eman Kulsem Properties Limited
17	Michael William Colin Martin
18	Martin Sinnott and Anna Mary Sinnott
19	Amanda Haslam
20	Rajesh Kumar Gupta and Roopam Rajesh Kumar Gupta
22	Ultimed Limited
27	Nicholas John Lamb and Susan Elizabeth Lamb, Infinite Horizon Properties Ltd (previous leaseholder)
28	Franklyn Leonard llett and Rachel llett

APPENDIX 2: SOURCES FOR FREE LEGAL MATERIALS

Legislation

The legislation referred to in this decision may be found at:

https://www.legislation.gov.uk/ukpga/1985/70
https://www.legislation.gov.uk/ukpga/2002/15/contents

Case Law

The dedicated website for Upper Tribunal (UT) cases, which are binding on this Tribunal, is:

https://landschamber.decisions.tribunals.gov.uk/Aspx/Default.aspx

The search engine does not allow for free text searching. Sufficient information to use the provided search engine (such as the date of the case or the parties names) may be available via a google search.

Alternatively, the official National Archive website is at:

https://caselaw.nationalarchives.gov.uk/

This has a better search engine, but does not contain UT decisions before 2015, and there may be gaps in its provision thereafter.

The National Archive website can also be used for finding cases in higher courts, including those referred to in UT decisions.

Alternatively, many UT decisions, and most other important cases in all courts, are available on:

https://www.bailii.org/ .

Bailii stands for British and Irish Legal Information Institute. It is a charity that has published free caselaw for many years, and has in some cases loaded up earlier case law.