FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT at Peterborough, sitting at Centre City Tower, Birmingham (remotely)

Tribunal reference	**:**	**BIR/00GF/LIS/2021/0029 & BIR/00GF/LLC/2021/0009 BIR/00GF/LLD/2021/0005**
Court claim number	**:**	**G4QZ18K3**
Property	**:**	**10 Beaconsfield, Telford, Shropshire, TF3 1NF**
Applicant/Claimant	**:**	**York Montague Ltd**
Representative	**:**	**Chandler Harris, Solicitors**
Respondent/Defendant	**:**	**Sekoa Ltd**
Representative	**:**	**Ms Anifatu Ayers**
Tribunal members	**:**	**Judge C J Goodall & Mr W Jones**
In the county court	**:**	**Judge Goodall (sitting as a Judge of the County Court (District Judge)), with Mr Jones as assessor**
Date of decision	**:**	**5 November 2021**

DECISION

Summary of the decisions made by the FTT

(i) The reasonable estimated service for the service charge year 2020/21 for the Property is determined to be £943.33;

(ii) The administration charge of £75.00 which was debited to the Respondent's account on 3 June 2019 is not yet legally due because statutory notice of rights was not served with the demand;

(iii) The administration charges of £75.00 which was debited to the Respondent's account on 18 March 2020 is not payable as it is not reasonable;

(iv) There were no arrears on the Respondent's service charge account as at the 13 July 2020. The account is in credit (save for any charges and / or payments made since 13 July 2020) at the date of this decision in the sum of £1,866.63;

(v) No costs in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent;

(vi) Any contractual liability upon the Respondent to pay the costs of these proceedings in the first-tier tribunal is extinguished.

Summary of the decisions made by the County Court

(vii) The claim is dismissed. No order for costs.

(viii) No costs in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent;

(ix) Any contractual liability upon the Respondent to pay the costs of these proceedings in the County Court is extinguished.

Background

1. The claimant landlord ("the Applicant") issued proceedings against the respondent tenant ("the Respondent") on 13 July 2020 in the County Court Business Centre under claim number G4QZ18K3 for a debt of £2,695.46 plus court fee and fixed costs. Judgement in default of acknowledgement of service was entered on 5 August 2020. This was set aside by order of District Judge Downey sitting in Manchester County Court on 30 September 2020. The respondent then filed a Defence dated 21 September 2020. The proceedings were then transferred to the County Court at Peterborough and then to this tribunal by the order of District Judge Austin dated 7 July 2021.

2. The tribunal issued directions dated 15 July 2021 requiring statements of case from both parties. The Applicant provided a statement dated 9 August 2021 and the Respondent's statement of case was provided which

was undated. The matter eventually came to a hearing on 4 October 2021. The hearing was conducted by video. The Applicant was represented by Mr Chris Green, an advocate from LPC Law instructed as an agent by the Applicant's solicitors. The Respondent was represented by Ms Anifatu Ayers, a director of the Respondent.

3. 10 Beaconsfield, Telford ("the Property") is one of six flats in a residential development in Telford, Shropshire.

4. The respondent holds a long lease of the Property, which requires the landlord to provide services and for the lessee to contribute towards their costs by way a variable service charge. The specific provisions of the lease, where relevant, will be referred to below.

5. The order transferring issues to the tribunal was in very wide terms: "The claim be transferred to the Property Chamber Midland Residential Property First Tier Tribunal sitting in Birmingham."

6. All First-tier Tribunal ("FTT") judges are now judges of the County Court. Accordingly, where FTT judges sit in the capacity as judges of the County Court, they have jurisdiction to determine issues relating to ground rent, interest or costs, that would normally not be dealt with by the tribunal.

7. Accordingly, the Tribunal confirmed in the directions dated 15 July 2021 that all the issues in the proceedings would be decided by a combination of the FTT and the Tribunal Judge member of the FTT sitting as a Judge of the County Court.

8. Accordingly, Judge Goodall presided over both parts of the hearing, which has resolved all matters before both the tribunal and the court. Mr Jones was appointed as assessor for the County Court trial.

9. Following the issue of the Directions, the Respondent applied for an order under section 20C of the Landlord and Tenant Act 1985 ("the Act") limiting the costs of these proceedings that can be included in the service charge, and for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") reducing or extinguishing liability for litigation costs.

10. This decision will act as both the reasons for the tribunal decision and the reasoned judgment of the County Court.

The issues & decisions (FTT)

The claim in detail

11. The Particulars of Claim stated the sum due was £2,695.46 plus interest, the court fee and fixed costs of £60.00. The particulars of claim stated that:

"there are arrears of service charges and administration fees for the period February 2020 to May 2020 that remain unpaid despite demands for payment. The claim includes costs of £678.00 incurred in contemplation of forfeiture and/or pursuant to the terms of the lease."

12. At the hearing, Mr Green said the claim for £2,695.46 comprised:

a. The balance on the Respondents service charge ledger in the sum of £1,984.20 as at the date of issue of the claim, plus

b. Interest to date of issue of £33.26

c. The sum of £678.00 being:

i. £165.00 plus VAT for a demand letter, plus

ii. £400.00 plus VAT being costs for the contractual costs of issuing and conducting the claim to date of issue

13. The state of the Respondent's service charge account according to the Applicant as at 1 July 2020 was as shown in this table. The claimed sum of £1,984.20 can be seen to be the balance in Row 13:

		Date	Debit	Credit	Balance due
1	Opening balance				399.59
2	Estimated s/c for 18/19	18/04/2018	1,080.00		1,479.59
3	Late payment fee	07/06/2018	75.00		1,554.59
4	Cross Charge Brethertons Legal Inv 018877 Enforcement of repairs notice Lessee responded10/09/2018	12/09/2018	534.00		2,088.59
5	Cheque from solicitors	07/11/2018		1,479.59	609.00
6	Estimated s/c for 19/20	05/03/2019	1,416.00		2,025.00
7	Late payment fee	03/06/2019	75.00		2,100.00
8	FTT decision Oct 19	15/10/2019		492.00	1,608.00
9	Receipt from tenant	23/11/2019		780.00	828.00

10	Receipt from tenant	25/02/2020			
				350.00	478.00
11	Key fobs	09/03/2020			
			20.20		498.20
12	Estimated s/c for 20/21	19/03/2020			
			1,411.00		1,909.20
13	Late payment fee	14/05/2020			
			75.00		1,984.20
14	Receipt from tenant	01/07/2020			
				780.00	1,204.20

14. The opening arrears in Row 1 and the 2018/19 estimated service charge invoice in Row 2 can be seen to have been discharged by the payment from solicitors in Row 5. The Respondent admitted at the hearing that the claim for a late payment fee in Row 3 and for key fobs in Row 11 were correct.

15. The entries in Rows 6 and 12 simply record the estimated service charge for each of the relevant service charge years. The sum demanded is correctly recorded.

16. Rows 9 and 14 correctly record payments from the Respondent. It will be seen that the Claim Form was based on the state of the account immediately prior to the receipt of £780.00 on 1 July 2020, even though the claim was not issued until 13 July 2020. The receipt on 1 July 2020 will obviously need to be deducted from any sum found to be due in these proceedings.

17. The issues in this case revolve around the correctness of the entries in Rows 4, 7, 8, 10 and 13. In addition, the Respondent's case is that further adjustments need to be made to the account as a result of the following issues:

    a. No credit is shown for a payment of £1,807.00 from the Respondent's mortgagee to the service charge account on 14 January 2019;

    b. The demand for an estimated service charge for 2020/21 is a demand for an unreasonable amount, so the Tribunal should fix a reasonable estimated service charge budget for that year.

18. The Tribunal also queried why no credit had been given as a result of the actual service charge expenditure for the 2018/19 service charge year being lower than the estimated service charge for that year.

19. Before discussing these issues, we set out the law in the areas we will look at, and discuss the extent of our jurisdiction to determine the issues

identified, as the Applicant submitted we should limit our consideration of some of them.

Law

20. Sections 18 to 30 of the Landlord & Tenant Act 1985 ("the Act") contain statutory provisions relating to recovery of service charges in residential leases. Normally, payment of these charges is governed by the terms of the lease – i.e. the contract that has been entered into by the parties. The Act contains additional measures which generally give tenants additional protection in this specific landlord/tenant relationship.

21. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-

    a. The person by whom it is or would be payable

    b. The person to whom it is or would be payable

    c. The amount, which is or would be payable

    d. The date at or by which it is or would be payable; and

    e. The manner in which it is or would be payable

22. Section 19(1) of the Act provides that:

    "Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:

    and the amount payable shall be limited accordingly."

23. Section 19(2) of the Act provides that:

    "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."

24. The Tribunal's jurisdiction to consider an administration charge is derived from Schedule 11 of the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), the relevant parts of which provide as follows:

> "1 (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
>
> (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
>
> (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
>
> (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
>
> (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
>
> ...
>
> (3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
>
> (a) specified in his lease, nor
>
> (b) calculated in accordance with a formula specified in his lease.
>
> ...
>
> 2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.
>
> ...
>
> 4 (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.
>
> (2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.
>
> (3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

5 (1) An application may be made to an appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

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

(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on an appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

…

6 (6) "Appropriate tribunal" means –

(a) in relation to premises in England, the First-Tier Tribunal…

25. Section 20C provides:

20C.— Limitation of service charges: costs of proceedings.

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

(2) The application shall be made—

…

(aa) in the case of proceedings before the First-tier Tribunal, to the tribunal;

…

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

26. The purpose of section 20C is to give the Tribunal the power to prevent a landlord actually recovering its costs via the service charge when it was not able to recover them by a direct order from the Tribunal. The discretion given to the Tribunal is to make such order as it considers just and equitable.

27. Paragraph 5A of the 2002 Act provides:

> 5A(1)A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
>
> (2)The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
>
> (3)In this paragraph—
>
> > (a)"litigation costs" means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and
> >
> > (b)"the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

28. The table referred to indicates that in County Court proceedings the relevant court is the County Court, and in first-tier tribunal proceedings, the relevant court is the first-tier tribunal.

Scope and jurisdiction issue

29. Mr Green submitted generally, and in particular in relation to the issues raised from consideration of paragraph 13 Row 4 and paragraph 18, and the Respondents evidence (see below) about non-receipt of some documentation, that the Tribunal should not reach any conclusion against his client as these matters raised had not been pleaded. The Tribunal should only determine the issues that had been raised on the pleadings - *Satyam Enterprises Ltd v Burton* [2021] EWCA Civ 287.

30. Further, the Tribunal was not entitled to deal with matters that were not within its jurisdiction, nor could we explore issues that went beyond the scope of the question raised in the order transferring the case to the Tribunal - *Cain v London Borough of Islington* [2015] UKUT 0117 (LC) – and paragraphs 15 and 17 in particular.

31. The Tribunal agrees with the legal principles espoused by Mr Green, and the authorities quoted are binding upon us, but we do not accept that we are limited in the way Mr Green urges upon us.

32. To take the pleadings point first, paragraph 35 of the *Satyam* case says:

> "This is not therefore a case, as sometimes happens, where one or other of the parties seeks to run a different case at trial from that pleaded. That itself is unsatisfactory and can cause difficulties, as has been said recently by this Court more than once: see UK Learning Academy Ltd v Secretary of State for Education [2020] EWCA Civ 370 at [47] per David Richards LJ where he said that statements of case play a critical role in civil litigation which should not be diminished, and Dhillon v Barclays Bank plc [2020] EWCA Civ 619 at [19] per Coulson LJ where he said that it was too often the case that the pleadings become forgotten as time goes on and the trial becomes something of a free-for-all. As both judges say, the reason why it is important for a party who wants to run a particular case to plead it is so that the parties can know the issues which need to be addressed in evidence and submissions, and the Court can know what issues it is being asked to decide. That is not to encourage the taking of purely technical pleading points, and a trial judge can always permit a departure from a pleaded case where it is just to do so (although even in such a case it is good practice for the pleading to be amended); in practice the other party often, sensibly, does not take the point, but in any case where such a departure might cause prejudice he is entitled to insist on a formal application to amend being made: Loveridge v Healey [2004] EWCA Civ 173 at [23] per Lord Phillips MR. "

33. The message from this extract is the importance of identifying the issues at large in the case, but the extract above also shows that the rule has a certain amount of flexibility and the interests of justice are paramount. A case starts with particulars of claim. Rule 16.2 and 16.4 of the Civil Procedure Rules require a concise statement of the nature of the claim and the facts relied upon. It is not possible to discern from the particulars of claim in this case (see paragraph 11 above) anything other than that the claim concerned service charges, administration charges, and some legal costs. It was not possible to identify which were said to be outstanding. It was certainly not possible to identify that the claim included a legal bill going back to September 2018 in relation to repairs following a water leak. The legal costs arising from that incident of £678.00 were not explained at all. And of course, further confusion was created by the incorrect reference to the time-period for which the allegedly outstanding service charge related. There is no reference to the dates of the invoices which the Applicant says are outstanding. It is a difficulty in this case that the pleadings were, to say the least, unsophisticated on the part of both parties.

34. Mr Green is correct to identify that the Respondent did not deal in its defence with the 2018 legal bill (paragraph 13, Row 4 above), nor the costs claim of £678.00, nor with the change of address issue, but in our view this is because the Particulars of Claim did not identify the case she had to meet.

35. On jurisdiction, our view is that all the issues we have to decide in this case are within the statutory jurisdiction of the first-tier tribunal under section 19 and 27A of the Act and Schedule 11 of the 2002 Act, with the exception of the charge for the key fobs which is admitted anyway. Particularly when exercising our statutory function under section 27A of the Act, we are, in our view, entitled to look at the lease, the technical requirements on the demands for payment, and the reasonableness of the charge when assessing payability. For this reason, in our view we were entitled to look at the question of a credit for overpayment of the 2018/19 service charge, as it was an obvious point arising from the lease, and failure to do so would have resulted in an incorrect amount being determined as payable.

36. On the question of whether we might make decisions that go beyond the scope of the question referred to us by the County Court, the reference was in the widest possible terms. In the *Cain* case, the Deputy President of the Upper Tribunal (Property Chamber) said:

> "When trying to identify which subsidiary issues ought properly to be treated as being included within the scope of the questions transferred it is not appropriate to be too pedantic, especially where an order transferring proceedings is couched in general terms and where there is no suggestion that the court intended to reserve for itself any particular question. It is not uncommon for orders for transfer to be expressed rather generally, and in practice the tribunals of the Property Chamber sensibly recognise that it would be a disservice to the parties (and to the transferring court) for them to adopt an over-scrupulous approach to their jurisdiction."

37. Our final point on these submissions is to recognise a conflict between the need to apply some restrictions on introducing new and unpleaded points to avoid a free-for-all developing when conducting a hearing, and the overriding objective which requires us to deal with a case fairly and justly, to avoid delay, and to deal with a case in a way that is proportionate, as this case is about relatively small sums.

38. Our view is that we are entitled to adjudicate on all the issues raised in this case; for the reasons set out above. Each is now considered.

Consideration of the detailed points in issue

(a) Credit for £1,807.00 – the paragraph 17.a issue

39. This issue is considered out of chronological order for reasons that will become apparent.

40. In both the defence and the statement of case, the Respondent's case was that a payment had been made for crediting to the service charge account for the Property in the sum of £1,807.00 by a company called Together Commercial Finance Limited ("Together"). This company hold a mortgage over the Property. It's case was that any sum it may owe to the Applicant should be reduced by this amount.

41. In support of the Respondent's case, it produced a notice dated 21 January 2019 from Together confirming that this sum had been debited to the mortgage account for "service charge costs" on 14 January 2019.

42. The Applicant had entirely failed to address this element of the Respondent's defence in its statement of case, and there was no witness statement explaining what action the Applicant had taken to investigate this payment. Mr Green however challenged that this notice was proof of payment to his client. The notice made no reference to 10 Beaconsfield and it would relate to any property owned by the Respondent. The Tribunal permitted the Respondent to produce additional correspondence, which consisted of a letter from Together dated 10 January, headed "10 Beaconsfield, Telford", and saying:

> "We understand that you are in breach of the terms of your lease as you have failed to pay the service charge or ground rent of £1,807.00 to Chandler Harris despite their demands. In order to protect our security we have paid the arrears and added this amount to your balance outstanding with us."

43. A copy of the mortgage statement was also provided clearly showing that the account had been debited with the sum of £1,807.00.

44. Mr Green told us that his clients had investigated whether this payment had been made, and had not been able to locate it. There was, however, no evidence to this effect.

45. On the balance of probabilities, we find that it is likely that this payment was made by Together to the Applicant. The correspondence we have seen completely supports the Respondent's case. If, contrary to their written confirmation, Together failed to pay this sum, that can no doubt be investigated and rectified, but the evidence clearly leads us to conclude that £1,807.00 should be credited to the Respondent's service charge account as at 14 January 2019.

(b) Legal bill for £534 – the Row 4 issue

46. At the hearing, the Respondent said that it was not known until the bundle of documents which included the service ledger was received in preparation for this hearing that the legal bill from Brethertons for £534 had been included in her service charge ledger in September 2018. She said it is not the managing agent's practice to send copies of the ledgers, nor copies of the annual accounts. She disputed liability for this charge.

47. The charge was debited to the Respondent's account on 12 September 2018. The Applicant provided no information at all in relation to it. Ms Ayers said that she did not know why it had been charged. She denied that there had been any water leak from the Respondent's flat. She did not think the Respondent had received a bill, and was not aware of the charge. The Respondent should not be found liable to pay it.

48. In 2019, the Respondent had brought a case to this Tribunal regarding the reasonableness of her service charge bill for the budgeted expenses to be incurred in the 2018/19 service charge year. She was successful in persuading that Tribunal to reduce the charge (on which see point (d) below). It is apparent from that decision that the Respondent had received an invoice for legal costs of £534 (see paragraph 43(e) of the determination). The Tribunal declined in that Tribunal case to deal with any challenge to that amount as it was not within the scope of the application. The Respondent was advised to seek advice on how she could challenge that invoice.

49. There is undoubtedly a dispute regarding this charge. However, the consequence of our finding on point (a) above is that this charge was in fact paid by the credit to the account that we found should have been applied. The Applicant is suing for an outstanding balance, and this sum had in fact been settled by the credit of £1,807 and so was not outstanding at the date of issue of the County Court claim.

50. Accordingly, this charge of £534.00 has been settled. It does not in fact form part of the claim.

(c) Credit for overpayment of 2018/19 service charge – the paragraph 18 issue

51. The Tribunal had noticed that the lease of the Property requires that at the end of a service charge year, if an excess of service charge has been paid, the tenant shall be credited the difference against the Tenant's next instalment of the service charge. This had not happened for the 2018/19 service charge year. There was a possibility therefore that the Respondent should be entitled to a further credit for the overpayment of the 2018/19 service charge.

52. It is correct that this point was not raised in the Respondent's defence or statement of case. We have discussed why the Tribunal considers that it should form part of our deliberations above.

53. The lease of the Property contains a covenant by the tenant to pay the service charge, in clause 12.1 of Schedule 4. Clause 12.3 deals with under and over payments as follows:

> "If in respect of any Service Charge Year the Landlord's estimate of the service charge is less than the service charge, the Tenant shall pay the difference on demand. If, in respect of any Service Charge Year the Landlords estimate of the service charge is more than the service charge, the Landlord shall credit the difference against the Tenant's next instalment of the estimated service charge…"

54. The Tribunal has been supplied with copies of the final service charge accounts for 2018/19 and 2019/20. These reveal that the actual expenditure in 2018/19 was £3,467.00. The estimated service charge for that year was £6,480.00 (being the individual charge of £1,080.00 multiplied by six). There was therefore an underspend of £3,013.00, or £502.16 per flat. We find that this amount should have been credited to the Respondent's account as at the date of the accounts which we estimate would have been produced in the summer of 2019. We have estimated the date would be around 1 September 2019.

55. The parties may note that for 2019/20 there was an overspend on the service charge account as against the budget, so the Respondent should not be surprised to receive a demand for her share of the excess expenditure. If she considers that the expenditure in that year was too high, or that the demand is defective in any way, her remedy is to seek a determination from this Tribunal; otherwise the lease requires her to pay her share. There has been no demand to date according to the papers the Tribunal has seen, so this liability is not an issue within these proceedings.

(d) Administration charge for 2019 for late payment – the issue from Row 7

56. There is no doubt that this charge was disputed by the Respondent in her Statement of Case. Her challenge is that the charge is not reasonable, that her account should not have been in debit, and because the service charge was under challenge.

57. The Applicant did not provide any documentation or evidence regarding the 2019 late payment charge. As has already been identified, an administration charge (which a late payment charge is classified as, it being a charge for a variable amount resulting from a failure by the

tenant to make a payment by the due date to the landlord), is only payable to the extent that it is reasonable, and payment may be withheld if a summary of rights and obligations is not provided to the recipient.

58. In the absence of the invoice and evidence of service of the summary of rights and obligations of the 2019 charge, we find that the Applicant has not proved it is entitled to judgement for the sum charged, as failure to provide the summary entitles the payee to withhold payment. This finding does not mean that the charge may not be payable if the Applicant cures the failure to provide the summary of rights and obligations. At that point the Respondent could apply to this Tribunal for a determination of reasonableness.

(e) Credit for the FTT Oct 2019 decision – the Row 8 issue

59. There is a credit on the ledger of £492.00 applied on 15 October 2019, and described as "FTT decision to reduce SC account". This comes about because of the Tribunal decision in October 2019 discussed above. The Tribunal determination, made on 15 October 2019, was that the reasonable estimated service charge for 2019/20 was £780.00. The credit should therefore have been the original charge of £1,416 minus the amount determined as the reasonable service charge of £780.00, which is £636.00, not £492.00. We found that the Respondent should be credited with a further £144.00 making a total of £636.00.

(f) Credit of £350 on 25 February 2020 – the Row 10 issue

60. There was a payment credited to the Respondent's service charge ledger on 25 February 2020 of £350.00. This happens to be the annual ground rent payment, and Mr Green raised the possibility that the payment had been credited to the wrong ledger. However, the bundle of papers also included the ground rent ledger, which had a nil balance as at 18 March 2020 and showed that the March 2020 ground rent had been paid. On the basis of the Claimants own documentation, we relied on the service charge ledger and determined that this payment should be credited to the Respondents service charge account;

(g) Reasonableness of estimated service charge demand for 2020/21- the paragraph 17.b issue

61. In its statement of case, the Respondent has challenged the estimated service charge demand for 2020/21 of £1,411.00 on the basis that the sum demanded should have been £780.00, as was determined to be the reasonable estimated service charge for 2019/20. That is the sum it paid prior to issue of the claim, so it is submitted that "a reasonable amount for the period has been paid". This brings into play the question for the Tribunal of whether the estimated service charge for 2020/21 was reasonable.

62. The law on this question is contained in section 19(2) of the Landlord and Tenant Act 1985, quoted above.

63. The Tribunal is in no doubt that the reasonableness of the 2020/21 service charge is in issue in these proceedings. In our view the Respondent has not fully appreciated that the 2019 Tribunal decision did not fix the service charge for future years; merely for 2019/20, and the 2020/21 year would need to be looked at afresh. The Respondent's argument that the 2019 Tribunal decision fixed the service charge for 2020/21 at £780.00 is therefore incorrect. But this does not resolve the matter in favour of the Applicant; the Respondent undoubtedly raised the reasonableness of the 2020/21 estimated service charge either expressly or by clear inference in her defence. We have to determine what a reasonable estimated service charge should be.

64. The Tribunal did not inspect the Property for these proceedings. The Judge however had chaired the 2019 Tribunal. To assess an estimated service charge for a flat, some knowledge of the Property is of real benefit. The following is an extract from the 2019 Tribunal decision which sets out what that Tribunal observed about the Property:

> "7. The Block, together with an adjoining block comprising flats 1 – 6, Beaconsfield, is located on the north side of Brookside Ave, with its western elevation facing onto Beaconsfield itself. It is a 3 storey rectangular block of brick construction with flat roof, and was probably constructed in around the 1970's. The six apartments in the Block are located off a central communal area with both front and rear doors and stairs. Flats 7 and 8 are located on the ground floor, either side of the central area, with flats 9 and 10 being on the first floor and 11 and 12 on the second floor.
>
> 8. The communal entrance and stairway have tiled flooring with exposed brick walls and plastered ceilings. There is a substantial double-glazed uPVC window on the southern aspect, though the window catches are loose. The general appearance of the communal area is that it is rather run down. It does not appear clean, though there was no litter evident. The doors and external paintwork are in average condition at best. There were some lighting units fixed to the ceilings, but no switches. It is unclear how those lights operate and Mr Tobwongsri did not know. We could not turn them on. They do not appear to be movement activated. They might be on a timer, but we asked to see this and it could not be located.
>
> 9. There must be an electrical supply to the communal area because there were both lights and a door entry system, but there did not appear to be a meter. We were told that the Respondent intends to install a sub-meter in the Block but were given no further details of the location of the main supply.

10. There were no fire detection devices apparent at the inspection. The door entry system was broken.

11. At the rear, there is an alley with outbuildings to the east. There were two small lock-up sheds, presumably used by two of the lessees, and a bin area. At the time of inspection, the bin area was cleared and had been swept. Mr Tobwongsri told us this had been done the previous week in readiness for our inspection.

12. To the front (north) of the Block there are some shrubs and a small grassed area."

65. The service charge year runs from 1 April to 31 March in each year. The service charge is calculated for the block of six flats, and is apportioned equally between them. There was no dispute that this is an appropriate apportionment. The budget for the year was supplied in the bundle of documents. The actual expenditure for 2019/20 is also shown as it will assist in understanding the decision that we make below as to a reasonable estimated service charge.

	20/21 budget	19/20 actual
Accountancy	360.00	360.00
Cleaning	750.00	678.00
Refuse collection	900.00	250.00
Electricity	300.00	908.97
Health & Safety	0.00	0.00
Repairs	2600.00	634.80
Insurance	1320.00	782.14
Managing agent	1273.00	1060.96
Security	250.00	716.22
Gardening	560.00	239.40
Entry phone	250.00	0.00
Total	8563.00	5630.49
Individual share	1427.17	938.42

66. Even though the reasonableness of the estimated service charge was clearly in issue, the Applicant provided no evidence to justify or explain the budget figures. Our approach was therefore to assess a reasonable service charge against historical outcomes, and in the light of our expert knowledge of the likely costs that might be incurred to maintain, insure and manage the six flats described above. We were sure that the proposed budget was unreasonable as drafted (though it might have been a different story if the Applicant had provided a rationale), as it was around 50% higher than the previous years expenditure, and around two

and a half times the amount of actual expenditure in 2018/19, which was £3,467.00.

67. We did not consider it appropriate to set a budget that was lower than the actual expenditure in 2019/20, though it is important to say that this expenditure could be challenged as itself being unreasonable.

68. Our determination is that a reasonable budget for 2020/21 is as follows:

	20/21 budget
Accountancy	360.00
Cleaning	500.00
Refuse collection	600.00
Electricity	180.00
Health & Safety	
Repairs	1250.00
Insurance	820.00
Managing agent	1200.00
Security	250.00
Gardening	250.00
Entry phone	250.00
Total	5660.00
Individual share	943.33

69. The impact of this decision is that the charge of £1,411.00 as the estimated service charge for 2020/21 is reduced to £943.33. A credit to the Respondent's ledger is therefore required in the sum of £467.67.

70. We are conscious that as at the date of this determination, the service charge year under consideration has ended, and indeed it is likely that final accounts have been prepared. The Applicant however provided no information to the Tribunal about the actual sums paid for 2020/21.

(h) Administration charge for 2020 for late payment – the issue from Row 13

71. Again, there is no doubt that this charge was disputed by the Respondent in her Statement of Case.

72. The Respondent's case is that any late payment charge must relate to non-payment of the service charge demand, and she did not receive that demand as the Applicant sent it to an old address. This element of her challenge was raised at the hearing.

73. The Applicant has provided evidence that the charge was demanded and that a summary of rights and obligations was also provided. The Tribunal must be satisfied that the charge is claimable under the lease. It is so satisfied by virtue of clause 17 of Schedule 4 of the lease which is a covenant by the tenant to pay costs in connection with the enforcement of any tenant's covenants.

74. On the question of whether the Respondent received the 2020 service charge demand, there is evidence that it was not sent to the most recent address notified by the Respondent to the Applicant. It is also clear that it was not sent to the registered office of the Respondent.

75. We must firstly consider whether the charge is reasonable. In our view it was not, because as a result of the decisions we have made, the Respondent's service charge account was at the date of levying this charge substantially in credit. It could never be reasonable to levy a charge for non-payment if payment can simply be taken from the credit balance on the account.

76. This means we have not resolved whether the service charge invoice for 2020/21 was received despite it being sent to what the Respondent claimed was an incorrect address. Fortunately, we do not need to, following our conclusion in the above paragraph.

Summary so far

77. We have reconstituted the Respondent's service charge ledger to take account of our decisions on the points above, as follows:

	Date	Debit	Credit	Balance due
Opening balance				399.59
Estimated s/c for 18/19	18/04/2018	1,080.00		1,479.59
Late payment fee	07/06/2018	75.00		1,554.59
Cross Charge Brethertons LegalInv 018877	12/09/2018	534.00		2,088.59
Cheque from solicitors	07/11/2018		1,479.59	609.00
Credit from Together	14/01/2019		1,807.00	(1,198.00)
Estimated s/c for 19/20	05/03/2019	1,416.00		218.00
Overpayment for 18/19	01/09/2019		502.16	(284.16)
FTT decision Oct 19	15/10/2019		636.00	(920.16)

Receipt from tenant	23/11/2019		780.00	(1,700.16)
Receipt from tenant	25/02/2020		350.00	(2,050.16)
Key fobs	09/03/2020	20.20		(2,029.96)
Estimated s/c for 20/21	19/03/2020	1,411.00		(618.96)
Receipt from tenant	01/07/2020		780.00	(1,398.96)
FTT decision Oct 21	10/08/2021		467.67	(1,866.63)

78. Evidently there is now a substantial surplus on the ledger, and there was on the date of issue of the County Claim.

79. Inevitably, exercising the jurisdiction of the FTT, we must find that the sums claimed as arrears of service charges and for unpaid administration fees are not payable.

The additional charge for costs of £678.00 included in the Particulars of Claim, and interest

80. At the hearing we were told by Mr Green that this amount comprised a fee of £165.00 plus VAT for a demand letter; we presume this to be a letter before action, plus £400.00 plus VAT for the conduct of the County Court proceedings.

81. Our findings above show that the Respondent's service charge account has been in credit since September 2019 and there can be no justification for the Applicant to have incurred any costs to pursue the Respondent for any service charge arrears; there were none. These charges are not payable. Likewise, given the positive balance in the Respondent's service charge account, there can be no justification for an award of interest.

The applications under section 20C of the Act and paragraph 5A of the 2002 Act

82. We consider that the Respondent is entitled to an order under section 20C of the Act as a result of the conclusion we have reached. We order that any costs of these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent.

83. In so far as the applicant may seek to claim costs for the conduct of these proceedings in the FTT under clause 17 of Schedule 4 of the lease or under the indemnity in clause 26 of Schedule 4, directly from the

Respondent rather than through the service charge, we make an order under paragraph 5A of the 2002 act extinguishing the Respondents liability to pay those costs.

The issues & decisions (County Court)

84. The conclusion of the Tribunal sitting as the FTT are that no service charges or administration charges are payable by the Respondent under the County Court claim. The County Court claim for principal and interest must therefore be dismissed with no order for costs.

85. We order that any costs of these proceedings incurred in the County Court are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondent.

86. In so far as there is or may be any claim for contractual costs under clause 17 of Schedule 4 of the lease or under the indemnity in clause 26 of Schedule 4, those costs are in the discretion of the court, and it would be unconscionable for the Respondent to be ordered to pay these costs bearing in mind the outcome of this case. Accordingly, and sitting as a County Court Judge, Judge Goodall orders that any contractual claim for costs in respect of the County Court proceedings be extinguished.

Name: Judge C Goodall **Date: 5 November 2021**

Rights of appeal

Appealing against the tribunal's decisions

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

2. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

3. 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.

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

1. A written application for permission must be made to the court at the Regional tribunal office which has been dealing with the case.

2. The date that the judgment is sent to the parties is the hand-down date.

3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

4. The application for permission to appeal must arrive at the Regional tribunal office within 28 days after the date this decision is sent to the parties.

5. The application for permission to appeal must state the grounds of appeal and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers.

6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the xx County Court office within 14 days after the date the refusal of permission decision is sent to the parties.

7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.