

DECISION

The Tribunal determines:

a. The amounts payable for the interim demands for the following service charge years for Flat 1 are as follows:

Service charge year	Amount payable/credit	Paragraph in reasons
01 01 2019 – 31 12 2019	Nil	45
01 01 2020 - 31 12 2020	704.85	49
01 01 2021 – 31 12 2021	2546.04	50
01 01 2022 – 31 12 2022	Nil	51

b. The amounts payable for the interim demands for the following service charge years for Flat 10 are as follows:

Service charge year	Amount payable/credit	Paragraph in reasons
01 01 2019 – 31 12 2019	Nil	53
01 01 2020 - 31 12 2020	1874.71	54
01 01 2021 – 31 12 2021	2898.97	55
01 01 2022 – 31 12 2022	688.39	56

c. The amounts payable for the interim demands for the following service charge years for Flat 11 are as follows:

Service charge year	Amount payable/credit	Paragraph in reasons
01 01 2019 – 31 12 2019	159.79	59
01 01 2020 - 31 12 2020	1397.02	60
01 01 2021 – 31 12 2021	1958.03	61
01 01 2022 – 31 12 2022	381.46	62

d. The Tribunal declines to order that any Respondent is to reimburse the Applicant the application fees for any of the applications.

REASONS

Introduction

1. The Applicant landlord seeks a determination of each of the Respondent lessee's liability to pay and reasonableness of service charges for the years 1st January 2019 to 31st December 2021 and December 2022 pursuant to section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") for Flat 1, Flat 10 and Flat 11 respectively at Ashley House, Ashley Road, Epsom, KT18 5AZ ("the Building"). The 3 applications are made by the Applicant's representative Peak Estates Limited. There is a letter of authority signed by the Applicant dated 25 07 2022 in the hearing bundle at page 176.
2. References in these Reasons to page numbers are to the hearing bundle of 346 numbered pages prepared by the Applicant or its representative.

Procedural background

3. These 3 applications were consolidated to be heard together by directions of Tribunal Judge Dobson of 30th June 2022 with two other applications relating to other flats in the building which are now no longer pursued. At the time those Directions were issued the Tribunal Judge formed the view that this application was likely to be suitable for determination upon the papers alone without an oral hearing pursuant to rule 31 of the Tribunal Procedure Rules 2013 unless any party objected in writing to the Tribunal by 4th August 2022, subject to further review.
4. Those directions were sent to each of the Respondents by letters of 1st July 2022 by email. The Tribunal has not received any objection to the procedure suggested in those Directions (determination upon the papers). The Tribunal has not received any details of objection or opposition to the application from any of the Respondents. Those directions required the Applicant to prepare a signed and dated statement with statement of truth setting out each aspect of its case within the jurisdiction of the Tribunal and to provide copies of all relevant demands made supporting invoices received and accounts prepared and any witness statements relied upon by 28th July 2022. The Hearing Bundle produced by the Applicant under the heading "Statement of Case" from pages 172-345 contains documents, invoices and correspondence "Particulars of Claim" and a letter at page 346 described as "Cost and Reimbursement of Tribunal fee breakdown" (unsigned and undated). No witness statements were produced on behalf of the Applicant or any of the Respondents.
5. Subject to the directions given above, the Tribunal Judge has reviewed the potential issues in the light of the hearing bundle and in the circumstances considered that determination upon the papers remains appropriate and is consistent with the overriding objective of determining applications of this kind efficiently and with the best use of resources of the parties and the Tribunal.

The Scope of the Tribunal's jurisdiction in this application

6. The Tribunal is asked to determine the reasonableness and liability to pay

services charges for each of the Respondents under section 27A of the 1985 Act. Although the Applicant’s “Particulars of Claim” (at page 172) assert that the Respondents are “representative” of Flats at Ashley House, the Tribunal has not seen any evidence or observations from any of lessees. Nor has the Tribunal directed that this decision is “representative” or should be treated as binding upon any other lessee. This Decision should not be treated as binding any other Lessee or person than the named Respondents. The Tribunal’s decision for the service charge year ending 31st December 2022 only relates to the “on account” (interim) charge for the 3 flats in issue and will be subject to the final accounting process required by the Leases.

Sums claimed in addition to service charges

7. “Particulars of Claim” are a form of statement of case appropriate to the County Court. In this case the Tribunal does not have the jurisdiction of the County Court and does not have jurisdiction to award interest or order any payment of sums found payable.

8. It is clear from each application form that each Respondent lessee has been withholding payment of service charges. In each form service charges are said to be disputed and the “Particulars of Claim” at pages 172-174 claim sums based upon alleged debit balances or arrears by reference to documents said to be “demands”. The bundle contain additional claims against each Respondent to charges described explicitly as “administration fee for preparation and issuing” the application: see for example page 207 and claims to administration fees as “costs” on page 346. The Particulars of Claim at pages 173-174 prepared by Peak Estates also contain claims to contractual interest for alleged late payment of service charges. These amount to claims to administration charges within the meaning of paragraph 1(1) of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. For this purpose an “administration charge” is defined as:

“(1)an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

.....

(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.”

9. A claim to an administration charge is not a claim to a “service charge” within the meaning of section 18 of the 1985 Act. Accordingly those claims are not within the scope of the applications being considered by this Tribunal in this Decision. The claims to interest in the Particulars of Claim are claims to administration charges.

10. Equally the Applicant’s claims to the costs of “Solicitor’s letter” as “costs” on page 346 are not framed as claims for service charges. They are not

within the scope of these applications under section 27A of the 1985 Act. The solicitors' letters referred to are not within the hearing bundle and not in evidence before the Tribunal.

Approach to payability of service charges

11. The application notice in each case seeks a determination based upon figures said to derive from demands (invoices) for each of the service charge years 2019, 2020, 2021 and 2022. Most of these appear to be "on account" or "interim demands" and others are demands which appear to give some credits for payments or balancing payments. The credits are not explained in the demands of the Particulars of Claim. The Particulars of Claim at page 173 which should have set out the Applicant's case, simply refers to "various demands" and assert those demands have been sent "as set out in their Leases". The Applicant has not clearly distinguished between interim "on account" demands and demands or credits based upon final accounts as the Sixth Schedule to the Leases requires. It is only for the service charge year ended 31 12 2022 that a separate budget document is available at page 345. Otherwise there is no evidence of what the Applicant or its agent considered to be a fair and reasonable interim payment for the purpose of paragraph 1.4 of the Sixth Schedule to each Lease.
12. No reasoned or detailed objection or response to the application has been received. The Applicant's case in each Application form says the service charges are "disputed". Accordingly the task of the Tribunal is to decide what (if any) sums are payable under the terms of the Leases and whether it is satisfied that the sums claimed as "on account" charges were fair and reasonable within the terms of the Sixth Schedule to the Lease. Those issues must be decided according to the balance of probabilities, what is more likely than not, on the available evidence.
13. In relation to the burden of proof the Tribunal bears in mind the words of HHJ Rich in *Schilling v Canary Riverside* LRX/26/2005 where he said the burden in regard to applications under section 27A of the 1985 Act depends on who makes the application, Those principles do not apply where the interpretation of a clause in Lease is in issue: *Redrow Regeneration (Barking) v Edwards* [2013] L&TR 8. To ascertain what is payable in the circumstances of these cases where final accounts have not been produced it is necessary to give credit for payments made.

The Building

14. The "Particulars of Claim" at pages 172-175 describe the Building as a "block" of 12 flats and Peak Estates Limited as the Landlord's managing agent. Each of the 5 leases described there were granted in early or middle of 2019. The application form describes the Building as "Redeveloped block of 12 flats". The Lease plans at [56] (for example) prepared in 2017 appear to show that works of conversion were carried out and there are ground floor external communal areas which include 14 numbered parking spaces, with some trees or bushes. Each of the Respondents was granted a Lease in their own names. None was an assignee of the Lease.
15. The lease plans and the configuration of the flats do not suggest that the building was a purpose built "block of flats". The invoice for "fire maintenance" for 26 07 2019 suggests that there are two parts of the

building: see page 251. The invoice from a key provider for a Union 5 lever lock dated 02 09 2019 refers to a basement at Ashley House: see page 263. The builder's maintenance invoice of 09 09 2019 at page 264 was for work at the basement as was the similar maintenance work for a leak in the basement of 26 11 2019 at page 270. The use of pest control services for external airbricks in the invoice of 22 01 2020 at page 301 and the frequency of gutter cleaning invoices at pages 327-328 and 297-300 suggest a design and construction from a much earlier age.

16. The Lease of Flat 1 to Mr Causer shows that it is a First floor flat with premium of £344,000. The lease plan depicts a one bedroom flat consisting of an open plan living and dining room and kitchen sometimes described as studio flat with a separate combined bathroom and toilet. Confusingly the Lease plan at page 56 was prepared for a ground floor flat. The floor areas are not specified on this plan. The proportion of service charge allocated to this Flat is not specified in the Lease but is described as a "fair and reasonable proportion to be determined by the Landlord the Managing Agent or the Landlord's surveyor". The proportion of service charge allocated to this flat in 2019 and 2020 2021 was 7.1256% according to the demands in the hearing bundle: see the application form at page 15 and pages 180 and 184 for example.
17. The Lease of Flat 10 to Ross Thompson shows that it is a second floor flat with a premium paid of £405,000. The lease plan at page 95 depicts a 2 bedroom flat with separate kitchen/dining room, external terrace and separate bathroom. The larger bedroom has an ensuite bathroom attached. The proportion of service charge allocated to this flat in 2019, 2020 and 2021 was 8.1133% for 6 months from 01 01 2020: see the application form at page 15 and page 197 for example.
18. The Lease of Flat 11 to Oliver William Hunter shows that it is a second floor flat with a premium paid of £285,000. The Lease plan at page 134 depicts a 1 bedroom flat consisting of an open plan living and dining room and kitchen area sometimes described as a studio flat with a separate bathroom and toilet. There is a separate hall area. The proportion of service charge allocated to this flat in 2019, 2020 and 2021 was 5.5735%: see the application form at page 42 and page 213 for example.
19. None of the apportionments were challenged.

Relevant service charge provisions

20. These are found in the Sixth Schedule to each of the Leases. The Tribunal will not lengthen these Reasons by rehearsing the terms of that Schedule which include provision for interim charges, accounts after the service charge year ends and balancing adjustments.
21. Of relevance to the service charge year 2019 is the definition of "service charge" in paragraph 1.3 of the Sixth Schedule as follows "...such proportion of Total Expenditure as are specified in the Particulars or (in respect of each accounting period during which this Lease is executed) such proportion as is attributable to the period from the date of this Lease to the 31st December next following".

Validity of the landlord's demands (invoices)

22. The Tribunal makes no determination whether the demands (invoices) rendered by the Applicant landlord for each lessee for each of the service charge years in issue complied with the relevant statutory provisions. As none of the Respondent has raised the issue of whether any of the costs were reasonably incurred, *for the purpose of this determination* the tribunal finds that the costs referred to in the interim on account demands were reasonably incurred.

Flat 1 Mr Causer service charge calculation

23. The Particulars of Claim assert a claim to £4677.56 to 27 07 2022: see pages 173-174. That sum includes the Applicant's claims to interest and other administration charges. The figure of £4677.56 is not explained by the demands or statements which accompany or follow that document at pages 177-192.
24. The most recent service charge demand for Flat 1 dated 01 06 2022 at page 192 (including a demand for on account service charges for the period from 10 07 2022) showed a claimed balance of £5977.56. The statement of account of 27 07 2022 at page 178 shows the same balance of £5977.56. That figure includes the following administration charges which cannot be taken into account in calculating the claimed outstanding service charge balance:

Description of administration charge fee included in £5977.56 claimed by Applicant page 178	£ amount
Solicitor's letter 14 10 2021 (see page 188)	102.00
Administration fee for issuing Court claim (Feb 22)	600.00
Interest claimed (February 2022	49. 71
Court fees February 2022	80.00
Administration fee for serving section 146 (March 22)	480.00
Administration fee for preparing and issue "Leasehold Valuation Tribunal (April 22)	1200.00
Interest March 22	3.05
LVT application fee April 22 (see page 191)	100.00
Sub-total	2614.76

25. Deducting £2614.76 from the claimed balance of £5977.56, produces a claimed service charge balance of £3362.80. That is the starting point for calculating the claimed balance of service charges for Flat 1 at 27 07 2022.

Analysis of service charge demands – all 3 flats

26. The first demand for Flat 1 dated 24 06 2019 at page 179, claims sums which must be regarded as on account (interim) charges, for a 6 month period from 01 01 2019, at the allocated proportion for communal cleaning, window cleaning, garden maintenance, gutters and drains, health and safety maintenance, building insurance, communal electricity general maintenance and a management fee calculated at the rate of £3000.00 per

annum. Each of those heads of expenditure are, in principle, costs falling within paragraphs 1.2 of the Sixth Schedule, as complying with the landlord's obligations in the Fifth Schedule and clause 5(e) of the Lease and payable as service charge. The costs which fall within definition of "Total Expenditure" need to be apportioned for the period between 3rd April 2019 (the date of the grant of the Lease of Flat 1) and 31st December 2019 in accordance with paragraphs 1.3 and 3 of the Sixth Schedule to the Lease. The Applicant or its agent appears to have calculated service charges for the 2019 service charge year on the basis that no apportionment is necessary. This is an incorrect understanding of the Lease.

27. The second demand for Flat 1 also dated 24 06 2019 is identical in form, except that it claims the same estimated service charge of £660.33 for the six month period from 01 07 2019. VAT was not claimed on the managing agents' fees for either demand.
28. The same conclusions apply to the service charge demands made by or on behalf of the Applicant of the same dates for Flat 10 at pages 195- 196. The date for apportionment of the first service charge year for this Lease is 9th April 2019.
29. The same conclusion applies to the service charge demands made by the Applicant of the same dates of Flat 11 at pages 211-212. The date for apportionment of the first service charge year for this Lease is 17th May 2019.

VAT charged upon service charges from 2020 onwards

30. The Third demand for service charges in each case was in similar form (in that the same heads of expenditure were itemised) but was dated 14 November 2019 and was expressed to relate to the period of 6 months from 01 January 2020 at page 180 (Flat 1) page 197 (flat 10) and page 213 (flat 11). In this demand VAT of 20% was charged upon the contribution towards managing agent's fees (Peak Estates Limited). Assuming (without deciding the point) that Peak Estates Limited became registered at November 2019, VAT on those costs might have been chargeable as an interim on account service charge. The invoice from Peak Estates Limited to Ashley House Sub Limited for management fees for the 2019 service charge year is dated 01 07 2019 but does not include a demand for VAT: see page 272. The invoice from Peak Estates Limited to Ashley House Sub Limited for management fees for the 2020 service charge year is dated 01 11 2019 and includes a demand for VAT: see page 324.
31. Some of the demands from Peak Estates Limited such as this third demand include a further charge to VAT upon the sub-total of claimed service charges for the year. By way of example the demands at pages 181, 182, 185 and 187 claim an additional amount described as VAT upon the total amount demanded as service charge at the rate of £21.38 (flat 1). Similar demands for VAT on the total of service charges claimed for Flat 10 are at pages 200, 201 and 203. For Flat 11 the demands claiming this additional amount of VAT are found at pages 213, 216, 217 and 219. This charge to VAT has not been explained by the Applicant or its agent. This appears to be an error as the amount of VAT in each case does not correlate to any rate of VAT payable for the year in question or any of the heads of cost incurred.

32. VAT is not payable upon service charges which are reimbursement for costs incurred on behalf of the landlord reimbursed by a Lessee. In very general terms the position is summarised by VAT notice 742 published by HMRC <https://www.gov.uk/guidance/vat-on-land-and-property-notice-742#supplies-between-landlords-and-tenants> as follows:

“12.1 The basic position

Service charges payable by a holder of a residential lease or tenancy are further payment for an exempt supply of an interest in land by the landlord to the leaseholder or tenant. These periodic charges represent the cost to the landlord of fulfilling his contractual obligations, including the provision of various services, as required under the lease or tenancy agreement.

Landlords usually contract out the supply of goods and services they are contractually obliged to provide to an occupant. They will also allow a property management company, or someone similar to collect the periodic charges from the occupant on their behalf. This supply by the property management company or similar is a taxable supply to the landlord, not to the leaseholder or tenant.”

33. The Applicant’s asserted charge for VAT again on the gross amount of service charges (including the VAT charged upon Peak Estates Limited’s services) has not been justified or explained under terms of any statutory provision. It is not payable under the terms of the Sixth Schedule or other provisions in the Lease. It should be deducted from the Applicant’s calculation of sums payable as service charges for each year in which has been charged.

Communal Electricity charges invoices

34. The total charge for communal electricity for the building in the 2019 service charge year claimed is £148.20: see the printout at pages 225 and 227.
35. The total charge for communal electricity for the building in the service charge year ending December 2020 claimed is £724.75: see the printout at pages 273 and 275. This appears to comprise sums billed in the following invoices

Invoice summary	Page no	£
British Gas 17 01 2020 (account ending ...1215) relating to period 25 October to 31 12 2019	307	113.58
British Gas 25 02 2020	308	104.96
British Gas 11 04 2020	309	86.39
SSE Southern Electric (statement not dated)	310	37.31
SSE Southern Electric (statement not dated but relating to 3 previous invoices)	311	19.88
British Gas 01 06 2020 (addressed to Michael Spirrow P41 Limited) (revised bill) – account1212 – including balance to 25 December 2019 and period 25 12 2019 – 27 03 2020	312	108.07

SSE Southern Electric (statement not dated relating to June 2020)	313	41.40
SSE Southern Electric (statement not dated relating to July 2020)	314	35.37
SSE Southern Electric (statement not dated relating to August 2020)	315	35.37
SSE Southern Electric (statement not dated relating to November 2020 and balance from earlier bill)	316	103.51
SSE Southern Electric (statement not dated relating to December 2020 and balance from earlier bill)	317	38.57

36. The invoice dated 17 01 2020 (page 307) appears to relate to the Building although it is addressed to P41 Limited, an entity whose relationship to the Building is not explained. With some hesitation the Tribunal is just persuaded that this invoice relates to communal electricity at the Building consumed between October and December 2019. Some accounting conventions would permit this invoice to be charged to the 2020 service charge year when it is said to have been paid. There is also evidence in the subsequent invoice dated 25 02 2020 (at page 308) that the invoice dated 17 01 2020 (page 307) has been paid.
37. The invoice dated 25 02 2020 (at page 308) was for £104.96. The subsequent invoice dated 11 04 2020 at page [309] for £86.39 does not show that the invoice at page 308 has been paid. Both of these invoices were addressed to P41 Limited. Despite the apparent discrepancy in the identity of the bill payer and the absence of receipts for payment, with some hesitation the Tribunal is just persuaded to find that these invoices relate to communal electricity at the Building in the period to which the electricity is said to have been supplied according to the description on the invoices.
38. The statements of account from SSE Southern Electric set out above raise several. Although they are addressed to the Applicant they described the site name (referring to the place of supply) as C/o Ashtead Park Gard... pleasure Pit” This appears to be a reference to Ashtead Park Garden Centre Pleasure Pit Road Leatherhead KT21 1HU. Each statement of account refers to an invoice which is not enclosed. The electricity supply invoices for the 2021 service charge year are in similar format. With hesitation the Tribunal finds these SSE Southern Electric statements relate to communal electricity at the Building.
39. Of more difficulty is the British Gas invoice for electricity addressed to Michael Spirrow dated 01 06 2020 at page 312. This appears to relate to an entirely different account number ending ...1212 to the previous British Gas invoices for electricity which relate to account number ending ...1215. It relates to a billing period between 25 December 2019 and 27 March 2020 and an outstanding balance at 25 12 2019. At least some of that billing period (January to February 2019) appears to have been the subject of an earlier British Gas bill dated 25 02 2020 at page 308. The part said to be outstanding balance also appears to relate to period covered by the British Gas invoice dated 17 01 2020 at page 307 for a different account. As the Respondents have not put this in issue, the Tribunal finds that the British Gas invoice for electricity addressed to Michael Spirrow dated 01 06 2020 at page 312 has been shown to relate to communal electricity which is properly to be charged to the lessees as service charge for service charge years 2019 or 2020.

Management fees – all years Flats 1, 10 and 11

40. All the service charge demands (invoices) for each 6 month period are prepared on the footing that management fees for Peak Estates Limited are charged at the allocated percentage. The annual charge claimed by Peak Estates Limited for management fee is expressed £3000.00 for each service charge year in the invoice for 2019 dated 01 07 2019 at page 272 and the printout at page 227. Subsequently for each service charge year the printouts of annual expenditure at pages 273, 325 and budgets have been prepared on the basis that the annual management fee is £3000.00 plus VAT: see the budget at page 345. However, each 6 monthly demand invoice purports to charge management fee at the full allocated percentage for the whole year. One example of this is the demand dated 14 11 2019 for Flat 1 for the 6 month period from 01 01 2020 which charges £213.77. This is Flat 1's annual contribution towards management fees at the allocated percentage of 7.1256%. Exactly the same sum £213.77 is charged again for the 6 month period from 01 07 2020 in the demand dated 17 06 2020 at page 184. VAT on this head of charge is added.
41. The additional management fee and VAT thereon has been charged twice in each case. It is an error of calculation or other administrative error. A deduction is required from each demand (invoice). The same error of calculation is made in each of the interim demands for Flat 10 and Flat 11.

Other head of costs for 2019 Flats 1, 10 and 11

42. These include communal cleaning, window cleaning garden maintenance gutter and drains, health and safety maintenance building insurance communal electricity general maintenance and management fees. Subject to the other observations in other Reasons about particular invoices or costs, for this service charge year 2019, the Tribunal finds the costs listed on pages 226-227 were payable under the Sixth Schedule of each Lease. Although that document contains the word "Budget", it is a historic record of costs incurred in the 2019 service charge year. It was printed on 17 02 2022. There is no evidence a budget was prepared or sent to any of the Respondents at that stage. The service charge demands refer to "budgeted" sums but are not service charge budgets of the kind recognised by the Service Charge Residential Management Code, 3rd Edition.

Apportionment of 2019 service charge costs under paragraph 1.3 of the Sixth Schedule to the Lease

43. There are different methods of apportionment. The most straightforward for Flat 1 and 10 is to deduct 25% from all costs properly chargeable to the accounting period in question. The Applicant and Peak Estates Limited have determined the accounting period is 1st January to 31st December in the interim demands for 2019. This method avoids having to examine individual invoices separately. No attempt at apportionment on this basis appears to have been in the interim demands or the final accounting for 2019.
44. The date of execution of the Lease of flat 11 was 17th May 2019. This correlates to 62.73% of the accounting year and will be used as the basis for apportionment of service charges for the 2019 service charge year for Flat 11.

Flat 1 - service charge year ending 31 12 2019

45. Paragraph 6 of the Sixth Schedule to each Lease requires the Applicant or its managing agent to prepare and serve upon each Lessee a certificate containing the amount of the Total Expenditure for the accounting period, the amount of the interim charge paid by the Lessee and any surplus carried forward from the previous accounting period and the amount of the service charge for the accounting period and any excess or deficiency over the interim charge. There is no satisfactory evidence that such a certificate was prepared or served. There are print outs of expenditure for 2019 at pages 225 -227 which contain some credits. The document at page 182 is expressed to be a demand for “excess service charge” but is not certified and does not provide details of “Total Expenditure” as paragraph 6 of the Sixth Schedule requires. The figures in the excess demand at page 182 differ substantially from those in the printout at page 225. In the absence of a certificate, the Tribunal calculates the sums payable account by reference to the heads of expenditure contained in the demands and the printout at page 225 as follows:

	Flat 1 year 2019 interim charge @ 7.1256% pp 179-180 £	Final sum/credit @ 7.1256% (p 225) £	£ Amount payable
1	Communal cleaning 798.07	297.27	
2	Window cleaning 228.02	23.94	
3	Garden maintenance 256.52	119.71	
4	Gutters and drains 42.76	00.00	
5	Health & safety 111.16	161.32	
6	Buildings insurance 549.22	507.66	
7	Communal electricity 85.50	10.56	
8	General maintenance 142.52	199.55	
9	Management fees 427.54	213.77	
10	Total demanded 1320.66	1533.79	
	Deduct 213.76 duplicated management charge = £1106.90		
11	75% apportioned for 2019 (6 th Schedule of Lease)	830.17	
12	Credit to be given for 2 x £660.33 paid in 2019 by Lessee (page 177)	-1320.40	
13.	Total credit		-490.22

46. The amount payable by the Lessee of Flat 1 for service charges for the service charge year 01 01 2020 to 31 12 2020 should accordingly be reduced or credited by the surplus in accordance with the requirements of paragraph 4 of the Sixth Schedule to the Lease.
47. There is no final account for 2020 for Flat 1 in the Hearing Bundle which complies with the requirements of paragraph 6 of the Sixth Schedule to the Lease. The document at page 182 dated 13th January 2020 shows credits for certain heads of service charge costs listed but gives no details of actual expenditure and is expressed to be a “demand” for a sum of £213.15. It is not certified. The “Particulars of Claim” give no details of actual expenditure for any service charge year. The document at page 273 simply gives details of expenditure but is not certificated. In the absence of explanation the Tribunal

does not accept that the document at page 182 is a certificate complying with paragraph 6 of the Sixth Schedule to the Lease. In the absence of such a certificate on the available evidence the Tribunal finds that the surplus to be credited to the service charge year 01 01 2020 to 31 12 2020 for Flat 1 is £490.22 (as set out above).

48. The Tribunal does not treat the omission to prepare a final account for each year as a condition precedent to payment of service charges. The Tribunal attempts to ascertain whether the interim demands in each service charge year were a “fair and reasonable” sum to be paid on account of service charge for the service charge year within the terms of paragraph 3 of the Sixth Schedule to the Lease having regard to the need to give credit for the surplus from the previous service charge year, if any, as paragraph 4 of the Sixth Schedule to the Lease requires. The Tribunal seeks to ascertain what sums are payable for each service charge year by reference to the estimated expenditure as follows:

49.

	Flat 1 year 2020 interim charge @ 7.1256% pp181-184 £	Final sum/credit @ 7.1256% (p 186) £	£ Amount payable
1	Communal cleaning 798.07		
2	Window cleaning 228.02		
3	Garden maintenance 256.52		
4	Gutters and drains 42.76		
5	Health & safety 111.16		
6	Buildings insurance 549.22		
7	Communal electricity 85.50		
8	General maintenance 142.52		
9	Management fees 427.54		
10	Sum described as VAT on “above” 42.76		
11	Sum demanded in pp 181 and 184 excluding alleged arrears 1281.20		
12	Deduct 213.77 plus 42.75 VAT duplicated management charge = £1024.68		
13	“balancing” demand at page 182 £213.15		
14	Sub-Total demanded £1237.83		
15.	Credit Tribunal finds due from 2019 £490.22		
15.	Deduct £42.76 claimed as VAT on pages 118 and 184.		
16.	Amount payable		704.85

50.

	Flat 1 year 2021 interim charge @ 7.1256% pp 185 and 187 £	Final sum/credit @ 7.1256% £	£ Amount payable
1	Communal cleaning 769.56		
2	Window cleaning 114.00		
3	Garden maintenance 256.52		
4	Gutters and drains 71.26		
5	Health & safety 171.02		

6	Buildings insurance 336.14		
7	Communal electricity 85.50		
8	General maintenance 213.76		
9	Management fees 427.54		
10	Total demanded 2445.30		
11	Deduct 213.77 duplicated management fee		
12.	Add "balancing charge" (page 186) £314.51		
13	Amount payable		2546.04

51. There is very little evidence in the hearing bundle which has a bearing upon the landlord's agent's decision to make the interim charges for the 2022 service charge year or whether that process was consistent with the requirement to demand a fair and reasonable interim payment in paragraph 4 of the Sixth Schedule. The first interim payment appears to have been demanded on 22 12 2021 at page 189. Presumably the financial information about service charge expenditure during 2021 itemised at pages 325-326 was available at that date. That shows a total expenditure of £8973.58. This compares with total expenditure of £21,793.57 for the 2020 service charge year itemised at pages 273-275. It is to be inferred that the earlier practice of duplication of charges for management fees, VAT and VAT on the total of estimated cost would have featured as part of the calculation of that year's service charge. The Tribunal infers the most likely explanation for the relatively large credit to service charge account of £583.22 in the credit note dated 28 January 2022 at page 190 is that actual expenditure during 2021 was comparatively modest.

	Flat 1 year 2022 interim charge @ 7.1256% (page 189 and 192) £	Final sum/credit @ 7.1256% £	£ Amount @ payable
1	Communal cleaning Not known	Not known	
2	Window cleaning Not known	Not known	
3	Garden maintenance Not known	Not known	
4	Gutters and drains Not known	Not known	
5	Health & safety Not known	Not known	
6	Buildings insurance Not known	Not known	
7	Communal electricity Not known	Not known	
8	General maintenance Not known	Not known	
9	Management fees Not known	Not known	
10	Total demanded 1487.10		
11	Credit given 28 01 2022 at page 190 for surplus year ended 2021: £583.22		
12	Deduct VAT upon service charge sub-total 2 @ £21.38 = £42.76		
13	Credit payments of £729.71 and £483.05 in April 2022 (page 178) = £1212.76		
14	Deduct 213.77 plus 42.75 VAT duplicated management fee = 256.52		
15	Total credits and deductions		

	2095.26		
	Total payable		-608.16

The above calculation shows that for the service charge year ending 31 12 2022 the combination of the requirement to give credit for the surplus from the previous service charge year, the pattern of duplication of charges for management fees and incorrect charges to VAT upon the sub-total of service charges in earlier years (and sums paid in 2022) means that nothing is payable toward the interim demands for 2022 *on the evidence put before the Tribunal*. If anything a credit is due to Mr Causer subject to the final account being taken for this service charge year. That credit may change when the final account for the service charge year ending 31 12 2022 has been prepared.

Flat 10 - service charge year ending 31 12 2019 onwards

52. The service charge demands (invoices) for this Flat are found at pages 195-208. For the reasons given above in relation to Flat 1, the sums claimed for interest, solicitor's letter, preparation of this application and application fee are not the subject of this determination.
53. Paragraph 6 of the Sixth Schedule to each Lease requires the Applicant or its managing agent to prepare and serve upon each Lessee a certificate containing the amount of the Total Expenditure for the accounting period, the amount of the interim charge paid by the Lessee and any surplus carried forward from the previous accounting period and the amount of the service charge for the accounting period and any excess or deficiency over the interim charge. There is no satisfactory evidence that such a certificate was prepared or served. There are print outs of expenditure for 2019 at pages 225 -227 which contain some credits. The document at page 198 is expressed to be a demand for "excess service charge" but is not certified and does not provide details of "Total Expenditure" as paragraph 6 of the Sixth Schedule requires. The figures in the excess demand at page 198 differ substantially from those in the printout at page 225. In the absence of a certificate for the 2019 service charge year, the Tribunal calculates the sums payable account by reference to the heads of expenditure contained in the demands and the printout at page 225 as follows:

	Flat 10 year 2019 interim charge @ 8.1133% pp 195-196 £		£ Amount payable
1	Communal cleaning 908.68		
2	Window cleaning 259.62		
3	Garden maintenance 292.08		
4	Gutters and drains 48.68		
5	Health & safety 126.56		
6	Buildings insurance 625.34		
7	Communal electricity 97.36		
8	General maintenance 162.26		
9	Management fees 486.79		
10	Total demanded 3007.37		
11.	Less duplicated demand for management fee 243.40	2,763.97	
11	75% apportioned for 2019 (6 th Schedule of Lease)	2,072.98	
12	Credit to be given for payments or credits of £32.95, £718.90 and	2,984.94	

	£751.85, £1481.24 paid in 2019 by Lessee (page 193)		
13.	Total credit		-911.96

54. The amount payable by the Lessee of Flat 10 for service charges for the service charge year 01 01 2020 to 31 12 2020 should be reduced or credited by the surplus in accordance with the requirements of paragraph 4 of the Sixth Schedule to the Lease. The amounts claimed in the demands upon the total of service charges for VAT on each of pages 197 and 200 are not payable for the reasons given above. The duplication of management fee and VAT in those demands again must be credited. This produces the following calculation:

	Flat 10 year 2020 interim charge @ 8.1133% pp 197 and 200 £	Final sum/credit @ 8.1133% £	£ Amount payable
1	Communal cleaning 908.68		
2	Window cleaning 129.82		
3	Garden maintenance 292.08		
4	Gutters and drains 61.66		
5	Health & safety 129.82		
6	Buildings insurance 551.7		
7	Communal electricity 97.36		
8	General maintenance 162.26		
9	Management fees 486.80		
10	Sum described as VAT on "above" 97.36		
11	Balancing demand 13 01 2020 242.68 (page 198)		
	Subtotal 3160.22		
12	Deduct 243.40 plus 48.68 VAT duplicated management fee charge		
13	Credit 59.01 (page 199) (13 01 20)		
14.	Credit Tribunal finds due from 2019 £911.96		
15.	Deduct payment 31 03 20 22.46 (page 193)		
	Total deductions and credits	1285.51	
16.	Amount payable		1,874.71

55. The amount payable by the Lessee of Flat 10 for service charges for the service charge year 01 01 2021 to 31 12 2021 should be reduced or credited by the surplus in accordance with the requirements of paragraph 4 of the Sixth Schedule to the Lease. The amounts claimed in the demands upon the total of service charges for VAT at pages 201 and 203 are not payable for the reasons given above. The duplication of management fee and VAT in those demands again must be credited. This produces the following calculation:

	Flat 10 year 2021 interim charge @8.1133% pp 201 and 203 £	Final sum/credit @ 8.1133% £	£ Amount payable
1	Communal cleaning 876.24		

2	Window cleaning 129.82		
3	Garden maintenance 292.08		
4	Gutters and drains 81.14		
5	Health & safety 194.72		
6	Buildings insurance 382.72		
7	Communal electricity 97.36		
8	General maintenance 243.40		
9	Management fees 486.80	2784.28	
10	Balancing demand 28 05 2021 358.09 (page 202)		
	Total demanded 3142.37		
11	Deduct 243.40 duplicated management fee		
13	Amount payable		2,898.97

- 56 There is very little evidence in the hearing bundle which has a bearing upon the landlord's agent's decision to make the interim charges for the 2022 service charge year or whether that process was consistent with the requirement to demand a fair and reasonable interim payment in paragraph 4 of the Sixth Schedule. The first interim payment appears to have been demanded on 22 12 2021 at page 205. Presumably the financial information about service charge expenditure during 2021 itemised at pages 325-326 was available at that date. That shows a total expenditure of £8973.58. This compares with total expenditure of £21,793.57 for the 2020 service charge year itemised at pages 273-275. It is to be inferred that the earlier practice of duplication of charges for management fees, VAT and VAT on the total of estimated costs would have featured as part of the calculation of that year's service charge. The Tribunal infers the most likely explanation for the relatively large credit to service charge account of £664.09 in the credit note dated 28 January 2022 at page 206 is that actual expenditure during 2021 was comparatively modest.

	Flat 10 year 2022 interim charge @ 8.1133% (page 205 and 208) £	Final sum/credit @ 8.1133% £	£ Amount payable
1	Communal cleaning Not known	Not known	
2	Window cleaning Not known	Not known	
3	Garden maintenance Not known	Not known	
4	Gutters and drains Not known	Not known	
5	Health & safety Not known	Not known	
6	Buildings insurance Not known	Not known	
7	Communal electricity Not known	Not known	
8	General maintenance Not known	Not known	
9	Management fees Not known	Not known	
10	Total demanded 1693.24		
11	Credit given 28 01 2022 at page 190 for surplus year ended 31 12 2021: £664.09 (page 206)		
12	Deduct sum described as VAT upon service charge assumed to be at the rate, as it was in demands at pages 201 and 203 2 @ 24.34 = £48.68		

13	Deduct 243.40 plus 48.67 VAT duplicated management fee = 292.08		
15	Total credits and deductions	1004.85	
	Total payable		688.39

57. The above calculation assumes, the pattern of duplication of charges for management fees and incorrect charges to VAT upon the sub-total of service charges in earlier years (and sums paid in 2022) would have continued. A calculation has been made to deduct the estimated amount of VAT which would have been included. The sums payable may change when the final account for the service charge year ending 31 12 2022 has been prepared and demands based upon that account are available. The absence of evidence produced by the Applicant or its agent about how the interim demands for 2022 were calculated, or information about this in the Particulars of Claim means the Tribunal has had to do the best it can on the available evidence.

Flat 11 - service charge year ending 31 12 2019 onwards

- 58 The service charge demands (invoices) for this Flat are found at pages 210-224. For the reasons given above in relation to Flat 1, the sums claimed for interest, solicitor's letter, preparation of this application and application fee are not the subject of this determination.
- 59 Paragraph 6 of the Sixth Schedule to each Lease requires the Applicant or its managing agent to prepare and serve upon each Lessee a certificate containing the amount of the Total Expenditure for the accounting period, the amount of the interim charge paid by the Lessee and any surplus carried forward from the previous accounting period and the amount of the service charge for the accounting period and any excess or deficiency over the interim charge. There is no satisfactory evidence that such a certificate was prepared or served. There are print outs of expenditure for 2019 at pages 225 -227 which contain some credits. The document at page 214 is expressed to be a demand for "excess service charge" but is not certified and does not provide details of "Total Expenditure" as paragraph 6 of the Sixth Schedule requires. The figures in the excess demand at page 214 differ substantially from those in the printout at page 225. In the absence of a certificate for the 2019 service charge year, the Tribunal calculates the sums payable account by reference to the heads of expenditure contained in the demands and the printout at page 225 as follows:

	Flat 11 year 2019 interim charge @ 5.5735% pp 211-212 £		£ Amount payable
1	Communal cleaning 624.24		
2	Window cleaning 178.36		
3	Garden maintenance 200.64		
4	Gutters and drains 33.44		
5	Health & safety 86.94		
6	Buildings insurance 429.58		
7	Communal electricity 66.88		
8	General maintenance 111.48		
9	Management fees 334.42		
10	Total demanded 2068.68		
11.	Less duplicated demand for management fee 167.21	1,901.47	

11	62.73% apportioned for 2019 (6 th Schedule of Lease)	1192.79	
12	Credit to be given for 2 payments of £516.50 paid on 22 08 2019 and 20 11 2019 by Lessee (page 209)		
13.	Total payable		159.79

60. The amount payable by the Lessee of Flat 11 for service charges for the service charge year 01 01 2020 to 31 12 2020 should be reduced or credited by the surplus in accordance with the requirements of paragraph 4 of the Sixth Schedule to the Lease. The amounts claimed in the demands upon the total of service charges for VAT at pages 213 and 216 are not payable for the reasons given above. The duplication of management fee and VAT in those demands again must be credited. This produces the following calculation:

	Flat 11 year 2020 interim charge @ @ 5.5735% pp 213 and 216 £	Final sum/credit @ 5.5735% £	£ Amount payable
1	Communal cleaning 624.24		
2	Window cleaning 89.18		
3	Garden maintenance 200.64		
4	Gutters and drains 42.36		
5	Health & safety 89.81		
6	Buildings insurance 379.00		
7	Communal electricity 66.88		
8	General maintenance 111.48		
9	Management fees 334.42		
10	Sum described as VAT on "above" 66.88	2004.86	
11	Balancing demand 13 01 2020 166.71 (page 214)	2171.57	
12	Deduct 167.21 plus 33.44 VAT duplicated management fee charge		
13	Credit 573.90 (page 215) (13 01 20)		
	Total deductions and credits	774.55	
14.	Amount payable		1,397.02

61. The amount payable by the Lessee of Flat 11 for service charges for the service charge year 01 01 2021 to 31 12 2021 should be reduced or credited by the surplus in accordance with the requirements of paragraph 4 of the Sixth Schedule to the Lease. The amounts claimed in the demands upon the total of service charges for VAT at pages 201 and 203 are not payable for the reasons given above. The duplication of management fee and VAT in those demands again must be credited. This produces the following calculation:

	Flat 11 year 2021 interim charge @5.5735% pp 217 and 219 £	Final sum/credit @5.5735% £	£ Amount payable
1	Communal cleaning 601.94		
2	Window cleaning 89.18		
3	Garden maintenance 200.64		
4	Gutters and drains 55.74		
5	Health & safety 133.76		
6	Buildings insurance 262.92		
7	Communal electricity 66.88		
8	General maintenance 167.20		
9	Management fees 334.42		
10	VAT on management fee 66,88		
11	Balancing demand 28 05 2021 246.00 (page 218)		
	Total demanded	2158.68	
12	Deduct 200.65 duplicated management fee (including VAT)		
13	Amount payable		1,958.03

62. There is very little evidence in the hearing bundle which has a bearing upon the landlord's agent's decision to make the interim charges for the 2022 service charge year for Flat 11 or whether that process was consistent with the requirement to demand a fair and reasonable interim payment in paragraph 4 of the Sixth Schedule. The first interim payment appears to have been demanded on 22 12 2021 at page 221. Presumably the financial information about service charge expenditure during 2021 itemised at pages 325-326 was available at that date. That shows a total expenditure of £8973.58. This compares with total expenditure of £21,793.57 for the 2020 service charge year itemised at pages 273-275. It is to be inferred that the earlier practice of duplication of charges for management fees, VAT and VAT on the total of estimated costs would have featured as part of the calculation of that year's service charge. The Tribunal infers the most likely explanation for the relatively large credit to service charge account of £456.20 in the credit note dated 28 January 2022 at page 222 is that actual expenditure during 2021 was comparatively modest.

	Flat 11 year 2022 interim charge @ 5.5735% (page 221 and 224) £	Final sum/credit @5.5735% £	£ Amount payable
1	Communal cleaning Not known	Not known	
2	Window cleaning Not known	Not known	
3	Garden maintenance Not known	Not known	
4	Gutters and drains Not known	Not known	
5	Health & safety Not known	Not known	
6	Buildings insurance Not known	Not known	
7	Communal electricity Not known	Not known	
8	General maintenance Not known	Not known	
9	Management fees Not known	Not known	
10	Total demanded 1163.18		

11	Credit given 28 01 2022 at page 222 for surplus year ended 31 12 2021: £456.20		
12	Deduct sums described as VAT upon service charge assumed to have been included in figure of £1163.18 as it was in pages 217 and 219 : 2 @ 16.72 = 33.44		
13	Deduct 167.21 plus 33.44 VAT duplicated management fee = 292.08		
15	Total credits and deductions	781.72	
	Total payable		381.46

63. The above calculation assumes the pattern of duplication of charges for management fees and incorrect charges to VAT upon the sub-total of service charges in earlier years (and sums paid in 2022) would have continued. A calculation has been made to deduct the estimated amount of VAT which would have been included. The sums payable may change when the final account for the service charge year ending 31 12 2022 has been prepared and demands based upon that account are available. The absence of evidence produced by the Applicant or its agent about how the interim demands for 2022 were calculated, or information about this in the Particulars of Claim means the Tribunal has had to do the best it can on the available evidence.

Reimbursement of fees

64. The Applicant asks for reimbursement of fees in cost document at page 346 and in its invoices (demands) sent to each of the Respondent lessees. It is neither just nor equitable that such an order be made. The Applicant has not been successful in significant parts of its claim. The “Particulars of Claim” and accompanying documents have not explained its case as clearly as would be expected from managing agents and as the Tribunal’s directions required. The Tribunal has not been shown evidence of attempts to resolve differences about service charge calculations with the lessees by way of alternative dispute resolution.

H Lederman

Tribunal Judge

29 11 2022

RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
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 identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.