



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

Case reference : CHI/24UH/LIS/2021/0048

Property : Flat 11 Bembridge House, Bembridge Drive, Hayling Island PO11 9LU

Applicant : L C Webb & Son (Builders) Limited

Representative : Kiteleys Solicitors

Respondent : Mr Stuart Robert Wakley and Michelle Wakley

Representative :

Type of application : Transferred Proceedings from Portsmouth County Court in relation to service charges

Tribunal member(s) : Judge J Dobson
Mr K Ridgeway MRICS

Date of decision : 13th April 2022

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be the date this decision is sent to you.

Summary of the Decision of the Tribunal

1. **The Applicant's service charges of £2013.40 demanded for the period March 2019 to September 2020 are payable and reasonable.**

Summary of the Decision of the County Court

2. **Judgement is awarded in favour of the Applicant in the sum of £2013.40 plus interest of £100.27.**
3. **The Respondents do pay the court fee of £115. There is no other order as to costs.**
4. **The Respondents is ordered to pay to the Applicant the total sum of £2228.67 by 30th April 2022.**

Procedural Background

5. On 3rd May 2021, the Applicant lessor filed a money claim in the County Court under Claim No. H28YX326 in respect of unpaid service charges. The claim related to a flat, Flat 11, ("the Flat") within the building named Bembridge House, Bembridge Drive, Hayling Island PO11 9LU ("the Building"). The Applicant stated that the Lease was relied upon, although no provisions were set out.
6. The Respondents filed a Defence in brief terms dated 16th March 2021, denying that the services for which charges had been demanded had been provided and making more specific reference to asserted lack of cleaning or maintenance to the balcony and lack of provision of parking permits.
7. The proceedings were transferred to the Tribunal by District Judge Emerson by order dated 15th September 2021.
8. The Tribunal gave Directions first on 11th October 2021, explaining the nature of the Court and Tribunal jurisdictions and giving directions to a final hearing, listed for November 2021. Payment of the hearing fee was not made, with consequent delays and further Directions being given. Additional issues arose, producing more delays. The fault for those delays lay on the Applicant's side. The case was subsequently re-listed on 14th March 2022.
9. In light of the nature of the Defence, the Tribunal was required to make a determination as to the Respondents liability to pay and the reasonableness of service charges.

10. The Tribunal Judge would then decide, sitting as a Judge of the County Court, whether any service charge sums were owed to the Applicant, and would further decide whether the Respondent succeeded in respect of his counterclaim.

The Lease

11. The Tribunal was provided with a copy of the lease for the Flat (“the Lease”). The Lease, dated 7th April 1971, is for a term of ninety- nine years commencing 25th March 1968, granted in consideration of, amongst other matters, compliance by the Respondents with the covenants.

12. The relevant parts of the Lease provide the following various matters.

13. The Lease is granted for the term together the right to pass over a roadway shown on the plan to the Lease and, more significantly in clause 1 (vii) as follows:

to use for temporary parking of one motor vehicle such part of the parking areas as the Applicant may allocate).

14. The Applicant is granted the right to re- enter if any covenant on the part of the Respondents is not performed. At paragraph 1 (d) of the Second Schedule to the Lease, the Lessee agreed to pay:

“all costs charges and expenses (including solicitors costs and surveyors fees) incurred by the Lessor in or in contemplation of proceedings under Section 146 and 147 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court”.

15. The Respondents covenanted in paragraph 1 (f) (vii) of the First Schedule as follows:

“To keep the Demised Premises including all glass and the landlords fixtures and fittings and all walls party walls windows ceilings floor surfaces above the structural slabs in good and substantial repair and condition including the renewal or replacement of any worn-out or damaged parts.....”

16. The Applicant covenanted in the Third Schedule to address repair and maintenance of the Building generally, as follows:

“(b) That (subject to contribution and payment as hereinafter provided) the Lessor will maintain in good order repair and condition and renew where necessary

(i) the main structure and in particular (but without prejudice to the generality of this covenant) the foundations and roof gutters and rainwater pipes of the Building

(ii)

(iii) the main entrances staircases roads paths grounds walls party walls party structures fences and other conveniences and amenities of the Building so

enjoyed and used by the Lessee in common as aforesaid until such time as any part of the same may be taken over by the Local Authority

(c) That (subject as aforesaid) the Lessor will so far as practicable keep clean and reasonably lighted the main entrances staircases and other common parts of the Building and will keep the roads and pathways serving the Building in good order and condition

(d) That (subject as aforesaid) the Lessor will so often as reasonably necessary decorate the exterior of the Building and the common parts of the interior thereof and in particular (but without prejudice to the generality of this covenant) will paint oil varnish or distemper the exterior parts of the Building usually painted oiled varnished or distempered with two coats at least of good oil paint varnish or distemper at least once every three years and the common parts of the interior at least every five years and further will provide and maintain as and when necessary suitable furnishing in the entrance hall and on the staircase of the Building”

17. In the Sixth Schedule the Respondents agreed, amongst other matters as follows:

“Maintenance Payments

In addition to the yearly rent above mentioned the Lessee as a separate covenant hereby covenants to pay to the Lessor on the twenty fifth day of March in each year of the said term by way of maintenance payments one ninth part of the expense properly and reasonably incurred by the Lessor during the twelve months period ending on the twenty fifth day of December..... In respect of the matters mentioned contained or referred to in sub-clauses (i) and (v) of the Schedule of Expenses hereunder set out.....”

18. The Schedule of Expenses follows and contains the following:

- “(i) The costs of an incidental to the observance and performance of the covenants on the part of the Lessor contained in (a) (b) (c) and (d) of the Third Schedule hereto
- (ii) all rates, taxes.....
- (iii)
- (iv) All sums actually expended or liabilities incurred by the Lessor in connection with the management and maintenance of the Building and the common parts hereinbefore mentioned and the said roads paths and grounds serving the Building and all fees charges expenses and commission payable to any solicitor accountant valuer architect or agent whom the Lessor may from time to time employ for such purpose
- (v) The cost of carrying out other work or providing services of any kind whatsoever the Lessor may from time to time consider desirable for the purpose of managing and maintaining the Building or the services in or under the Building in the interests of the Lessees thereof”

19. No submissions were made as to whether the first words of paragraphs (b) and (c) created a condition precedent such that the Applicant was only obliged to undertake the tasks where the service charges had been paid. No part of the case turned on construction of that provision.

20. The Lease is to be construed applying the basic principles of construction of such leases as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to “what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean”, to quote Lord Hoffmann in *Chartbrook Ltd v Persimmon Homes Ltd* [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party’s intentions.

21. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

“the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in *Chartbrook* [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision.”

The factual background to the dispute and the Property/ Building

22. The Applicant is the company which originally built the Building and those adjoining. It is the original lessor and has retained freehold ownership since that time.
23. The Respondents became the lessees of the Flat on 30th July 2004, with their title being registered later in the year. The Respondents also hold the long lease of another flat in the Building, Flat 9. Both of those flats are tenanted, the Respondents living elsewhere. Whilst some limited mention was made of Flat 9 in evidence, matters relating to that flat form no part of this case.
24. The Building comprises four storeys. The ground floor consists of commercial premises. There are three floors of flats above, with three flats on each floor. The Building is on a corner and had a curved façade. For the avoidance of doubt, the above is not only the Building as termed in this Decision but is the Building as defined at paragraph (i) of the preamble to the Lease.

25. There are three- storey buildings, also owned by the Applicant, to either side. That on Rails Lane includes a ground floor comprising commercial units and two floors of flats above. The building to the other side of the Building, on Bembridge Drive, is entirely residential, being three floors of flats. Mr Webb explained, and it was not disputed, that those other two buildings are separately charged service charges, with therefore no contribution from the Respondent. There is however a split in respect of the charges for the parking area.
26. The Applicant used to own Bembridge Drive itself (and roads off it) but ceased to do so in 2014.
27. The Applicant has demanded payment of the one-ninth part of the relevant expenses by way of service charges from the Respondents six- monthly from 25th March 2019 onward (leaving aside earlier sums not forming part of this case). The Respondents paid £691.00 on 18th January 2021, equating to one of the two demands served in 2020.

The Hearing

28. Judge Dobson sat at Havant Justice Centre. The other participants, including Mr Ridgeway, the surveyor member of the Tribunal, attended remotely by video.
29. The Applicant was represented by Mr Adrian Randall, a Legal Executive employed by the Applicant's representative. Mr Wakley, one of the Respondents, represented the Respondents. Oral evidence on behalf of the Applicant was given by Mr Stephen Webb and on behalf of the Respondents by Mr Wakley. Written witness statements had been served from each.
30. The longest witness statement on behalf of the Applicant was, however, given by Mr Randall. Consequently, an issue arose as to his position as a witness of fact at a final hearing, who would be cross- examined on the facts stated within his statement- insofar as he had any direct knowledge of them- as compared to his intended role as an advocate as a legal professional. Whilst it is not uncommon for lay persons to be their own witness and represent themselves, that does not apply to lawyers whose role is to professionally represent their clients.
31. In the particular event, Mr Webb indicated that he had prepared that longest statement and would have signed it, but for reasons that he could not. That may explain a number of comments in the statements which suggest matters done by Mr Randall where sensibly they could not have been. Mr Webb was able to confirm the accuracy of the statement. In the circumstances, he did so and the statement was treated as his, such that he could be questioned about it and there was no need for Mr Randall to give oral witness evidence with the complications which would have arisen from that. Whilst a simple and pragmatic solution was possible on this

occasion and agreed to by the parties, it by no means follows that the same would be possible on another occasion.

32. As Mr Randall stated that a shorter and earlier statement prepared by him added nothing, the Tribunal put the contents of that out of its mind and makes no reference to those contents.
33. Judge Dobson explained to the parties the elements within the jurisdiction of the Tribunal, to be determined by both Tribunal members together, and the elements within the jurisdiction of the Court, to be determined by the Judge alone exercising his County Court jurisdiction.

The Case before the Tribunal

The Tribunal's jurisdiction

34. The Tribunal has power under section 27A of the Landlord and Tenant Act 1985 ("the Act") to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a lessee to a lessor for the costs of services, repairs, maintenance or insurance and the lessor's costs of management, under the terms of the Lease and which vary according to such costs- section 18 of the Act.
35. The Tribunal can decide by whom, to whom, how much and when a service charge is payable. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. Where service charges are payable in advance, no greater amount than is reasonable is payable (section 19(2)).
36. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.
37. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.
38. It is well established that a lessee's challenge to the reasonableness of a service charge must be based on some evidence that the charge is unreasonable. The burden is on the landlord to prove reasonableness, but

the tenant cannot simply put the landlord to proof of its case. Rather the lessee must produce some evidence of unreasonableness before the lessor can be required to prove reasonableness (see for example *Schilling v Canary Riverside Development Ptd Limited* [2005] EW Lands LRX 26 2005).

39. In *Knapper v Francis* [2017] UKUT 003 (LC) it was held that where service charges demanded were demanded on account, the question is whether those demands were reasonable in the circumstances which existed at that date.
40. The Tribunal is entitled to consider any breach of covenant on the part of the lessor and the amount of any award which ought to be made to a lessee arising from that. The Tribunal is entitled in determining the service charges payable whether any sum should be off- set in consequence of any breach by the lessor. The Court has jurisdiction in respect of defences of set-off and in respect of counterclaims. However, that does not preclude the Tribunal's above entitlement.

Payability of the Service charge

41. There are obligations on the Respondents to pay service charges and there are obligations on the Applicant in respect of, amongst other things, repairs and maintenance, cleanliness and otherwise as usual, to which cost the charges contribute. Whilst the Sixth Schedule is set out not quite in the usual manner, the effect is as might normally be expected.
42. The Tribunal was mindful that the Respondent had not specifically raised an issue as to the Applicant's compliance with the Lease in relation to the service charges demanded. Absent any challenge on the part of the Respondents, the Tribunal does not take a point on compliance.
43. However, the Tribunal observes that if an issue had been raised, there may have been issues requiring consideration. The Lease provides for payment by the lessee of one-ninth of the expenditure incurred in the preceding year to 25th December. That requires the expenditure in the preceding year to be identified and provided to the lessee in advance of 25th March. It of course also requires the lessor to know the expenditure in that preceding year to 25th December, such that the lessor can prepare demands on account for the following year which reflect that previous year's expenditure. It is not apparent when accounts for any given year were prepared- indeed no accounts were provided in the bundle for 2019- albeit that the figures for 2019, the preceding year, are set out in the accounts for 2020 in the usual way. If the information were not known sufficiently in advance of 25th March, the lessor could not produce on account demands for the next year on the required basis. Equally, if the first information is provided to the lessee in a demand dated 25th March and then posted out, compliance by the lessee with the required payment date, the date of the demand itself, would seem impossible.

44. In addition, the Lease makes no identifiable provision for demands in both March and September, much as that appears to be the Applicant's established practice. It may be convenient for all parties, including the lessees finding the funds for two smaller payments rather than one large one, but may equally be open to challenge.
45. The Respondent did raise a number of points relevant to whether the service charges as a whole were reasonable. Those included assertions that the Respondent's Flat had suffered effects because of breach of obligations by the Applicant. It should be recorded that it was not wholly clear to what extent those breaches were said to occur during the period of the service charges the basis of the claim.
46. The Respondents did not raise any challenges to the amount of individual elements of the service charge and the costs which they were raised to meet. It was not suggested that any sums were unreasonable.

Challenges raised in the Defence and witness statement

47. The first challenge made in Mr Wakley's witness statement related to problems asserted with the cladding to the front of the Building and asserted leaks and continuous damp. It was said that the Applicant had resealed some of the cladding but not that in front of the Flat. The Applicant said that the cladding had been fitted in 1997, which predated the Respondent's leases and the resealing took place in 2020 following a report of problems by the occupier of Flat 10 in summer 2020.
48. The witness evidence indicated that the cost would be shown in the 2021 accounts. The Tribunal understands that the service charges which have been raised were not demanded in the 2019 or 2020 on- account demands which form the basis of this claim, at which time the expenditure on re-sealing the cladding was not envisaged. However, if that is not correct, nothing turns on it in the event.
49. It was common ground that there had been some damp within the Flat. The Applicant obtained the report of a surveyor, Mr Neil Hawkins of Chandler Hawkins, in 2014. That report dealt with both Flat 10 and the Flat.
50. It was put to Mr Wakley by Mr Randall that the report stated that the windows in the Flat were subject to substandard fitting. It did not.
51. Mr Webb had also asserted, at some length, the windows to the Flat to have been fitted such that the sealant application may have been deficient. The Tribunal found that he did so with no evidence that it was.
52. Mr Wakley asserted that water had penetrated into the Flat where cladding had split and referred to sealing of cladding outside Flat 10. However, he conceded in response to cross-examination that there being cracks was an

assumption on his part. The Tribunal found no evidence had been presented which demonstrated such cracks.

53. Mr Webb also stated that the wall ties between the two layers of brick to the external walls were butterfly ties- and so with a twist to ensure that water runs off rather than tracking to the internal face. The Tribunal accepted from its experience that ties of that nature are usual and for the reason Mr Webb gave. The Tribunal accepted his evidence in that regard.
54. Mr Hawkins did express his opinion that there was mould and staining to wall finishes in the bedrooms of the Flat consistent with condensation. He noted that the Flat was being refurbished and advised dry lining walls, introducing heating into each room and fitting mechanical extractors to the kitchen and bathroom.
55. Mr Wakley stated that the work suggested by the surveyor had been undertaken by him. He also accepted that there was no ongoing issue.
56. The Tribunal found two matters relevant from that. Firstly, the fact of a lack of ongoing issues since the suggested works indicated on the balance of probabilities that the cause of the damp problems was that identified by the surveyor, and so internal not external. There was, the Tribunal found, no support for the damp having been caused by leaks from the front cladding, which cladding was apparently not attended to (and equally, albeit not directly relevant, no evidence that it was caused by the windows).
57. Secondly, the Tribunal found that any damp inside the Flat occurred several years ago and certainly not on the evidence presented from March 2019 onward. Consequently, the Tribunal would have been unlikely at first blush to have reduced the payable service charges from March 2019 onward in any event. In the circumstances, it is unnecessary to address that potential point further.
58. The Respondents failed to demonstrate any damp arose from breach of any obligation placed on the Applicant. Therefore, the Tribunal found there to be no sums to offset against the service charges in respect of such damp. The Tribunal also found that insofar as there was work undertaken to the cladding and that service charges claimed arose from that, such service charges were reasonable.
59. With regard to the painting of the balcony, the Tribunal understood from the evidence that to mean the painting of the rail. The Respondents' case as expanded on by Mr Wakley in oral evidence was that the rail had not been painted on one occasion in or about 2018 but had been painted on a more recent occasion, albeit that Mr Wakley considered that paint was simply applied on top of the existing surface and that the surface ought to have been dealt with first. The latter was a challenge to whether the work had been undertaken to a reasonable standard.

60. The Applicant's case was that the rail to the balcony parapet wall had been painted in October 2019 and then in June 2021. The need for painting to be undertaken twice in relatively quick succession was not explained. The Tribunal found that the work had been undertaken in 2019 rather than in 2018, preferring the evidence of Mr Webb. The Tribunal was mindful of the Applicant having received an invoice for the works, whereas Mr Wakley had not been charged directly and was, the Tribunal considered, less likely to remember the date accurately.
61. The painting in 2021 had been the subject of service charges demanded and claimed in these proceedings- which were for 2019 and 2020- and so that any inadequacy of painting in 2021 would render any of the relevant 2019 and 2020 service charges unreasonable. In any event, no photographic or other evidence was provided to the Tribunal demonstrating any inadequacy in the work undertaken.
62. With regard to the earlier painting of the rail asserted by the Applicant and denied by the Respondents, there is direct contradiction between the two sets of evidence. It was noted by the Tribunal that neither Mr Webb or Mr Wakley reside in the Building and that neither demonstrated any first-hand knowledge of the painting undertaken. The Applicant did not rely on any invoices received from the painting contractor in support of the work which was undertaken or how that had been charged for.
63. Neither it should be said, and quite surprisingly, did it rely on invoices from any other contractor by which services were provided and which were charged for by way of service charges and which might support the reasonableness of the service charges demanded on account and on which the claim is founded.
64. The Tribunal accepts that the charges were on account and that necessarily the actual level of expenditure for the given year was not known at the time of the on- account demands. However, some charges were regular ones, where the charges in a given year (up to 25th December) were the basis for the on account demands in the subsequent year, as provided for the Sixth Schedule to the Lease. Evidence of the expenses in the previous year on which the on- account demands had been basis would usually be presented.
65. Nevertheless, the Respondents' case was not that the level of any charges for services provided was unreasonable but rather that the services had not been provided at all or that the Respondent had suffered effects. In relation to the painting work, the Respondents complained that they, in particular, had not been provided with the service, rather than that the charge was not a reasonable one in itself or that more generally the painting had not been undertaken. The challenge stood or fell on whether the part of the balcony rail outside the Flat had been painted and to a reasonable standard.
66. The Tribunal considered that visually the effect would be odd if the balcony parapet wall rail were painted save for the portion outside the Flat. The

difference visually would affect all lessees not just the Respondents. There were no photographs produced in evidence by the Respondents to show the remainder of the rail painted but that outside of their Flat not painted.

67. The Tribunal found there to be a lack of evidence to support the Respondents' case that painting of the relevant portion of the balcony rail had not taken place, albeit a lack of evidence either way, and on balance determined that there was no sufficiently cogent evidence on which the Tribunal could find that the work was not undertaken. There was a similar lack of evidence of the standard of the work, so that Tribunal could not find the work to have been undertaken to below a reasonable standard. Consequently, the Tribunal found the service charges for that aspect to be reasonable.
68. In relation to the assertion that the cleaner does not sweep the Respondents' portion of the walkway, as described, having been told not to, the Tribunal found the lack of payment of the service charges by the Respondents did not entitle the Applicant to cease to provide services- see above with regard to condition precedents. Consequently, if the Tribunal found in favour of the Respondent on the point, the Tribunal considered that the element of the service charge that related to cleaning ought to be reduced to an extent, albeit a modest one.
69. However, the evidence of Mr Wakley relied on what his tenant said the cleaner said the Applicant said. The evidence was a long way from Mr Wakley having any direct knowledge. The Tribunal did not preclude the possibility of the position being correct, noting amongst other matters the approach to parking permits referred to below. Nevertheless, the Tribunal found there to be insufficient cogent evidence for the Tribunal to conclude on the balance of probabilities that the cleaner had not swept the walkways to at least a sufficient extent and so for the Respondents' case on the point to succeed. That is despite the Applicant also relying on what the cleaner is said to have said, rather than having obtained a short statement directly from him. The Tribunal found the service charges for that aspect to be reasonable
70. Mr Wakley also complained about the condition of a staircase used by the Respondents' tenants to access the Flat. It was established that the stairs to which Mr Wakley referred are within the building to the side of the Building and in Rails Lane. They do not form part of the Building.
71. The service charges demanded are for the Building and not any adjoining or other one. Hence, no part of the service charges related to cleaning those stairs and no lack of reasonableness of service charges for the Building can be founded on work undertaken and charged to others in relation to a different building. In addition, whilst it is apparent that the Flat can be accessed using, in part, that staircase, the rights granted to the Respondents in the Lease relate to access in respect of the Building and not another adjoining one.

72. In respect of the Respondents' point about parking permits, the Tribunal found there to be no reference to such in the Lease. No obligation is set out for the Applicant to provide such permits. The Lease has not been varied in writing and by deed to impose any such obligation. It was apparent from the evidence given that there is much greater presence of motor vehicles than was envisaged in 1971, now a considerable time ago. It is not possible in any way to construe the Lease as requiring provision by the Applicant of such permits for parking on the private road Bembridge Drive or otherwise around the Building- nor it is therefore necessary to determine whether such construction should be adopted.
73. The Tribunal therefore found no breach by the Applicant in relation to which the Respondents were entitled to any sum to be offset against the service charges claim. The Tribunal found no aspect of the service charges to be unreasonable because of any absence of provision of the permits.
74. The Tribunal was concerned that whilst it was common ground that work had been undertaken to the parking area to improve that and to improve parking in the area, explained in some detail in written evidence, Mr Webb appeared to consider that he was unable to address the parking problem in any formal manner and take firmer action to avoid the use by occupiers of the Building and attached buildings of more than one parking space in the parking area each. The Tribunal considers that the rights, at least of residential lessees and on the footing that their leases contain the same provision as that of the Respondents, are clear and the limits on use of the parking spaces by such lessees are clear.
75. If the Lease had been intended to state that the Respondents' right to park in the parking area was limited to a space allocated by the Applicant, no such area had been allocated. If the Lease was intended not to refer to a specific space but simply the parking area more generally, which the Tribunal considers to be the correct construction, the grant of a right to park in the parking area carried with it nothing else. There was no obligation imposed on the Applicant to ensure that a parking space was available as and when the Respondents (or a tenant of the Respondents) wished to use one. As Mr Webb said in oral evidence, the ability to park in a space is on a first come first served basis.
76. Consequently, the Tribunal considered that issues in respect of parking permits and parking provided the Respondents with no answer to the service charges demanded being payable and reasonable. That is notwithstanding that the Tribunal was not impressed by the apparent acceptance by Mr Webb that a parking permit had been withheld from the Respondent because of this dispute. In addition, the Tribunal noted that the service charges payable in respect of Flat 10 include £3.00 per year in relation to the overall cost of maintenance of Bembridge Drive but considers that is a contribution related to the right to pass over the relevant land provided for in the Lease.
77. The other matter raised by the Respondents in the statement of Mr Wakley in respect of which no cross examination occurred was that the bins areas

were in an over-flowing condition and could not be used. That was coupled with an assertion that the shop owners leave cooking oil and rubbish.

78. It was additionally suggested that fumes from cooking blow into the Flat when the doors are open, but no claim was made in nuisance, no specific breach of covenant was identified and no impact on the Respondents was explained. No evidence was called in relation to that or any other matter from the Respondents' tenant. If the Respondents may have had any cause of action, the basis of which they did not explain, the Tribunal found there to be nowhere near sufficient evidence to support that.
79. In relation to the bins, the Tribunal found as a fact that they did become over-flowing and that rubbish was left around and about them. The evidence of Mr Wakley and the lack of challenge to it in cross-examination was such that no other conclusion could properly be reached on the evidence presented. However, in a similar vein, the written evidence of the Applicant was that the cleaner attends each Monday and that refuse not collected by the local council is dealt with by the cleaner or a contractor. The Respondents did not challenge that.
80. The Tribunal accepted that a service was provided, which on the evidence was reasonable. There was no challenge to the cost and the contribution to that by the service charges demanded.

Additional matters raised at the hearing

81. Mr Wakley introduced a new challenge in cross-examination of Mr Webb, namely that repair to the asphalt to the balcony outside the Flat and the other flats to the same floor was caused by jet-washing of the balcony by the tenant of Flat 10. Mr Webb's response was that the damage was caused by divots caused by a bench having been placed on the balcony. The point was not pursued further by Mr Wakley.
82. The Tribunal received no evidence or submission as to whether the repair cost ought to have been charged to whoever placed the bench on the asphalt and otherwise whether it was an appropriate charge through service charges. Mr Wakley did not indeed indicate whether or not he accepted that as the cause of the damage. There was no witness evidence on behalf of the Respondents in respect of the balcony asphalt.
83. In any event, Mr Webb's oral evidence was that the repair was undertaken in 2021, which Mr Wakley did not dispute. It was not apparent that the repair formed part of the costs charged by way of the 2019 and 2020 service charges and no evidence was advanced that it did.
84. Taking the above matters, the Tribunal found no basis for finding any of the service charges unreasonable arising from repair of the asphalt.
85. The only other issues raised were firstly that there is, Mr Wakley said, no cladding to the side wall of Flat 9, the other flat of which the Respondents are the lessees. However, the service charges related to the Flat, so Flat 11,

and not to Flat 9 and where the wall not having been clad meant that there had been no costs for such work then charged as service charges. The Tribunal considered there to be no relevance to the reasonableness of the actual service charges demanded.

86. Secondly and in a similar vein, Mr Wakley queried cladding to the adjoining building in Bembridge Drive but where no service charges for the Building can relate to such expenditure. There was no suggestion made that the Respondents had wrongly been charged service charges for any part of the costs of such works. Hence there was nothing to indicate the actual service charges were unreasonable. Mr Wakley's point was that, he said, expenditure was on other buildings and not the Building, which was being neglected. However, the Tribunal found no evidence of that being correct and in any event of it being relevant to the sums claimed.
87. No other written or oral witness evidence was advanced by the Respondents in respect of general lack of provision of services for which service charges had been rendered, as briefly suggested in the Defence. The Tribunal did not therefore consider there was any evidence on which it could determine the lack of reasonableness of any other element of the service charges.
88. The Respondents' difficulties were firstly that they did not identify which covenant the Applicant was thereby in breach of and secondly that there was no evidence of any impact on the Respondents' who do not live at the Flat and demonstrated no financial loss. There was nothing to demonstrate the actual costs incurred by the Applicant to be other than reasonable. The effect was that the Tribunal determined that no sum could properly be set-off against the service charges arising from the finding of fact made.
89. For completeness, the Tribunal touches on an assertion by Mr Wakley that the account documents were confusing, in response to which Mr Webb said that he was happy everything was reconciled. It was suggested there may be a lack of clarity from when managing agents dealt with such matters and funds were transferred to the Applicant. Accounting matters generally fall outside of the question of reasonableness of service charges, save for example they may in appropriate circumstances be relevant where sums held and anticipated expenditure affect the reasonableness of demanding further funds. Nevertheless, the Tribunal was content that the statements of account and related were amply clear.
90. Finally, in terms of specific points raised, Mr Wakley stated during a question asked by him in cross-examining Mr Webb that demands had been sent to an incorrect address. He expanded on the matter to an extent when questioned by Mr Randall. Mr Wakley also appeared when questioning Mr Webb to suggest that some correspondence may have been sent to the Flat. The Tribunal noted that 2019 demands were sent to a different address to those in 2020, which is the Respondents current address.

91. Mr Wakley stated in evidence that the Applicant was made aware of the change of address, the indication being that was earlier than between the September 2019 and March 2020 demands. Mr Wakley said that at a mediation in 2018, he told the mediator of the change of address and that the mediator said he would inform the Applicant. Mr Wakley did not know whether the mediator did so. That particular point had not been put to Mr Webb and so he had been unable to provide any answer.
92. The Tribunal determined that as it was unclear whether Mr Wakley sought to raise a point. However, he certainly had not explicitly done so, no mention of the issue being made in the written case or in closing and hence no decision ought to be made in respect of any issue which might potentially have arisen.

Other matters

93. No application was made by the Respondents to prevent costs of the litigation, if any, being recoverable as service charges and/or administration charges, in the event that such recovery would otherwise be permitted pursuant to the Lease and applying section 20C of the Act and paragraph 5 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002. The Tribunal did not therefore address that potential matter.
94. The Tribunal concludes by observing that whilst the Respondents have not sufficiently demonstrated any service charges to be unreasonable or there to be any breaches of covenant by the Applicant, the Tribunal was left with the impression that there may have been a degree of unsatisfactory reaction from the Applicant to the failure to pay service charges by the Respondents. Further that more could be done to resolve problems arising in the parking and communal areas behind the Building. Equally, the Respondents need to understand that any issues have to be reported and if they are not, inevitably no work will be undertaken. Further, that maintenance may go in cycles and there may be works to other buildings paid for by service charges not levied on the Respondents at times when works are not being undertaken to the Building. On the other hand, the Building and adjoining buildings are separate for the obligations and rights of the respective occupiers and that must be recognised, such that any convenience to the Applicant of doing works to the individual buildings in sequence is irrelevant in the context of the obligations of the Lease.
95. As the Tribunal observed in the hearing, the parties have an ongoing contractual relationship, where working together as far as practicable is likely to be in the interests of both sides.

The County Court issues

Claim

96. The effect of the Tribunal determination is that all of the amount claimed by the Applicant is payable and reasonable. There was no counterclaim. The only other basis of defence advanced was that no sum was owed

because the sum claimed had been paid by the Respondent's mortgage company.

97. No subsequent mention of that was made by Respondent in his witness statement dated 18th February 2022. No evidence as advanced of a payment in the amount of the claim having been made by the Respondent's mortgage company in respect of the sum claimed, or of any series of payments in respect of the individual service charges which cumulatively constitute the sum claimed.
98. The Court does not accept on the evidence advanced that the Respondent's mortgage company has paid the sum claimed. The Court finds the sum of £2013.40 owing and due.
99. For the avoidance of doubt, reference was made in witness statements on behalf of the Applicant to further sums for service charges (and ground rent) having fallen due since the issue of the claim in January 2021 and remaining unpaid. However, no amendment had been sought of the amount claimed and so any such further sums were not relevant for these purposes and consequently have not been considered.

Interest

100. The Claim Form claims interest on the amount of the claim. The Particulars of Claim pleaded interest at a rate to be determined by the Court from the date on which the amount claimed fell due. No figures were provided as to a daily rate for interest or otherwise.
101. The first of the relevant service charges was demanded by demand dated 25th March 2019. The next is dated September of that year. Subsequent demands were made on the same dates in 2020. Whilst the payment date in the Lease was 25th March- see above- in the circumstances it is appropriate to treat the payment date as within a reasonable time of the demand being served. The payment made by the Defendant on 18th January 2021 should be set against the oldest sum payable, applying usual accounting principles, where neither party suggested that any other approach should be taken.
102. It follows that the March 2019 service charge was unpaid for just under twenty-two months and a small part of the September 2019 one was unpaid for just under sixteen months. Adjustment should be made for the reasonable time to pay. All other sums remain outstanding to date, where the full balance now outstanding is the figure due following 18th January 2021.
103. It should be added that no contractual interest rate was pleaded, that no such rate was immediately apparent in the Lease and that no provision of the in respect of any contractual rate was referred to by either party. Therefore, the claim for interest is simply considered on the statutory provision advanced by the Applicant.

104. Doing the best that can reasonably be done in the absence of specific figures and bearing in mind the different sums due from different dates, the approach taken is to award £60 in interest for the period prior to 18th January 2021. In respect of the period since 18th January 2021, I award 2% per year, for what is now 1.2 years give or take a day or two, and so a further £40.27.

Costs

105. Given that no matters were advanced as a result of which the Tribunal's limited costs jurisdiction arose, matters as to costs fall entirely to the Court.

106. The Applicant's case was that in the absence of payment by the Respondent, the Applicant was left with no choice but to incur legal costs to pursue the matter. As a statement, that is wrong: the Applicant could have pursued the matter itself without incurring legal costs. However, that is not the question for determination by the Court, which is rather whether the Applicant is entitled to recover from the Respondents the legal costs which it decided to incur.

107. The claim was allocated to the Small Claims Track in respect of the Court elements of the case. The Civil Procedure Rules provide limited circumstances in which legal costs are recoverable in cases dealt with in the Small Claims Track. By far the most common outcome is that no costs are awarded.

108. The Applicant's representative did not seek to argue that the case was one in which costs should be recoverable pursuant to the limited circumstances provided for in those Rules.

109. The Applicant's representative did submit that costs should be recoverable on a contractual basis, relying on paragraph (v) of the Sixth Schedule to the Lease and possibly the provision for "Maintenance Payments".

110. However, the Court finds that the former refers to work or services for the purpose of maintaining and managing the Building or the services and very much reads as the cost of matters in relation to the Building itself. The Court is unable to construe the clause as related to the recovery of legal costs arising as a consequence of proceedings or other action to pursue unpaid service charges.

111. The Maintenance Payments requires the payment of service charges to meet the costs incurred in meeting the Applicant's obligations under paragraph (v) and the preceding paragraphs (i) to (iv) in the "Schedule of Expenses". Paragraph (v) has been referred to above.

112. None of the other paragraphs within that Schedule were argued to contain any relevant provision. As to whether any may have and as to whether any such would have enabled recovery of such costs as service

charges or as contractual costs against these Respondents was not a matter which the Court was therefore asked to consider and hence the Court did not do so.

113. The Court noted that a contractual basis for costs recovery might commonly have arisen from a clause relating to forfeiture or contemplation of it such as paragraph (d) in the Second Schedule- see above- it being relevant in that regard that clause 5 of the Lease provides for re- entry- also see above. However, no submissions had been made on behalf of the Applicant in that regard. The Court did not therefore consider whether there was any basis for any award of costs pursuant to that provision absent any submission that it should. As the Claimant's case was not advanced on the basis of any contemplation of forfeiture- which is at no time mentioned- and the proceedings were not of course forfeiture proceedings themselves, it may be the answer would have flowed from that.

114. In those circumstances, the Court finds there to be no contractual entitlement to recover the costs of this claim. In light of that and in the absence of an award of costs pursuant to the CPR more generally, the amount of the costs claim is of no relevance and hence no observations are required.

Court fees

115. Given that the claim succeeded, there is no discernible basis for disallowing the court fees. No specific representations were made by the parties as to those fees, but it is not apparent what those could have usefully added if there had been.

116. The Applicant therefore recovers the court fee of £115 on the Claim Form.

ANNEX - RIGHTS OF APPEAL

Appealing against the Tribunal's decision

1. 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 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

6. A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case.
7. The date that the judgment is sent to the parties is the hand-down date.
8. 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.
9. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties;
 1. 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
 2. 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 Regional Tribunal office within 21 days after the date the refusal of permission decision is sent to the parties.

3. 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

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

Appendix of legislation relevant to the Tribunal decision

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

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

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

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

Section 27A

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

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

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

(e) the manner in which it is payable.

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

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

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

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

(c) the amount which would be payable,

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

- (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
 - (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.