FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/00AH/LSC/2021/0388**
Property	**:**	**The Studio Flat, 59A Ross Road, London SE25 6SB**
Applicant	**:**	**59 Ross Road Limited**
Representative	**:**	**Mr Edward Blakeney (Counsel) Instructed by Ringley Law LLP (Solicitors)**
Respondent	**:**	**Mr Colin Watson**
Representative	**:**	**In person**
Type of Application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Donegan** **Mrs A Flynn MRICS (Valuer Member)**
Date and venue of Hearing	**:**	**25 May 2022** **10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**27 July 2022**

DECISION

Decisions of the tribunal

A. The tribunal determines that, as at 02 November 2020, a total sum of £1,921.22 (One Thousand, Nine Hundred and Twenty-One Pounds and Twenty-Two Pence) was payable by the respondent to the applicant. This figure is broken down as follows:

Advance service charge due 24/06/2019	**£488.05**
Advance service charge due 25/12/2019	**£762.10**
Advance service charge due 24/06/2020	**£955.10**
	£2,205.25
Less	
Respondent's set-off	**£284.00**
	£1,921.22

B. The parties must now try and agree the County Court issues, being interest and costs, and the current balance due from the respondent. The applicant must write to the tribunal and the respondent by 5:00pm on 19 August 2022, stating whether these issues have been agreed. If not, Judge Donegan, sitting as a judge of the County Court, will give directions for a paper determination of these issues.

The background and procedural history

1. The applicant is the freeholder of 59 Ross Road, London SE25 6SB ('the Block'), which is a converted house comprising five flats. These proceedings concern advance service charges for 59A Ross Road ('the Flat'), which is a one-bedroom flat on the ground floor of the Block. The respondent is the long leaseholder of the Flat.

2. The shareholders in the applicant company are the various leaseholders at the Block. The respondent is both a shareholder and director of this company. The Block is partly managed by the company and partly managed by external managing agents, Ringley Limited ('RL'). The applicant's solicitors are a linked business, Ringley Law LLP ('RLL').

3. The proceedings started life in the County Court Business Centre. The applicant issued a claim for service charge arrears, interest, and legal and court fees, totalling £2,852.83, on 02 November 2020. The respondent filed a defence on 24 November 2020 and the proceedings were later transferred to the tribunal by an order of District Judge Sterlini dated 14 September 2021.

4. The tribunal issued directions on 03 December 2021 and amended directions on 15 February 2022. Both sets of directions were given by Deputy Regional Judge Martynski. Paragraph 6 of the amended directions required the respondent to file and serve a statement of case by 18 March 2022 *"(which may be in the form of or have attached a Schedule) setting out all items disputed with the reasons why they are disputed and, where applicable, any alternative sums offered by the Respondent."* Paragraph 7 gave guidance on the form of any schedule and paragraph 8 provided *"If the Respondent wishes to rely on any documents not already seen by the Applicant, copies of any such documents must be delivered (by email) to the Applicant at the same time."*

5. Paragraph 12 dealt with service of witness statements and is recited below:

"If a party intends to rely on a witness at the final hearing (this includes the parties themselves), then a summary of the evidence to be given by the party/witness must be set out in a Witness Statement and delivered (by email) to the other party no later ***22 April 2022****."*

6. The County Court proceedings included claims for interest and costs, which fall outside the tribunal's jurisdiction. However, judges of the First-tier Tribunal are now also judges of the County Court by virtue of section 5(2)(t) and (u) of the County Court Act 1984 (as amended). Recital E in both directions explained that the judge hearing the case would decide all issues, including interest and costs, sitting alone as judge of the County Court and would make all necessary County Court orders. The Court elements of the case were allocated to the Small Claims Track.

7. This decision just deals with the tribunal element of the case, being the claim for advance service charges. The claims for interest and costs will be determined on paper in a separate County Court decision, if terms cannot be agreed (see paragraph 28, below).

8. The relevant legal provisions are set out in the appendix to this decision.

The lease

9. The lease was granted by Diane Frances English (*"the Lessor")* to Nicole Lorraine Claxton (*"the Lessee")* on 31 December 1983, for a term of 99 years from 25 March 1982. The demised premises are described at paragraph (e) of Part V of the Schedule, as "*ALL THOSE several rooms on the ground floor known as Studio Flat, 59 Rosslyn Road, South Norwood aforesaid…"*. This description makes no mention of any garage. Unfortunately, the official copy lease in the hearing bundle did not include any plans and some of the pages were cropped. Following

the hearing, RLL supplied the tribunal with a further copy of the lease, but this was similarly incomplete. They also produced an official copy of the leasehold title plan, which only extends to the Flat and does not incorporate any garage.

10. Clause 1 obliges the Lessee to pay the yearly ground rent "*...in advance by equal half-yearly payments on the Twenty fourth day of June and the Twenty fifth day of December in every year...*".

11. The Lessee's covenants are at clauses 2 and 3 and include the following obligations:

"2(5) To pay all costs charges and expenses (including Solicitors costs and Surveyors' fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under Sections 146 and 147 of the Law of Property Act 1925 (including any such fees payable in respect of the preparation and service of any schedule of dilapidations) notwithstanding that forfeiture may be avoided other than by relief granted by the Court"

"(3)(v)(b) Contribute and pay on demand (i) the proportionate part set out at Paragraph (i) of Part V of the Schedule hereto of all costs charges and expenses from time to time incurred by the Lessor in performing and carrying out the obligations and each of them under Part IV of the Schedule hereto as set out in the notice mentioned in Paragraph 9 of Part IV of the Schedule hereto (ii) such amount as may from time to time be required by the Lessor for the proper performance of his said obligations on account of the sum payable pursuant to paragraph (i) of this sub-clause"

12. The service charge proportion for the Flat is one-fifth, as specified at paragraph (i) of Part V of the Schedule.

13. At clause 7 the Lessor covenanted "*...at all times during the said term to perform and observe the obligations and each of them set out in Part IV of the Schedule hereto subject always as set forth in the said Part IV*". Part IV includes the following obligations:

"Subject to the due performance by the Lessee of his obligations to contribute to the costs charges and expenses of the Lessor as provided in Clause 3(5) hereof

1. The Lessor will whenever reasonably necessary maintain repair renew decorate and renew

(a) The external walls and structure and in particular the main load bearing walls and foundations roof storage tanks gutters rainwater pipes of the property and the party walls and the boundary fences and the balconies (if any) but so that the Lessor shall only be liable to decorate the external walls and the underside of any balcony

(b) The gas and water pipes drains and electric cables and wires in under and upon the Property and any external master

television aerial and wires thereto enjoyed or used by the Lessee in common with the lessees of the other parts of the property

(c) The main entrances common passages hallways landings (excluding the steps porch and entrance hall leading to the demised premises) and staircases each separate flat entrance door and all other parts of the Property so enjoyed or used by the Lessees in common as aforesaid but so that the Lessor shall only be liable to decorate the exterior of each separate flat entrance door

(d) All such dustbin areas drives paths forecourts as included in the Property

...

3. *Keep the said garden cultivated and maintained in a neat and tidy condition*

...

5. *The Lessor will at al times during the said term (unless such insurance shall be vitiated by any act or default of the Lessee) insure and keep insured the Property in the names of the Lessor and the Lessee his Mortgagees (according to their respective estates and interests) against comprehensive risk with some insurance company of repute nominated by the Lessor and through the agency of the Lessor including loss or damage by fire and loss of damage or liability* ***to (?)*** *any persons arising from the ownership or occupation or user of the Property and all other risks usually described as Property Owners liability and such other risks (if any) as the Lessor or its Agents may think fit in the full re-instatement value thereof (inclusive of Architects and Surveyors fees) and will in the event of the Property or any part thereof being damaged or destroyed in a good and substantial manner*

...

7. *(a) The Lessor shall keep proper books of account of all costs charges and expenses incurred by it in carrying out its obligations under this Part of the Schedule and an account shall be taken on the Thirty first day of May in each year during the continuance of the demise of the amount of the said costs charges and expenses incurred since the date of the commencement of the term hereby created or of the last preceding account as the same may be*

(b) The Lessor will secure that any persons not being tenants of flats in the Block who are authorised to use or to whom rights are granted over any parts of the Property shall make such contributions to the upkeep of those parts as are fair and reasonable

8. *The account taken in pursuance of the last preceding paragraph shall be prepared and audited by a qualified accountant who shall certify the total amount of the said costs charges and expenses including the audit fee for the said account and any other professional accountancy charges) for the period to which the account relates and the proportionate amount due from the Lessee to the Lessor under this Lease credit being given for any amount which shall already have been paid under Clause 3(5) of this Deed*

9. *The Lessor shall within two months of the date to which the said account is taken serve on the Lessee a notice in writing stating the said total and proportionate amount certified in accordance with the last preceding paragraph together with details if known and an estimate of the amount required for the following year*

10. *The Lessor may employ such staff or agents or Managing Agents for the performance of its obligations hereunder as it shall think fit"*

The issues

11. The County Court claim form included brief particulars of claim. These did not give a breakdown of the service charge arrears or identify the years covered by the claim. Further, they did not state the claim was for advance service charges or identify the relevant lease clauses.

12. Not surprisingly, the respondent took issue with the lack of particulars in his defence. He also alleged a failure to comply with paragraphs 7-9 of Part IV of the Schedule to the lease and sought a determination of the service charges pursuant to section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act'). The respondent did not file a counterclaim in the County Court proceedings.

13. Following the transfer of the proceedings, the tribunal requested further details of the claim, and these were supplied by RLL under cover of a letter dated 10 November 2021. Various documents accompanied that letter, including a service charge statement. The disputed charges are:

Advance service charge due 24/06/2019	£532.10*
Advance service charge due 25/12/2019	£806.15
Advance service charge due 24/06/2020	£955.10
	£2,293.35

*This represents the sum demanded (£806.15) less a credit balance of £274.05.

The statement also included details of various legal fees totalling £360, Court and Land Registry fees totalling £115 and interest of £84.48 for

the period 27 June to 30 October 2020. Details of all these sums were included at recital A in the directions and amended directions.

14. The service charges to be determined by the tribunal are the advance charges for June and December 2019 and June 2020.

The hearing

15. A face-to-face hearing took place at 10 Alfred Place on 25 May 2022. Mr Blakeney appeared for the applicant and was accompanied by Mr Adrian Kwok of RLL and Mr Nick Cochrane, who is the leaseholder of 59C Ross Road and a director of the applicant company. The respondent appeared in person.

16. Mr Cochrane and the respondent both gave oral evidence with the former speaking to a witness statement dated 22 April 2022. There was no witness statement from the respondent, contrary to paragraph 12 of the amended directions but the tribunal allowed him to expand on the matters raised in his statement of case and schedule. The witness evidence was thoroughly tested, both in cross-examination and questioning from the tribunal.

17. The applicant produced a hearing bundle (223 pages), which included copies of the claim form, defence, directions and orders from the County Court proceedings, Mr Cochrane's witness statement, the parties' statements of case and a schedule of disputed items. Mr Blakeney also produced a short skeleton argument.

18. At the start of the hearing, the judge explained that the tribunal members would both hear the issues within its jurisdiction. He would then hear the remaining issues on his own, sitting in his capacity as a County Court judge. Mr Blakeney identified the tribunal issues as the payability of the advance service charge with interest and costs as issues for the County Court.

19. Mr Blakeney also took the tribunal through the key documents, being the lease and the service charge accounts, budgets and statement. He explained the credit balance of £274.05 had been calculated by adding payments from the respondent on 03 January 2020 (£400) and 03 July 2020 (£600) to the account balance immediately before the 24 June 2019 demand (-£725.95). Further service charges have been demanded since June 2020, but these did not form part of the Court proceedings. The tribunal was not asked to determine these later charges.

20. The advance charges in June and December 2019 were each £806.15. These were based on a service charge budget for 2019/2020 of £8,061, broken down as follows:

- Insurance premium £4,030
- RL management fee (including VAT) £1,061
- Refuse removal (bulky items) £330
- Repairs and maintenance £1,650
- Tree surgery £220
- Garden maintenance £440
- Annual filing fee £110
- Allowance for excesses on insurance claims £110
- Legal fees £110

TOTAL £8,061

The respondent's 1/5th (20%) contribution amounts to £1,612.20, which was demanded in two equal instalments. There appears to have been a minor arithmetical error, as half the annual contribution amounts to £806.10 rather than £806.15.

21. The advance charge in June 2020 was £955.10. This was based on a service charge budget for 2020/21 of £9,551, broken down as follows:

- Insurance premium £5,370
- RL management fee (including VAT) £1,114
- Refuse removal (bulky items) £300
- Repairs and maintenance £882
- Annual filing fee £110
- Fence and Gate £1,775

TOTAL £9,551

The respondent's contribution amounts to £1,910.20, which was demanded in two equal instalments.

22. The hearing bundle included copies of the service charge accounts for 2018/19 and 2019/20. Both these and the budgets used a different year end, 23 June to that stated in the lease, 31 May. Mr Blakeney suggested this disparity was immaterial as the claim is for advance charges, which are payable on demand. The lease does not specify payment dates and the applicant has reasonably demanded the advance charges on the ground rent payment dates. Further, there is no requirement to deduct any service charge credit in the preceding year from the advance charges.

23. The accounts are dated 11 September 2019 and 08 December 2020, respectively. Paragraph 9 of Part IV of the Schedule to the lease requires service of end of year notices within two months of the year end. The bundle did not include copies of these notices, but they must

have been served after the date of the accounts, if at all. There appears to have been a breach of paragraph 9. Further, the accounts have not been audited which may be a breach of paragraph 8.

24. The actual service charge expenditure shown in the accounts was:

Item	2018/19	2019/20
Accountancy fees	£100	£60
Management fees	£1,158	£1,215
All ground maintenance	£1,645	£87
Company secretarial fee	£15	£15
Legal fees	-	£15
Refuse cleaning	-	£320
Refuse collection	-	£246
Insurance	£1,326	£8,231
Survey fee	£130	-
Repairs and maintenance	£187	£637
TOTAL	£4,561	£10,826

In 2019/20 there was a notional end of year surplus of £3,095 which was shown in the balance sheet. In 2020/21 there was a notional end of year deficit of £2,762, which was also shown in the balance sheet.

25. The respondent's statement of case was accompanied by a schedule of disputed items. He explained this was based on a 'schedule' served by the applicant in the County Court proceedings. The latter was not included in the hearing bundle.

26. The respondent agreed many of the disputed items during his oral evidence. By the end of the hearing, the only outstanding issues were the budgeted sums for repairs and maintenance (£1,650/£882), garden maintenance (£440/£0) and fence and gate repairs (£0/£1,775). The respondent also made general complaints about the increase in his service charges since he purchased the Flat in 2006 and unfavourable treatment compared with other leaseholders.

27. The respondent's statement of case also raised a potential counterclaim arising from fire damage to the four garages at the Block, back in 2010. He owns one of the garages and used this as a studio. The fire damage was the subject of an insurance claim and the other three garages have been repaired. The respondent's garage has not been repaired. It appeared he was seeking to set-off the cost of the outstanding repairs (£2,770) and replacing the studio equipment against his service charges. There are various obstacles to the potential set-off including a lack particulars, limitation, and the absence of formal counterclaim. Crucially, the garage is not demised as part of the Flat lease.

Presumably, it is held on a separate lease. The tribunal is unable to consider the potential set-off in the absence of the garage lease, an application to amend the defence to include a counterclaim or a draft counterclaim.

28. The hearing was listed for half a day, but this proved insufficient. The tribunal issues took up most of the day, concluding at 15:35pm. The parties agreed the County Court issues should be determined on paper, based on written representations, to avoid a further hearing. Judge Donegan will issue separate directions for this paper determination, if the parties are unable to agree terms.

29. In his oral evidence, the respondent referred to various documents not within the hearing bundle. These included invoices for repairs to the front door and lean-to roof, an estimate for remedial work to the fence and the applicant's schedule from the County Court proceedings. Several documents were exhibited to the respondent's statement of case but one, 'CW4' was missing. This was highlighted in the applicant's response, but the omission was not remedied. The respondent suggested the tribunal bundle might be incomplete. Following the hearing, the judge checked the documents filed with the tribunal, but these did not include exhibit CW4 or the missing invoices and estimate. The case officer notified the respondent of this in a letter dated 30 May 2022.

30. The respondent filed further documents on 26 May 2022, following the hearing, including the applicant's statement of case and bundle from the County Court proceedings. These were not included in the hearing bundle. The statement of case was verified by a statement of truth from Mr Leo Georgiou, a former employee of RLL, who previously represented the applicant. This referred to the heads of expenditure in the annual service charge accounts, rather than the figures in the advance budgets.

31. The further documents also included a bundle headed "*Court PDF G1QZ5V20.pdf*", which the respondent referred to as "*my original court bundle*". This included various documents not found in the tribunal bundle. The case officer wrote to the respondent on 09, 16 and 29 June and 05 July 2022, at Judge Donegan's request, querying if this bundle had been served on the applicant or RLL in connection with the County Court proceedings. The respondent's replies were equivocal, and he failed to produce documentary evidence of service. However, he did say he no longer had all his email correspondence with Mr Georgiou. The case officer also queried the position in a letter to RLL dated 13 July 2022. They responded on 14 July stating *"the bundle headed Court PDF G1QZ5V20pdf in connection with the County Court proceedings was not received by Ringley Law until recently when it was supplied by the Respondent."* In the absence of documentary

evidence, the tribunal is not satisfied this bundle was served on the applicant or RLL in connection with the County Court proceedings.

32. The respondent filed additional documents on 10 June 2022, being emails he exchanged with Mr Georgiou on 24 and 25 March 2021. It appears he emailed the following documents to Mr Georgiou on 25 March:

(a) photographs of the external pipes and gully, lean-to roof, and front door,

(b) invoices for the repairs to the lean-to roof (£230) and gully (£125) together with a copy of Ms Agbo's statement (see paragraph 39, below), and

(c) an undated settlement proposal.

RLL briefly commented on these documents in their letter of 14 July 2022 but were unable to say whether the documents had been supplied to Mr Georgiou, as they no longer have access to his emails. Based on the email exchange, the tribunal is satisfied these documents were supplied to Mr Georgiou on 25 March 2021 and should have been included in the hearing bundle.

The parties' evidence and submissions

33. Mr Cochrane verified his witness statement, which largely addressed the procedural history of the claim. On questioning from the tribunal, he explained the service charge budgets are set in late May or early June. They are based on expenditure in the previous financial year with a small percentage increase, based on advice from RL. Any planned expenditure is also included. Historically, the budgets have been agreed at house meetings which all leaseholders are invited to. During the last couple of years, budgets have been agreed at Zoom meetings or by email.

34. Mr Cochrane also explained that RL partially manage the Block. They issue the service charge accounts and demands and deal with any regulatory matters. However, maintenance and repairs are arranged by the leaseholders who then upload the invoices on RL's dedicated portal. Works can only be commissioned if a majority agree. Typically, one leaseholder will take responsibility for obtaining and circulating estimates and then instructing the contractor. Where possible, RL pay the invoices from the service charge fund. However, some contractors require immediate payment and are paid by the leaseholder who then seeks reimbursement via the portal. Two or more directors must approve the invoice before it is uploaded to the portal.

35. In cross-examination, Mr Cochrane was asked why RL had written to the respondent's mortgage lender. He understood this to be standard procedure and a possible route to recovering the arrears. He was also

asked about the garden maintenance figure in the 2019/20 budget. He accepted the leaseholders undertake the gardening, without charge. Historically, an external gardener had tidied the gardens once or twice per year but not recently. He was unable to comment on how the repairs and maintenance figures in the 2019/20 and 2020/21 budgets had been calculated or provide any breakdowns.

36. The respondent took the tribunal through his schedule of disputed items and conceded several items. He contended that the garden maintenance budget should be disallowed, as the gardening has been undertaken by another leaseholder for the last five years. He accepted that £440 was a reasonable figure for occasional tidying of the garden if an external gardener were used.

37. In relation to repairs and maintenance, the respondent referred to various photographs appended to his statement of case. These evidenced works to a drainage gully and the lean-to roof. There was also a photograph of the main front door. The respondent explained he had arranged repairs to these areas, having notified the other leaseholders of the relevant defects. A hopper had been incorrectly fitted in the gully outside his bedroom window when the original cast-iron pipes were replaced. This caused stagnant water to pool, and he arranged the removal of the hopper, allowing the water to drain away. The work was undertaken by P&P Maintenance and a copy of their invoice was appended to his statement of case. This was for £125 and took the form of an email from Mr Colin Plummer dated 24 February 2020. The respondent said he had paid this fee and sought reimbursement from RL, without success.

38. The respondent also arranged the repair of storm damage to the lean-to roof, having inspected this damage with Mr Cochrane. He said he paid £230 for new tiles and leadwork but has been unable to recoup this sum from RL. No estimate, invoice or receipt for these repairs was appended to his statement of case.

39. The respondent also arranged the easing and adjustment of the front door, which had been sticking. This was verified in a short statement from the tenant of the other ground floor flat, Ms Agbo, dated 08 March 2021. The respondent said he paid £90 for this work but had been unable to recoup this sum from RL. Again, no estimate, invoice or receipt was appended to his statement of case.

40. The sums to be set-off, if any, are 80% of these repair costs. The respondent is liable for the remaining 20%, being the service charge contribution for the Flat.

41. The respondent disputes the cost of renewing the garden fence and gate in 2020. He obtained an initial quote for fence repairs, with concrete kickboards, which was rejected. Mr Cochrane subsequently obtained a

cheaper quote, for the replacement of the fence with timber kickboards. This was for £1,775, being the amount claimed in the 2020/21 budget. The respondent raised concerns about this quote, but Mr Cochrane still instructed his contractor. There have been problems with the new fence, and the respondent has now obtained a quote for remedial works of £890. Neither this quote nor the original quote was appended to his statement of case.

42. As to the fire damage, the respondent explained that a contractor had been instructed to repair all four garages. Work on his garage stopped at Mr Cochrane's instigation. The other three garages have all been repaired. The respondent has raised the issue at numerous house meetings and in writing but the work to his garage is still outstanding, 12 years after the original fire.

43. On questioning from the tribunal, the respondent said he was not pursuing a set-off for the cost of the outstanding garage repairs. Rather, he raised this issue to demonstrate unequal treatment at the Block. In his statement of case and schedule, he also referred to unequal treatment for reimbursement of repair costs. Invoices presented by him had been rejected by the applicant, despite being in similar form to those accepted from other leaseholders. Further, he was unable to access the RL portal as he has been given an incorrect password.

44. The respondent's statement of case also referred to substantial increases in the service charge since he moved into the Flat. Originally, he paid £20 per month and the charges now exceed £1,500 per annum.

45. In cross-examination, the respondent accepted that Mr Cochrane had obtained multiple quotes for the fence renewal and had chosen the cheapest. He also accepted that his original quote was higher.

46. The respondent acknowledged that the removal of the gully hopper had not been discussed at any house meeting. However, he had raised the issue in several emails, over a six-month period. He could not recall if he obtained a quote before instructing the contractor. The work was urgent, given the smell from the stagnant water.

47. Similarly, the roof repairs were not discussed at a house meeting. Mr Cochrane had inspected the damage with him, and the work was urgent as there was water ingress to the garden flat. The respondent obtained a receipt for this work but no quote.

48. The respondent confirmed that he cuts the garden hedges, using clippers supplied by a friend. The applicant supplied him with clippers some years back, but these did not work and were returned.

49. The respondent said there had been no budget meetings until last year but accepted that budgets may have been circulated by email.

50. The respondent was also questioned on figures in the accounts. Mr Blakeney suggested the 2018/19 budget for maintenance and repairs (£1,650) had been well set, as actual expenditure on ground maintenance (£1,645) and repairs and maintenance (£187), as shown in the 2018/19 accounts, totalled £1,832. The respondent felt unable to comment, as he did not know how the budget figure was made up.

51. The respondent accepted that his arrears of £2,201, as shown in the 2019/20 accounts, made up the bulk of the balance sheet surplus of £2,244. This left only £43 to pay any bills.

52. Mr Blakeney submitted there was no defence to the service charge claim. The various arguments advanced by the respondent have no bearing on his liability for advance charges. The budgets are set by the leaseholders, and he was involved in this process. Even if he had been excluded, which is denied, the budgets are reasonable. Further, the potential counterclaim arising from the damage to his garage is misconceived and unsubstantiated. If he wants to try and recover the cost of repairs then he should pursue separate County Court proceedings, which will be defended.

53. Mr Blakeney rejected the various set-off claims. There was no evidence of the repairs to the front door. Further, there was no evidence of the cost of this work, or the roof repairs and the respondent did not follow the correct procedure before instructing contractors. In the case of the gully repair, he had not produced the emails referred to in his oral evidence. The applicant would consider retrospective claims for reimbursement of these repair costs, upon production of the invoices but the claims in these proceedings should be dismissed.

54. Mr Blakeney also rejected the respondent's arguments on the fence and gate renewal. Where there are several possible methods of repair, it is up to the freeholder to choose the method. They do not have to accept the cheapest solution, but their decision must be reasonable in all the circumstances. In this case the applicant accepted the cheapest quote and each flat's contribution was only £335. There was no evidence of the cost of the potential remedial work, and this is not relevant to advance charges.

55. Mr Blakeney relied on ***Bluestorm Ltd v Portvale Holdings Ltd [2004] EWCA Civ 289***, where the defendant's failure to pay service charges on its flats was a substantial cause of the claimant's non-performance of its repairing covenants. The Court of Appeal found the defendant's acts were entirely reasonable and upheld the first instance decision to reject a counterclaim for disrepair. Mr Blakeney likened

Bluestorm to this case where the respondent's arrears meant the applicant had insufficient funds to pay for further repairs.

56. The respondent suggested the tribunal should take a broad view of the case, as he is a litigant in person. He complained of unfair and undemocratic management, with only some leaseholders having access to the RL portal. The repairs to the door, gully and roof were all clear to see. The easing of the front door was a health and safety issue and was urgent. Mr Cochrane was fully aware of the hopper removal. They had a heated discussion about this repair when Mr Cochrane said he would not authorise further expenses incurred by the respondent.

57. The respondent accepted his statement of case and schedule did not include full details of the set-off costs, but he had previously supplied this information to Mr Georgiou at RL. He had to continue paying his service charges and simply wanted clarity over the sums demanded. The applicant failed to answer his questions and prematurely issued proceedings, rather than looking for a resolution. He only obtained proper details of the claim after the case was transferred to the tribunal and had misunderstood the basis for the advance charges.

58. The respondent submitted that the gardening budget should be disallowed in full. He said the applicant's approach to repairs showed a lack of consideration. He and Mr and Mrs Cochrane are the only owner-occupiers and are most affected by any disrepair. He invited the tribunal to make general reductions in the maintenance and repair budgets, without specifying a figure.

The tribunal's decision

59. The following service charges are payable by the respondent:

Advance charge due 24/06/2019	£488.05
Advance charge due 25/12/2019	£762.10
Advance charge due 24/06/2020	£955.10
	£2,205.25

60. The respondent can set off a total sum of £284 against these charges, in respect of the repairs to the gully and lean-to roof.

Reasons for the tribunal's decision

61. The tribunal is satisfied the advance charges have been validly demanded and in accordance with the lease. Copies of the demands were included in the bundle, and they contain the relevant statutory information and were accompanied by summaries of rights and obligations. Clause 3(v)(b) of the lease requires the Lessee to pay

service charges on demand. No payment dates are specified, and the applicant is entitled to demand advance charges on the rent payment dates (24 June and 25 December).

62. The tribunal is also satisfied the 2019/20 and 2020/21 budgets were supplied to the respondent within two months of 31 May in each year, pursuant to paragraph 9 of Part V of the Schedule to the lease. The budgets referred to the wrong year end (24 June) but this does not affect their validity and was not challenged by the respondent.

63. The tribunal then considered section 19(2) of the 1985 Act, which provides "*Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable…*". This acts as a filter and precludes the recovery of unreasonable amounts.

64. When considering the reasonableness of the budgets, the tribunal had regard to the service charge accounts for the preceding year. The accounts also had the wrong year end and were produced late. However, the figures in the accounts provided a helpful yardstick. In 2018/19 total expenditure on ground maintenance and repairs and maintenance was £1,832. This is £182 less than the repairs and maintenance budget for 2019/20 (£1,650). Given the expenditure in the previous year, the budget figure was entirely reasonable and is allowed in full.

65. The same cannot be said of the garden maintenance budget. This work is undertaken by the leaseholders, without charge. There was no specific garden maintenance expenditure in the 2018/19 accounts; just the ground maintenance figure approved at paragraph 64. The occasional use of an of external gardener dates back several years and there was no justification for a separate garden maintenance item in the 2019/20 budget. Interestingly, it did not appear in the 2020/21 budget. The inclusion of this item was unreasonable, and it is disallowed in full. This reduces the 2019/20 budget by £440, to £7,621. The respondent is liable to pay 20% of this sum (£1,524.10), with half due on 24 June 2019 and the other half due on 25 December 2019. The credit balance of £274.05 has been deducted from the June 2019 charge.

66. Turning now to the 2020/21 budget, the repairs and maintenance figure was £882 with an additional sum of £1,775 for fence and gate repairs. The 2019/20 expenditure on ground maintenance (£87) and repairs and maintenance (£637) totalled £724. The budget of £882 was in line with this figure and is reasonable. This item is allowed in full. The fence and gate budget matches the quote obtained by Mr Cochrane and is also reasonable. The respondent's arguments about the scope and quality of this work are not relevant when determining advance charges. They might be relevant on an application to

determine actual service charge expenditure for 2020/21. The repairs and maintenance and fence and gate figures are allowed in full. There was no garden maintenance item in the 2020/21 budget.

67. The 2020/21 budget of £9,551 is payable in full. The respondent's 20% contribution amounts to £1,910.20 with half (£955.10) payable on 24 June 2020.

68. Any increase in the respondent's service charges, since he purchased the Flat in 2006, does not automatically mean the charges unreasonable. Rather it is necessary to look at the underlying figures and assess whether they are greater amounts "*than is reasonable*". The only amount that was unreasonable was the garden maintenance item in the 2019/20 budget.

69. There was a notional surplus of £3,495 in the 2018/19 accounts, as actual expenditure was less than the advance charges. The tribunal considered whether the 2019/20 budget should have been adjusted to reflect this credit. There is nothing in the lease requiring such an adjustment and the credit was purely notional, as the respondent had not paid these advance charges. Given these facts it was reasonable to transfer the notional credit to the balance sheet, rather than adjust the balance. Further, the respondent did not challenge this transfer.

70. Turning now to the set-off claims. The tribunal finds that the respondent arranged the repairs to the gully and lean-to roof and paid the contractor's fees of £125 and £230, respectively. The applicant was provided with evidence of these works. Both invoices were attached to the email to Mr Georgiou dated 25 March 2021 and the invoice for the hopper was also appended to the respondent's statement of case. By his own admission, the respondent did not obtain prior approval for these works. However, the tribunal accepts he corresponded with the directors regarding the hopper and only arranged this work due to their inaction. This was a breach of the repairing obligation at paragraph 1(b) of Part IV of the Schedule to the lease and led to pooling of stagnant water outside his bedroom window. The respondent acted entirely reasonably in arranging the gully work at modest cost and he is entitled to set-off £100, being 80% of the cost, against his service charges. He also acted reasonably, in arranging repairs to the lean-to roof. He inspected the roof with Mr Cochrane and the hearing bundle including before and after photographs, showing this repair. The tribunal accepts the work was urgent, given the water ingress to the garden flat. The repair should have been arranged by the applicant, but the respondent took on this responsibility with Mr Cochrane's knowledge. Again, the cost was reasonable, and the respondent is entitled to set-off £184, being 80% of the cost.

71. The tribunal accepts the respondent was treated unfavourably in relation to these repair costs. The applicant should have reimbursed

80% of these costs, or applied credits to his service charge account, when presented with these invoices. However, this does not justify an additional, general reduction in the advance service charges.

72. The decision in ***Bluestorm*** can be distinguished on its facts and does not assist the applicant. The gully repairs only cost £125. The respondent's arrears were not a substantial cause of the applicant's failure to remove the hopper. The roof repairs were urgent and arranged by the respondent with Mr Cochrane's knowledge. This was a pragmatic and sensible solution, given the water ingress to the garden flat.

73. The tribunal also finds that the respondent arranged the easing of the front door, as corroborated by Ms Agbo's statement. However, there was no documentary evidence of the cost of this repair. No estimate, invoice or receipt was appended to his statement of case or attached to his email of 25 March 2021. The applicant must know the case being made against them, well in advance of the final hearing, so they can investigate and respond. In the absence of documentary evidence, this set-off fails.

74. There was no set-off claim for the proposed repairs to the respondent's garage. It remains open to him to pursue a separate claim to try and recover the cost of this work. However, he should seek independent legal advice before initiating such a claim, given the obstacles referred to at paragraph 27, above. The tribunal makes no findings on this issue, including the alleged unequal treatment, given the possibility of separate proceedings.

75. This decision just deals with the advance service charge due on 24 June 2019, 25 December 2019, and 24 June 2020. It does not address the end of year charges for 2019/20 or 2020/21. It is open to either party to pursue a separate tribunal application to determine the end of year charges.

76. This has been a difficult case, due to the confusing presentation by both parties. The original claim form did not give a breakdown of the service charge arrears or identify the years covered by the claim. Confusingly, the applicant's statement of case from the County Court proceedings referred to heads of expenditure in the end of year accounts. The respondent mistakenly focused on this expenditure, rather than the service charge budgets, in his schedule. All this generated unnecessary work and extended the duration of the hearing. These problems have been compounded by the parties' approach to documents. The hearing bundle did not include the applicant's bundle from the County Court proceedings, the respondent's email of 25 March 2021 or the repair invoice for the lean-to roof, all of which were highly relevant. Only one of the repair invoices was appended to the respondent's statement of case and exhibit 'CW4' was missing. These omissions meant additional

disclosure was required following the hearing and delayed the preparation of this decision.

77. The tribunal has given the respondent considerable latitude, mindful he is a litigant in person. He was allowed to give oral evidence at the hearing despite not serving a witness statement and the tribunal took great pains to draw out and clarify his case. Further, he was given the opportunity to file additional documents following the hearing. He has secured some modest reductions in the disputed service charges but the applicant has been largely successful. The total sum due from the respondent, as at 02 November 2020, was 1,921.22 (see paragraph 78, below). This is approximately 84% of the sum claimed (£2,293.35 excluding interest and costs).

Summary

78. The total sum payable for the three advance charges is £2,205.25. The total sum to be set off is £284, which leaves a balance of £1,921.22. This was the sum due from the respondent when the County Court proceedings were issued 02 November 2020. He has made further payments since that date, which may reduce the current balance. This will need to be addressed as part of the County Court case.

Section 20C and Paragraph 5A

79. There were no applications for orders limiting, reducing or restricting the applicant's costs under section 20C of the 1985 Act or paragraph 5A of schedule 11 to the Commonhold and Leasehold Reform Act 2002.

Next steps

80. This decision deals with all issues within the tribunal's jurisdiction. The remaining issues (interest and costs) are matters for the County Court and will be determined by Judge Donegan, sitting alone. The parties should try to agree these issues, and the current balance due. If they are unable to reach agreement by 19 August 2022, further directions will be issued.

81. The respondent is encouraged to seek independent legal advice upon this decision and the County Court issues.

Name: Tribunal Judge Donegan **Date:** 27 July 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.

Appendix of relevant legislation

County Courts Act 1984

Section 5 Judges of the county court

(1) A person is a judge of the county court if the person—
(a) is a Circuit judge,
(b) is a district judge (which, by virtue of section 8(1C), here includes a deputy district judge appointed under section 8), or
(c) is within subsection (2),
but see also section 9 of the Senior Courts Act 1981 (certain ex-judges may act as judges of the county court).

(2) A person is within this subsection (and so, by virtue of subsection (1)(c), is a judge of the county court) if the person—
(a) is the Lord Chief Justice,
(b) is the Master of the Rolls,
(c) is the President of the Queen's Bench Division,
(d) is the President of the Family Division,
(e) is the Chancellor of the High Court,
(f) is an ordinary judge of the Court of Appeal (including the vice-president, if any, of either division of that court),
(g) is the Senior President of Tribunals,
(h) is a puisne judge of the High Court,
(i) is a deputy judge of the High Court,
(j) is the Judge Advocate General,
(k) is a Recorder,
(l) is a person who holds an office listed—
(i) in the first column of the table in section 89(3C) of the Senior Courts Act 1981 (senior High Court masters etc), or
(ii) in column 1 of Part 2 of Schedule 2 to that Act (High Court masters etc),
(m) is a deputy district judge appointed under section 102 of that Act,
(n) is a Chamber President, or a Deputy Chamber President, of a chamber of the Upper Tribunal or of a chamber of the First-tier Tribunal,
(o) is a judge of the Upper Tribunal by virtue of appointment under paragraph 1(1) of Schedule 3 to the Tribunals, Courts and Enforcement Act 2007,
(p) is a transferred-in judge of the Upper Tribunal (see section 31(2) of that Act),
(q) is a deputy judge of the Upper Tribunal (whether under paragraph 7 of Schedule 3 to, or section 31(2) of, that Act),
(r) is a District Judge (Magistrates' Courts),
(s) is a person appointed under section 30(1)(a) or (b) of the Courts-Martial (Appeals) Act 1951 (assistants to the Judge Advocate General),

(t) is a judge of the First-tier Tribunal by virtue of appointment under paragraph 1(1) of Schedule 2 to the Tribunals, Courts and Enforcement Act 2007,
(u) is a transferred-in judge of the First-tier Tribunal (see section 31(2) of that Act), or
(v) is a member of a panel of Employment Judges established for England and Wales or for Scotland

Landlord and Tenant Act 1985 (as amended)

Section 18 Meaning of "service charge" and "relevant costs"

(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 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the 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 20C Limitation of service charges: costs of proceedings

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

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
- (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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

Section 27A Liability to pay service charges: jurisdiction

(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.

Commonhold and Leasehold Reform Act 2002

Schedule 11

Part 1

Reasonableness of Administration Charges

Meaning of "administration charges"

1(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Reasonableness of administration charges

2 A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

...

Limitation of administration charges: costs of proceedings

5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph –

(a) "litigation costs means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) "the relevant court or tribunal" means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court.