FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) and
THE COUNTY COURT

Case Reference	**:**	**BIR/17UH/LIS/2021/0026/** **BIR/17UH/LIS/2021/0036**
Court Reference	**:**	**H27YJ893** **(County Court Money Claims Centre)**
HMCTS Code	**:**	**V:VHSREMOTE**
Subject Property	**:**	**Flat 3** **5 The Square** **Buxton** **Derbyshire** **SK17 6AZ**
Applicant	**:**	**High Peak Theatre Trust Limited**
Representative	**:**	**W H Lawrence Solicitors**
Respondents	**:**	**Stephen Peter Robinson** **Heather Michelle Robinson** **Katie Louise Robinson**
Type of Application	**:**	**(1) Liability to pay service charges** **(2) Liability to pay interest** **(3) Liability to pay costs** **(All on transfer from the County Court)**
Date of Hearing	**:**	**21 February 2022**
Tribunal Members	**:**	**Deputy Regional Judge Nigel Gravells** **Thomas Wyn Jones FRICS**
County Court	**:**	**Deputy Regional Judge Nigel Gravells** **(sitting as a Judge of the County Court)**
Date of Decision	**:**	**7 March 2022**

DECISION

Preliminary

1 This case concerns a service charge dispute in respect of Flat 3, 5 The Square, Buxton, Derbyshire SK17 6AZ ('the subject property'). The freehold interest in the property is owned by the Applicant, High Peak Theatre Trust Limited; the leasehold interest in the property is owned by the Respondents, Stephen Peter Robinson, Heather Michelle Robinson and Katie Louise Robinson.

2 On 5 July 2021 the Tribunal received three applications from the Respondents: (1) under section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act') for the determination of the reasonableness and payability of service charges demanded by the Applicant in respect of the subject property; (2) under section 20C of the 1985 Act for an order for the limitation of costs; and (3) under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ('the 2002 Act') for an order reducing or extinguishing the Respondents' liability to pay administration charges in respect of the Applicant's litigation costs.

3 On 16 July 2021 the Tribunal issued Directions for the conduct of the applications.

4 However, it subsequently emerged that on 6 June 2021 the Applicant had issued proceedings against the Respondents in the County Court, claiming –

(i) arrears of service charges in the sum of £7297.71;
(ii) interest in the sum of £67.20 and accruing;
(iii) any other sums falling due under the lease before the date of judgment;
(iv) costs.

5 On 2 August 2021 the Tribunal rejected the Applicant's application to strike out the Respondents' application to the Tribunal; but suggested that the parties should seek to have the County Court claim (and any defence and counterclaim of the Respondents) transferred to the Tribunal.

6 By Order dated 4 October 2021, Deputy District Judge Edden approved a consent application (i) that the Applicant's claim should be transferred to the First-tier Tribunal to decide all matters falling within the jurisdiction of the Tribunal and (ii) that all or any remaining proceedings including any claims for costs and interest should be disposed of by a Tribunal Judge sitting as a Judge of the County Court exercising the jurisdiction of a District Judge (under section 5(2)(t) and (u) of the County Courts Act 1984 as amended by Schedule 9 to the Crime and Courts Act 2013).

7 On 11 October 2021 the Tribunal issued new Directions.

8 The Tribunal proceeded to deal with all the issues in dispute between the parties, following the guidance of the Upper Tribunal (Lands Chamber) on the Civil Justice Council flexible deployment scheme. Issues relating to service charges and related costs issues were determined by the First-tier Tribunal (Deputy Regional Judge Nigel Gravells and Wyn Jones ('the Tribunal')). The Respondents' counterclaim, interest and other costs issues were determined by Judge Gravells, sitting as a Judge of the County Court ('the Court').

9 Since the case is now before the First-tier Tribunal, for the purposes of this Decision the Claimant in the County Court action is referred to as 'the Applicant' and the Defendants are referred to as 'the Respondents'.

Background

10 The property at 5 The Square ('the building') is part of a larger grade 2 listed building in the centre of Buxton. Flat 3 is a self-contained apartment on the second and third floors, currently occupied by tenants of the Respondents. The ground and first floors, which were formerly flats 1 and 2, have now been converted into offices occupied by the Applicant.

11 The Respondents' lease, dated 29 August 1985 for a 999-year term from that date, is arguably no longer suited to the current mixed use of the building. However, in the absence of any variation, the parties are bound by the lease; and in its determination of the issues in the present case the Tribunal is bound to apply the lease in its current form.

12 By clause 5(1) of the lease, the Applicant, as landlord of the building, covenants to provide the usual range of services, including maintenance and repairs, insurance, heating of the common parts and cleaning of the common parts. The Applicant does not appear to have appointed a managing agent to provide those services on its behalf.

13 By clause 4(1) of, and the First Schedule to, the lease, the Respondents covenant to pay one-third of (i) the costs incurred by the Applicant in providing the services set out in clause 5(1) and (ii) any other costs and expenses reasonably and properly incurred in connection with the building. Payment is required to be made, first, by monthly instalments of the interim charge and, second, by a balancing payment (or credit) following the preparation of the accounts for the relevant service charge year.

14 The Applicant's claim is based on unpaid service charges totalling £7297.71 for the service charge year 6 April 2019 to 5 April 2020. The Respondents' challenge their liability to pay and/or the reasonableness of four heads of expenditure in the service charge accounts for that year.

Hearing

15 A hearing was held by remote video conferencing on 21 February 2022. The hearing was attended by (i) Mr Illyr Pride, of W H Lawrence Solicitors, representing the Applicant, (ii) Ms Susanne Howe and (ii) the Respondents.

Service charges

Statutory framework

16 Section 27A of the Landlord and Tenant Act 1985 ('the 1985 Act'), so far as material, provides –

> (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.

17 Sections 18 and 19 of the 1985 Act provide –

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.

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 provision 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.

Service charge demand

18 As noted above, the alleged unpaid service charges for the service charge year 2019/2020 total £7297.71. The calculation of that figure, showing each head of expenditure challenged by the Respondents, the costs included in the service charge accounts in respect of that head of expenditure, the one-third apportionment to the Respondents, the amount paid by the Respondents and the balance claimed by the Applicant, is set out in the table below:

Head of expenditure	Costs included in service charge accounts	Respondents' one-third apportionment	Amount paid by Respondents	Balance claimed by Applicant
Buildings insurance	£1,726.84	£575.61	£191.87	£383.74
Boiler repairs	£366.00	£122.00	£36.60	£85.40
Legal fees	£2,856.00	£952.00	£250.00	£702.00
Pavement grate	£379.70	£126.57	£00.00	£126.57
Repair fund	£18,000.00	£6,000.00	£00.00	£6,000.00
				£7,297.71

19 The Respondents subsequently conceded that they were liable to pay their one-third apportionment of the cost of replacing the grate on the pavement outside the building.

Payability and reasonableness of service charges

20 In determining the issues of payability and reasonableness of the service charges demanded, the Tribunal took into account, so far as relevant, all written representations of the parties, together with the oral evidence and arguments advanced at the hearing.

Buildings insurance

21 The Respondents challenge the figure of £1,726.84 for buildings insurance (and their one-third apportionment of £575.61), proposing that they should only be liable for one-ninth of the base figure. First, they argue that the policy documents refer to employers' liability, business interruption and public and products liability, risks that are inapplicable to them. Second, they assert that they could obtain appropriate insurance for a more competitive premium. The Applicant relied on the wording of the policy documents and the confirmation of the insurance broker: see paragraph 24 below.

22 The Tribunal is not persuaded by the Respondents' arguments.

23 First, it is not clear why the Respondents proposed that they pay one-ninth of the figure included in the service charge accounts. That proposal would implicitly suggest that the figure is correct; and, if it is correct, the Respondents' lease clearly provides that the Respondents are liable to pay one-third of the costs of insurance.

24 Second, although the buildings insurance for the building is part of a wide-ranging insurance policy covering a number of risks in respect of the Applicant's business activities carried on at the building and elsewhere in Buxton, the policy documents clearly state that buildings cover under the policy extends only to the building at 5 The Square. Moreover, in an email dated 28 April 2020 the insurance broker confirms that the premium for

buildings insurance for the building at 5 The Square is the figure included in the service charge accounts.

25 Third, in the view of the Tribunal, the Respondents overstate the impact, if any, on the insurance premium of the 'commercial' activities carried on by the Applicant in the building.

26 Fourth, the Respondents produced no evidence for their assertion that they could obtain appropriate insurance for a more competitive premium. Although they asserted that the Applicant had refused access to the building, the Tribunal finds that a reinstatement valuation can properly be based on an external inspection and does not require entry to the building.

27 Fifth, the issue of insurance premiums has been considered by the Upper Tribunal on a number of occasions. In *Forcelux Limited v Sweetman* [2001] 2 EGLR 173, a decision of the then Lands Tribunal, the Tribunal stated:

> [39] I consider, first, [the] submissions as to the interpretation of section 19(2A) of the 1985 Act, and specifically [the] argument that the section is not concerned with whether costs are 'reasonable', but whether they are 'reasonably incurred'. In my judgment, [that] interpretation is correct, and is supported by the authorities .... The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.
>
> [40] But to answer that question, there are, in my judgment, two distinctly separate matters I have to consider. First, the evidence, and from that whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Second, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market.

28 That decision was elaborated upon in *Cos Services Ltd v Nicholson and Willans* [2017] UKUT 382 (LC). In that case, HHJ Stuart Bridge, having referred to the case of *Waaler v Houslow LBC* [2017] EWCA Civ 45, in which the Court of Appeal analysed the concept of 'reasonably incurred' in section 19(1) of the 1985 Act, stated –

> [47] This is in my judgment a crucial point. If, in determining whether a cost has been 'reasonably incurred', a tribunal is restricted to an examination of whether the landlord has acted rationally, section 19 will have little or no impact for the reasons identified by the Court of Appeal in *Waaler*. I agree with the Court of Appeal that this cannot have been the intention of Parliament when it enacted section 19 as it would add nothing to the protection of the tenant that existed previously. It must follow that the tribunal is required to go beyond the issue of the rationality of the landlord's decision-making and to consider in addition whether the sum being charged is, in all the circumstances, a reasonable charge. It is, as the Lands Tribunal identified in *Forcelux*, necessarily a two-stage test.
>
> [48] Context is, as always, everything, and every decision will be based upon its own facts. It will not be necessary for the landlord to show that the insurance premium sought to be recovered from the tenant is the lowest that can be obtained in the market. However, the Tribunal must be satisfied that the charge in question was reasonably incurred. In doing so, it must consider the terms of the lease and the potential liabilities that are to be insured against. It will require the landlord to explain the process by which the particular policy and premium have been selected, with reference to the steps taken to assess the current market. Tenants may, as

happened in this case, place before the Tribunal such quotations as they have been able to obtain, but in doing so they must ensure that the policies are genuinely comparable (that they 'compare like with like'), in the sense that the risks being covered properly reflect the risks being undertaken pursuant to the covenants contained in the lease.

29 Applying those principles, it has already been noted that the Respondents produced no evidence of any comparable insurance quotation. On the other hand, the Tribunal accepts that the Applicant followed an appropriate procedure to secure a competitive premium; and that that premium of £1,726.84 could not be regarded as unreasonable.

30 The Tribunal therefore determines that the figure of £575.61 (one-third of £1,726,84) included in the Respondents' service charge demand in respect of buildings insurance is reasonable.

31 Since the Respondents have paid £191.87, the balance due to the Applicant is £383.74.

Boiler repairs

32 The Respondents do not challenge the figure of £366.00 for boiler repairs; but they do challenge their one-third apportionment of £122.00.

33 They propose that they should only be liable for one tenth of the costs. That proposal is largely based on the determination of the First-tier Tribunal on a section 27A application made by the Respondents in 2019 in respect of the costs of heating the communal areas of the subject property. In that decision (see BIR/19UH/LIS/2019/0051) the Tribunal (at paragraph 62) endorsed as reasonable the apportionment to the Respondents of 1/33 of the heating costs. The only benefit that the Respondents received was the heating of the single radiator in the communal areas. Since the heating system comprised ten other radiators in those parts of the building occupied by the Applicant, the Applicant itself apportioned to the Respondents one-third of the notional cost of heating one of eleven radiators. It is perhaps surprising that the Respondents did not propose a similar apportionment in the present case.

34 The present Tribunal wholly agrees with the fairness of the result in the previous case. Moreover, the argument based on fairness may be thought to be even stronger in the present case because the gas boiler also provides hot water to those parts of the building occupied by the Applicant whereas both heating and hot water in the subject property are provided by the Respondents' own gas boiler.

35 However, the Applicant seeks to distinguish the previous case, arguing that that case concerned running costs whereas repairs to the gas boiler are a capital cost; that the boiler is necessary to heat the radiator in the communal areas; and that the provision in the lease for one-third apportionment to the Respondents should apply.

36 The Tribunal is not persuaded by the running costs/capital cost distinction. Although the costs appear under the heading of boiler repairs, the two invoices show that the relevant work comprised resetting the radiator controls, servicing the boiler, carrying out the gas safety check and fitting an auto bypass below the boiler.

37 The Tribunal is therefore of the view that the Applicant's approach to the apportionment of the boiler repair costs is inconsistent with its approach to

the apportionment of the heating costs in the previous case – and that it could be seen as unfair to the Respondents.

38 However, as noted above, the Respondents' lease clearly provides for a one-third apportionment of service charge costs and the Tribunal cannot disregard that provision. If the Applicant had been prepared to depart from that apportionment in the Respondents' favour, the Tribunal would have endorsed that apportionment (as the Tribunal did in the previous case); but in the present case the Applicant has applied the terms of the lease. Reluctantly, therefore, the Tribunal determines that by reference to the terms of the lease and the provisions of the 1985 Act the figure of £122.00 included in the Respondents' service charge demand in respect of boiler repairs is reasonable.

39 Since the Respondents have paid £36.60, the balance due to the Applicant is £85.40.

Legal fees

40 The Respondents originally challenged the figure of £2,856.00 (and their one-third apportionment of £952.00) for legal fees on the grounds that they were uncertain whether the inclusion of such fees contravened the determinations/orders of the Tribunal in the previous case on applications under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (see paragraphs 65 and 66 of the previous decision).

41 When it became clear that the costs under this head of expenditure in fact related to the charges of Mr Pride for dealing with the statutory consultation procedure in relation to qualifying works to be carried out on the building, the Respondents argued that the costs were excessive and unreasonable, even though it appears that Mr Pride charged out his time at a significantly lower rate than the Civil Justice Council Guideline Rates and his normal rates. (A further argument that their liability was limited to £250.00 because they had not been consulted was misconceived: it seemed to be based on the mistaken view that the appointment of Mr Pride to deal with the statutory consultation procedure was itself subject to that procedure.)

42 The Tribunal questioned Mr Pride as to the reasons why he as a lawyer had been engaged by the Applicant to carry out a task that would normally be carried out by a landlord or the landlord's managing agent. Mr Pride stated that, following a failure to comply with the consultation requirements in respect of earlier qualifying works (and the consequent partial limitation on the recovery of costs: see paragraphs 47-57 of the previous decision), the Applicant was concerned to ensure that the procedure was followed correctly. Mr Pride also indicated that the Applicant was concerned that the Respondents might seek to identify and rely upon any instance of non-compliance in order to avoid contributing to the costs of the works.

43 While the Tribunal understands the concerns of the Applicant, it does not accept that it was reasonable to incur the (even discounted) costs of a lawyer in dealing with the statutory consultation procedure. With template documents available on internet websites of organisations such as Lease and ARMA, the various stages of the procedure can be properly completed by a competent landlord or landlord's agent. The Applicant may have preferred not to take on the task itself – and, as already noted, it does not appear to

have a managing agent – but that does not make it reasonable to incur the costs of a lawyer and to pass on (a proportion of) those costs to the Respondents.

44 Using its general knowledge and experience, the Tribunal determines that a reasonable figure to include in the service charge accounts in respect of dealing with the statutory consultation procedure is £1,000.00 inclusive of VAT; and that the Respondents' one-third apportionment of that figure - £333.33 inclusive of VAT – is reasonable.

45 Since the Respondents have paid £250.00, the balance due to the Applicant is £83.33.

Replacement pavement grate

46 Although the Respondents originally challenged their liability under the lease to contribute to the costs of the replacement pavement grate, they subsequently withdrew their challenge.

47 The Tribunal therefore determines that the figure of £379.70 included in the service charge accounts in respect of the replacement pavement grate (and the Respondents' one-third apportionment of £126.57) is reasonable.

48 Since the Respondents have paid nothing, the balance due to the Applicant is £126.57.

Repair fund

49 The Respondents challenge the inclusion in the service charge accounts of the sum of £18,000.00 (and their one-third apportionment of £6,000.00) transferred to a repair fund, principally to meet the cost of qualifying works on the building.

50 The background to this head of expenditure may be summarised briefly. In August 2019 the Applicant commissioned a report on the condition of the main structural fabric of the building. In the light of recommendations in that report the Applicant resolved to carry out various items of remedial work to the exterior of the building. Those works were 'qualifying works', as defined in section 20ZA of the 1985 Act. In accordance with the statutory consultation requirements imposed by section 20 of the 1985 Act and the Service Charges (Consultation Requirements) (England) Regulations 2003 ('the 2003 Regulations'), the Applicant served on the Respondents a notice of intention to carry out specified works; and observations and nominations of possible contractors were invited. The Respondents' response was largely supportive (querying only the current need to tie back the front of the property) and constructive; and it proposed that Aura Conservation Ltd be invited to tender for the work. The Applicant obtained three estimates, including one from Aura, who quoted a price of £14,522.92 plus VAT (a total of £17,427.50); and those estimates were notified to the Respondents. In response the Respondents provided a detailed comparison of the three estimates and expressed a preference for Aura. On 30 March 2020 the Applicant emailed the Respondents, indicating that the Applicant intended to appoint Aura to carry out the works, that the sum of £18,000.00 would be set aside as a 'repair fund' and that that sum would be included in the service charge accounts for 2019/2020.

51 Aura carried out works to the building in June 2020; and the Applicant paid Aura the sum of £19,075.10 by two instalments in July and August 2020.

52 The Respondents' challenge largely centres on contentions (i) that the work carried out by Aura did not fully match the works specified in the consultation documents, (ii) that the Applicant had failed to obtain listed building consent and (iii) that the Applicant had failed to serve party wall notices and secure contributions to the cost of the works from the adjoining property owners.

53 However, as the Tribunal pointed out, while such arguments may be relevant to a challenge to the actual expenditure in the service charge year 2020/2021, they are not relevant to a challenge to the setting up of the repair fund in the service charge year 2019/2020 - before the works were carried out.

54 There is no doubt that the lease provides for the creation of a 'repair fund'. By clause 5(1)(g) the Applicant covenants:

> to set aside (which setting aside shall for the purpose of the First Schedule hereto be deemed an item of expenditure incurred by the [Applicant]) such sums of money as the [Applicant] shall reasonably require to meet such future costs as the [Applicant] shall reasonably expect to incur of replacing maintaining and renewing those items which the [Applicant] has hereby covenanted to replace maintain or renew.

55 The question for the Tribunal is whether it was reasonable for the Applicant to include the sum of £18,000.00 in the balancing charge for the 2019/2020 service charge year.

56 The Tribunal determines that it was reasonable. When the Applicant received the fabric report in September 2019, it decided that it was appropriate to follow its recommendations and carry out certain works on the building. The tender process at the end of 2019 established that the works would cost in the region of £18,000.00. The works were to be carried out in mid-2020 and the invoices for the works would have to be paid soon afterwards. The Applicant could have included the cost of the repair fund in the interim charge demand for 2020/2021, which was served on 1 April 2020; but the interim charge is paid monthly over the course of the service charge year and service charge account would not have been balanced until March/April 2021.

57 The Tribunal therefore determines that the figure of £18,000.00 included in the service charge accounts for 2019/2020 in respect of the setting up of a repair fund (and the Respondents' one-third apportionment of £6,000.00) is reasonable.

58 Since the Respondents have paid nothing, the balance due to the Applicant is £6,000.00.

Service charges: summary

59 The effect of the determinations of the Tribunal on the service charges for 2019/2020 are set out in the table below:

Head of	Sum demanded from	Amount paid by	Balance claimed	Balance due as

expenditure	Respondents	Respondents	by Applicant	determined by Tribunal
Buildings insurance	£575.61	£191.87	£383.74	£383.74
Boiler repairs	£122.00	£36.60	£85.40	£85.40
Legal fees	£952.00	£250.00	£702.00	£83.33
Pavement grate	£126.57	£00.00	£126.57	£126.57
Repair fund	£6,000.00	£00.00	£6,000.00	£6,000.00
			£7,297.71	**£6,679.04**

Interim service charge for 2020/2021

60 Although the Respondents' application also purported to cover the interim service charge for 2020/2021, they provided no particulars of their challenge and it was not pursued in the Scott Schedule or at the hearing.

61 The Tribunal therefore makes no determination as to the reasonableness of the charge.

Counterclaim

62 In response to the Applicant's County Court claim, the Respondents sought to make a counterclaim against the Applicant.

63 However, the substance of the counterclaim is unclear. The Respondents state: '… this is a waste of the Court's time, intentionally done by solicitor. As such I would want to counter claim for time wasted in the responses required'. Moreover, the Respondents did not specify what remedy they were seeking.

64 The Court determines that the Respondents have shown no cause of action and dismisses the counterclaim.

Interest on unpaid service charges

65 The Applicant claims interest on the unpaid service charges from 7 April 2021 to the date of judgment (7 March 2022).

66 Although the Applicant claims interest at the rate of 8 per cent per year (pursuant to section 69 of the County Court Act 1984), paragraph 5 of the First Schedule to the lease provides for interest at 4 per cent above the base rate of National Westminster Bank plc at the date of demand. The Court determines that that is the appropriate rate to be applied in the present case. At the date of demand (8 March 2021), the National Westminster Bank plc base rate was 0.1 per cent. The Court therefore applies the rate of 4.1 per cent to the unpaid service charges of £6,679.04, as set out in paragraph 61 above, from 7 April 2021 to 7 March 2022 (335 days).

67 The Court determines that total interest of £251.33 is payable by the Respondents.

Costs

Preliminary

68 It is clear that the Applicant is the successful party in the present case. With the exception of the reduction in the amount of the legal fees payable, the Tribunal has determined that the service charge demands served on the Respondents were reasonable and payable in full.

69 It follows that the question for the Court and/or the Tribunal is whether the Applicant should be awarded costs against the Respondents.

70 The Applicant's County Court claim included a claim for the court issue fee of £455.00 and (unquantified) costs. Mr Pride subsequently provided a schedule of costs (including the County Court issue fee and the Tribunal hearing fee of £200.00) totalling £6,655.00.

71 Mr Pride acknowledged that the lease makes no provision for contractual costs.

72 The issues of costs in a deployment case such as the present requires the separate treatment of costs in the County Court and costs in the Tribunal: see the decision of the Upper Tribunal in *John Romans Park Homes Ltd v Hancock* [2018] UKUT 249 (LC).

Costs in the County Court

73 The case was allocated to the small claims track. In the absence of any entitlement to contractual costs, Mr Pride did not dispute that the question of costs in the County Court is therefore wholly governed by CPR 27.14.

74 CPR 27.14, so far as material, provides:

> (1) This rule applies to any case which has been allocated to the small claims track.
>
> (2) The court may not order a party to pay a sum to another party in respect of that other party's costs, fees and expenses, including those relating to an appeal, except –
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> (a) the fixed costs attributable to issuing the claim which –
>
> (i) are payable under Part 45; or
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> (ii) would be payable under Part 45 if that Part applied to the claim;
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> (c) any court fees paid by that other party;
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> …
>
> (g) such further costs as the court may assess by the summary procedure and order to be paid by a party who has behaved unreasonably ….

75 Mr Pride submitted that the Respondents had acted unreasonably in insisting on an oral hearing, having indicated on their section 27A application to the Tribunal that they would be content with a paper determination. However, if that submission can be made out, the Court takes the view – as Mr Pride himself suggested – that it is properly considered by the Tribunal as an application for wasted costs under rule 13(1)(a) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and section 29(4) of the Tribunals, Courts and Enforcement Act 2007.

76 Accordingly, the Court determines that in accordance with CPR 27.14 the costs to be paid by the Respondent to the Applicant are limited to the

County Court issue fee of £455.00 and fixed legal representative's costs of £100.00, a total of £555.00.

Costs and reimbursement of fees in the Tribunal

77 The general principle is that First-tier Tribunal (Property Chamber) does not operate costs shifting. The parties pay their own costs.

78 Section 29 of the Tribunals, Courts and Enforcement Act 2007 ('the 2007 Act'), so far as material, provides:

> 29(1) The costs of and incidental to—
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> (a) all proceedings in the First-tier Tribunal, and
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> (b) all proceedings in the Upper Tribunal,
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> shall be in the discretion of the Tribunal in which the proceedings take place.
>
> (2) The relevant Tribunal shall have full power to determine by whom and to what extent the costs are to be paid.
>
> (3) Subsections (1) and (2) have effect subject to Tribunal Procedure Rules.
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> (4) In any proceedings mentioned in subsection (1), the relevant Tribunal may—
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> (a) disallow, or
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> (b) (as the case may be) order the legal or other representative concerned to meet,
>
> the whole of any wasted costs or such part of them as may be determined in accordance with Tribunal Procedure Rules.
>
> (5) In subsection (4) 'wasted costs' means any costs incurred by a party—
>
> (a) as a result of any improper, unreasonable or negligent act or omission on the part of any legal or other representative or any employee of such a representative, or
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> (b) which, in the light of any such act or omission occurring after they were incurred, the relevant Tribunal considers it is unreasonable to expect that party to pay.
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> (6) In this section "legal or other representative", in relation to a party to proceedings, means any person exercising a right of audience or right to conduct the proceedings on his behalf.

79 Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the 2013 Rules'), so far as material, provides:

> 13(1) The Tribunal may make an order in respect of costs only—
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> (a) under section 29(4) of the 2007 Act (wasted costs) and the costs incurred in applying for such costs;
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> (b) if a person has acted unreasonably in bringing, defending or conducting proceedings in—
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> ...
>
> (ii) a residential property case, or
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> ....
>
> (2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.

80 Section 29 of the 2007 Act and rule 13 of the 2013 Rules therefore provide for the award of costs in the Tribunal under two headings: (i) wasted costs

under rule 13(1)(a) of the 2013 Rules and section 29(4) of the 2007 Act and (ii) unreasonable action under rule 13(1)(b) of the 2013 Rules.

81 In the circumstances of the present case, the Tribunal determines that it has no jurisdiction to award wasted costs under rule 13(1)(a) of the 2013 Rules and section 29(4) of the 2007 Act. First, the Respondents instructed no legal or other representative whom the Tribunal could order to meet any wasted costs. Second, in any event, neither paragraph of section 29(5) applies in the present case. Paragraph (a) does not apply because the Respondents instructed no legal or other representative; and paragraph (b) does not apply because the act of the Respondents of which the Applicant complains (the insistence on an oral hearing) did not occur after the Applicant incurred the claimed wasted costs.

82 In relation to rule 13(1)(b) of the 2013 Rules, Mr Pride's principal argument was that the Respondents had acted unreasonably in insisting on an oral hearing, having indicated in their section 27A application to the Tribunal that they would be content with a paper determination.

83 The Respondents' request for an oral hearing was made in an email to the Tribunal (and copied to Mr Pride) on 1 December 2021. They gave two reasons for that request. First, they stated that Mr Pride had sent the Applicant's response to the Scott Schedule to Mr Robinson alone (and not the other Respondents) with the result that there was a delay in providing a collective response. Second, the Respondents referred to their repeated requests for 'written evidence', which the Applicant failed to provide. They concluded by requesting an oral hearing 'in order to fully explore/research/rehearse/explain the circumstances surrounding that missing written evidence'. In the view of the Tribunal the first point lacks substance. On 14 July 2021 the other Respondents provided to the Applicant and to the Tribunal signed statements, confirming that they wished to be represented by Mr Robinson. It was therefore reasonable for the Applicant to communicate with Mr Robinson alone, save where the particular circumstances required communication with one or more of the other Respondents. In any event, subsequent correspondence from the Respondents suggests that all three Respondents were in almost constant communication with each other in relation to the present case. The second point appears to relate to the Respondents' almost obsessive concern with party wall notices. As noted above (paragraphs 52-53), the Tribunal determines that the requested 'written evidence' of those notices was not relevant to the issues in the present case.

84 However, although the Tribunal is of the view that the stated reasons for the request for an oral hearing lack substance, the Tribunal is not satisfied that the Respondents acted unreasonably in their conduct of the proceedings. It became apparent during the hearing that the relationship between the parties is acrimonious and that the Respondents are distrustful of the Applicant. They assert that the Applicant refuses to engage with them in relation to the management of the building and the subject property. It is perhaps understandable that the Respondents were concerned that a paper determination (to which they originally consented) might fail to consider matters which they genuinely believed to be relevant to their case.

85 In the circumstances, the Tribunal determines that the Applicant has failed to establish that the Respondents acted unreasonably in their conduct of the proceedings; and the Tribunal therefore makes no order under rule 13(1)(b).

86 On the other hand, there is no threshold of unreasonable action as a pre-condition for the ordering of the reimbursement of fees under rule 13(2) of the 2013 Rules. Since the Applicant was very largely successful in its application, and the Respondents' request for an (arguably unnecessary) hearing meant that the Applicant was required to pay a hearing fee of £200.00, the Tribunal orders the Respondents to reimburse to the Applicant the Tribunal hearing fee of £200.00.

Costs and reimbursement of fees: summary

87 The Court orders that the Respondents pay to the Applicant costs in the sum of £555.00.

88 The Tribunal makes no order as to costs.

89 The Tribunal orders the Respondents to reimburse to the Applicant the hearing fee of £200.00.

Paragraph 5A application

90 In their application to the Tribunal the Respondents made an application under paragraph 5A of Schedule 11 to the 2002 Act, which, so far as material, provides:

> (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.

91 In the light of the above conclusions on costs in the County Court and in the Tribunal, and applying the statutory criteria of what is just and equitable, the Tribunal orders that the Respondents' liability in respect of the Applicant's litigation costs is extinguished save for the payment of the County Court costs of £555.00 and the Tribunal hearing fee of £200.00.

Section 20C application

92 The Respondent also made an application under section 20C of the 1985 Act, which, so far as material, provides:

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

93 The application under section 20C is for determination by the Tribunal, since it relates to the recovery through the service charge of costs incurred by the Applicant in connection with Tribunal proceedings.

94 In *Conway v Jam Factory Freehold Ltd* [2013] UKUT 0592 the Upper Tribunal underlined the importance of considering the overall financial consequences of any order under section 20C. In the light of the decisions of the Court and the Tribunal on the issue of costs, the Tribunal is of the view that it would not be just and equitable if the Applicant sought to recover through the service charge costs that it failed to recover in its claims for costs.

95 In order to give effect to that view, the Tribunal makes an order under section 20C that the costs incurred by the Applicant in connection with the present 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 Respondents in respect of the subject property.

Decisions

Decisions of the First-tier Tribunal

96 The Tribunal determines that the Respondents are liable to pay to the Applicant the sum of £6,679.04 in respect of unpaid service charges as at 6 June 2021.

97 Pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, the Tribunal orders that the Respondents' liability in respect of the Applicant's litigation costs is extinguished save for the payment of the County Court costs of £555.00 and the Tribunal hearing fee of £200.00.

98 The Tribunal makes an order under section 20C of the 1985 Act that the costs incurred by the Applicant in connection with the present proceedings shall not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Respondents in respect of the subject property.

99 The Tribunal makes no other order as to costs.

Decisions of the Judge sitting as a Judge of the County Court

100 The Respondents shall within 28 days pay to the Applicant the sum of £555.00 in respect of the County Court issue fee and fixed legal representative's costs.

101 The Order giving effect to this Decision, a copy of which is annexed to this Decision, has been sent to the County Court for sealing.

Appeal

102 Different routes of appeal apply to decisions made by the First-tier Tribunal and by the Judge sitting as a County Court Judge.

Appeal against the decisions of the First-tier Tribunal

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

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

105 If the application for permission to appeal 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 made within the time limit.

106 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

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

Appeal against the decisions of the Judge sitting as a Judge of the County Court

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

109 The date that the decision is sent to the parties is the hand-down date.

110 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.

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

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

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

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

Appeal against the decisions of the First-tier Tribunal and the decisions of the Judge sitting as a Judge of the County Court

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

7 March 2022

Professor Nigel P Gravells
Deputy Regional Judge of the First-tier Tribunal

General Form of Judgment or Order

In the County Court Money Claims Centre
Claim Number: H27YJ893
Date:

High Peak Theatre Trust Limited	**Claimant**
Stephen Peter Robinson **Heather Michelle Robinson** **Katie Louise Robinson**	**Defendants**

BEFORE Deputy Regional Tribunal Judge Nigel Gravells, sitting as a Judge of the County Court (District Judge) at the County Court Money Claims Centre

UPON –

(a) the County Court having transferred to the First-tier Tribunal the matters within the jurisdiction of the Tribunal

(b) the Deputy Regional Tribunal Judge (sitting as a Judge of the County Court (District Judge) having exercised the jurisdiction of the County Court on the matters falling outside the jurisdiction of the Tribunal

AND UPON hearing (by remote video conferencing) Mr I Pride, Solicitor, for the Claimant and Mr S Robinson, Ms H Robinson and Ms K Robinson for the Defendants

AND UPON this order putting into effect the decisions of the First-tier Tribunal made at the same time

IT IS ORDERED THAT:

1 The Defendants shall within 28 days pay to the Claimant the sum of £6,679.04 in respect of unpaid service charges as at 6 June 2021.

2 The Defendants shall within 28 days pay to the Claimant the sum of £251.33 in respect of interest on unpaid service charges.

3 The Defendants' counterclaim is dismissed.

4 The Defendants shall within 28 days pay to the Claimant the sum of £455.00 in respect of County Court fees and £100 in respect of fixed legal representative's costs.

5 The Defendants shall within 28 days pay to the Claimant the sum of £200.00 in respect of the Tribunal hearing fee.

6 The reasons for the making of this Order are set out in the combined decision of the Court and the First-tier Tribunal (Property Chamber) dated 7 March 2022 under case reference number BIR/17UH/LIS/2021/0026/ BIR/17UH/LIS/2021/0036.

Dated: 7 March 2022