



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

**Case Reference** : CHI/00HN/LIS/2023/0008

**Property** : 7 McKinley Road Bournemouth Dorset BH4 8AG

**Applicant** : 7 McKinley Road Bournemouth Limited

**Representatives** : Mr Owen Jones and Mrs Ilse Prince

**Respondent** : Miss Marie Hopp

**Representative** : Not represented

**Type of Application** : (1) Liability to pay and reasonableness of service charges section 27A Landlord and Tenant Act 1985.  
(2) Liability to pay and reasonableness of administration charge, schedule 11 to the Commonhold and Leasehold Reform Act 2002.

**Tribunal Members** : Judge Jutton, Mr M J F Donaldson FRICS, Mr M Jenkinson

**Date and Place of Hearing** : Monday 30 October 2023, Court 9, Bournemouth and Poole Combined Court, Courts of Justice, Deansleigh Road, Bournemouth, Dorset, BH7 7DS

**Date of Decision** : 3 November 2023

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DECISION

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## 1. Background

2. 7 McKinley Road Bournemouth (the Property) is a property believed to have been constructed in 1905 and which is divided into three residential flats, one on each floor. The top floor flat (7A) is occupied by the Respondent Miss Marie Hopp. Miss Hopp holds her flat under the terms of a long lease dated 4 July 2002 and made between the Applicant and the Respondent (the Lease).
3. The freehold interest in the Property is owned by the Applicant, 7 McKinley Road Bournemouth Ltd.
4. The Applicant seeks a determination from the Tribunal pursuant to section 27A of the Landlord and Tenant Act 1985 as to whether service charges are payable by the Respondent to the Applicant and if so the amount which are payable, for the service charge years 2012 to 2022 (in each case the service charge year ends on 29 September). The Applicant also seeks a determination as to whether certain legal costs incurred by the Applicant are payable by the Respondent as an administration charge under the terms of the Lease and if so are reasonable in amount.

## 5. Documents

6. There was before the Tribunal a bundle of documents running to some 206 pages. Those included a copy of the Lease, Directions made by the Tribunal, the Applicants statement of case, witness statement made on behalf of the Applicant, service charge demands and accounts for each of the years in question and correspondence between the parties. There was no statement of case or witness statements made on behalf of the Respondent. References to page numbers in this decision are references to page numbers in the bundle.

## 7. The Law

8. The relevant statutory provisions are to be found in sections 18, 19, and 27A of the Landlord and Tenant Act 1985 (the 1985 Act) and in Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (the 2002 Act). They provide as follows:

### **The 1985 Act**

- 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

.....

27A (1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to –

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable

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

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

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which –

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

- (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

### **The 2002 Act Schedule 11**

- 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) .....
- (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) .....
- 2 *A variable administration charge is payable only to the extent that the amount of the charge is reasonable.*
- 3 .....
- 4 (1) *A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.*
- (2) *The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.*
- (3) *A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.*

- (4) *Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.*
- 5 (1) *An application may be made to [the appropriate tribunal] for a determination whether an administration charge is payable and, if it is, as to—*
- (a) *the person by whom it is payable,*
  - (b) *the person to whom it is payable,*
  - (c) *the amount which is payable,*
  - (d) *the date at or by which it is payable, and*
  - (e) *the manner in which it is payable.*
- (2) *Sub-paragraph (1) applies whether or not any payment has been made.*
- (3) *The jurisdiction conferred on [the appropriate tribunal] in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.*
- (4) *No application under sub-paragraph (1) 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.*
- (6) *An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—*
- (a) *in a particular manner, or*
  - (b) *on particular evidence,*

*of any question which may be the subject matter of an application under sub-paragraph (1).*

## **9 The Lease**

10 There is a copy of the lease at pages 25 to 42. It is dated 4 July 2002. It is for a term of 99 years from 25 March 1965. It is understood to have replaced a previous lease so as to be consistent with the leases of the other two flats. It provides for a ground rent of £10 per annum payable by half yearly equal instalments on 25 March and 29<sup>th</sup> September in each year. In addition the lessee covenants at clause 3.2: *'To pay the service charge calculated in accordance with the Third Schedule on the dates stated there'*.

11 Clause 1 of the Third Schedule provides:

12 *"Service Costs" means the amount the Landlord spends in carrying out all the obligations imposed by this Lease (other than the covenant for quiet enjoyment) and not reimbursed in any other way including the cost of borrowing money for that purpose*

13 *"final service charge" means one-fifth of the Service Costs*

14 *"interim service charge" means a half-yearly payment on account of the final service charge which is half of the final service charge on the latest service charge statement*

15 Clause 2 of the Third Schedule provides that the landlord must keep detailed accounts of service costs and produce a service charge statement for each period ending on 25 March and 29<sup>th</sup> September setting out the service costs for that period with particulars of the amount spent on each major category of expenditure, stating the amount of the final service charge, the amount of the interim service charge paid by the lessee and the amount by which the final service charge exceeds the interim service charge instalment or vice versa.

16 The service charge instalments are payable on the same dates as the ground rent, 25<sup>th</sup> of March and 29<sup>th</sup> September in each year.

17 By clause 4 of the Lease the landlord covenants to insure the Property, to pay all rates taxes and outgoings in respect of the common parts, to provide the services listed in the Fourth Schedule and to maintain a reserve fund. The landlord may engage the services of such employees agents contractors et cetera as the landlord considers necessary. The services set out in the Fourth Schedule include repairing maintaining and decorating the outside of the Property, the roof, the main structure, the foundations and the common parts.

## **18 The Hearing**

19 The hearing was attended by Mrs Ilse Prince the company secretary of the Applicant company and by Mr Owen Jones a director of the Applicant company. The Respondent, Miss Marie Hopp also attended.

- 20 At the start of the hearing the Tribunal agreed with the parties that the issues to be determined by the Tribunal were as follows:
- 21 That for each of the service charge years (ending on 29 September in each year), for the years 2012 to 2022 inclusive, was a service charge payable by the Respondent to the Applicant and if so the amount that was payable.
- 22 Was the Applicant entitled to recover legal costs incurred by it of £540 from the Respondent as administration charges under the terms of the Lease and if so whether such charges were reasonable in amount.
- 23 Should the Tribunal make an order providing for the Respondent to reimburse the Applicant the Tribunal fees paid by the Applicant.

#### **24 The Service Charges**

- 25 Contained within the bundle were forms of statements of account of income and expenditure in respect of service charges for each year from 2012 to 2022 inclusive in each case for the 12 months to 29 September. There were also service charge demands issued to the Respondent twice a year, an interim demand dated 25 March and a year end demand dated 29 September. The bundle also contained copies of invoices for works of repair and maintenance carried out to the Property. As set out above the service charge payable by the Respondent under the terms of the Lease is 1/5 of the total expenses incurred by the Applicant in complying with its insuring repairing decorating and maintenance obligations. The Tribunal noted that in respect of each of the years 2012 to 2022 inclusive the amount of service charge set out in the demand for payment sent to the Respondent (being the amount of the interim service charge claimed in March of each year plus the final service charge claimed at the end of the service charge year) was slightly less than 1/5 of the expenses set out in the service charge statement for the year. By way of example, for the year ending 29 September 2012 the total expenditure figure in the service charge statement dated 29 September 2012 (page 85) is shown as £2600. The Respondent's 1/5 share of that would be £520. The service charge demand for the same period dated 29 September 2012 addressed to the Respondent (page 63) refers to an 'interim service charge instalment' of £268 and a 'final service charge instalment' of £250 a total of £518.
- 26 Upon being questioned by the Tribunal Mr Jones and Mrs Prince accepted that the amount of service charge that the Applicant could recover from the Respondent in each year was limited as at the current time to the amount that had been demanded to date. Where in this decision the Tribunal has determined that a specific sum is payable by the Respondent as a service charge for any given service charge year that is limited, where applicable, to the sum which the Tribunal has determined is payable by the Respondent as at the date of this decision upon the basis of and by reference to inter-alia historic service charge demands served by the Applicant on the Respondent.

## **27 Year Ending 29 September 2012**

- 28 The service charge statement for this year is at page 85 of the bundle. It shows total expenditure for the year of £2600 (of which £1399.88 was paid into the reserve fund). That includes legal fees totalling £330. Upon being questioned by the Tribunal Mr Jones said that these related to legal fees incurred by the Applicant in seeking advice as to how to recover alleged arrears of service charge and ground rent from the Respondent. The Tribunal suggested that if these were items of expense sought solely from the Respondent and not from other lessees as part of the expenses incurred by the Applicant that made up the service charge, that properly they were not service charge items but were a form of administration charge. Mr Jones on behalf the Applicant agreed and that as such these items should not be included within the service charge accounts. That they were administration charges.
- 29 Miss Hopp did not agree the item of 'sweeping of drive and gardening services' in the sum of £30 on the basis that she did not accept that the work had been carried out. Mr Jones and Mrs Prince said they were satisfied that the work had been carried out. Nor did Miss Hopp accept that it was necessary for monies to be paid into a reserve fund. Indeed she did not feel that it was necessary to operate a reserve fund at all. In her view as and when a major item of expenditure arose all that was necessary was for the Applicant to make a demand of the lessees even if that were for a relatively large sum. Miss Hopp made the same submission in respect of the reserve fund for each of the service charge years.
- 30 The lease allows for the provision of a reserve fund. As such the Applicant is entitled to seek from the lessees as part of the service charge payable such sum as it reasonably determines from time to time should be paid into the reserve fund to meet future anticipated major items of expense. The notes to the service charge statement for the year (page 86) explain that the reserve fund was established to cover the anticipated cost of decorations and repairs to the Property every five years. Those include repairs to the exterior, the roof, the main structure and foundations of the building, the decoration of the exterior of the building (excluding window frames and the conservatory) and the repair and decoration of the common parts. That the annual contribution was calculated by reference to historic costs incurred in performing such works plus 10% rounded up to the nearest £100. In the view of the Tribunal that is a reasonable and sensible provision to make in the interests of good estate management and is one which the Applicant is entitled to make under the terms of the lease.
- 31 On the basis of the evidence before it the Tribunal determines that the items of expenditure, save for those relating to legal fees totalling £330, set out in the service charge statement for the year ending 29 September 2012 (page 85) are expenses which have been reasonably incurred and are payable under the terms of the lease as service charges. The legal fees claimed of £330 are not recoverable as service charges upon the basis that they are claimed by the Applicant as administration charges payable solely by the Respondent. They are charges incurred by the Applicant arising by reason of a failure by the



Respondent to make a payment due to the Applicant under the terms of the lease (a failure to pay service charges and ground rent).

- 32 Accordingly the Tribunal determines that the total amount of the service charge for the year ending 29 September 2012 is £2600 less legal fees of £330 leaving a balance of £2270 of which the 1/5 share payable by the Respondent is £454.

### **33 Year Ending 29 September 2013**

- 34 The service charge statement for this year is at page 89 of the bundle. It shows total expenditure for the year of £3007.53 (of which £1400 was paid into the reserve fund).

- 35 As for the previous year Miss Hopp questioned the monies paid to a Mr Motley for gardening services. Mr Jones and Mrs Prince said that Mr Motley attended at the Property every other week and while he would spend some time doing work for them on a private basis he would also on each occasion spend around half an hour working on the communal garden and driveway/pathway areas. Miss Hopp simply didn't accept that Mr Motley had carried out the work that he had charged for and which the Applicant said had been carried out.

- 36 On the basis of the evidence before it and the submissions made by the parties, the Tribunal is satisfied on the balance of probabilities that the work that Mr Motley contends that he had carried out had been carried out and that the charges made were reasonable in amount. Mr Motley had charged a total of £75 during the course of the year for what would amount to several hours work.

- 37 Included in the items of expense for this year is an invoice from a company called "The Accountancy Butler" for £193. Upon being questioned by the Tribunal Mr Jones explained that these were fees incurred with an accountancy company for the costs of filing company returns and accounts on an annual basis in respect of the Applicant company with Companies House. The Tribunal questioned whether fees incurred in respect of the administration of the Applicant company could be recovered under the terms of the Lease as part of the service charge payable by the lessees. It invited Mr Jones and Mrs Prince to consider the terms of the lease. The Tribunal adjourned for 15 minutes to allow them the opportunity to do so. After the adjournment Mr Jones confirmed that the Applicant accepted that such fees were not recoverable under the terms of the Lease as part of the service charge.

- 38 The Tribunal agrees with Mr Jones. The Lease allows the landlord to recover by way of service charges expenses that it reasonably incurs in carrying out its obligations under the terms of the Lease (other than the covenant for quiet enjoyment). Those obligations are set out at clause 4 and in the fourth schedule of the Lease. They make no reference to the Applicant company's own administration costs.

- 39 Included in items of expense for this year are legal fees of £120. Mr Jones confirmed that these related to advice obtained in respect of the arrears of service charge and ground rent owed by the Respondent and as for the previous

year properly were administration charges not items of expense which should form part of the service charge.

- 40 As to the reserve fund provision of £1400 Mr Jones explained that as in previous years that was based upon a previous expense incurred for major works at the Property in 2009. That the sum reserved each year was calculated as of 1/5 of the cost of those historic works plus 10% on the basis that such works would be required to the Property every five years or so. Miss Hopp repeated her contention that she did not think that it was necessary to make a reserve each year. That as and when a major item of expense arose each lessee should simply pay the full amount of their share of the cost of such works at that time.
- 41 For the reasons stated above for the year ending 29 September 2012 the Tribunal is satisfied that the Applicant is entitled to seek as part of the service charge a contribution to the reserve fund and that the amount demanded is reasonable.
- 42 Accordingly the Tribunal determines that the amount of the service charge for the year ending 29 September 2013 is £3007.53 less £193 in respect of accountancy charges and £120 in respect of legal fees leaving a net figure of £2694.53 of which the Respondent's 1/5 share is £538.90.

#### **43 Year Ending 29 September 2014**

- 44 The service charge statement for this year is at page 93 of the bundle. It shows a total expenditure of £2875.12 (of which £1400 was paid into the reserve fund).
- 45 Miss Hopp questioned the insurance premium of £858.12. She contended that Mr Jones had converted his flat into two so that there were now in effect four flats at the Property. Miss Hopp was not satisfied that the insurance cover reflected that fact. Mr Owen explained that in 2020 he had begun to sublet the rear part of his flat (on 'Airbnb'). To facilitate that he had installed a temporary partition. He had, he said, consulted with the insurers who had confirmed that such division to his flat and the subletting of part made no difference to the amount of the insurance premium charged.
- 46 On the basis of the evidence before it the Tribunal is satisfied that the insurance premium is reasonably incurred. That the subletting of part of Mr Jones flat did not occur until 2020 and that further that had no adverse effect, on the basis of Mr Jones submissions, on the amount of insurance premium charged.
- 47 Miss Hopp also questioned the items of expense in relation to hedge cutting. She contended that the hedge "ruins my life". That it was a privet hedge that required cutting twice a year. She complained that the Applicant would not allow her to cut the hedge. She believed that it was not trimmed as she understood it should be twice a year or at least not at the right times of the year.
- 48 Mr Jones referred the Tribunal to invoices from a company called Greenscape Ltd trading as 'Landscape', one dated June 2014 and one dated December 2014 at pages 146 and 148 of the bundle. In each case the work described in the invoice is "hedge cutting of communal areas, as instructed". Mr Jones said that

the work described in the invoice in each case was carried out Miss Hopp did not accept that was the case.

- 49 On the basis of the evidence before it and the submissions made by the parties the Tribunal is satisfied that the work described in the invoices was properly carried out and was reasonable amount.
- 50 Miss Hopp also questioned the bank charges incurred of £55. There was she submitted no need for the Applicant to operate a bank account into which service charges were paid and expenses met.
- 51 The Tribunal does not agree with Miss Hopp. It is perfectly reasonable and proper for the Applicant to operate a bank account into which service charges should be paid and held. Indeed, section 42A of the Landlord and Tenant Act 1987 requires service charges to be held in 'a designated account at a relevant financial institution'. As such it is reasonable for the Applicant to incur bank charges. There was no evidence before the Tribunal to suggest that the bank charges incurred were not reasonable.
- 52 Miss Hopp questioned an item of expense of £400 for the costs of repairing damage to a driveway wall. The wall in question she suggested was not part of the communal area. Mr Jones and Mrs Prince said that it was. The Tribunal asked whether the Applicant had considered making an insurance claim in respect of the cost of the repairs (it being understood that the need for repair had arisen because of damage caused by a third party). Mr Jones said that the Applicant had decided not to make an insurance claim bearing in mind the amount of the insurance excess that would be payable and the potential effect on future insurance premiums.
- 53 The Tribunal is satisfied upon the basis of the evidence before it that this item of expense relates to repairs properly carried out to a communal wall the cost of which is recoverable under the terms of the Lease as part of the service charge. That the decision of the Applicant not to in the circumstances make a claim against its insurance policy was a reasonable one to make.
- 54 The Tribunal determines that the amount of the service charge for the year ending 29 September 2014 is £2875.12 of which the Respondent's 1/5 share is £575.02. However the amount demanded to date by the Applicant for the year totals £566.11 (page 67) and thus the amount payable as at the date of this decision by the Respondent is limited to that amount.

#### **55 Year Ending 29 September 2015**

- 56 The service charge statement for this year is at page 97 of the bundle. It shows a total expenditure of £2785.42 (of which as in previous years £1400 was paid into the reserve fund).
- 57 The expenses include an invoice from the 'Accountancy Butler' for £373. Mr Jones confirmed that as in previous years this related to work carried out in respect of the filing of returns and company accounts for the Applicant company with Companies House. For the reasons stated above the Tribunal

determines that this sum is not recoverable under the terms of the lease as part of the service charge.

- 58 Miss Hopp queried an item of expense of £80 for 'painting of entrance'. She said that the front door to her flat had not been painted. Mr Jones explained that a communal door that just serves the entrance to the ground floor and first floor flat had been painted. That Miss Hopp's flat enjoyed its own separate entrance.
- 59 The Lease provides that part of the services to be performed by the landlord include the decoration of the '*... outside of the Building excluding the window frames and the conservatory no less frequently than every five years*' (clause 3 of the Fourth Schedule). They also include '*Repairing and whenever necessary decorating and furnishing the Common Parts*' (clause 4 of the Fourth Schedule) The 'Common Parts' are defined at clause 1.8 as '*... the parts of the Building intended for use by some or all of the tenants and other occupants of the Building*'. The 'Building' is defined at clause 1.6 as "*... the property comprised within title number DT 299594 consisting of three flats known as Ground Floor Flat, First Floor Flat and Top Floor Flat 7 McKinley Road Bournemouth Dorset shown edged on the plan of title number DT 299594*".
- 60 The Tribunal is satisfied that the front door to the entrance hall which serves the ground floor and first floor flat forms part of the 'Common Parts' of the building or is otherwise in any event part of the exterior of the building. That the definition of the 'Common Parts' makes it clear that it includes a part of the building which is intended for use of some (emphasis added) of the tenants or occupiers not necessarily all of the tenants or occupiers.
- 61 Accordingly the Tribunal does not accept Miss Hopp's submission that she should not be liable to pay her share of the cost of this item of expense even though the front door to her flat was not decorated and even though the door in question serves the entrance hall to just the ground floor and first floor flats.
- 62 The Tribunal determines that the amount of the service charge for the year ending 29 September 2015 is £2785.42 less the 'Accountancy Butler' invoice of £373 a net figure of £2412.42 of which the Respondents 1/5 share is £482.48.

### **63 Year Ending 29 September 2016**

- 64 The service charge statement for this year is at page 102 of the bundle. It shows a total expenditure of £2873.04 (of which £1400 was paid into the reserve fund).
- 65 The expenses include two invoices from the 'Accountancy Butler' which total £386 which Mr Jones confirmed related to fees incurred for the filing of company returns and company accounts with Companies House and which for the reasons stated above the Tribunal determines are not recoverable as part of the service charge.

66 On the basis of the evidence before it and the submissions made by the parties the Tribunal is satisfied that the balance of the expenses set out in the service charge statement are recoverable as part of the service charge under the terms of the lease and are reasonable in amount. The Tribunal determines that the amount of the service charge for the year ending 29 September 2016 is £2873.04 less the sum of £386 in respect of accountancy fees leaving a balance of £2487.04 of which the Respondent's 1/5 share is £497.41.

#### **67 Year Ending 29 September 2017**

68 The service charge statement for this year is at page 106 of the bundle. It shows a total expenditure of £2439.43 (of which £1400 was paid into the reserve fund).

69 There were no works of repair and maintenance carried out during the year. The expenses include legal fees of £180 which Mr Jones confirmed, as before, were fees incurred for obtaining advice as regards the arrears of service charges and ground rent payments owed by the Respondent. For the reasons stated above the Tribunal determines that such legal fees are not recoverable as part of the service charge.

70 The Tribunal determines that the amount of the service charge for the year ending 29 September 2017 is £2439.43 less legal fees of £180 a net figure of £2259.43 of which the Respondent's 1/5 share is £451.88. However the amount demanded to date by the Applicant for the year is £438.47 (page 73) and thus the amount payable as at the date of this decision by the Respondent is limited to £438.47.

#### **71 Year Ending 29 September 2018**

72 The service charge statement for this year is at page 110 of the bundle. It shows a total expenditure of £4108.01 (of which £3000 was paid into the reserve fund).

73 The notes to the service charge statement explain that the annual contribution to the reserve fund had been raised to £3000 but that it was clear from recent works carried out that that would be insufficient to fund anticipated works over a five year cycle. That it had been noted during recent works that many of the roof battens were rotten and likely to require substantial replacement before 2024. That the intention was therefore to raise the reserve fund contribution in the subsequent years to £6000 to ensure that there was as far as possible sufficient monies in the reserve fund to meet anticipated future works of repair.

74 Included in the expenses for this year is an item described as 'late filing penalty' of £150. That was, Mr Jones explained, a penalty incurred for the late filing of returns and accounts in respect of the Applicant company with Companies House. He accepted that could not be recovered as part of the service charge.

75 On the basis of the evidence before it and the submissions made by the parties the Tribunal determines that the service charge for the year ending 29 September 2018 is £4108.01 less the late filing penalty charge of £150 leaving

a balance of £3958.01 of which the Respondent's 1/5 share is £791.60. However the amount demanded by Applicant to date is £782.77 (page 75 of the bundle) and thus the amount payable as at the date of this decision by the Respondent is limited to £782.77.

## **76 Year Ending 29 September 2019**

- 77 The service charge statement for this year is at page 114 of the bundle. It shows a total expenditure of £25,250.06 (towards which £2000 was drawn down from the reserve fund).
- 78 It includes a major item of expenditure for repairs and maintenance of £24,117.36. Mr Jones and Mrs Prince explained that the gable end at the rear of the Property had come down. Substantial works have been carried out to repair the gable and other roof works to include the cost of scaffolding. That three companies had been asked to provide quotations for the work which have been passed to Miss Hopp. Both the Applicant and Miss Hopp had selected the cheapest quotation from a company called S&D Decorating & Maintenance Limited (SDDM). Miss Hopp confirmed that she had received the three quotations and that she was happy that SDDM had been chosen as the contractor to carry out the work (the SDDM work). She said that the work carried out was very good.
- 79 The Tribunal asked Mr Jones and Mrs Prince whether the Applicant had followed the consultation process required by section 20 of the Landlord and Tenant Act 1985. It explained in outline what that process was. Mr Jones said that he was not familiar with the process. He read out a letter dated 23<sup>rd</sup> of August 2018 that had been sent by the Applicant to Miss Hopp with the three quotations. The letter did not invite Miss Hopp to propose the name of a person from whom the Applicant should try to obtain an estimate for the proposed works.
- 80 Section 20 of the 1985 Act and the related Regulations provide that where a lessor intends to undertake major works with a cost of more than £250 per lease in any one service charge year the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively (Section 20ZA).
- 81 The consultation process is set out in the Service Charges (Consultation etc) (England) Regulations 2003. The lessor must as a first step serve on the lessee notice in writing of his intention to carry out the proposed works. That notice is required to describe in general terms the proposed works or specify a place and hours in which the description of the proposed works may be inspected. It should state the lessor's reasons for considering it necessary to carry out the proposed works and invite the making in writing of observations in relation to the proposed works. It must also specify the address to which such observations may be sent, that they must be delivered within the relevant period and the date on which the relevant period ends. The notice should also invite each lessee to propose within the relevant period the name of a person from whom the lessor

should try to obtain an estimate for the carrying out of the proposed works. That in outline is the first step in the consultation process.

82 The letter read out by Mr Jones to the Tribunal did not comply with those requirements. In particular it did not, as Mr Jones confirmed, invite Miss Hopp to propose the name of a contractor from whom the Applicant should try to obtain an estimate (his recollection was that he felt, not unreasonably, that there was no reason to do so given that he understood that Miss Hopp was happy to proceed with SDDM).

83 The Tribunal is sympathetic to the Applicant's position. The Applicant may feel that it took reasonable steps to consult with Miss Hopp. It obtained three estimates. It asked Miss Hopp to consider these. She did so and she was pleased to agree to appoint SDDM. The Applicant may reasonably feel that no harm was done.

84 However the strict requirements of the said consultation regulations were not complied with. In those circumstances, in the absence of an application for dispensation from the consultation requirements (which may be made retrospectively), the service charge contribution to be paid by Miss Hopp towards the SDDM work is limited to £250.

85 Also included in the expenses for this year are legal fees of £90 which as in previous years were incurred by Applicant for seeking advice as to how to recover arrears of service charges and ground rents from the Respondent. For the reasons stated the Tribunal considers these be a form of administration charge and therefore cannot be recovered from the Respondent as part of the service charge payable by her. The statement also includes a fee of £13 described as 'Companies House registration'. That would appear to relate to a fee paid by the Applicant company to Companies House and for the reasons stated above cannot be recovered as part of the service charges.

86 Putting to one side the SDDM work the balance of the expenses which form the service charge account for the year ending 29 September 2019 are £1133.60 less legal fees of £90 and Companies House registration fee of £13 leaving a net sum of £1030.60 of which Miss Hopp's 1/5 share is £206.12. To that is added the sum of £250 in respect of the SDDM work making a total payable by Miss Hopp of £456.12.

#### **87 Year Ending 29 September 2020**

88 The service charge statement for this year is at page 119 of the bundle. It shows a total of £4313 (of which £3000 was paid into the reserve fund).

89 The expenses include a Companies House late filing penalty of £300. For the reasons stated above the Tribunal determines that this sum cannot be recovered as part of the service charges.

90 On the basis of the evidence before it and the submissions made by the parties the Tribunal determines that the total amount of service charge for this year is £4013 of which the Respondent's 1/5 share is £802.60. The amount demanded

by the Applicant to date (page 79) was £791.03 and accordingly as at the date of this decision that is the amount payable by the Respondent.

## **91 Year Ending 29 September 2021**

- 92 The service charge statement for this year is at page 124 of the bundle. It shows a total of £7857.65 (of which £3000 was paid into the reserve fund).
- 93 The expenses include works of repointing and show invoices paid to a company called I & R Masonry totalling £2429 plus £132.56 described as ‘Masons Mortar – building supplies’ (which Mr Jones confirmed related to the same works) making a total of £2561.56. Miss Hopp’s 1/5 share of that would be £512.31. That exceeds the sum of £250 and accordingly the consultation requirements of section 20 of the 1985 Act are engaged. Mr Jones confirmed that those requirements had not been carried out. Accordingly (and in the absence of an application for dispensation) the Tribunal determines that Miss Hopp’s service charge contribution to these works are limited to £250.
- 94 Included in the expenses is a reference to ‘Stephen Back’ and the sum of £575. Mr Jones explained that Mr Back was a surveyor who had been retained by the Applicant to inspect a retaining wall at the rear of the Property which was leaning towards the building. Miss Hopp suggested that this expense was not reasonably incurred on the basis that she believed that there was nothing wrong with the wall, as she put it “it will outlive me”. Mr Jones confirmed that the works that Mr Back reported had not yet been carried out.
- 95 It was in the view of the Tribunal reasonable for the Applicant to seek expert advice as to the stability of the wall and as to what works if necessary should be carried out to it. Clause 4.4 of the Lease provides that in providing the services listed in the fourth schedule of the Lease the landlord ‘... *may engage the services of whatever employees, agents, contractors, consultants and advisers as the Landlord considers necessary*’.
- 96 It was reasonable in the view of the Tribunal in such circumstances for the Applicant to seek expert advice as to what works may need to be carried out. That as such the costs of employing Mr Back to advise are costs that have been reasonably incurred.
- 97 Similarly, Mr Jones explained that the reference to Coles Miller and the sum of £504 was to legal fees incurred by the Applicant in seeking advice as to who was responsible for the repair and maintenance of the said wall and whether or not the cost of the repair works could be claimed against the building insurance policy. The Tribunal is satisfied that in the circumstances the cost of seeking legal advice are costs that were reasonably incurred and for the reasons stated are recoverable under the terms of the lease as part of the service charge.
- 98 Putting to one side the works totalling £2561.56 in respect of the repointing the balance of the expenses which form the service charge for the year ending 29 September 2021 are £5296.09 of which Miss Hopp’s 1/5 share is £1059.22. To that is added the sum of £250 in respect of the repointing work making a total



of £1309.22. Accordingly the Tribunal determines that the amount of service charge payable by Miss Hopp for this year is £1309.22.

## **99 Year Ending 29 September 2022**

- 100 The service charge statement for this year is at page 129 of the bundle. It shows a total of £4592.87 (of which £3000 was paid into the reserve fund).
- 101 That figure includes fees paid to companies house of £163 which for the reasons stated the Tribunal determines cannot be recovered as part of the service charge.
- 102 Very reasonably Miss Hopp stated that in relation to an item for unblocking a drain that Mrs Prince (who had organised the work) had done a very good job. She also said that she was happy with the contractor who had carried out hedge trimming, Gavin Riley Ltd (indeed she had sourced that company herself).
- 103 On the basis of the evidence before it and the submissions made by the parties the Tribunal determines that the total amount of the service charge for this year is £4592.87 less Companies House fees of £163 leaving a balance of £4429.87 of which Miss Hopp's 1/5 share is £885.97. The amount demanded by the Applicant to date (page 83) was £819.57 and accordingly as at the date of this decision that is the amount payable by the Respondent.

## **104 The Administration Charges**

- 105 The administration charges claimed by the Applicant from the Respondent total £540. They are charges incurred by the Applicant in seeking legal advice with a view to recovering from the Respondent alleged arrears of service charges and ground rent. Mr Jones told the Tribunal that the solicitors that the Applicant instructed advised him that such charges could be recovered from the Respondent under the terms of the lease. The Tribunal asked Mr Jones to identify which clause or clauses in the lease he relied upon which would allow the Applicant to recover such charges from the Respondent. The Tribunal offered him time to consider the terms of the lease. Mr Jones referred to clause 3.28.
- 106 Clause 3.28 of the lease (page 35) provides that the lessee will pay all expenses including reasonable legal fees incurred by the landlord in the preparation and service of a notice under section 146 of the Law of Property Act 1925. That is a notice served by a landlord seeking forfeiture of a lease. That clause does not in the view of the Tribunal allow the landlord to recover legal fees incurred by it in seeking legal advice as to what steps might be taken by the landlord to recover alleged arrears of service charges for ground rent. Nor, having considered the lease carefully, the Tribunal is not satisfied that there are any other provisions in the lease which would assist the Applicant.
- 107 Accordingly the Tribunal determines that the Applicant cannot recover administration charges of £540 from the Respondent.

## **108 Reimbursement of Fees**

- 109 The Applicant seeks an order for reimbursement to it of fees paid to the Tribunal. Rule 13 (2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 provides that 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.
- 110 Mr Jones said that the application to the Tribunal had been a last resort on the part of the Applicant. That the Respondent had not paid service charges for many years. That the shortfall in the service charge account in effect restricted the Respondent's fellow lessees in the sale of their respective flats. That the Applicant had been extremely patient but that ultimately been left with no choice but to make the application.
- 111 Miss Hopp said that it was for each party to pay their own solicitor. That if the Applicant chose to appoint a solicitor it was for the Applicant to pay that solicitor not her. If the law said otherwise the law she said was wrong.
- 112 Save for a payment of £2200 in 2019 the Respondent has made no payments of service charges for over 10 years. The Lease requires her to pay a service charge. However much the Respondent may dispute the service charges demanded from her she must accept that something should be paid. The Tribunal notes that the Applicant has delayed for many years before submitting its application. It notes that save for attending the hearing the Respondent failed to engage in the Tribunal proceedings. She failed to comply with directions made by the Tribunal, in particular she did not serve upon the Applicant any form of written statement of case. The Tribunal has found that service charges are due and payable from the Respondent to the Applicant.
- 113 In the circumstances Tribunal orders that the Respondent reimburse the Applicant the Tribunal fees paid by the Applicant in the total sum of £300.

## **114 Summary of Tribunal's Decision**

### **Service Charges**

For each of the service charge years ending on 29 September for the period 2012 to 2022 inclusive the Tribunal determines that the service charge payable as at the date of this decision by the Respondent to the Applicant is as follow:

2012: £454.00  
2013: £538.90  
2014: £566.11  
2015: £482.48  
2016: £497.41  
2017: £438.47  
2018: £782.77  
2019: £456.12

2020: £791.03  
2021: £1309.22  
2022: £819.57

TOTAL: £7,136.08

(The Tribunal notes that it was told by both parties that the only payment made by the Respondent to the Applicant over the same period was a payment of £2200 made in 2019).

### **Administration Charges**

The administration charges of £540 claimed by Applicant are not payable by the Respondent.

### **Tribunal fees**

The Tribunal Orders the Respondent to reimburse the Applicant Tribunal fees paid of £300.

3 November 2023

Judge N Jutton

## **RIGHTS OF APPEAL**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) being the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking