FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00HN/LSC/2023/0166 and CHI/00HN/LBC/2023/0025
Property	**:**	Flat 11, 17 Admirals Walk, West Cliff Road, Bournemouth, BH2 5HH
Applicant	**:**	Admirals Walk 2002 Limited
Representative	**:**	Cassandra Zanelli, solicitor, Property Management Legal Services Limited
Respondents	**:**	Kevin Roy Dixon David Paul Bell
Representative	**:**	Not represented
Type of Application	**:**	(1) Breach of covenant S168(4) Commonhold and Leasehold Reform Act 2002. (2) Determination of liability to pay and reasonableness of Service Charges S27A Landlord and Tenant Act 1985.
Tribunal Members	**:**	Judge N P Jutton, Mr M J F Donaldson FRICS, Ms T Wong
Date	**:**	6 June 2024 Havant Justice Centre, Elmleigh Road, Havant, PO9 2AL
Date of Decision	**:**	11 June 2024

DECISION

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1 **Introduction**

2 Admirals Walk is a 14 storey block of 121 residential flats on the West Cliff in Bournemouth understood to have been constructed in the 1960s. It has been described as a prestigious and high class development. The Applicant company is the freehold proprietor. The Respondents Mr Kevin Roy Dixon and Mr David Paul Bell are the registered proprietors of flat 11. They hold flat 11 under the terms of a lease dated 5 August 2004 made between the Applicant and Margaret Mary Knowles for a term of 999 years from 1 September 2004 (the Lease).

3 The Applicant makes two applications. Firstly an application under section 168(4) of the Commonhold and Leasehold Reform Act 2002 for a determination that the Respondents have breached certain covenants contained in the Lease. Secondly an application under section 27A of the Landlord and Tenant Act 1985 for a determination as to whether certain service charges demanded are payable by the Respondents and if so are reasonable in amount.

4 Directions made by the Tribunal provided that the two applications would be heard together.

5 **Documents before the Tribunal**

6 The documents before the Tribunal comprised a bundle of 1771 pages which included the Applicant's applications, both parties Statements of Case, various witness statements, service charge accounts and documents in support, photographs, previous decisions of this Tribunal and other documents. References to page numbers in this Decision are references to page numbers in the bundle of documents. The Applicant also supplied a copy of the Lease (the lease in the bundle being the lease for flat 26 not flat 11). Both parties also produced a number of short videos.

7 **The Breach of Covenant Application**

8 **The Statutory Provisions**

9 Section 168 of the Commonhold and Leasehold Reform Act 2002 provides:

> *"(1) A landlord under a long lease of a dwelling may not serve a Notice under section 146(1) of the Law of Property Act 1925 (c20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless sub-section (2) is satisfied.*
>
> *(2) This sub-section is satisfied if –*
>
> *(a) it has been finally determined on an application under subsection (4) that the breach has occurred,*
>
> *(b) the tenant has admitted the breach, or*

(c) a court in any proceedings or an arbitral tribunal in proceedings pursuant to a post dispute arbitration agreement, has finally determined that the breach has occurred.

…

(4) A landlord under a long lease of a dwelling may make an application to the appropriate tribunal for a determination that a breach of a covenant or condition in the lease has occurred".

10 **The Lease**

11 Clause 3 of the lease contains covenants made on the part of the lessee. They include:

3.18 *Not to use the property, or any part of it, for any of the following, nor allow anyone else to do so:*
activities which are dangerous, offensive, noxious, noisome, illegal or which are or may become a nuisance or annoyance to the Landlord or to the owner or occupier of any neighbouring property

3.19 *Not to display any notice or advertisement either on the outside of the property or visible from outside it*

'The property' is defined at clause 1.7 as:

> '….. *Flat Number 11 on the fifth floor of the building together with any garage or storeroom belonging thereto all which are shown on the plan of title No. HP70976 registered at HM Land Registry as described in the property register thereof'*

12 **The Applicants Case**

13 The Applicant says that the Respondents have over a period of time acted in breach of both clauses 3.18 and 3.19 of the Lease. That in particular they have displayed a number of signs placards and notices from the balcony of their flat and from the windows of their flat so as to be visible from outside it. The said signs placards and notices, the Applicant says, have been displayed on the Respondents balcony since at least 23rd of January 2023. The Applicant produced a number of photographs of the balcony and of the windows of the Respondents flat which date from 23 January 2023 to 12 December 2023 (pages 85-98 and 192-208). The Applicant also produced a number of short videos of the Respondents balcony.

14 The photographs and videos show a number of banners attached to the railings to the balcony which contain statements such as: '*Napier Out', 'Admirals Walk is currupt', 'Many involved', 'Go online read Napier's reviews', 'This block is corrupt many involved', 'Whistle blowers', 'Admirals scam'*. There are also photographs which show similar signs or notices displayed in the windows of the Respondent's flat and banners hanging from those windows. Some of the photographs and videos show

strings of balloons tied to the balcony railings sometimes hanging from the balcony so as to reach the balconies of the flats below. The balloons appear to have paint on them. The reference on the banners to 'Napier' is understood to be a reference to the managing agents retained by the Applicant to manage Admirals Walk; Napier Management Services Limited.

15 Ms Zanelli said that the two covenants, set out above, were absolute covenants. They were not qualified or partially qualified covenants. They were both clear absolute covenants. They were in the form of absolute prohibitions. That neither of the covenants raised questions of consent or permission or of reasonableness. She submitted that if the Tribunal were to find as a question of fact that notices had been displayed by the Respondents on the outside of their flat and/or which were visible from outside of it then it must find that the Respondents had been in breach of clause 3.19 of the Lease. Similarly, if the Tribunal were to find that the display of banners et cetera from the balcony of the Respondents flat constituted a nuisance, annoyance or were dangerous to the Applicant or to the owners or occupiers of neighbouring flats, then the Tribunal must find that the Respondents had been in breach of clause3.18 of the Lease. The two covenants were not, Ms Zanelli, said linked covenants. They were freestanding.

16 The jurisdiction enjoyed by the Tribunal, Ms Zanelli said, was a statutory jurisdiction. It was a discreet and narrow jurisdiction. That the Tribunal should not be concerned with the future but simply with the terms of the lease and whether there had been a breach of the covenants contained therein. By reference to section 168(4) of the Commonhold and Leasehold Reform Act 2002 the question for the Tribunal was, Ms Zanelli said, whether a breach of covenant had occurred not whether it was continuing to occur. It was accepted by the Applicant that the balcony of the Respondents flat has now been cleared of banners and balloons.

17 Ms Zanelli suggested that it might be helpful to both parties if the Tribunal were to give a preliminary oral indication as to whether or not it viewed the covenants in clauses 3.18 and 3.19 of the Lease as absolute or qualified covenants. That might assist both parties, she suggested, in the presentation of their respective cases. Mr Dixon agreed.

18 The Tribunal adjourned for a short period of time to consider the point. Upon reconvening the Tribunal told the parties that in its view the two covenants were absolute covenants. The wording of covenants was clear. They were covenants not to carry out certain acts. That the wording was not in any way qualified.

19 The Tribunal heard oral evidence from Aileen Lacey-Payne a director of Napier Management Services Ltd (witness statement at pages 172-188). Mrs Lacey-Payne said that she may have taken a couple of the photographs exhibited to her witness statement (pages 85 to 98) and that others had been taken by lessees of other flats and given to her. That none of the photographs as far she was aware had been embellished.

20 The Tribunal also heard oral evidence from Ms Laurie Scott (witness statement at pages 291- 294). Ms Scott referred to a letter dated 22 July 2023 which she had hand-delivered to flat 11 the same day (the letter is in her former name of Cox) (page 1562).

Ms Scott explained that she had purchased her flat, 7 Admirals Walk, in May 2023. That it is two stories below the Respondents flat. That she had carried out works of refurbishment to her flat and had not moved in until around the middle of September 2023. During the works of refurbishment she would regularly visit the property. That she had been shocked she said to see banners and signs hanging from the balcony of the Respondent's flat. That she had felt obliged to write the said letter. That at the time she had not met the Respondents and did not know their names which is why she had delivered the letter addressed to '*the owners/tenants of 11 Admirals Walk'*. The letter states that *'….on recent visits to site, I have been perturbed to see what appear to be protest banners/signs in the form of painted bedsheets, balloons and various other materials (hereafter 'protest adornments') hanging from a window to the front elevation of the building and a further set displayed from what I believe is your balcony at the rear of the building*'. The letter suggested to the Respondents that they were in breach of the terms of their lease. The letter said that Ms Scott considered the '*protest adornments*' to be a nuisance and annoyance to her.

21 In her witness statement Ms Scott refers to an incident on 9 September 2023 when she was sitting on her balcony and was soaked with a large volume of water that she said had come from the balcony of flat 11. That she took pictures of the puddles of water on her balcony albeit they were not produced to the Tribunal. In answer to questions put to her by Mr Dixon she confirmed that her balcony was not directly below the balcony of flat 11 but to one side. Nonetheless she said that she was in is no doubt that the water had emanated from the balcony to flat 11 because when she looked up she could see more water dripping from that balcony.

22 Ms Scott said that certain of the photographs in the bundle had been taken by her and that they had not been embellished. Ms Scott said that crisp packets and other detritus had fallen onto her balcony. That she didn't consider that dangerous in the sense that they were not of significant weight such that would cause injury. That paint on balloons hanging from the Respondents balcony had hit the screens to her balcony depositing paint on those screens. She said that matters had escalated following her letter with balloons hanging from the Respondents balcony hitting her bedroom windows.

23 In response to questions put to her by Mr Dixon Ms Scott said that prior to the Tribunal hearing she had only met the Respondents once when she had asked if they could refrain from allowing crisp packets and other detritus from landing on her balcony. She said that she found that she was obliged to collect rubbish on a daily basis. Mr Dixon asked if Ms Scott's witness statement was a full account. She said that it was a summary of events relevant she believed to these proceedings. That the events described were she said a nuisance and annoyance to her.

24 The Tribunal heard oral evidence from Mrs Nancy Lewis of flat 5 (witness statement at pages 295-297). At paragraph 4 of her witness statement Mrs Lewis states that shortly after or around 3 February 2023: '*….Mr Dixon and Mr Bell who live in a flat 3 floors above me started to cover their balcony with painted banners and balloons – decorated with slogans painted on them which they frequently had to renew because of the wind and weather. The banners stated "Napier Out", "Admirals Walk is corrupt" and "Many involved". Mr Bell would often be out on the balcony waving banners around and shouting. The outcome of which was general annoyance from residents and neighbours. There was debris of balloons and bits of torn banners on the streets, in the gardens and hanging from trees. Paint dripped down on our balcony and bits of plastic melted onto glass and furniture in the weather which ruined our new furniture and tarnished the glass balcony and windows. None of which will come off without specialist cleaning'*.

25 Mrs Lewis said that her flat was on the 2nd floor directly below flat 11. She said that she always knew when the Respondents were at home. That if they were away the banners and balloons would disintegrate and fly onto her balcony and garden furniture. The glass of her balcony she said was spattered with paint. She said that it was a nuisance and upsetting. She said it was also embarrassing when she had visitors. She said that she found it offensive and very annoying. In answer to a question from the Tribunal she said she didn't consider the matter to be dangerous to her personally.

26 Mr Dixon questioned the likelihood of debris falling from the 5th floor onto a balcony on the 2nd floor. Mrs Lewis said that she believed that the debris had fallen from Respondents flat but had no photographic evidence before the Tribunal to that effect.

27 The Tribunal heard oral evidence from Mr Timothy Watts (witness statement pages 302 – 303). Mr Watts said that the banners displayed from the Respondent's flat were a nuisance and annoyance to him and that he found them offensive. They were he said potentially dangerous. That Admirals Walk was exposed to the weather and at times was subject to gales of up to 90 mph. That furniture had blown off the balcony of his flat (on the 11th floor). He was concerned that the banners and other items displayed from the Respondents flat could blow off and land on a passing car or motor bike causing an accident. In answer to questions from Mr Dixon he said that he found the banners displayed from the Respondents flat upsetting. That he had he said some standing in the local area particularly in the education sector and for his charity work. That visitors asked him, with reference to the banners on the Respondent's balcony, what was going on. He agreed that the banners had now been removed from the Respondents balcony. He said that he had seen debris which he believed to have come from Respondent's balcony lying in adjacent roads and a car park. In answer to a question put to him by Mr Dixon he denied that his witness statement was malicious. He said it was a truthful representation of how he felt.

28 The Tribunal heard oral evidence from Mr George Murphy (witness statement pages 286 – 288). At paragraph 10 of his witness statement Mr

Murphy referred to loud laughter and shouting coming from the Respondents flat which he said was clearly intended to intimidate. He told the Tribunal that he considered that to be annoying offensive and noisome.

29 **The Respondents Case**

30 Mr Dixon said that it was accepted that banners had been displayed from the balcony of flat 11. However he didn't accept that constituted a breach the terms of the Lease. There were justifiable reasons he said for displaying the banners. They were a form of protest. That it was never intended that the protest would be for a long period. That the banners were not intended to annoy people but to inform them. That the Respondents felt that they had never had a voice in the Admirals Walk community. They believed that these proceedings had been brought to harass them. He didn't agree that the covenants at clauses 3.18 and 3.19 of the Lease were absolute covenants. He said that Mr Bell was an artist. That he suffered from Tourette's syndrome. That if Mr Bell could not express himself in the way that he had on the balcony that there would be adverse consequences. He said that the Respondents believed that the evidence against them was exaggerated. That the photographs produced by the Applicant of the balcony have been enhanced. That there was no evidence of paint staining to the balconies of other flats or of plastic melting onto garden furniture. That the Respondents protest did not break the terms of the Lease because the banners did not contain advertisements. That they were not an annoyance. That the only complaint that they had received was from Ms Scott. That no complaints had been made to the Police. That those complaining were people who had historically lost previous cases before the Tribunal. He believed that those complainants had conspired together to exaggerate the alleged breach of the lease for other purposes. That the banners and placards on the balcony had come down in January 2024 and the signs in the windows probably around March 2024.

31 The Respondents produced witness statements from Mr David Hacker, flat 98 (pages 1567 – 1569), Mr Daniel de Rosa of flat 108 (pages 1576 – 1586), Dr Rodney Frederick Cooper of flat 121 (pages 1604 – 1607), and Mr Philip Austin a concierge who works at Admirals Walk (pages 1608 – 1609). On the basis that she considered the contents of those witness statements to be irrelevant to the issues before the Tribunal, Ms Zanelli stated that the Applicant did not seek to challenge those witness statements and did not seek to cross examine those witnesses.

32 Both of the Respondents, Mr Dixon (witness statement pages 1625-1626) and Mr Bell (witness statement pages 1621-1623) gave oral evidence.

33 Mr Dixon said the notices on the balcony had come down on 1 January 2024. He couldn't say exactly when they had first gone up but thought they had been in place for about a year. He was referred to a photograph of the balcony showing banners taken on 23 January 2023 (page 85). He said that he didn't disagree with that date. He described the banners and notices on the balcony as both artwork and a protest. He accepted that the covenants on the lessee's part in the Lease were a promise on the lessees

part to do or not do certain things. He said that he would never wish to break the terms of the Lease.

34 Ms Zanelli put it to him that was exactly what he had done. Mr Bell denied that saying that we were not living in feudal times. He said that the Respondents had used their balcony to make a protest, that it was for the Tribunal to decide whether that constituted a breach of the terms of the Lease or not. There were, he said, mitigating circumstances. Letters received from lawyers telling him to remove the banners from the balcony were he said offensive. They were written he said to antagonise the Respondents. He said that the Respondents denied any intention to breach the terms of the Lease. He said that the pictures showing signs in the windows and banners hanging from windows (pages 97 and 98) were the windows of what he described as Mr Bell's art room and the middle bedroom of his flat. He agreed that the photographs showed banners hanging out of the windows and that the photographs were taken on the dates claimed by the Applicant. Mr Dixon said that although it was Mr Bell who had put up the banners he supported Mr Bell in his protest.

35 Mr Dixon said he didn't accept that the Respondents protest was annoying a nuisance or offensive or as some contended, dangerous. It was not he said a breach of the terms of the lease but rather a courageous protest not intended to annoy.

36 Mr Bell said that at times he sang and danced to help cope with his Tourette's syndrome. He said that other people might find his behaviour aggressive but that it wasn't. The protest on the balcony had been helpful for him. He accepted with reference to the picture taken on 23 January 2023 (page 85) that two banners could be seen hanging from the balcony one reading '*Go Online Read Napier's Reviews*' and the other '*BUSTED*'. In answer to questions put to him by Ms Zanelli Mr Bell accepted that there had been progressive increase in the number of items on or hanging from the balcony over time. Mr Bell said that he was standing up for his rights the only way he knew how. That he hasn't read correspondence received from the Applicant's lawyers.

37 **The Tribunals Decision**

38 The Tribunal agrees with the Applicant that the covenants at clauses 3.18 and 3.19 of the Lease are absolute covenants. They are not in any way qualified. They are covenants not to do certain things. They are not subject to any form of test of justification or reasonableness. They are not subject to obtaining consent (whether expressly or impliedly). The Respondents cannot avoid the burden of those covenants by arguing that their actions are justified. The Respondents are clearly unhappy with the way in which Admirals Walk is managed and with the managing agents. However strongly felt their feelings are that is not a defence to a breach of an absolute covenant.

39 The evidence that notices have been displayed by the Respondents from the balcony of flat 11 and certain of the windows of the flat is clear. That not least from the photographs and videos produced by the Applicant and from the evidence of the Applicants witnesses. Indeed, the Respondents

don't dispute that they displayed notices from the balcony of their flat and from certain windows between January 2023 and March 2024. The Tribunal is satisfied on the evidence adduced to it both in writing and orally at the hearing that the Respondents acted in breach of the covenant at clause 3.19 of the Lease. That breach occurred between January 2023 and March 2024.

40 Clause 3.18 of the Lease. The wording at the start of this clause provides that the lessee is '*Not to use the property, or any part of it….*' for any of the activities that are set out in the second part of the clause. The property is defined in the lease as the Respondents flat. It follows that the activities referred to must relate directly to the Respondents use of their flat. The Tribunal raises this because both the written and oral evidence and submissions put to it by both sides contained various allegations as regards the conduct of both parties that is said to have taken place away from the Respondents flat. By way of example one witness statement, which in the event was not relied upon by the Applicant, even made reference to the alleged conduct of one of the Respondents at a previous Tribunal hearing. Throughout the hearing the Tribunal sought to make it clear to the parties that allegations of misconduct taking place outside of Respondents flat, more particularly, not relating to the Respondents use of their flat, was not relevant to issues that it fell to the Tribunal to determine. Indeed such allegations were unhelpful.

41 The Tribunal is satisfied that the actions of the Respondents in displaying items such as notices placards banners and balloons from their balcony constituted a breach of the covenant at clause 3.18 of the lease. The Tribunal accepts the evidence of Laurie Scott that she found such activities a nuisance and annoyance. Further the Tribunal is satisfied on the balance of probabilities from the evidence of Ms Scott that painted balloons strung from the Respondent's balcony deposited paint splashes on her property which she found to be a nuisance and annoyance.

42 The Tribunal also accepts the evidence of Nancy Lewis that she found the Respondent's use of their balcony to be annoying and that debris including paint found its way from the Respondent's balcony onto the balcony of her flat which she found be a nuisance and annoying.

43 The Tribunal accepts the evidence of Timothy Watts that he found the Respondents use of their balcony to be a nuisance and annoying. The Tribunal does not however find that the Respondent's activities in the use of their balcony to be dangerous. There may be an argument that the escape of items from the balcony might have caused harm and thereby be dangerous, but the Respondent's use of their balcony was not in itself dangerous and in the view of the Tribunal the potential for danger as alleged by Mr Watts was too remote.

44 On the balance of probabilities the Tribunal is not satisfied that George Murphy's contention that loud laughter and shouting emanating from the Respondent's flat was intended to intimidate and therefore as is presumably alleged, constituted a nuisance or annoyance to a neighbour.

45 **The Service Charge Claim**

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

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.

46 **The Lease**

47 Clause 3.2 of the Lease provides that the lessee (referred to in the lease as ' the Tenant') must pay a service charge calculated in accordance with the third schedule. 'Service costs' are defined in the third schedule by reference to '*the amount that the Landlord spends in carrying out its obligations imposed by and in exercising all the rights contained in this lease*'. Those include the expense of the services to be provided by the lessor (referred to in the Lease as 'the Landlord') set out in the fourth schedule. Clause 4 of the Lease sets out details of further services to be provided by the lessor or which may be provided by the lessor. The lessees service charge proportion is defined as 1% of the service costs. On each quarter day the lessee is required to pay to the lessor a quarterly payment on account of the lessee's service charge proportion of the estimated service costs.

48 The lessor is required to keep detailed accounts of service costs and to produce a service charge statement for each maintenance year (which runs from 25 March to 24 March in each year) and to have the service charge accounts prepared and certified by member of the Institute of Chartered Accountants in England and Wales. The fifth schedule to the lease allows the lessor to maintain a reserve fund to accumulate funds in advance in respect of expected cost of works to the building, common parts, grounds and facilities. The reserve fund contribution each year is part of the service cost to be taken into account when calculating the service charge.

49 For each maintenance year the lessor is required to produce an estimated service charge account, a form of budget, which sets out its estimate of the expenses that it anticipates that it will incur in the forthcoming maintenance year and which informs the amount of quarterly payments to be made by the lessee on account.

50 **The Applicants Case**

51 The Applicant seeks a determination in respect of actual service charges for the year ending 24 March 2022, and for estimated service charges for the years ending 24 March 2023 and 2024.

52 The service charge accounts for the year ended 24 March 2022, are at pages 147 – 156 of the bundle. They are audited service charge accounts prepared by Carter & Coley Ltd chartered accountants and registered auditors. They show expenditure which makes up the service charge, including a contribution to the reserve fund, of £688,426 for the year.

53 The budget or estimated service charge account for the year ending 24 March 2023 is at page 146. It shows a total for the year of £573,940 (the item at the bottom of the page in respect of 'company costs' is excluded). The contribution the Applicant says that is due from the Respondents in accordance with the terms of the Lease is 1% of that sum payable by four equal instalments. Each instalment is therefore £1434.85. That accords with the service charge demands (demands that estimated payments on account) which appear at pages 160 – 163 of the bundle.

54 The budget or estimated service charge account for the year ending 24 March 2024 is at page 145. It shows a total for the year of £628,955 (again the figure for 'company costs' is excluded). The contribution the Applicant says that is due from the Respondents in accordance with the terms of the Lease is 1% of that sum payable by four equal instalments. Each instalment is therefore £1572.39. There are three service charge demands for that sum at pages 157-159 of the bundle.

55 The expenses set out in the service charge account for the year ending 24 March 2022 and which make up the service charge are the Applicant says recoverable form the lessee (1% thereof) under the terms of the Lease and have been reasonably incurred. Similarly the Applicant says that the estimated expenses that make up the estimated service costs in respect of the years ending 24 March 2023 and 24 March 2024 are recoverable under the terms of the lease and are reasonable estimates of anticipated expenditure.

56 Included in the bundle at pages 310 – 778 are invoices for expenditure incurred by the Applicant for the year ending 24 March 2022.

57 **The Respondents Case**

58 The Respondents say that they require the Applicant to prove that the expenditure that makes up the service charge has been reasonably incurred and that works that have been carried out have been carried out to a reasonable standard. The Respondents contend that the Applicant is in breach the terms of the lease for example for failing to paint the exterior of the building. They say that the Applicant's claim that expenditure has been reasonably incurred is unsupported as to '*affordability, quality and standard of services and repair of maintenance*' (page 1092). At the hearing Mr Dixon said that in particular he felt that the porters wages were excessive for the poor

quality of service which he believed was provided. He believed that the cost of the provision of CCTV was too much. That the management agents did not provide value for money. That there was no need for professional fees to be incurred. That the sum shown for 'sundries' was unreasonable. That the sum shown for the reserve fund contribution was unreasonable. When it was put to Mr Dixon by the Tribunal that the managing agents fees equated net of VAT to around £280 per flat per annum he agreed that was not excessive.

59 In their written submissions the Respondents make a number of allegations in respect of the directors of the Applicant company and the managing agents. They make reference to historic decisions made by this Tribunal. The make allegations of harassment and stalking. They make reference to previous proceedings in the County Court. In particular to a form of Tomlin order dated 8 July 2021 made in the County Court Money Claims Centre. That order stays the proceedings and sets out agreed terms in a schedule. The schedule recites the fact that the proceedings were issued on 5 January 2021 (predating the service charge year ending 24 March 2022).

60 **The Tribunals Decision**

61 The issue for the Tribunal to determine, upon the basis of the evidence before it, is whether service charges, including estimated service charges, sought by the Applicant from the Respondents are recoverable under the terms of the lease and if so are reasonable in amount.

62 Nowhere in either their written or oral submissions made to the Tribunal do the Respondents dispute that the items of expenditure which make up the service charge cannot be recovered as part of the service charge payable by them under the terms of the Lease. Nor have they produced any evidence to support their contention that certain expenses have been unreasonably incurred, that they are unreasonable in amount. For example they have adduced no evidence in the form of alternative quotations or estimates in relation to any particular item of expense. They have adduced no evidence which directly addresses the quality of work carried or of services provided which make up the service charge expenditure. They have adduced no evidence of any loss or damages sustained by reason of the alleged failure on the Applicant's part to comply with its repairing and decorating covenants. The Tribunal has read the Respondents lengthy submissions very carefully. They refer to a number of matters such as the said county court proceedings, historic Tribunal decisions and an alleged 'cash call' made by the directors of the Applicant company, none of which appear relevant to the issues that it falls upon this Tribunal to determine. Just because the Tribunal has not set out every argument put forward by the Respondents in this decision that does not mean that it has not considered them.

63 Upon the basis of the evidence before it the Tribunal is satisfied that the service charges for the year ending 24 March 2022 are payable under the terms of the Lease and are reasonable in amount. That accordingly the service charge payable by the Respondents to the Applicant under the

terms of the Lease for the year ending 24 March 2022 is 1% of that sum a total of £6884.26.

64 The Tribunal is satisfied on the basis of the evidence before it (not least having regard to the actual service charge for the year ending 24 March 2022) that the estimated service charges for the years ending 24 March 2023 and 24 March 2024 are reasonable estimates of anticipated expenditure for each year. Accordingly under the terms of the Lease the estimated service charge payable by the Respondents to the Applicant for the year ending 24 March 2023 is £5739.40 and for the year ending 24 March 2024 is £6289.56.

65 **Summary of Tribunal's Decision**

66 Breach of Covenant - Section 168(4) Commonhold and Leasehold Reform Act 2002

67 The Tribunal determines that the Respondents acted in breach of the covenants at clauses 3.18 and 3.19 of the Lease between January 2023 and March 2024.

68 Services Charges – Section 27A landlord and Tenant Act 1985

69 The service charge payable by the Respondents to the Applicant for the service charge year ending 24 March 2022 is £6884.26.

70 The estimated service charge on account payable by the Respondents to the Applicant in respect of the service charge year ending 24 March 2023 is £5739.40.

71 The estimated service charge on account payable by the Respondents to the Applicant in respect of the service charge year ending 24 March 2024 is £6289.56.

72 **Other Matters**

73 At the conclusion of the proceedings the Applicant indicated that it might wish to make an application for recovery of Tribunal fees under Rule 13 (2) of the Tribunal Procedure Rules 2013. The Respondents indicated that they might wish to make Applications pursuant to section 20C of the Landlord and Tenant Act 1985 (for an order that all or any of the costs incurred, or to be incurred, by the Applicant in connection with these 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) and Paragraph 5A of Part 1 of Schedule 11 of the Commonhold and Leasehold Reform Act 2002 (for an order reducing or extinguishing the Respondents liability to pay an administration charge in respect of litigation costs incurred by the Applicant). Both parties suggested that it might be more convenient to await the Tribunals substantive decision before deciding whether to make such applications. It was agreed that the Tribunal would address such applications without a hearing on the basis of written submissions.

74 Accordingly the Tribunal **DIRECTS** as follows:

75 Any application for an order for costs or reimbursement of Tribunal fees under rule 13 of the Tribunal Procedure (first-tier Tribunal) (Property Chamber) Rules 2013 or for orders under Section 20C of the Landlord and Tenant Act 1985 or Paragraph 5A of Part 1 of Schedule 11 to the Commonhold and Leasehold reform Act 2002 shall be made in writing and sent to the Tribunal (and copied at the same time to the other party) by **4.00pm on 28 June 2024.**

76 Any reply to such an application(s) shall be made in writing and sent to the Tribunal (and copied at the same time to the other party) by **4.00pm on 12 July 2024.**

77 Thereafter the Tribunal will make a written determination in respect of any such applications on the basis of the written submissions received.

Dated this 11th day of June 2024

Judge N P Jutton

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk to the First-tier Tribunal at 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.