FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/00MS/LSC/2024/0101
Properties	**:**	8-9 Ground Floor, Oxford Street, Southampton, SO14 3DJ
Applicant	**:**	Moores Netherwood Moores (a partnership), landlords
Representative	**:**	Suffian Hussain of counsel, instructed by Dutton Gregory LLP
Respondent	**:**	Ms Elizabeth Warnock-Miller, lessee
Representative	**:**	In person
Type of Application	**:**	Liability to pay service charges under s.27A Landlord and Tenant Act 1985
Tribunal Members	**:**	Judge MA Loveday Mr R Waterhouse FRICS Ms J Dalal
Date and venue of hearing	**:**	30 September 2024 Havant Justice Centre
Date of Decision	**:**	10 December 2024

DETERMINATION

Introduction

1. This is an application for determination of liability to pay service charges and administration charges. The matter has been transferred by the County Court to the tribunal under s.176A Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") and it was dealt with by flexible judicial deployment at a hearing on 30 September 2024. This determination is limited to matters which fall within the tribunal's jurisdiction. It must be read together with the separate judgment of Tribunal Judge M Loveday (sitting as a judge of the County Court), which deals with matters outside the tribunal's jurisdiction.

Background

2. The matter relates to 8/9 Oxford Street Southampton, which originally comprised two or three flat-fronted three storey mid-terraced period houses under pitched slate roofs[1]. The houses have at some stage been combined into a single unit by a lateral conversion at ground floor level. The application relates to these ground floor premises which also enjoy use of the basement. There are two flats on the upper parts of the left-hand part of the building served by a communal hallway (Nos.8A and 8A Oxford Street). There is a maisonette on the upper two floors of the right-hand side of the building with its own street entrance (9A Oxford Street).

3. The applicant is a partnership comprising Mark John Moores, Neil Paul Moores and Kevan Robert Netherwood. It is registered as the freehold owner of 8-9 Oxford Street, and it retains Flat 8A as part of the freehold. The respondent is the registered proprietor of the lease of the ground floor and basement. Flats 8B and 9A Oxford Street are subject to separate leases held by third parties.

4. By a claim issued on 8 December 2022 in the County Court Money Claims Centre (claim no.J89YX283), the applicant sought payment of £5,680.28 together with statutory interest and contractual costs. The claim was accompanied by a

[1] The parties suggested the conversion was from two houses. But the photographs in the bundle suggest there may originally have been three houses, each with its own street door and windows in the front elevation at ground and first floor. This is not material to any issue the tribunal needs to consider.

statement which detailed various charges said to be payable between 30 November 2016 and 28 July 2022, also setting out credits for payments of £6,086.89 made by the respondent during this period. The respondent filed a Defence and Counterclaim on 30 December 2022, and the applicant filed a Reply and Defence to Counterclaim. Judgment was entered in default, apparently in error, but this was later set aside. On 2 May 2023, DDJ Piddington transferred the claim to the tribunal, and on 17 June 2024, Deputy Regional Tribunal Judge Dobson gave directions in the tribunal. No further statements of case were filed, and no applications were made to amend them. At the hearing on 30 September 2024, the tribunal therefore dealt with liability to pay the service charges and administration charges set out in the original claim form and statement. No application was made in relation to costs under s.20C Landlord and Tenant Act 1985 ("the 1985 Act").

The Lease

5. By a lease dated 10 February 2012, the premises were demised for a term of 999 years at a peppercorn ground rent ("the Lease").

6. By para 2 of Sch.4 to the Lease, the lessee agreed to pay a service charge to the landlord. Clause 1.1 defined the "Service Charge" as "a fair and reasonable proportion determined by the Landlord of the Service Costs". The "Service Costs" were in turn defined as "the total of: (a) all of the costs … of: (i) providing the Services" etc. The "Services" were defined as:

    (a) cleaning, maintaining, decorating, repairing and replacing the Retained Parts and remedying any inherent defect;

    (b) any other service or amenity that the landlord may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building."

Finally, the "Retained Parts" are defined as all parts of the Building other than the Property and the Flats …". The "Building" is defined by clause 1.1 as:

> "the land and building known as 8-9, 8A, 8B and 9A Oxford street Southampton SO14 3DJ registered at HM Land Registry with title number HP717592".

7. By para 4 of Sch.4, the lessees agreed pay interest at 4% above NatWest base rate "on any Rent, Insurance Rent, Service Charge or other payment due under the lease and not paid within 21 days of the date it is due, for the period from the due date until the date of actual payment, whether before or after judgment".

8. Para 7 of Sch.4 was a covenant by the lessee as follows:

> "**7. COSTS**
>
> To pay to the Landlord on demand the costs and expenses (including any solicitors', surveyors' or other professional's fees, costs and expenses and any VAT on them) assessed on a full indemnity basis incurred by the Landlord (both during and after the end of the Term) in connection with or in contemplation of any of the following:
>
> (a) the enforcement of any of the Tenant Covenants;"

Clause 1.1 provided that the "Tenant Covenants" included the matters in Sch.4, and para 4 of Sch.4 included an obligation to pay service charges to the landlord.

The claim

9. The applicant's Claim Form did not distinguish between the service charges and administration charges claimed. However, the tribunal's analysis of the statement accompanying the original County Court Claim Form suggests the following service charges are the subject of the claim:

04/01/2017	Service charge 01.01.16 – 31.12.16	£1,097.60
22/03/2017	Building Insurance 22.03.17 – 21.03.18	£316.25
15/12/2017	Service charge	£616.32
07/03/2018	Insurance 22.03.18 – 21.03.19	£439.82
27/02/2019	Service charge 2019	£1,074.48
13/03/2020	Service charge 2020	£947.08
31/03/2021	Service charge 2021	£1,595.34
06/04/2022	Service charge 2022	£1,048.08
30/05/2022	Damp work and external Decoration 2021	£3,357.00

10. A similar analysis suggests the claim includes the following administration charges:

15/01/2016	Late payment charge	£30.00
01/02/2016	Late payment charge	£30.00
12/04/2016	Late payment charge	£30.00
01/05/2016	Late payment charge	£30.00
10/02/2017	Late payment charge	£36.00
06/12/2017	Legal letter arrears	£316.80
31/01/2018	Arrears letter	£36.00
15/05/2018	Arrears letter	£36.00
11/04/2019	GFF - arrears letter	£36.00
28/05/2019	GFF Flat final reminder	£36.00
30/08/2019	Letter before action	£90.00
04/05/2020	Late payment fee	£36.00
16/07/2020	Final demand	£36.00
13/07/2022	Arrears Letter	£36.00
28/07/2022	Arrears Letter	£36.00
28/07/2022	Instructed solicitors	£90.00
10/08/2022	Letter Before Action	£90.00
06/10/2022	Legal fees	£799.40

11. It was common ground that all the service charges had been paid, apart from the last two items. At the hearing, it was further accepted that a sub-tenant had paid the 2022 service charges directly to the applicant. The parties agreed the only issues before the tribunal were therefore (i) the single service charge item of £3,357 and (ii) the administration charges. The directions in the bundle of 24 June 2024 are unclear whether the respondent's counterclaim/set-off was transferred to the tribunal or retained as an issue to be determined by the County Court. The tribunal has therefore treated it as a County Court matter.

Jurisdiction

12. At the start of the hearing, the court and the tribunal dealt with a preliminary issue in relation to jurisdiction, namely whether the premises were a "dwelling" within the meaning of ss.18 and 38 of the 1985 Act.

Background

13. The jurisdictional issues arose as follows.

14. The Defence included manuscript references to each of the paragraphs in the Claim Form, with a typed continuation sheet. The reference to paragraph 1 was stated "1. Agreed". As to the Reply, this did not seek to withdraw or qualify para 1 of the Claim Form. However, in para 4(ii), the applicant stated, in relation to arguments concerning s.20 of the 1985 Act that:

> "(ii) Notwithstanding the actions described at paragraph 4(i) above, section 20 of the Act applies to the payment of a 'relevant contribution', which is further defined in section 20(2) of the Act as being the amount which a tenant may be required to contribute under their lease (by the payment of service charges). Section 18 of the Act defines 'service charge' for the purposes of section 20 of the Act as being an amount payable in addition to rent for repairs, improvements and other matters, by a tenant of a dwelling. In turn, section 38 of the Act defines 'dwelling' as being a building or part of a building occupied or intended to be occupied as a separate dwelling together with any yard, garden, outhouses and appurtenances belonging to it or usually enjoyed with it. In the circumstances the section 20 process applies only to residential tenancies, even where the building is mixed use, In such circumstances the residential leaseholders are entitled to be consulted under section 20 of the Act but the commercial tenants are not so entitled. The Defendant is a commercial tenant."

15. The hearing bundle included a witness statement from Joanna Uffendell dated 19 September 2024. Ms Uffendell, a premises manager with Park Klane Block Management Ltd, the managing agents for the block, stated as follows:

> "7. 8-9 Oxford Street, Southampton, SO14 3DJ is a terraced 3 storey building c19 century in a conservation area. Originally two separate terraced houses, the buildings have been merged to comprise one commercial premises across the entire ground floor area and three residential flats above. The premises

extend across the ground floor of both 8 and 9. Flats 8a and 8b share a communal entrance and are situated above one half of the commercial premises. Flat 9A is situated above the other half of the commercial premises and has its own entrance.

8. The commercial premises on the ground floor is [sic] leased to the Respondent on a 999 year lease which commenced on 10 February 2012…."

At para 23 Ms Uffendell repeated that "The premises is [sic] a commercial unit …", and there are similar references to the "commercial" nature of the premises at paras 19, 20, 21, 25, 26, 31, 34, 43 and 45.

16. The tribunal pointed out to the parties the contradiction within the applicant's case. On the one hand, the brief details of claim and para 1 of the Claim Form suggested the premises were a "dwelling house", and this had expressly been admitted by the respondent[2]. On the other hand, para 4(ii) of the Reply and Ms Uffendell's statement suggested the premises were not a "dwelling" for the purposes of s.18 of the 1985 Act. The tribunal explained it was bound by the statements of case, unless and until the Claim Form was first amended in the County Court: *Staunton v Kaye and Taylor* [2010] UKUT 270 (LC) at [21]. This was not simply a matter of a party running alternative cases, since s.18 of the 1985 went to the very heart of the tribunal's jurisdiction. If the premises were not a "dwelling", the tribunal had no jurisdiction to determine liability for the service charges under s.27A of the 1985 Act and it had no jurisdiction to determine liability to pay administration charges under para 3(1) of Sch.11 to the 2002 Act ("the 2002 Act"). In addition, the protections afforded by the other provisions of s.19-22 of the 1985 Act would not apply. In particular, the applicant would have had no obligation to consult the respondent in relation to major works under s.20 of the 1985 Act.

17. In the light of this, and after a brief adjournment, counsel sought to amend the Claim Form under CPR 17, by withdrawing the references to a "dwelling house".

[2] The Claim Form was also accompanied by a letter dated 1 August 2022 which enclosed a summary of rights and obligations under s.21B pf the 1985 Act, and which referred to s.81 Housing Act 1996. Both are obviously consistent with the premises being a "dwelling".

Since the application could only be made in the County Court, the application was dealt with by Tribunal Judge Loveday sitting as a judge of the County Court. The judge's decision on the application is dealt with in the accompanying county court judgment. But suffice it to say the application to amend was refused.

18. On the judge giving his decision on this, counsel applied to adjourn the tribunal proceedings to give the applicant an opportunity to renew its application to amend in the in the County Court by way of a formal N113 application notice. The tribunal declined to adjourn, for substantially the same reasons given by the judge in refusing permission to amend.

19. The parties therefore proceeded on the basis that the claim concerned service charges and administration charges within the tribunal's jurisdiction.

The case for the parties

20. Counsel opened by suggesting that the applicant had a contractual right to payment of both the service charges and the administration charges. The applicant relied on the statement of case, and the witness statement of Ms Uffendell referred to above. As to the service charges, the respondent had paid the charges of £1,097.60 due on 4 November 2017, £616.32 due on 15 December 2017, £439.82 due on 7 March 2018 (insurance rent), £1074.48 due on 27 February 2019, £974.08 due on 13 March 2020 and £1,595.34 due on 31 March 2021. The most outstanding item was a demand for a service charge contribution of £3,357 towards the costs of "damp work and external decoration" dated 30 June 2022. The applicant referred to a copy of the demand for payment in the bundle, which included notices under ss.47 and 48 Landlord and Tenant Act 1987 ("the 1987 Act"). The administration charges were largely fixed charges of £30-£36 for "late payment", although there were additional charges of £316.80 and £90 for legal letters chasing the arrears. The applicant referred to the provisions of the Lease, particularly the definition of "service costs" and "retained parts" in clause 1.1, which it was submitted covered the service charges, and clause 7.1, which it was said covered the administration charges.

21. Ms Uffendell gave evidence and relied on her witness statement. She explained that until 2022, the service charge apportionment of costs within the two buildings had been based on the internal area of each unit (the "square footage", as she put it). Under that assessment, the ground floor premises paid 32% of the management costs for the combined buildings, Flat 9A paid 31% and Flats 8 and 8A paid 18.5% each: see for example, letter from Park Lane Management dated 13 January 2017. But in 2022, the applicant changed the apportionment, because it became aware of inconsistencies between the various leases. In particular, Flats 8A and 8B were only obliged by their leases to pay an apportioned percentage of the costs of management of 8 Oxford Street, whilst Flat 9A was only obliged to pay an apportioned percentage of the costs of managing 9 Oxford Street. The subject premises straddled both parts. Rather than basing the apportionment for the subject premises on the combined area of the entire building, the applicant therefore decided to re-apportion the service charges in accordance with a more complex scheme:

    (a) The respondent would pay 50% of the costs of external repairs to 9 Oxford Street and 33% of the costs of external repairs to 8 Oxford Street;

    (b) The lessee of 9A Oxford Street would pay 50% of the costs of external repairs to 9 Oxford Street; and

    (c) The lessees of 8A and 8B Oxford Street would each pay 33% of the costs of external repairs to 9 Oxford Street and 50% each of the costs associated with the internal communal areas.

    In cross-examination, Ms Uffendell denied the scheme was designed to advantage the landlord as the 'owner' of Flat 8A.

22. The costs of the 2021 damp and external decorations comprised the following

    (a) A tender from the contractors Clydesdale Group for £5,784 Inc. VAT. The actual invoice from the contractors was not in the bundle, but it was referred to in a s.20 statement of estimates dated 15 October 2021; and

    (b) £930 in fees, including £600 for serving the s.20 notices.

The total of these costs was £6,714. The applicant applied an apportionment of 50% to these costs, because the works were to 8 Oxford Street. This resulted in a service charge of £3,357.

23. Although the respondent's Defence and witness statement raised numerous points, in oral submissions, she helpfully focused on a narrower range of arguments:
    (a) The re-apportionment of service charge costs was inappropriate. The respondent had previously paid 33% of the costs, but this had now increased to 50%. By contrast, the applicant (Flat 8A) had previously paid 18.56% of the costs, but it now paid less.
    (b) The administration charges were not "legitimate fees". They were not encapsulated by para 4 of Sch.7. In any event, the standard charges of £30 and £36 were excessive. The agents simply sent standard letters demanding payment.

24. In response, Mr Hussain submitted that:
    (a) The apportionment issue was essentially a "contractual dispute". The issue was whether the apportionment of costs was a "fair and reasonable proportion" in accordance with the definition of "service charge" in clause 1.1 of the Lease. Counsel stressed that the applicant had a wide discretion as to apportionment.
    (b) The administration charges were properly incurred, and they were payable under para 13 of Sch.4 to the Lease.

The Tribunal's determination

25. Apportionment. As explained, at the hearing the only service charge issue related to the £3,357.00 contribution to the 2021 cost of damp work and external decorations. There was no dispute that the £5,784 cost of the works or the £930 fees were "Service Costs" as defined by clause 1.1. of the Lease.

26. The applicant argued it had a wide discretion to apportion or re-apportion on any "fair and reasonable" basis under the definition of "Service Charge" in clause 1.1 of the Lease. Although neither party referred to relevant case law on this topic, the tribunal accepts that the landlord does generally have a wide discretion to choose any contractually permissible apportionment method: see *Aviva Ground Rent GP Ltd v Williams* [2021] EWSC Civ 27. The tribunal was not addressed on the specific meaning of the words "fair and reasonable" in clause 1.1 of the Lease. But it considers they involve an objectively reasonable assessment, which includes a consideration of the outcome for the lessees: *Bradley v Abacus Land 4 Ltd* [2024] UKUT 120 (LC) at [50] to [52][3].

27. The tribunal finds the new apportionment scheme could meet the test for a "fair and reasonable" proportion of costs. It rejects the suggestion made by the respondent that the 2022 re-apportionment exercise was deliberately calculated to benefit the applicant as the owner of Flat 8A. The evidence of Ms Uffendell suggests the scheme was motivated by the need to align the charges made under the various leases within the building. It is not in itself *Braganza* irrational. Neither is the outcome unreasonable within the ordinary sense of the word: see *Hawk v Eames* [20123] UKUT 168 (LC), *Bradley* (supra).

28. However, that is not the end of matters. The apportionment requirements of the Lease do not simply permit the applicant to adopt any scheme it chooses from year to year. The definition of "Service Charge" in clause 1.1 of the Lease is that the landlord may determine "a fair and reasonable proportion … <u>of the Service Costs</u>". Grammatically, this envisages a fraction, with the numerator being the "fair and reasonable proportion" determined by the landlord, but the denominator being the "Service Costs" fixed by the terms of the Lease. As a matter of plain language, the landlord's discretion in clause 1.1 only applies to the former. The denominator, namely the Service Costs, is fixed by the definition of "Service Costs" in clause 1.1. As explained above, the "Service Costs" include "the total" of the costs of providing the services to "the building" and "the Retained Areas". And since the "Building"

[3] The Tribunal is aware that permission to appeal to the Court of Appeal has been given in that case.

means “the land and known as 8-9, 8A, 8B and 9A Oxford Street Southampton SO14 3DJ”, the apportionment must apply the numerator to the costs for the whole “building”, not just a part of it.

29. The tribunal is fortified in this view by the other terms of the Lease. Whereas the Lease defines the word “building”, it does not explain the parts of the building which the applicant has to consider when assessing the service charges, namely “8 Oxford Street” and “9 Oxford Street”. The tribunal considers it is inherently improbable that a provision intended to provide certainty about calculations would permit the landlord to adopt an uncertain and unspecified denominator in the fraction referred to above. Moreover, although the copy of the Lease in the bundle omits the main lease plan, it does include a plan showing parking spaces to the rear of the premises. These are plainly included in the “Building”: see definitions of “Building” and “Parking Spaces” in clause 1.1 of the Lease. The applicant’s apportionment wholly ignores any provision for contributions to the costs of the external areas, which cannot have been what was intended.

30. In this case, the tribunal therefore considers the apportionment adopted in 2022 was not in accordance with the contractual scheme set out in clause 1.1. Instead of assessing “the total” of the costs for “the building” (i.e., the whole of both 8 and 9 Oxford Street), the applicant has applied different percentages for separate categories of cost, an approach which is not permissible under the Lease.

31. It may well be that the re-apportionment scheme made sense to the applicant in the light of the provisions of the other leases in the building, although the tribunal was not shown those provisions. It may also be that in the long term, the contributions by the lessees of the subject premises will even out – in some years they may pay a higher or a lower proportion of the costs of works and maintenance of 8 or 9 Oxford Street. But that is not what the Lease of 8/9 Oxford Street says. Moreover, the provisions of the leases of Flat 8B and 9A (which were not before the tribunal) are irrelevant when it comes to the interpretation of this particular lease. There was no evidence of a letting scheme. If the lease provisions of the various units

create difficulties, there are of course remedies under Pt. IV of the 1987 Act. But there is no application before the tribunal to vary the provisions of any of the leases within the building.

32. Arguably, this conclusion could in some circumstances provide a complete defence to the claim for payment of £3,357. But under s.27A of the 1985 the tribunal must determine what is payable, and there is no particular reason why it should not determine a sum which is payable by applying the correct contractual apportionment. Before 2022, there was already a well-established position that the applicant considered a "fair and reasonable" apportionment of the overall cost of the combined "building" for the unit to be 31%. There is evidence the 2021 damp and external decoration costs were £6,714. It follows that the tribunal finds that the respondent is liable to pay 31% of £6,714, or £2,081.34.

33. This conclusion does not of course prevent the applicant applying a different "fair and reasonable proportion" of the costs in future, but it must always apply that proportion to the costs of the combined "building" at 8 and 9 Oxford Street. If it wishes to change that scheme without the consent of the respondent, it will have to apply to vary the Lease under Pt. IV of the 1987 Act.

34. Administration charges. Each of the charges in para 9 above is an "administration charge" within the meaning of paras 1(1)(c) and/or (d) of Sch.11 to the 2002 Act. The tribunal has jurisdiction to determine liability to pay under para 5(1). The charges are variable service charges within the meaning of para 2 of Sch.11 of the 2002 Act and they are subject to the reasonableness limitation test in para 2 of Sch.11.

35. Twelve of the administration charges are described as either a "late payment charge", "an arrears letter" or a "late payment charge" and each is for either £30 or £36 (presumably the latter being inclusive of VAT). The evidence for these costs is as follows:

    (a) The applicant did not produce any invoices for professional fees paid by it to Park Lane Management or solicitors in relation to these charges.

(b) In paras 8 and 9 of her first witness statement, Ms Uffendell states that "arrears notifications" in relation to the £1,048.08 2022 service charges (previously demanded on 6 April 2022 and due on 6 May 2022) "were sent to the Respondent on 12 May 2022 and 23 May 2022" and that further "arrears notifications" in relation to the £3,357.00 damp and external decoration costs (previously demanded on 30 May 2022 and due on 30 June 2022) "were sent to the Respondent on 13 July 2022 and 28 July 2022". Ms Uffendell goes on to state that all "arrears notices were sent by post and email to the addresses provided by the Respondent".

(c) In the bundle is an email from the agents dated 1 October 2021 addressed to the respondent which states that in future all communications would be sent to her at a residential address in Wickham, Hampshire and copied to her by email.

(d) There are indistinct emails from the agents to the respondent headed "late payment reminder" which appear to be dated 12 and 23 May 2023. Both stated that "we recently sent you an invoice but do not appear to have received payment".

(e) There is then a letter to that residential address dated 23 May 2022 headed "Re: Ground Floor Flat 8-9 Oxford Street – Arrears Letter" from Park Lane Block Management. This refers to service charge arrears and states that "this, and any future letters we send regarding arrears will incur a £36 charge". There is an email copy of this addressed to the respondent.

(f) In her oral evidence, Ms Uffendell stated that "late payment charges" meant letters sent by the managing agents to the respondent and that the letter dated 23 May 2022 was a "standard letter".

(g) In paras 36-37 of her witness statement, the respondent refers to the "punitive, excessive letter charges". In para 39, she states the agents "send arrears letters to the wrong address". On making queries about various matters, "no invoices were subsequently received apart from invoices detailing charges for their disputed arrears letters".

(h) The bundle includes a letter from the respondent dated 4 September 2019, which states that "we have not received the invoice, nor the letters dated 11

April [2019] or 28 May [2019]". It complains about delivery issues and is followed by another letter dated 20 September 2019 in a similar vein.

36. The tribunal's findings of fact in relation to the late payment charges are as follows:

(a) All the £30 and £36 charges were for letters or emails purportedly sent by the managing agents to the respondent. It accepts Ms Uffendell's unchallenged evidence on that point, and her evidence is consistent with a regular charge of £30 or £36 (presumably increased from £30 to £36 to include VAT) notwithstanding the various descriptions given for these items. But the tribunal does not accept all the charges were for letters in substantially the same form as the arrears letter of 23 May 2022. The email reminders of May 2023 in the bundle were very short indeed.

(b) Prior to 1 October 2021, there is no evidence at all that these letters were produced or served on the respondent or that the applicant incurred any cost for the letters. Ms Uffendell gives no evidence about arrears letters before 2021. The agent has produced no copies, gave no evidence of service and produced no invoice from the managing agents for the cost of the letters. The respondent denies receipt, and there is contemporaneous correspondence from 2019 which is consistent with that denial.

(c) In 2019, the applicant switched to using the Wickham address, with email copies sent to the respondent. We have a copy of an arrears letter dated 23 May 2022, with an email copy of the same date which shows that. The applicant sent that letter and email to the Wickham address. It accepts Ms Uffendell's evidence on the point.

(d) The administration charge which has the strongest evidence to support it is the letter of 23 May 2023. But it does not appear to be part of the pleaded claim. No administration charge with that date appears in the statement attached to the Claim Form: see paragraph 9 above. Instead, the claim includes the cost of two email reminders in July 2022, both of which are in the hearing bundle.

(e) On the balance of probabilities, the tribunal is not therefore satisfied that any of the arrears letters referred to in the Claim Form were in fact served.

37. Before leaving the issue of the arrears letters, the tribunal notes the covenant permits the applicant to recover costs "incurred" in connection with or in contemplation of the enforcement of any of the tenant covenants. There is no evidence of any invoice from the agents to the applicant for the cost of the arrears letters. Indeed, it is unlikely the applicant did "incur" any such costs. The cost of invoicing and collecting service charges and instructing others to collect unpaid service charges is ordinarily covered by the agent's basic annual management fee: see para 3.4 of the *RICS Service Charge Residential Management Code* (3rd Ed). No extra charge is therefore likely to have been made to the applicant. And for largely the same reason, a charge of £30 or £36 would not be reasonable under Sch.11 to the 2002 Act, since the applicant has not incurred any cost.

38. Apart from the above, there are sundry other charges, described variously as "Legal letter arrears" (£316.80), "Letter before action" (£90.00), "Instructed solicitors" (£90), "Letter Before Action" (£90) and "Legal fees" (£799.40"). Again, none of these is included in the bundle, and there are no fee notes from the agents or solicitors to support any charge for them. These charges are not referred to by Ms Uffendell in any detail in paras 8-14 of her first witness statement or in para 42 of her second statement.

39. It follows that none of the administration charges listed in para 10 above are payable.

Decision

40. Issue 1: The respondent is liable to pay service charges of £2,081.34 as a contribution to the 2021 cost of damp work and external decorations

41. Issue 2: None of the administration charges listed in para 10 above are payable.

Judge Mark Loveday
10 December 2024

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.