FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Tribunal Case reference	:	HAV/18UB/LSC/2024/0605
County Court claim	:	Claim No 518 MC 498
Properties	:	Flat 2, Holmes Court, Russell Street, Sidmouth, Devon EX10 8DD
Applicant	:	Mr Alan Parrish
Representative	:	----
Respondent	:	Mr Ian Parrish
Representative	:	----
Type of application	:	Transferred Proceedings from County Court in relation to Service Charges and related
Tribunal member(s)	:	Judge J Dobson Mr MJF Donaldson Ms T Wong
County Court Judge	:	Judge J Dobson
Date of Hearing	:	16th December 2024
Date of Decision	:	17th February 2025

DECISION

Summary of the Decision of the Tribunal

1. The Residential Lease service charges claimed by the Applicant in the proceedings were not payable.

2. There is consequently no sum otherwise payable against which set off is relevant. There is insufficient information for the Tribunal to be able to determine whether the service charges would be reasonable had they been payable.

3. The Tribunal received no application to disallow recovery of the costs of the Tribunal proceedings as service charges or as administration charges and so made no such determination.

4. If a party applies for the award of any costs, Directions in respect of that will be given.

Summary of the Decision of the County Court

5. The Applicant's claim is dismissed.

6. The Respondent's Counterclaim is dismissed.

7. If a party applies for the award of any costs, an Order in respect of that will be given.

Background

8. The Applicant is a freeholder and the Respondent the lessee of Flat 2, Holmes Court, Russell Street, Sidmouth, Devon EX10 8DD ("the Property").

9. The Property is a flat situated within Holmes Court ("the Building"). The ground of the Building is in commercial use by a company named 4homes Limited. Above part of the commercial use are two flats, of which the Property is one. The other is owned by a Ms Selwood. The flats are accessed via a passageway to the side of the commercial premises and a staircase from there to a communal hallway from which there is access to the other flat and, via a further staircase, the Property.

10. The Respondent became the lessee under the Lease on 11th May 2001. The Applicant became a freeholder at an earlier but not identified time and is currently one of three freeholders, the other two of whom are- somewhat unusually- not parties to the proceedings. The freehold title extends beyond the Building and residential parking areas.

11. The parties are referred to by their titles, as used above in the Tribunal proceedings. That is to avoid confusion which might arise from using one title in respect of Court matters and another in respect of Tribunal

matters. The titles are also used in preference to names given the common surname of both parties- and indeed all attendees, see below.

12. There have been previous Court proceedings between the parties of some relevance as referred to below.

The parties' cases

13. The Applicant freeholder filed a claim in the County Court under Claim No. 518 MC 498 [14- 16] in respect of sums said to be due from the Respondent lessee. The claim related to unpaid service charge, interest and costs. The stated value of the claim on the Claim Form was £907.85 excluding the court fee paid which reflected that value and excluding any legal costs The principal parts of the sum comprised £500 of service charges (2 x £250), together with £381.05 for building insurance. Interest is claimed at £11.82 plus 14.93 to the date of issue at 9.25%.

14. The Respondent filed a Defence and Counterclaim dated 7th May 2024 [18- 19], asserting a failure of the Applicant to undertake work, including a counterclaim of £3,124.18 paid on 9 June 2023 pursuant to a default judgment for similar service charge sums in respect of previous years and on the basis that the work said to be referrable to the sums demanded had not been completed. It was said in the Reply to Defence and Defence to Counterclaim [32- 34] that the Respondent had not attended the hearing and the District Judge had determined in May 2023 the £3124.18 to be due. It was also identified that the Applicant is not the only freeholder.

Procedural History

15. The case was transferred to the administration of the Tribunal and for the determination by the Tribunal of the payable residential service charges by Order of District Judge Griffiths sitting at the County Court at Exeter dated 2nd July 2024 [27]. The Court proceedings were allocated to the small claims track [29-30].

16. The case was listed for a case management hearing on 20th September 2024, following which Directions of the same date were given [61- 67]. It was said, amongst other matters, that as no application has been made in the County Court to set aside the judgment referred to above, it appeared to the Tribunal, unless the Respondent sought to persuade it otherwise, that the claims and matters necessarily decided by that judgment are res judicata so that they are finally determined between the parties and cannot now be relitigated or the sum paid reclaimed.

17. The Directions included the requirement for a bundle of documents for the hearing. The bundle comprises, including the index, 223 pages. Much of that was duplicated documentation which ought not to have been included and/ or documents related to concluded previous proceedings.

18. Whilst the Court and Tribunal make it clear that they have read the bundles in full, the Court and Tribunal do not refer to various of the documents in detail in this Decision, it being unnecessary to do so. Where the Court and/ or Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that they have been ignored or left out of account. Insofar as reference is made to specific pages from the bundle that is done by numbers in square brackets [ ], as occurs in the preceding paragraphs where appropriate, and with reference to PDF bundle page- numbering.

The Leases

19. A copy of each of the Lease was provided within the bundle. The Lease [37- 49] is dated 11th May 2001. The term of the Lease is 99 years from then. The parties to this dispute are the original contracting parties under the Lease.

20. The Lease defines the freehold known as Holmes Court, of which the structure on the land in that title has been termed in these proceedings the Building, as "the Property". It defines the Property as described in these proceedings as "the Flat". The Tribunal has therefore substituted the terms it has used and in square brackets [ ] where the Lease is specifically quoted from below and the Lease uses the above terms, for the avoidance of confusion.

21. The service charges payable by the Respondent are described as 50% of the sums expended by the Applicant in meeting his obligations in the Third and Fourth Schedules- clause 1 (h). At clauses 6 and 7 the parties agree to perform and observe the covenants entered into.

22. Pursuant to the Second Schedule, the Respondent is required to pay service charges by half yearly instalments on 1st January and 1st July of each calendar year.

23. The Third Schedule requires the Applicant to keep the Building in good repair, to decorate the external parts and common parts of the Building every 3rd year. The Applicant is additionally required to keep the Building insured- paragraph (2) of the Schedule.

24. Further, the Applicant is required:

> "(7) To keep proper books of accounts of the sums received from the Lessees and other lessees of the flats in the Other Property in respect of all costs charges and expenses incurred by the Lessor pursuant to its covenants in this Lease
>
> (8) To set aside sums as the Lessor reasonably requires to meet such future costs and expenses as the Lessor reasonably expects to incur in replacing maintaining and renewing those items that the Lessor has covenanted to replace maintain or renew".

25. In addition:

> "The Lessor shall as soon as convenient after the end of each year of the term granted by this lease prepare an account showing all costs charges and expenses incurred by the Lessor pursuant to its covenants in this Lease such account to be delivered to the Lessee".

The Construction of Leases

26. The Leases are to be construed applying the basic principles of construction of such leases, and where the construction of a lease is not different from the construction of another contractual document, as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

27. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

> "the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in Chartbrook [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."

The Hearing

28. The hearing was conducted on 16th December 2024 at Havant Justice Centre in person. Mr Alan Parrish represented himself. Mr Ian Parrish represented himself. Mr Alan Parrish was accompanied by Mr Michael Parrish and Ms Sally Parrish. They are the other two holders of the

freehold identified in the Reply and Defence. The bundle was said to have been prepared by Mr Michael Parrish on behalf of the Applicant.

29. Oral evidence was received from Mr Alan Parrish and Mr Ian Parrish. There were no documents which were strictly witness statements provided by either but there were other documents endorsed with statements of truth. There were some matters added by Michael Parrish which was acceptable in this instance. The Judge and Tribunal are grateful to the above for their assistance with this case.

30. There was something of an issue raised by the Respondent as to whether the Lease was the correct one. He was concerned at witness signatures shown who had not witnessed his signature. However, the Court and Tribunal considered it amply clear that the Applicant and the Respondent had executed the Lease as counterparts, such that there is a version signed by each side, which in combination comprise the fully executed Lease. The solicitors involved must apparently have been content and the Land Registry had registered the Respondent's title. The Tribunal was not persuaded the Lease is different from another version in existence. The Tribunal adds that even if there had been a version of the Lease requiring one (advance) payment per year and not two, it is not apparent that the amounts demanded per year would have differed and indeed the reasons why the claim fails, as explained below, would have applied almost exactly the same and with the same outcome.

31. There was nevertheless discussion about how many payment dates there were. The Respondent was adamant that there had only been one payment per year required from 2001 to 2020, which the Applicant had accepted in its Reply. The Claim Form contended for payments twice yearly, hence the claim for two lots of £250, other than the £381.05 claimed for building insurance.

32. It was identified that, rather unusually, there was an apparent distinction between the leases of the two flats in the Building (so the assertion in the Reply that the two are identical was not correct, although nothing turns on that). The information provided indicated that the other flat lease did only require one payment per year.

33. Reference was also made to there having been previous proceedings between the parties in 2020 at which time the Respondent said it was determined that he had been overcharged for service charges. The Tribunal had noted that an unsigned witness statement of Mr Michael Parish [148- 151] explained that the Respondent had been entitled to a credit for amounts during the period 2015 to 2018 which had been demanded and paid but where there had been errors in calculating the sums and a balance due to the Respondent was set against and exceeded the 2019 service charges demanded in those proceedings.

34. There was additionally clarification about an area referred to as the conservatory. That was clarified to be an extension to the rear of the

ground floor and by the stairs to the flats. It was described as covered with a plastic roof, to incorporate six glass windows and a fire escape.

35. Whilst the point is returned to below, the Tribunal considers it merits mention at this point that the Applicant- and Michael Parrish- were unable to identify the amount paid by the Respondent and held by the Applicant.

36. This Decision seeks to focus on the key issues and, not least where there are several different elements to this case, does not cover every last factual detail. The omission to therefore refer to or make findings about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the bundle or at the hearing require any finding to be made for the purpose of deciding the relevant issues in the case. Findings have not been made about matters irrelevant to any of the determinations required. Findings of fact are made in the balance of probabilities and so references to the parties making out, or not making out, their case in respect of any given point for which the onus is on that party to do so are to them doing so or failing to do so to that standard.

The Tribunal matters

The jurisdiction of the Tribunal

37. The Tribunal has power to decide about all aspects of liability to pay service and administration charges in relation to residential properties and can interpret the lease where necessary to resolve disputes or uncertainties.

38. Service charge is in section 18 of the Landlord and Tenant Act 1985 ("the Act") defined as an amount:

> "(1) (a) which is payable, directly or indirectly, for services, repairs, maintenance[, improvements] or insurance or the landlord's costs of management and
> (2) the whole or part of which varies or may vary according to the relevant costs."

39. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable (section 27A). Section 19 provides that only payable insofar as a cost is reasonably incurred and the services or works to which it relates are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. The amount payable is limited to the sum reasonable.

40. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The

Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: "Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account."

41. There are innumerable case authorities in respect of several and varied aspects of service charge disputes, but none have been cited by the parties. Nevertheless, the Tribunal is aware of and applies the authorities relevant, as it is well-used to doing.

42. Notable principles (but not an exhaustive list) include that a lessee's challenge to the reasonableness of a service charge must be based on some evidence that the charge is unreasonable- whilst the burden is on the landlord to prove reasonableness, the tenant cannot simply put the landlord to proof of its case, but rather the lessee must produce some evidence of unreasonableness before the lessor can be required to prove reasonableness. Also, that there is a two- part approach of considering broadly- speaking whether the decision making was reasonable and whether the sum is reasonable. In respect of estimated service charges the question of the reasonableness of the costs for which charges are demanded is to be determined according to what was reasonable on the information known at the time.

43. The Tribunal is entitled in determining the service charges (or administration charges) payable whether any sum should be off- set in consequence of any breach by the lessor. That is in addition to the jurisdiction of the Court to consider any counterclaim for sums beyond the level of the service charges demanded.

Are the Service Charges payable?

44. As noted above, it is amply clear from the Lease that the Applicant is in principle entitled to demand service charges from the Respondent. That is unsurprising. The Respondent accepts that the sums claimed by the Applicant have not been paid in response to the demands. That entitlement does require sums to be properly demanded and required for matters provided for in the Lease.

45. The claim in respect of the Residential Lease made is for service charges demanded on 26th June 2023 and on 15th December 2023, at £250.00 each. The insurance was demanded on 15th March 2024 for the period 16th December 2023 to 15th December 2024.

46. The Tribunal first considered whether in respect of the service charges element those were variable service charges and therefore within the

jurisdiction of the Tribunal. The Applicant had demanded a round sum and not one which identifiably related to any specific costs.

47. However, the Tribunal identified that the sums were ones demanded on account and not sums payable in the given year irrespective of the figures for the expenditure for the year (neither did they relate to that actual expenditure). Further, that the way that the Applicant had operated the service charges- whilst as discussed below not correctly- involved the Respondent being potentially liable (so subject to the Applicant complying with all relevant requirements) to contribute to service charges in whatever amount they were, not just a fixed and potentially limited sum.

48. Hence, the Tribunal determined that the service charges were variable ones in respect of which it consequently held jurisdiction.

49. The Tribunal next considered the service charge mechanism under the Lease. The contract between the parties is fundamental to and governs their relationship.

50. Most commonly in a modern lease, that would provide for the landlord to produce a budget for each given year and to estimate the lessee's share of the service charges in light of that; for the landlord to be able to demand- most commonly but not always twice per year- payments towards the lessee's share; for there being accounts following the end of the service charge year, often by an accountant, and usually certified by someone appropriate whether the accountant or otherwise (variations are possible, including sometimes the requirement for particular report or an audit); for any balance due from a lessee to be able to be demanded by the landlord and for the lessee to have to pay it, or in the alternative for any surplus paid by the lessee to be either repayable to the lessee or set against future service charges whether general ones or capital ones where the sum would be transferred into a reserve fund for capital expenditure.

51. The provision in paragraph (3) of the Second Schedule is at best unclear. The service charge which the Respondent must pay by half yearly instalments in advance, and for the particular year forming the main part of the service charges in issue in this case, is not described as an estimated one. However, it cannot be a final service charge for any given year because that can only be paid after a demand for actual charges is rendered, which can only happen once the expenditure for the year has been incurred and accounted for. Necessarily, there cannot be actual service charges before the service charge year has ended, the expenditure is known and the sum due from the Respondent is identified.

52. There is no specific provision in the Lease requiring the Applicant to provide a budget or other estimate of anticipated expenditure in a given service charge year. However, given that the Applicant is able to render a service charge to be paid by the Respondent in advance, the Tribunal

considers that a term must be implied that the Applicant does so or provides some other basis- if there could be any- for the amount demanded on account. The Tribunal considers that the Lease is otherwise unworkable- there would be no identifiable basis for any given sum demanded by the Applicant and no way of identifying that as reasonable- or not as the case may be. The provision of something identifying the basis for the payments demanded on account must be part and parcel of being able to demand such sums.

53. That said, the Tribunal was not provided with any estimate of service charges for any given year and any budget on which they were based. Indeed, when asked the Applicant specifically said that no budget was prepared and provided. He thought that the amount demanded would provide him with enough funds but identified no basis for so thinking. The Applicant mentioned preparing a balance sheet but did not satisfactorily explain what that meant in terms of any account charges, although he was clear that it was not a budget.

54. The Applicant specifically said that he did not know what the expected expenditure was. He could not answer, he said in evidence, on what basis he could demand the sums he did. The Tribunal noted the candour with which the Applicant responded, although that did not make his overall case any better.

55. There is also, the Tribunal observes, quite strikingly no provision for the Respondent paying anything beyond the two half yearly instalments in advance. The covenant is to pay (as additional rent) the sums in paragraph 3 of the Second Schedule, no more and no less. There is nothing identifying, how and when- if at all- any other sum is payable: there is nothing requiring the Respondent to pay any balancing sum if the two payments in advance are insufficient to meet the Applicant's share of the service charges. Whilst the service charge under the Lease is defined as 50% of various expenses incurred by the Applicant, there is an element of disconnect between that and the payment provision.

56. That gives rise to a question of whether a term should be implied into the Lease requiring the Respondent to pay any balance service charge for a share of the expenditure over and above the payments in advance. So equally whether, alternatively, the Applicant is simply not entitled to any additional sum. The Tribunal considers that the answer is not simple to arrive at. It may at first blush be suggested as obvious that the contracting parties intended a balancing sum to be paid but less so that such can be construed from the wording they used, and the result would be a payment being required by a party for which the Lease does not provide. There are potential issues with that. The Tribunal declines to answer that question in this Decision given that it is an answer not needed for the purpose of this Decision.

57. There has been, on the evidence received, no demand for any balance sum. In any event, there is no balance sum which contributes any portion of the amount claimed by the Applicant in the Court

proceedings and which the Tribunal has been asked to determine. Hence it is not part of the situation being dealt with by the Tribunal. It is not appropriate to seek to answer a question which the Tribunal has not been asked by the Court to answer and where the answer to which is not required for the task in hand. The Tribunal could therefore have left the point alone. However, the matter may well need to be addressed in the future and so the Tribunal prefers to identify it for the parties to consider.

58. The effective reverse is whether a provision ought to be implied that the Applicant must return to the Respondent any balance sum demanded on account and paid by way of the half- yearly instalments but unused during the service charge year. That is subject to setting it towards future costs in the amount the Applicant reasonably requires to meet such future costs and expenses as he reasonably expects to incur in replacing maintaining and renewing. The Tribunal considers this point rather simpler.

59. The Tribunal determines that the ability to set sums towards future costs not only carries with it the necessity for the sum to be reasonably expected to be required in the mind of the Applicant but also it being demonstrable. The Tribunal determines that the requirement under the Lease that the Applicant not only keep proper books of accounts but also prepare an account showing the Respondent all costs charges and expenses incurred is very relevant and that the Applicant must in those accounts demonstrate clearly any sum which has been retained towards future costs so that can be identified and, if relevant, challenged.

60. It is also particularly relevant that the Applicant does not have free rein to set any sum he wishes towards future costs. Rather the ability is limited, as identified above, to sums he reasonably requires to meet such future costs and expenses as he reasonably expects to incur in replacing maintaining and renewing items.

61. That must require the Applicant to identify what the future costs and expenses are considered to be and when they are expected to be incurred. The Applicant can then identify the sums which can be demanded from time to time to meet the lessee's proportion of those costs and expenses.

62. If and only if the Applicant does that, the Tribunal considers that sums paid on account by the Respondent can be retained by the Applicant. The Respondent accepted that. In any other circumstance, unused sums cannot be retained. The funds received by the Applicant from the Respondent are held on trust. They can only be retained within the limits of that trust.

63. Save where the Lease permits funds to be retained as reasonably required for future expenditure, the trust does not allow the Applicant to retain them. They must necessarily be returned to the Respondent. Whilst it would be preferable for the Lease to specifically provide for

that return, the Tribunal determines that is not a necessity because that return must occur except within the limits in which retention is specifically allowed.

64. What the Applicant cannot do, is to demand sums which might be needed for future expenditure at some stage but which it cannot be said he reasonably expects to incur, at least within some sensible time frame. He cannot just demand sums for the sake of it or in case he might need them for some unknown purpose at some unknown future date with no sense of what that might be and when. He cannot demand and retain sums beyond those reasonably required to meet identifiable future costs in the above manner.

65. The demand for insurance [23] on 15th March 2024 notably referred to a previous letter dated 15th December 2023 in which the Applicant had stated that the £381.05 charge for insurance would be deducted from a surplus held on account. It was implicit from the demand that there was sufficient held to meet the contribution to the cost of insurance. It was said in the March 2024 letter that to deduct the cost:

> "would deplete the account such that there would be insufficient funds to carry out the painting work this year".

Irrespective of the impact on funds for other matters, there was plainly ample to pay for the contribution to insurance and no further sum requiring payment by the Respondent for that purpose. Whilst there was an indication of future expense, the Applicant had failed to take the other steps required for him to have been able to retain funds for that purpose and to decline to utilise any of the funds for a sum which may be payable by the Respondent.

66. In oral evidence, the Applicant explained that there is one insurance policy for the freehold as a whole (but not contents). That is a commercial policy as it has to be because it includes commercial premises the Applicant said. The Tribunal considered whether the cost of the building insurance contributed to by the Respondent was reasonable.

67. There are two flats in the Building and there are commercial premises. There was only limited indication of how the insurance premium had been calculated in accordance with the level of risk or the re-instatement value of the commercial parts as compared to the residential part. The Applicant relied [91] on a split made by his insurance broker, Howdens (previously Aston Lark), in December 2021. He had adopted that. He could not himself explain. The Applicant referred in his evidence to the Respondent being required to pay 1/6. The Tribunal particularly noted that the charge to the Respondent was stated in documents to be 1/4 of the overall total cost of the insurance policy. The Applicant subsequently corrected his evidence.

68. The Applicant pointed in the hearing to the plans and the relative sizes of areas. The Applicant agreed that the approach taken is not provided for in the Lease. In response to further questions, the Applicant said that the insurance company has a valuation and that the land and buildings are valued every ten years with the insurance being for re-building costs.

69. The Respondent observed that the shop within the freehold is grade 2 listed, whilst the part containing the flats is relatively new. He suggested that may make a difference in respect of insurance and the Tribunal could identify a logic in that. The Applicant clarified that there is an old building, there is a newer extension to that, and the newer part includes the flats. He implied that there may be more than one policy because he referred to the rear extension to the commercial premise being half and the flats being half. The Tribunal was unable to understand that and how it fitted with his other evidence.

70. The Respondent had not sought any alternative quotes for insurance and said he was not aware that he could. As to whether he would have been successful had he tried to, could not be known by the Tribunal. On the other hand, the Applicant had failed to provide any copy of the insurance policy, so on the one hand if the Respondent had provided any alternative policy there would have been nothing to compare it with.

71. More significantly, the Tribunal could not identify the extent of the insurance cover, whether it included all that it ought and nothing beyond that to which the Respondent should contribute or any features at all. Essentially, all that the Tribunal knew was the amount which the Respondent had been charged.

72. The Tribunal asked the Applicant how it might be satisfied that the insurance policy was suitable and the contribution to the premium was appropriate. The only answer was essentially that the insurers had suggested a division but there had been no breakdown as to how that took account of distinction between the different types of premises and different use.

73. The Tribunal cautiously accepted that it may be that a ¼ share of the appropriate premium was reasonable. The Tribunal accepted that it was for the Applicant to decide how to split the cost and more than one decision could be rational. The Tribunal determined, however, that it was not satisfied overall that the service charges demanded from the Respondent were properly payable given the wider matters related to the policy. Neither could the Tribunal determine what any appropriate premium for an appropriate policy was. In the normal course, the Tribunal would have sought to do so. As it is the Tribunal cannot go beyond the determination that the premium demanded is not payable and cannot identify any level of premium that is.

74. As to the other part of the claim, the Respondent was unhappy that the level of service charges demanded, in advance as the half- yearly instalments, had increased from £300.00 per year to £500.00 per year. He also said in evidence that he did not understand what he was being asked to pay for and queried why the sums he had previously paid were not paying for required expenditure.

75. There was nothing tangible before the Tribunal as to why that increase had happened. The Tribunal surmises that the Applicant must have determined in some fashion that £300.00 would not be enough to meet the contribution which the Applicant is required to make on account towards expenditure. Similarly, presumably that £500 should be around and about the right and reasonable level. The Applicant's reply to the Respondent's case refers to "the necessary sum to meet maintenance costs which at present is £250 twice per year". However, the costs cannot be precisely the same per year, the Tribunal has determined that the service charge was not a fixed one, and there is nothing to explain why that sum, either exactly or approximately is the "necessary", or reasonable, one.

76. The reply referred to an estimate for decoration [83] in the sum of £2958.00 and it was suggested that the sums demanded plus those to be demanded in July 2024 and January 2025 were needed to meet that, presumably in combination with a like contribution from the lessee of the other flat plus any other relevant contribution. The Tribunal notes the level of that estimate and that there are two residential flats but knows nothing of the process followed in obtaining that estimate or whether that contract or is intended to undertake the works. The Applicant said there had been no consultation process. As to whether there is other relevant expenditure and any other elements of payment towards the decoration and anything else required is not mentioned.

77. In an email dated 28th October 2024 [85] the Respondent refers to the communal front door being fixed in July 2024. The Tribunal perceives that was charged as a relevant expense to the Respondent and other flat lessee, because the Respondent complains at the cost being "astronomical"- he mentioned in oral evidence £900- and that the relevant tradesman told the Respondent that the cost for making and fitting that he charged to the Applicant was rather lower. There is other reference to concerns in respect of the condition of the door.

78. The Tribunal is not entirely clear as to the relevance of the door costs to the demands made on which these proceedings are based, which were some months before. The Tribunal is unsurprisingly very troubled if the Applicant has sought to charge the lessees a greater sum than the costs to him. However, the Tribunal considers that it lacks sufficient evidence to make any specific finding and lacks any identifiable basis for doing so in these proceedings. It should be said that the Applicant denies that and said the cost reflected the door being non- standard. The Tribunal avoids making a finding as to whether the Respondent was charged more than ought to have been his share of the cost by the Applicant.

79. The Tribunal does observe that if £900.00 is the correct cost, there was a need for consultation in respect of that and any other work undertaken- the Applicant mentioned some plumbing and drainage work- and that is also relevant to how much of the costs of any past work the Respondent was liable to pay. Any balance held may not be the correct one if more has been taken than the lack of consultation or any other features permitted. At first blush it seems likely more was.

80. The Respondent also referred in the same email to his doorbell and intercom being disconnected in 2020 and only reconnected in July 2024. He alludes to that being inconvenient. It is not apparent that any service charges could properly demanded to meet any such costs, or indeed that they were. No claim is brought by the Respondent for any breach by the Applicant or identifying any other cause of action and in any sum.

81. It appears to the Tribunal that demands were for a time made in arrears by the Applicant. The Applicant refers [100] in correspondence to "In the past we have not requested payments in advance of the works or services", suggesting charging in arrears and in a single payment then. It will be identified from the matters considered above that the Lease does not provide for payment in arrears at all. However, the approach had changed prior to the demands the subject of this claim and no determination is required in relation to any old demands.

82. The Applicant refers to changing to advance payments twice annually in accordance with the Lease and says that the balance beyond insurance and "minor property maintenance" will be held "for a future fund". However, as identified above, the Applicant is not permitted simply to demand and hold money for future potential expense in some general sense. Rather, and as discussed in some detail above, the requirement is more specific than that.

83. In contrast, the fact that the Applicant has demanded round sums each year and has referred to "a future fund" in a general sense even in themselves indicate the Applicant not to have limited demands for sums for future expenditure only to the extent that the Lease permits.

84. As identified above, the Respondent paid £3124.18 as ordered pursuant to the C0unty Court judgment in 2021. Some of that was plainly not off-set against sums owed by the Applicant for actual expenditure. Rather, there was plainly a balance. The Applicant's March 2024 correspondence cannot be read any other way.

85. In any event, as it appears to the Tribunal clear that the sums demanded by way of advance payments each year related at least in part- and the parties' cases suggested potentially a large part- to the "future fund". Hence the balance may be- and perhaps ought to be- a significant one.

86. As identified above, the Applicant was unable to identify to the Tribunal in the hearing how much that had been paid by the Respondent was still held and unspent. The Applicant specifically said that he was not sure. He was consequently unable to demonstrate how much ought to have demanded and could properly be demanded, including additional sums for future costs, of the £500.00 part of the claim which he had made.

87. That was all rather surprising where the Applicant has issued proceedings on the basis that sums were due to him and constitutes an obvious flaw in his case. It is also surprising where the requirement of the Lease is that proper books of accounts must be kept and that the Applicant must, each year, prepare an account showing all costs charges and expenses incurred by the Applicant pursuant to its covenants in this Lease such account to be delivered to the Respondent.

88. Even on the basis of the Applicant retaining sums previously demanded and paid by the Respondent, to the extent that he is permitted to as required for future expenditure, the Applicant has to know how much is held- and indeed so too does the Respondent have to know how much is held, by the Applicant providing to him the account which the Applicant is required to. That is by producing accounts year on year for the sums received and the expenditure incurred and providing the account to the Respondent that the Lease requires.

89. The Applicant said in oral evidence that he does produce end of year accounts. He explained, however, that was by way only of a balance sheet produced by him.

90. The Tribunal accepted that there were not a large number of occupiers, a large estate or a number of blocks. Any accounting and any accounts need not be unduly complex. The Tribunal noted that the Lease did not require accounts to be certified, still less audited accepted.

91. However, as the Applicant accepted, none of the balance sheets were contained in the bundle and so there was no evidence of what they contained, or evidence that they could constitute proper books of accounts or even an account showing all costs charges and expenses incurred if the latter might permit anything less then the former (which the Tribunal regarded as unlikely in any event).

92. The Tribunal could not therefore be satisfied that the balance sheet was sufficient to comply with the requirements of the Lease. Indeed, the contrast between the accounting provisions in the Lease and a balance sheet document alone rendered it very unlikely that the balance sheet could have complied.

93. The failure to proceed in that manner constitutes a breach of the Lease by the Applicant. The Lease itself does not specifically preclude any service charges being payable by the Respondent unless and until the Applicant complies with the provisions of the Lease. However, the

Tribunal considers that where the provision of accounts is inevitably fundamental to the financial relationship between the parties, the failure to provide those is such that any demand for additional sums by way of service charges is not valid.

94. Further, by the Applicant failing to provide any budget for anticipated expenditure for the year (and any reasonable sum to set against future expenditure) and any estimate of service charges to demonstrate that the sums demanded on account are reasonable, it would be hard to avoid the conclusion that the Applicants' covenant in the lease to pay the estimated service charge has not been triggered. If a lessee receives a demand to pay service charges in advance, he is entitled to be satisfied that he is not being asked to pay more than a reasonable amount: see section 19(2) of the Act.

95. For the various reasons identified, and perhaps most fundamentally that the Applicant did not know the sum he already held, the Applicant did not demonstrate that any service charges were actually payable.

96. Irrespective of the reasonableness of any expenditure which might in the normal course be met from service charges, the Applicant could not demonstrate that the additional sums demanded were required for any of the expenditure for which service charges could be demanded or that he was entitled under the Lease to demand them. It was not possible to discern how much was already held and which the Respondent was entitled to expect would be offset against any further service charges payable. It was not possible to discern if any further advance payment was appropriate.

97. The Tribunal therefore determines that whilst a reasonable sum for insurance would be payable and appropriate advance sums for expenditure can be demanded, the Applicant has not shown that any service charges demanded and included in this case were payable from a financial perspective. Further, the Applicant has no entitlement under the Lease to demand any sums unless and until proper accounts are provided for the years to date, until budgets and estimates are provided and until it is demonstrated that the expenditure for which service charges can be demanded requires the demand of further service charges to meet it when compared to sums already held. In addition, in respect of such part of the demands as relate to future expenditure, there is no entitlement unless and until it is demonstrated what and when future expenditure is expected to be incurred and what service charges are reasonable to meet that.

98. The Tribunal adds that if the Applicant had not failed on the above bases, it would have also needed to consider whether to address the nature of the demands made. At first blush, the Tribunal considers on the evidence in the bundle that it is at least less than certain those were compliant with statutory requirements, where that compliance is a necessity for the sums demanded to be payable. However, the Respondent had not raised the point. Whilst the Tribunal as an expert

forum may take points not raised by parties which it considers fundamental to its jurisdiction, there is a careful balance to strike and the Tribunal may or may not determine it appropriate to do so in a given case. In this instance, it is not necessary to consider what approach ought to be taken because the service charges are not payable in any event and hence the Tribunal can leave the matter there.

99. The complete lack of apparent accounting and identification of the sums paid by the Respondent over the years which were entitled to be expended and how much there is that has been paid by the Respondent which ought to be retained is very troubling and runs entirely contrary to how service charge funds are required to be dealt with. Given that sums paid in respect of service charges are held on trust by the landlord or its agent, the duties applicable to all trustees arise. There is no sense of the Applicant being aware of those and still less that they have been complied with.

100. Without wishing to pre- judge any future matter which might come before it, the Tribunal has serious doubts that any service charges can be properly demanded until the Applicant has undertaken a full reconciliation and then knows and can demonstrate the amounts received from the Respondent and any other lessees and expended and hence any balance due back to the Respondent or sum which is reasonable for the Applicant to additionally receive.

101. A document dated 31st August 2024, which the Tribunal understands to have been in effect the Respondent's position statement for the case management hearing, raised various issues. In particular those are a need for exterior redecoration (some was accepted as having been undertaken but not at high level), replacement of a door frame, replastering and redecorating to the communal hallway, replacement of the four windows (the seals to which are said to have blown) to what is described as the conservatory and to a door providing access to the roof and replacement of the roof to the conservatory and related works. The Respondent provided photographs which were included in the bundle [180- 187]. Specific effects on the Respondent are not set out, although documents contained some reference to concern about the condition of the door frame and formerly the door.

102. The Tribunal perceives that the matters amount to a defence of set- off of an appropriate sum in favour of the Respondent to reduce or extinguish any service charge liability to the Applicant. That would have been relevant in the event that any service charges had been determined to be payable by the Respondent to the Applicant. So too may potentially have been other assertions made by the Respondent, including those related to the problems with the door and intercom mentioned above, although it merits recording that the Applicant specifically denied the latter, albeit he was less clear about the former.

103. There was a good deal of questioning of the Applicant in the hearing by the Respondent in respect of previous works to the Building. The

subject matter may have been relevant in the event that any service charges the subject of the proceedings were otherwise payable. However, having found no service charges in the proceedings to be payable, nothing turned on the extent or quality of works prior to the relevant demands and so the Tribunal does not set any of the matters out here.

104. As no sums of service charges have been found to be payable, there is nothing to set- off against. Any impact upon any subsequent service charges demanded is not within the remit of this Tribunal, which does not therefore make any findings on the subject matter of the potential set- off. The Tribunal prefers to leave that to another time in the event that it is then relevant, at which time a Court or Tribunal determining something of substance can make the findings considered appropriate.

105. The only observation which the Tribunal makes is that whereas the answer from the Applicant to questions about lack of works to the Building was repeatedly that there was "no money in the kitty", that hardly avails the Applicant where he is in breach of his own obligations under the Lease and where he does not make valid demands for payment of service charges pursuant to the Lease or otherwise.

106. There are various wider allegations made in the 31st August 2024 document. For the avoidance of doubt, as those do not relate to service charges or identifiable set- off against them, had there been an otherwise payable, the Tribunal makes no observations or findings about those matters, which will need to be pursued in another forum if not resolved and a party wishes to so pursue them.

107. As a final comment, it was identified by the Tribunal- and accepted by the Applicant- that undertaking decoration every 3 years as required by the Lease together with compliance with the other provisions for the Lease would be highly likely to involve demands for service charge of a greater sum than the equivalent of £300 per year and of £500 per year- where the sums on account and the final charges should reflect the actual expenditure (plus sums insofar as they can be demanded for future expenditure) and there can be no guarantee at all of any limit to £300.00 per year on account. It is a matter for the Respondent as to whether he insists on compliance with the Lease in respect of matters such as decoration. In principle, he is entitled to do so, but the consequent more regular work will need to be paid for, including in part by him.

108. The parties may wish to reflect on whether decoration at such regularity is necessary and consider whether any suitable alternative approach might be agreed. No doubt the Applicant will address any cycle of redecoration in his documented budget for future expenditure and tailor the demands for service charges on account to that and the other expenditure anticipated. Consultation requirements should be borne in mind by the parties. It may be sensible for the parties to obtain advice.

Costs falling within the Tribunal's jurisdiction

109. The Tribunal has only a limited jurisdiction to make positive orders for costs to be payable by one party to another. That is on the basis of unreasonable conduct in taking, defending or conducting proceedings and pursuant to rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013. Pursuant to statute, the jurisdiction could have been wide, but the Rules proscribe that considerably.

110. In addition, the Tribunal may disallow the recovery of cost of proceedings as both service charges and administration charges, the former pursuant to section 20C of the Landlord and Tenant Act and the latter pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002. The wording used in each instance is not exactly the same but for practical purposes the net effect usually is. Given that to charge costs as administration charges the costs must be incurred, insofar as the limited bases for administration charges could apply in this case, in seeking to recover sums due, the fact that no sums have been determined to be due would appear to preclude any recovery of costs as such administration charges and that aspect would not appear relevant.

111. The Respondent has not made any relevant application pursuant to section 20C or paragraph 5A. There is consequently nothing for the Tribunal to determine in respect of such potential applications. If the Applicant does seek to recover any costs of the proceedings as service charges, or notwithstanding the above as administration charges, the Tribunal will determine the reasonableness in the usual way in the event that either party applies for it to do so.

112. In the event that a party contends that the other has behaved unreasonably pursuant to rule 13 and wishes to bring any claim for costs or expenses as a party representing himself in respect of the time spent by him or for legal costs incurred- it was not apparent that either party had paid for advice but the point was not addressed specifically- he may apply within 28 days of this Decision, setting out the basis on which he contends that any costs or expenses should be recovered by him and the amount of those, with evidence where available. In the event that a party does so, directions will be given dealing with any response from the other party and a determination by the Tribunal.

The County Court issues

Claim

113. The County Court issues have been considered by Judge Dobson alone, having regard where appropriate to the findings and determinations of the Tribunal in respect of the Residential Lease service charges. The answer in respect of this aspect of the claim is simple.

114. The Tribunal has comprehensively determined on the evidence presented that no service charges are payable. It necessarily follows that the claim for payment of sums said to be due but found by the Tribunal not to be payable must fail. The Court need not and cannot go beyond that determination. A party bringing a claim would do well to consider carefully any entitlement to the sums claimed before the issue of proceedings, indeed that might be consider a basic necessity.

115. It necessarily follows that there can be no interest payable, there being nothing demonstrated as owed to which interest could be applied.

Counterclaim

116. The Respondent's claim totals £3124.18.

117. He asserts that the Applicant had claimed the sum from him in a claim. The Respondent contends that the work involved was never completed. The Respondent also referred to 2020 proceedings in which he said it was found that the Respondent had been overpaying.

118. The Respondent's case indicates that the Respondent paid that sum to meet the 2023 County Court judgment mentioned above where the Court had found the sum to be due and ordered it to be paid by the Respondent. There was no appeal against that Order.

119. The Respondent nevertheless seeks in effect to challenge the Order in these proceedings by now seeking the return of the sum paid. However, the matter was determined in those proceedings by the Court. It is, to use an old term, Res Judicata. The matter cannot be re- determined by the Court now. The decision in the 2023 proceedings is binding.

120. It is of some note that the sum found to be due in 2021 has in practice been applied against future expenditure rather than sums which had been expended at an earlier time. Given the determination by the Tribunal that the Applicant is not entitled to retain sums and anything left at the end of any given service charge year has to be returned, it is arguably problematic that there is a sum paid which did not relate to sums already expended. It may be that any sum paid by the Respondent and not expended as the Respondent's appropriate contribution to matters for which expenditure is permitted under the Lease would have been returnable. However, there cannot be a claim for any of the £3124.18 in these particular circumstances.

121. The Respondent consequently has no cause of action for the sum to be returned. The Counterclaim must fail on that basis.

122. Whilst the Tribunal had asked some questions about the basis for the sums demanded which produced the judgment and that might have been relevant in some manner if the outcome of the remainder of the

case had been different, in the circumstances those matters are not relevant and need not be recounted.

123. For completeness, the Court does not identify any matter which the Tribunal has referred as a potential defence of set- off as forming part of the stated Counterclaim. The Counterclaim was brought for the precise sum of the payment made to meet the 2023 judgment and nothing else. Consequently, there is no other substantive matter for the Court to address.

Costs falling within the Court's jurisdiction

124. The claim was allocated by the Court to the small claims track. The principle distinction between that track and others in respect of costs is that in the normal course costs are not recoverable between the parties, although with the exception of situations in which a party which may be liable to pay the costs of another party has behaved unreasonably.

125. The Claimant has failed entirely and given his failings under the Lease and the fact that he already held funds, albeit which he was not entitled to hold, there ought never to have been any prospect of success. It is a very simple decision to determine that the Claimant does not recover the Court or other fees paid and is not entitled to any costs of advice or time spent.

126. It is not clear that the Respondent paid the relevant fee for the Counterclaim- the form completed is blank where the amount of the fee enclosed should be inserted. The Respondent in oral evidence was at best unclear whether a payment had been made. That may go beyond simply an inability to recover any fee had the Respondent succeeded. It may mean that he was precluded from pursuing the Counterclaim at all.

127. However, it will be seen that the Court has dealt with the Counterclaim on its merits in any event, not least given that it has been determined unsuccessful. Given that lack of success, the Court determines that it would not award to the Respondent any fee paid to bring the Counterclaim, if any. Hence payment of the fee or lack of it has not impact on any aspect.

128. As explained above in respect of costs of the Tribunal proceedings, in the event that the a party wishes to bring any claim for costs or expenses as a party representing himself in respect of the time spent by him, or for any legal costs incurred, he may apply within 28 days of this Decision, setting out the basis on which he contends that any costs or expenses should be recovered by him and the amount of those, with evidence where available. In the event that a party does so, an order will be drawn dealing with any response from the other party and determination by the Court.

ANNEX - RIGHTS OF APPEAL

Appealing against the Tribunal's decision

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

2. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

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

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

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

5. A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case. The date that the judgment is sent to the parties is the hand-down date.

6. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

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

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

    2. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the Regional Tribunal office within 21 days after the date the refusal of permission decision is sent to the parties.

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

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

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