FIRST-TIER TRIBUNAL PROPERTY CHAMBER
RESIDENTIAL PROPERTY

Case reference	**: MAN/00CH/LSC/2019/0095**
Property	**: Flats 1,2 and 4 The Warehouse, Well Lane, Low Fell, Gateshead Tyne & Wear NE9 6JW**
Applicants	**: Lucy Winter (1)** **Margaret Wilkinson (2)** **Lisa Reay (3)**
Respondent	**: Adriatic Land 1 (GR3) Limited**
Solicitors for the Respondent	**: JB Leitch Limited**
Counsel for the Respondent	**: Miss R Ackerley**
Type of Application	**: Landlord and Tenant Act 1985 - s27A and s20C Commonhold and Leasehold Reform Act 2002 – Sch 11 para 5A**
Tribunal Members	**: Tribunal Judge W L Brown,** **Tribunal Member Mr I R Harris MBE FRICS (Valuer Member)**
Date of Hearings	**: 22 November 2022 23 October 2023**
Date of Decision	**: 21 October 2024**

DECISION

DECISION

1. In 2018 the charge for water rates of £2,802.40 was reasonably incurred and reasonable in amount.

2. In 2018 the charge for repairs of £4,393.95 was reasonably incurred and reasonable in amount.

3. Legal costs concerning the claim by the Respondent against the Adjacent owners, net of VAT, recoverable as service charge against the Applicants which have been taken charged as direct expense or from the reserve fund, are limited to two-thirds of the sums invoiced by JB Leitch Limited to the Respondent for the service charge years 2018 – 2021 (inclusive).

4. Legal costs not relating to the claim against Adjoining owners and those relating to these proceedings in service charge years 2019 – 2021 (inclusive) and reasonably incurred and reasonable in amount.

5. The administration charge of £90 to the First Applicant to register a sub-tenancy of her flat is recoverable against her and reasonable in amount.

6. Any administration charges raised to the Applicants regarding their withholding of service charge payments were not reasonable in amount.

7. Order made under section 20C Landlord and Tenant Act 1985.

REASONS

The Application and the Property

8. The Applicants made an application to the Tribunal dated 10 December 2019, subsequently amended by agreement of the Respondent and with permission of the Tribunal (the Application) under section 27A of the Landlord and Tenant Act 1985 ('the Act') for determination of whether certain service charges were payable by them for years 2018 – 2022 (inclusive).

9. The Applicants are long-leaseholders of apartments in the Building of which the Properties form part (the Building). The Respondent is their immediate landlord, as freehold owner. Ms Winter is the owner of Flat 2, Ms Wilkinson of Flat 1 and Ms Reay of Flat 4. Until 31 March 2021 Forte Freehold Management Limited undertook for the Respondent its obligations concerning the Property, followed by Homeground Residential Limited. Day to day management of the Property was carried out by Kingston Property Services Limited (Kingston), including administration of the service charge.

10. The Tribunal first made directions on 28 January 2020, and subsequently. The Tribunal carried out an inspection of the Property on 15 June 2022 in the presence of Ms Winter with her partner and Mrs Wilkinson and Ms Reay. Also present with agreement of the parties was Mr D Charlton of New Forest Group,

which had undertaken redevelopment of the Property. The Respondent attended through its Counsel, Miss Ackerley, and joining the inspection part-way through was Mr Stoker from Kingston. The Tribunal learned that the Building formerly was a warehouse and was converted into mixed office and residential uses. The office space occupies the ground and part of the 1st floor. Mr Charlton is the tenant of the office unit and is also the tenant of flat number 3. Neither Mr Charlton nor the owner of flat 5 are parties to these proceedings.

11. A hearing of this matter took place at Gateshead County Court on 22 November 2022. All of the Applicants attended. The Respondent was represented by Miss Ackerley. Ms Douglass of the managing agent also was present. The documents that we were referred to were in separate bundles from the parties, the contents of which we have recorded.

The Property

12. From its inspection the Tribunal found that the Property comprises a converted warehouse, partially attached on each side to adjacent buildings. Entrance to the Property from street level gives access to an office over ground and mezzanine level. There are five residential flats to upper levels. There is a secure shared carpark from street level.

The Principal Law for the Application

13. Section 18 of the 1985 Act states

Meaning of "service charge" and "relevant costs".

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent—
(a)which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose—
(a)"costs" includes overheads, and
(b)costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 of the 1985 Act states

Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

a. only to the extent that they are reasonably incurred, and
b. where they are incurred on the provision of services or the carrying out of works, only for the services or works or are of a reasonable standard: and the amount payable should be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than as reasonable as so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise.

9. Section 27A of the 1985 Act states

Liability to pay service charges: jurisdiction

(1) An application may be made to the appropriate tribunal for a determination whether service charge is payable and, if it is, as to
a. the person by whom it is payable,
b. the person to whom it is payable,
c. the amount which is payable
d. the date at or by which it is payable, and
e. the manner in which it is payable.

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

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

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

10. Schedule 11 of the 2002 Act which states

Meaning of "administration charge".

1(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

……

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

Reasonableness of administration charges.

2 *A variable administration charge is payable only to the extent that the amount of the charge is reasonable*

……

Liability to pay administration charges

5 (1)An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a)the person by whom it is payable,

(b)the person to whom it is payable,

(c)the amount which is payable,

(d)the date at or by which it is payable, and

(e)the manner in which it is payable.

The Leases

11. The lease of each Applicant is for a term of 125 years, at an initial ground rent of £200 per year. The obligation of the Respondent, as landlord of the Property, to provide "Building Services" (as defined in Schedule 5 of each lease) is set out in clause 4.3, and to ensure "*….good estate management*..,," principles are adhered to in management of the Property is recorded in clause 4.4.

12. The obligation of each Applicant to contribute 10.20361% of the cost of provision of services is in clause 3.1 and detailed in Schedule 6 of their respective leases. The obligation concerns the "Building Service Charge", defined as "*the services amenities and/or facilities to be provided or made available or procured by the Landlord for the use or intended use by the Tenant and the tenants of Other Units as set out in Schedule 5.*"

13. Reimbursement by the Applicants of fees incurred by the Landlord – here regarding any breach of covenant, and recovery of any arrears of Rent (which includes the Building Service Charge – clause 2) - is provided for in clause 3.14

14. The Tribunal was satisfied that there was no dispute concerning the respective obligations in this matter and in particular the Applicants' liability in principle for the charges which are the subject of the Application.

The Parties' Positions

15. The Applicants presented a number of representations in support of the Application and their own written statements. The Respondent produced detailed Statements of Case and responses, a statement from Ms J Hollyoak of its Solicitors and two statements from Ms H Douglass, Property Manager of Kingston. The parties also provided written submissions on the S20C element of the Application. The Tribunal had before it relevant documents, as listed in the indices to the hearing bundles and attachments to emails to the Tribunal, copied to each side. In addition, we received oral representations. Further, this decision is prepared having regard to the Practice Direction dated 4 June 2024 from the Senior President of Tribunals: Reasons for decisions. In consequence it is not intended to record here all of the parties' arguments, but only persuasive evidence found by the Tribunal relevant to its determinations; if our summaries do not reflect every point, that does not mean we have ignored them.

16. The Applicants alleged a lack of transparency on the part of the Respondent's managing agents, Kingston. Their primary grievance about service charge amounts concerned substantial legal fees incurred consequential to two major water ingresses affecting the Property.

17. The parties had produced a 31 page Scott Schedule, but it was clarified and agreed by the parties at the hearing and in subsequent correspondence that the matters at issue were:

Service charge year 2018

Legal Fees £4,218.62

Water rates £2,802.40

Repairs £4,393.94

Service charge year 2019

Reserve fund £30,000

Admin fees £984.00

Service charge year 2021

Reserve fund £20,000

Service charge year 2022

Reserve fund £20,000

Tribunal findings from evidence and Determinations

18. The Tribunal first considered the lease terms and found that the service charge matters of the Application – legal costs relating to management of the Property, reserve funds and repair costs – fall within the definition of Building Service Charges. Therefore, the sums involved potentially are recoverable from the Applicants. The question was whether they individually were reasonably incurred expense and if so, whether each was reasonable in amount.

19. The factual position took time to clarify and we record that the Tribunal had to issue further Directions on 5 December 2022 to give the Respondent further opportunity to explain its case and disclose relevant documents. Those direction included:

> *".....(ii) copy of all invoices for legal fees regarding the dispute with the owners of the neighbouring property , with a schedule of those fees identifying the date of the invoice and showing the service charge year in which each fee was demanded (and whether as a distinct item of charge or within the Reserve Fundsum);*
>
> *(iii) analysis of the figures for Reserve Fund appearing in the notes to the Year End Accounts from 31/12/18 onwards, referrable to legal charges, compared to invoiced sums from JB Leith;*
>
> *(iv) copy of the invoices totalling £3,403.20 of expense for Front Roof Repairs appearing on Year End Accounts 31/12/19;*
>
> *(v) explanation of whether the invoice charges of Triple Shield appearing at page 553 of the hearing bundle relates to work for which the cost is being claimed from the owners of the neighbouring property, or relate to Front Roof Repairs;*

(vi) details of the compromise, if any, of the dispute between the freeholder of The Warehouse and the owners of the neighbouring property, sufficient to identify recovery of any repairs charges and legal fees passed on through the service charge;

(vii) the Respondent's position regarding refund to the Applicants, crediting of the service charge account for the Applicants, or otherwise, of any balance of legal fees for which demand have been made as service charge but not recovered through the compromise."

2018

20. As to water charges in 2018, in the sum of £2,802.40, the Applicants considered the amount to be an excessive sum, because the budgeted sum had been £1,570.00. However, the Tribunal found no persuasive reason to understand the situation other than as explained by the Respondent in its Final Statement of Case dated 6 December 2021:

"*The charges are based on usage, a matter of which neither the Respondent nor its agents have (or should have), any control. KPS receive bills from Northumbrian Water and these are based on the residential tariff. The bills received either consist of estimates or actual readings but there are frequent readings taken to ensure charges reflect actual usage. KPS, on behalf of the Respondent, enquired with Northumbrian Water as to the water costs. Northumbrian Water confirmed the two meter readings taken on 5 August 2018 and 23 May 2019 were 'average'*."

Later:

"KPS contacted Northumbrian Water to ask that they check all bills for the last 5 years to see if they could provide any insight. Nothing was identified. KPS's finance team has also undertaken a review of their bills for this period, and again, nothing of note was identified.

Insofar as the budgets reflecting lower figures than figures within the previous year accounts, KPS base the figure upon the information they have at the time. It is impossible to precisely foresee sums that will be incurred in any given accounting period and it should be noted that at the point the 2018 budget was prepared, the 2017 finalised accounts were not yet available."

Ms Douglass in her 2021 statement set out "*As confirmed to the Second Applicant on 12 July 2019, I contacted Northumbrian Water for clarification as to the reason for the increased charges. Northumbrian Water confirmed that the readings taken on 5 August 2018 and 23 May 2019 are what they would expect as an average. Nonetheless, for completeness, we conducted a further test to eliminate the possibility of a leak. No such leaks (from our water supply) were found*."

She went on to state "*I have proposed to the Applicants on multiple occasions (for example, on 19 May 2019, 13 June 2019, 5 July 2019, 12 July 2019, 3 May 2019, 5 August 2019, 6 September 2019) that they make an appointment at our offices to view and inspect the accounts, receipts and any other documents they might wish to have sight of. This has been done in accordance with the summary of tenants' rights*

and obligations which accompanies each and every service charge and administration charge demand. At no stage have KPS knowingly withheld any information from the Applicants to which they are entitled. None of the Applicants have opted to take up the offer of inspecting the accounts, invoices and other related documents."

21. The Tribunal found the evidence from the Respondent unambiguous and without contradicted evidence from the Applicants about the sum involved. The Tribunal determined that the charge of £2,802.40 was reasonably incurred and reasonable in amount.

22. Regarding repair costs in 2018 concerning the charge of £4,393.94 the Applicants (in their Further Statement of Case November 2021) complained:

"*1. the costs incurred far exceed the amount budgeted, consultation was therefore required which did not take place;*

11. a substantial part of the costs, £3,001.67, all relate to the same water ingress which again would have required consultation with the Applicants which did not take place;

111. it is unreasonable for the Applicants to be expected to contribute towards legal fees whilst at the same contribute towards repair works relating to water ingress; and

1v. there are concerns some of the works should have been covered by the building insurance."

23. The Tribunal found the Respondent had disclosed in these proceedings invoices for £4,393.95 – and explained the penny difference as a rounding adjustment. The question was whether the sum ought to have been the subject of "section 20" consultation. Landlord and Tenant Act 1985 at section 21(3) sets out the consultation process, which applies 'to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount'. The appropriate amount is £250 for any one leaseholder's contribution via the serviced charge mechanism under the lease. Section 20ZA(2) defines 'qualifying works' as 'works on a building or any other premises'.

24. We found evidence regarding each element of repair in the Respondent's Statement of Case (the table within paragraph 46 and the invoices in Annex 12). We found it reasonable that costs for out of hours services of £6.91 and health and safety for £2.84 are services which are provided to all sites managed by Kingston and the overcall cost is apportioned to each site. We found by reference to the produced invoices (Annex 12 to the Respondent's Final Statement of Case dated 6 December 2021) that the works were independent of each other and therefore did not require section 20 consultation. Specifically, we found that where works related to water ingress they were each separate tasks and could not be deemed to be a series of sufficiently connected jobs so as to merit accumulation of charges. We found no persuasive evidence overall from the Applicants to indicate that the sum involved

was unreasonable in amount. The Tribunal determined that the charge of £4,393.95 was reasonably incurred and reasonable in amount.

Leaks

25. We found that they Property was affected by two particular incidents of water ingress – one affecting principally the office (the "front" of the Property) and the second affecting more widely and relating to the adjoining premises. The facts were clarified in the statements of Ms Douglass.

26. Ms Douglass stated that two events – first in March 2018 - affected "*….the front end of the office/commercial unit and [Kingston] are currently undergoing the section 20 consultation process." (*Her statement dated 6 December 2021*).* The second problem occurred in November 2018 and a further report arose in June 2019. It was explained that these incidents were not covered by buildings insurance, because they arose over a period of time and not suddenly. The sums involved as set out in a notice of intention to carry out works dated 22 March 2019 were "*Gibson Maintenance Solutions Ltd £4665.60 including VAT. Tripleshield Property Maintenance Ltd £3403.20*". The Tribunal learned from Ms Douglass' statement of 27 February 2023 that works to the front (office) of the building required cavity trays to be replaced. The works were completed in October 2022. The expense associated with such works is not the subject of this decision.

27. Ms Douglass' evidence was that a separate, unrelated, leak occurred "*….from the Adjacent Property affected the rear area of the office including the kitchen and I believe also flat 3*." The Adjacent Property is 592 to 596 (even) Durham Road Low Fell NE9 6HX, owned at ethe relevant time by Dr Sheikh and Mr Malik, whose building insurer was NIG. The Tribunal found that this event was in 2019.

Legal costs

28. The issue of legal costs concerned firstly the sum of £4,218.62 in 2018. The Respondent's position (Final Statement of Case) was that *"….during accounting y/e 31.12.2018 the Respondent was invoiced for £7,379.42. The Respondent confirms that for the service charge year 2021, the legal costs incurred thus far totals £2,083.20…… The particular invoice of JBL totalling £4,218.62 (invoice no. 140400), and all other legal costs in discussion in this Application, are payable pursuant to Clause 3.1 (and 4.3) and paragraphs 6.8, (6.10) and 6.12 of Schedule 5 of the Leases.*

Owing to a number of incidents of ingress originating from and being caused by disrepair and maintenance issues concerning the Adjacent Property, damage was sustained to various parts of the Development including the ground floor offices of the commercial unit and the car park. JBL's instruction and all legal costs invoiced by them, relate however, only to ingress from the Adjacent Property and damage caused as a result; they do not relate to other ingresses and works that occurred under different circumstances (not related to the Adjacent Property) and have required no involvement of JBL."

The Tribunal records that "JBL" means J B Leitch Limited, Solicitors for the Respondent.

29. This takes us to the dispute with the owners of the Adjacent Property, as referred to above.

30. The Tribunal was satisfied that as a matter of law, management and running of a communal building may include the recovery of legal costs. We agreed with the Respondent's pleading on this point:

"*With reference to Clauses 4.3 and 4.4 of the Leases, in pursuing a claim against the Adjacent Owners of the Adjacent Property/their insurer (NIG), with a view to securing full reinstatement of the ground floor offices and damaged structural parts (both of which form part of the Development) and full recovery of associated costs and expenses incurred, the Respondent is providing 'Building Services', "in an efficient and reasonable manner and in accordance with the principles of good estate management ..." (Clause 4.3) and is also seeking to, "procure that the Development is operated and managed in accordance with the principles of good estate management"*

In terms of 'Building Services', the residential Leases provide for costs incurred in, "administering and managing the Development ... [and} performing the Landlord's other obligations in [the Leases] insofar as they relate to the Development" (paragraph 6.8, Schedule 5) and as a result of, "all other reasonable acts costs outgoings expenses and things done which in the reasonable opinion of the Landlord are for the efficient running of the Development and for the benefit of the occupiers thereof' (paragraph 6.12, Schedule 5) being payable by the Applicants by way of a service charge."

31. The overall principal complaint of the Applicants arose from damage to the structure of the Property caused by water ingress events and the cost of remedy and legal charges to which they were being required to contribute. Ms Douglas in her statement dated 27 February 2023 summarised the position as follows and the chronology was not in dispute:

"*The dispute centers* [sic] *around water ingress from the Adjacent Property that lies above and, in part, over the Building, which has caused damage to:*

> *1. Structural elements lying between the Building and the Adjacent Property and*
>
> *2. The ground floor offices of the commercial unit situated within the Building.*

NIG, who are the insurers of the Adjacent Property, have previously accepted liability for the water ingress and subsequent damage caused to the Building. To date, however, NIG has not confirmed how much it intends to pay in respect of the repair costs and associated legal costs or carried out any repair works. Consequently, JB Leitch solicitors ("JBL") have been instructed by the Respondent to assist with the dispute with the Adjacent Owners. A brief chronology of the most

pertinent events that have occurred since JBL's instruction in respect of the dispute with the Adjacent Owners is set out within the witness statement of Jennifer Hollyoak dated 6 December 2021.

32. In her statement of 1 November 2021 Ms Wilkinson set out for the Applicants "*Legal costs appear to be the most unregulated in the leasehold canon. Every other leasehold activity has to be notified and accounted for, but legal activity in our case was initiated without any notify cation.*" This comment formed the nub of the Applicants' case; it is in line with the questions presented for the Tribunal to answer as identified in the Application.

33. Ms Hollyoak set out that JBL had spent to the date of her statement 183 hours in correspondence with "*….the Adjacent Owners, their solicitors, NIG Insurers and others….*" We noted her chronology of events between involvement of JBL from issuing a Letter Before Claim to the Adjacent Owners on 8 February 2018 to chasing NIG loss adjusters on 25 November 2021.

34. The Applicants expressed frustration at lack of information concerning legal fees for which they have been charged – in 2018 and then as contribution to reserve fund amounts. The Tribunal found the Respondent to be somewhat opaque in its explanation of legal costs.

35. Ms Douglass informed through her second statement dated statement 27 February 2023 in response to the queries posed by the Tribunal on 5 December 2022 – and relevant to the Applicants' complaints that they had struggled to receive any information about legal charges:

"*The legal fees that have been invoiced thus far regarding the dispute with the owners of the neighbouring property (the "Adjoining Freeholders") total £23,154.98……*

I note that the invoice dated 31 July 2018 is addressed to the Respondent c/o Homeground Management Limited ("Homeground"), whereas the other invoices raised around this time are addressed to the Respondent c/o Forte Freehold Management Limited ("Forte"). For the purposes of clarification, Homeground are and have always been appointed by the Respondent to manage the Respondent company and other associated companies. Homeground instructed Forte as asset manager of the Property. Forte report to Homeground in respect of the Property. Forte retained management for the collection of Ground Rent for the Property but appointed KPS as its managing agent to fulfil the Respondent's obligations under the leases to the Property and collect the service charge. Once Forte ceased acting as agent for the Respondent via Homeground, Homeground retained management for the collection of Ground Rent and continued to appoint KPS as its managing agent for the collection of service charge and fulfilling the Respondent's obligations under the leases to the Property. As such, instructing solicitors were corresponding with both Homeground and Forte on behalf of the Respondent at this time in respect of the Property. The care of name/address is inconsequential as the invoice is ultimately addressed to the Respondent. However, if the Tribunal view this as an issue an amended invoice can be raised upon any request by the Tribunal.

A breakdown of these invoices is annexed…..which sets out the page number in the hearing bundle where the invoice can be found, the date of each invoice, the service charge year in which the invoice was accounted for and whether the sum was charged to the service charge account or the reserve fund.

The breakdown shows that the most recent invoice raised relating to the dispute with the Adjoining Freeholders was dated 26 March 2021. Since this date, further costs totalling £2,366.16 inc. of VAT have been incurred on a time spent basis as 14.7 hours' worth of work has been carried out since this invoice was raised. This amount has now been invoiced and a copy of the invoice is annexed…..”

36. Ms Douglass went on to state “*I note that Counsel for the Respondent confirmed at the hearing that the total amount of legal costs incurred in relation to the dispute with the Adjoining Freeholders totalled £24,446.16. However, upon further review, J B Leitch have confirmed that £1,291.20 of this amount concerned an additional but separate dispute with the Adjoining Freeholders and payment of this sum was received directly from the relevant party involved in that dispute……those sums have not been recovered/accounted for via the service charge.*

To clarify, the amount of legal fees incurred relating to the dispute concerning the Adjoining Freeholders total £25,521.14”

37. The Tribunal considered the bundle of JBL invoices produced. They are headed as concerning “Sheikh & Malik - The Warehouse, Durham Road, Low Fell, NE9 6JW” and begin with the invoice dated 27 September 2018 for £2,795.52, plus VAT of £559.10 and a disbursement described as “CONSIDERING PAPERS AND ADVISING BY PHONE - 26/09/18” for £864.00. The disbursement is reasonably assumed to relate to involvement of Counsel (as the invoice narrative refers to communications with Counsel). The total of £4,218.62 is the sum disputed by the Applicants for the 2018 service charge year.

38. The Respondent relied upon clause 3.1 (and 4.3) and paragraphs 6.8, (6.10) and 6.12 of Schedule 5 of the Leases as the basis of recovery of legal costs. While we do not set out here all of the lease extracts, we were satisfied that in principle legal costs are recoverable from the Applicants under the terms of the lease – and, indeed, the Applicants did not present persuasive contrary argument.

Reserve Fund

39. Ms Douglass proceeded to give explanation *“The reserve fund contributions have increased over recent years for the most part in order to ensure that there are sufficient funds to pay for legal costs that are being incurred by the Respondent in relation to the action taken against the Adjoining Freeholders.”*

40. Her evidence included “*Whilst charging the fees to the reserve fund rather than the service charge fund may not be considered standard practice, I am of the view that charging the fees either to the reserve fund or the service charge fund is inconsequential, as the funds all form part of the service charge held on trust for the leaseholders.”*

41. The Tribunal found that the Respondent has been splitting the reserve fund between sums for legal costs and accumulations for other more traditional reserve fund expenditure matters, such as planned repairs. Ms Douglas' evidence was that in 2019 "*Total reserve fund contribution: £30k; £20k for legal fees, water ingress related issues and surveys; £1Ok for normal reserve fund contribution".* For 2020 *"Total reserve fund contribution: £30k; £20k for legal fees and surveys; £1Ok for normal reserve fund contribution."* For 2021 "*Total reserve fund contribution: £20k; 1Ok for legal fees and surveys; £1Ok for normal reserve fund contribution".* It was understood by the Tribunal that a similar equal split was to happen for 2022.

42. Ms Douglass then provided a comparison between legal fees relating to the dispute with the Adjoining Owners and total actual legal costs, which she stated had been "*....accounted for within the reserve fund."*

Year	**Legal fees concerning dispute with owners of neighbouring property**	**Amount on accounts**
Ye 2018	£4,218.62	£4,218.62
Ye 2019	£13,054.56	£13,054.56
Ye 2020	£3,798.60	£5,598.60
Ye 2021	£2,083.20	£13,958.40
	Total: £23,154.98	**Total: £36,830.18**

43. She also explained "*The legal fees set out within the reserve fund of the accounts for some of the years exceed the legal costs incurred concerning the dispute with the Adjoining Freeholders. This is because further legal costs have been incurred at this Building which do not concern the dispute with the Adjoining Freeholders but have been incurred subsequently, namely legal costs incurred as a result of this Tribunal application."*

44. The Tribunal was therefore invited to deduce that costs in connection with these proceedings recovered through the reserve fund, to service charge year end 2021, are £9.686.20.

45. The Tribunal was also informed at the hearing on 22 November 2022 that a compromise with NIG was in negotiation on behalf of the Adjoining owners, which would include an element of legal costs recovery, liability having been accepted for water ingress damage occurring in July and September 2017. However, Ms Douglass indicated in her last statement that no settlement had been completed and it was unknown as to what sum may be contributed as a refund to the service charge account for each of the Applicants.

46. The Tribunal found that the Applicants should expect to accept the evidence of the invoices from JBL as accurate as to sums incurred by the Respondent. We further found that the broad provisions in Schedule 5 of the lease permits for the

maintenance of a reserve fund, the purposes of which are not specified (see paragraph 30).

47. The Applicants argued that the legal costs regarding the claim against the Adjoining owners, being those incurred in 2018 and subsequently (to year end 2021 and following) were disproportionate. At the date of preparation of this decision no further information has been provided to the Tribunal by the parties as to whether all or part of legal costs have been settled upon as recoverable through the NIG admission of liability. Therefore, we had to determine whether the sums complained about by the Applicants were reasonably incurred and are reasonable in amount. We found only limited information from the Respondent as to whether all of the legal work involved in running up fees in excess of £23,000 was reasonably incurred.

48. We had no doubt that JBL had invoiced accurately, but the narratives on its invoices were short and gave no detail of exact amounts of time which had been involved and how it had been split between grades of fee-earners. We received copy invoices to only 26 March 2021. In December 2021 Ms Hollyoak stated 183 hours of work had been undertaken. It was difficult to know accurately if all of the time spent was reasonably necessary and was undertaken by a fee-earner of a grade appropriate for the work. It was because the Respondent did not provide detail regarding the work of its Solicitors that the Tribunal found the amounts to be unjustified as to their entirety. Therefore, we found that the actual sums incurred regarding the claim against the Adjoining owners, as set out in the table included in paragraph 42, were not reasonable in amount. We determined that the recoverable costs net of VAT should be limited to two-thirds of the sums invoiced by JBL to the Respondent. The Tribunal found it reasonable to apply the finding to the actual costs of 2018 and those recovered from the reserve fund in 2019 – 2021 (inclusive). We found no persuasive reason why the same restriction should not apply to those costs anticipated to be recovered from the reserve account in 2022.

49. As to legal costs not relating to the claim against Adjoining owners, those relating to these proceedings will be dealt with below. The Applicants did not make out a cogent argument to oppose any other legal fees, within the sum of £9.686.20 and the Tribunal had to find they were reasonably incurred and in amount.

50. Of concern is that in her December 2021 statement Ms Douglass indicated no repair works had been undertaken. We received no update to indicate a change in the position. It appears to the Tribunal imperative that a resolution of the claim regarding the Adjacent property is reached without further delay and expense. Sums recovered should be credited back to the service charge account appropriately.

Administration charges

51. The Tribunal found that clause 3.14 and/or clause 3.3.1 of the lease permits the recovery of an administration charge. Clause 3.10.2 requires the leaseholder to give notice of sub-letting (the cost of which is specified as being not less than £75). Therefore any charges relating to such activity is potentially chargeable to the relevant leaseholder, subject to a test of reasonableness as to the amount (Commonhold and Leasehold Reform Act 2002 – Sch 11 para 5A). We found that

the charge of £90 to the First Applicant to register a sub-tenancy of her flat is recoverable against her and reasonable in amount.

52. However, the Tribunal records that it found prior to its engagement in these proceedings the Applicants faced significant difficulties in securing documentary information relevant to the service charge and that the way in which the Respondent has dealt with legal costs – through the reserve fund in years after 2018 – was unusual and complicated. It is only through these proceedings that the Applicants have had the opportunity to receive a detailed explanation from the Respondent of its accounting processes. We record that it was only with the second statement of Ms Douglass in February 2023 that we began to feel better informed about such matters. Therefore, the Tribunal determined that any charges raised to the Applicants regarding their withholding of service charge payments were not reasonable in amount.

Section 20

53. The Applicants included in the Application a request pursuant to section 20C 1985 Act preventing the Respondent recovering any costs of these proceedings through the service charge.

54. We found that paragraphs 6.8 and 6.12 of Schedule 5 of the lease allows, in principle, the Respondent to include the costs of these proceedings in the service charge. Both parties made written submissions on the point. We took into account the prejudice to the Respondent of inability to recover its costs if such an order was made. While the Respondent set out a list of efforts to provide answers to the Applicants' questions before the proceedings began, we found significant lack of transparency regarding the claim against the Adjoining owners. However, we were satisfied that the Respondent had not behaved improperly or unreasonably in the proceedings itself. For the Tribunal, its finding set out in paragraph 51 was persuasive in it determining that an order should be made, because while they have not been entirely successful in pursuing the Application, the proceedings have proved to be necessary action for the Applicants to obtain the transparency of explanations and documents to which we have had to refer in making our determinations. Taking all of these matters into account, we found it was just and equitable to make the appropriate order.

WL Brown

Tribunal Judge