FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CHI/24UH/LBC/2024/0012** **HAV/24UH/LBC/2025/0602**
Property	**:**	**Flat 11 and Flat 9 Bembridge House, Bembridge Drive, Hayling Island, HAMPSHIRE, PO11 9LU**
Applicant	**:**	**L.C. Webb & Son (Builders) Limited** **Mr. Stephen David Webb**
Representative	**:**	**Mr. Martin Davies (Solicitor)** **Rawlins Davy Reeves Limited**
Respondent	**:**	**Mr Stuart Robert Wakley and Michelle Wakley**
Representative	**:**	**Sophie Helps (Solicitor)** **Hazel Hobbs of Counsel**
Type of Application	**:**	**Breach of Covenant S168(4) Commonhold and Leasehold Reform Act 2002**
Tribunal	**:**	**Judge T.Hingston** **K. Ridgeway FRICS** **T. Wong - Lay member**
Date of Decision	**:**	**27th June 2025**

DECISION OF THE TRIBUNAL

In respect of the Application CHI/24UH/LBC/2024/0012, which relates to Flat 11, the Tribunal determines that Mr. Wakley failed to pay the service charges demanded for the years ending 25th December 2021, 2022 and 2023, and therefore he was in breach of the covenant contained in the 6th Schedule of his Lease.
The Tribunal further determines that Mr. Wakley is liable under the Lease to pay the Applicant's costs for this application, capped at £7,500.

In respect of the Application HAV/24UH/LBC/2025/0602, which relates to Flat 9, the Tribunal determines that the Respondent Mr. Wakley is not in breach of covenant. Accordingly no costs are payable in respect of this Application.

BRIEF BACKGROUND AND CHRONOLOGY

1. The Applicant is the freeholder of the building known as Bembridge House (as above.)

2. The Respondents are the owners of Flats 9 and 11 in the building, which they hold under the terms of long leases, the provisions of which are similar but not identical.

3. The Applicant has made 2 applications seeking Orders under S168 (4) of the Commonhold and Leasehold Reform Act 2002 that the Respondents have breached covenants in their leases.

4. The first application under reference CHI/24UH/LBC/2024/0012 for Flat 11 Bembridge House was received on 29 July 2024.

5. The second application under reference HAV/24UH/LBC/2025/0602 for 9 Bembridge House was received on 13 January 2025.

6. Directions were issued on the first application on 19 March 2025, and a timetable was set for a final hearing.

7. Following the receipt of the second application, further Directions were issued and the two matters were eventually consolidated and listed for hearing on the 27th of June 2025.

8. An electronic, paginated bundle of documents was provided, and page references hereafter in brackets [ ] refer to this bundle accordingly.

RELEVANT LAW

9. Under the Commonhold and Leasehold Reform Act 2002 (hereafter referred to as 'the Act'), the relevant provision is as follows: -

Section 168 - *No forfeiture notice before determination of breach*

(1) A landlord under a long lease of a dwelling may not serve a notice under section 146(1) of the Law of Property Act 1925 (c. 20) (restriction on forfeiture) in respect of a breach by a tenant of a covenant or condition in the lease unless subsection (2) is satisfied.

(2) This subsection is satisfied if—
(a) it has been finally determined on an application under subsection (4) that the breach has occurred,
(b) the tenant has admitted the breach, or
(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

(3) But a notice may not be served by virtue of subsection (2)(a) or (c) until after the end of the period of 14 days beginning with the day after that on which the final determination is made.

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

(5) But a landlord may not make an application under subsection (4) in respect of a matter which—
(a) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(b) has been the subject of determination by a court, or
(c) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(6) For the purposes of subsection (4), "appropriate tribunal" means—
(a) in relation to a dwelling in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and
(b) in relation to a dwelling in Wales, a leasehold valuation tribunal.]

THE LEASES

10. In respect of Flat 11, the Sixth Schedule of the Lease [at Page 50 in the bundle] provides for the Lessee to pay 'yearly rent' (usually known as 'ground rent') in advance, together with 'Maintenance Payments' (usually referred to as 'service charges') in respect of the Lessor's expenses incurred in complying with his various contractual obligations to maintain and service the property. These charges are described as follows :-

'In addition to the yearly rent above mentioned, the Lessee as a separate covenant hereby covenants to pay to the Lessor on the 25th March in each year of the said term by way of maintenance payments one ninth part of the expenses properly and reasonably incurred by the Lessor during the 12 month period ending on the ***preceding*** *25th day of December…'* (Tribunal emphasis).

11. The service charges for Flat 11 are therefore payable annually in arrears.

12. In respect of Flat 9, the provision for payment of service charges is slightly different, but it also refers to the charges as 'Maintenance Payments' and it is contained in the Sixth Schedule of the Lease [Page 175]. It provides as follows: -

'In addition to the yearly rent above mentioned, the Lessee as a separate covenant hereby covenants· to pay to the Lessor on the 25th day of March and the 29th day of September in each year of the said term by way of maintenance payments a proportionate part of the expenses properly and reasonably incurred by the Lessor during the six months period ending on the ***preceding*** *25th day of December or 29th day of September…'* (Tribunal emphasis).

13. The service charges for Flat 9 are therefore also payable in arrears.

HEARING

14. The hearing was conducted at Havant Justice Centre on the 27th of June 2025. All parties (save Mrs. Wakley, who was not present) attended in person.

APPLICANT'S CASE

15. The Applicant's case was contained in the Position Statement of 19th February 2025, in the Witness Statement of Mr. Stephen David Webb dated 2nd of April 2025, and in the Statement of Case dated 20th of May 2025.

16. Oral evidence was also given by Mr. Webb at the hearing and submissions were made on his behalf by Mr. Davies.

Flat 11.

17. In respect of Flat 11, the Applicant produced Service Charge 'Demands' for the periods ending December 25th 2021, December 25th 2022 and December 25th 2023.

18. For the first of the disputed years, the '*2021 Accounts and Budget 2022-3'* documents were sent to the Respondents with a letter dated 8th March 2022 [Page 68], and the actual '*Demand'* for the accounting period ending December 25th 2021 (which started from a balance of zero, then set out the list of the expenses and required a payment of **£1,238.22**) was dated 25th March 2022 [Page 74].

19. For the second disputed year the *'2022 Accounts and Budget 2023 - 4*' were sent out on the 8th of March 2023 [Page 76] and the '*Demand'* for the year ending December 25th 2022, (which carried forward the previous year's unpaid service charge and required a total payment of **£2,248.13**) was dated the 25th of March 2023 [Page 81].

20. For the third disputed year the '*2023 Accounts and Budget 2024-5'* were sent out on the 11th of March 2024 [Page 83] and the *'Demand'* for the year ending December 25th 2023 (which carried forward the previous 2 years' unpaid service charges and required a total payment of **£2,980.78**) was dated the 10th of April 2024 [Page 88].

21. On behalf of the Applicant, Mr. Davies submitted that the service charge demands had been served properly by post in accordance with the terms of the Lease, and although neither the payability nor the amount of the service charges were apparently disputed, none of the outstanding sums had been paid. As a result, it was alleged that the Respondent was in breach of covenant under the provisions of the Sixth Schedule.

22. On the 2nd of May 2024 the Applicant's solicitors, Rawlins Davy Reeves, sent a 'Letter before Action' [Page 90] to the Respondents Mr. and Mrs. Wakely, setting out all the outstanding sums payable for the last three years' service charges (total £2,980.78) and stating that the letter was written -
'…in direct contemplation of proceedings [for forfeiture] under Section 146 of the Law of Property Act 1925'. It was said that the next action would be an application to the First-tier Tribunal (Residential Property) for a determination of breach of the lease.

23. In relation to Costs, the letter stated as follows: -
'Our client intends to rely on paragraph l(d) of the Lease to recover all costs from you which it incurs whether or not forfeiture is avoided. That will include its costs in instructing us to advise and prepare this letter, the Tribunal proceedings and indeed the subsequent court proceedings to process forfeiture. Please note that this will be addressed explicitly in any court proceedings and our client and we are confident that these costs will be awarded as a result. Our client has incurred £260.00 + VAT (£312.00 net) of costs with us in relation to this matter to date which sum is added to the above mentioned amounts.'

24. No reply to this letter was received from the Respondents.

25. On the 29th of July 2024 the Application was made to the Tribunal for a determination that the Respondents were in breach of covenant.

26. On the 16th of April 2025 the Respondent made a payment of £2,980.78, which was rejected and returned to him because he refused to make any payment for costs. It was explained that the Applicants could not accept this figure and risk waiver of the breach of the Lease, in which case they would have had to either absorb the costs of the litigation or commence a fresh application on the issue of costs alone.

27. In respect of the Respondent's claim that he had made a number of service charge payments to the Lessor during the relevant period and that these had not been credited to his account, Mr Davies made the following observations: -

i) the payment of £691.00 on the 18th of January 2021 was in respect of historic arrears which pre-dated the current case.

ii) the payment of £2113.67 on the 27th of May 2022 was made in response to the previous Tribunal Decision relating to unpaid service charges on Flat 11, case reference CHI/24UH/LIS/2021/0048.

iii) the payment of £2,321.18 on the 16th of June 2022 was in respect of another Tribunal Decision on a different property.

28. In respect of the Respondent's claim that he had not received the relevant service charge demands, it was submitted that all except one of the three demands had been sent to the correct St. Helen's Road address, and it was not accepted that none of them had been received. Even if Mr. Wakley had not received the 2021 accounts (which were sent to Flat 11 itself) the 2022 Accounts had included the outstanding sum from the previous year and yet no payment had been made. Further copies of all the demands were attached to the Letter before Action of 2nd May 2024.

29. The Applicants confirmed that they had been aware of the Respondent's correct, St. Helen's Road, address since the previous proceedings were issued in 2021, and this was confirmed when Mr. Wakley sent a payment from that address for ground rent on the 23rd of March 2022.

30. It was averred that 'maintenance' or service charge payments were payable 'on demand' under the terms of the Lease [Statement of Case Page 114], but that the Respondents had not made a voluntary, timely payment of service charges since 2019. The charges for the years to December 2019 and December 2020 had both been the subject of Tribunal proceedings (Case ref. CHI/24UH/LIS/2021/0048 as above.)

31. As to any difficulties (medical or otherwise) which the Respondents had with paying charges on the due dates, it was submitted that if the Applicants had been made aware of such difficulties, arrangements could have been made for an extension of time for payment and litigation could have been avoided.

32. On the question of certification of the service charge accounts, Mr. Davies pointed out firstly that Mr. Webb undertook the management of the property himself so he did not have any 'Managing Agents' to sign off the accounts, and secondly this issue had not been raised at any stage in these or previous proceedings and the Respondents should be estopped from raising it now.

33. Costs to the tenants had been kept low as a result of the decision not to employ managing agents, and it was argued that as the accounts had been approved and signed by Sue Fisher, a Director of I.C. Webb & Sons, and certified as a fair and accurate summary of the actual costs and expenses by TC Group Accountants, that was sufficient in the circumstances of this case.

34. In conclusion, the Applicant's case was that the Respondents had a history of defaulting on service charges, they had failed to pay the three annual service charges as required, and a determination was sought that there was a clear breach of the covenant to pay.

Flat 11 Costs -

35. Schedule 2 (1)(d) of the Lease [Page 48] states that the Lessee has an obligation: '*To pay all costs charges and expenses (including solicitors costs and surveyors fees) incurred by the Lessor in or in contemplation of proceedings under Section 146 and 147 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court.*'

36. The Applicants sought their costs for this Application, capped at £7,500, as agreed between themselves and their representatives.

Flat 9

37. In Response to Mr. Wakely's Witness statement [Page 213, Paragraph 4] to the effect that he had not received any demand for the outstanding service charges for Flat 9 until he received the Letter before action on 30th October 2024, the Applicant exhibited a Certificate of Service [Page 157] which showed that the 2024 – 2025 Demand for **£741.28** was served on Mr and Mrs Wakely at the correct St. Helen's Road address on the 25th of September 2024.

38. It was submitted on behalf of the Applicants that the Respondent Mr. Wakley had clearly received the Letter before Action at the St. Helen's Road address a month later, on the 30th of October 2024, and he had admitted his liability to pay the service charges of £741.28 in his email of the same date [Page 199]. In that email Mr. Wakley had indicated an intention to make payment, but he did not do so until 20th January 2025.

Flat 9 Costs -

39. In relation to costs, Mr. Davies argued that the Applicants could not be expected to wait indefinitely for the service charges to be paid, and costs had been reasonably and necessarily incurred in chasing the outstanding monies and in starting the Tribunal proceedings. The Applicants had only commenced litigation as a last resort, and the Respondents could have mitigated the costs if they had chosen to do so.

40. The Respondents were said to be in breach of the covenant under Schedule 2 (1)(d) of the Flat 9 Lease [Page 166] '*To pay all costs charges and expenses (including solicitors costs and surveyors fees) incurred by the Lessor in or in contemplation of proceedings under Section 146 and 147 of the Law of Property Act 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court.*'

41. The Applicants sought their costs under the Lease in respect of this breach of covenant also, capped at £7,500, as agreed between themselves and their representatives. These were described as contractual costs, not costs under the Tribunal procedural rules.

42. The case of *Criterion Buildings Ltd. v. McKinsey & Company Inc (United Kingdom) and Another [2021] Costs LR 391* was referred to, as authority for the proposition that costs should be awarded on an indemnity basis.

43. Time ledgers for each Application were produced by Mr. Davies from his firm, Rawlins Davy Reeves.

RESPONDENT'S CASE

44. The Respondent's case was set out in Mr. Wakley's undated 'Statement of Case – 9 Bembridge House', in the 'Witness Statement for Stuart & Michelle Wakley' re Flat 11 Bembridge House dated 16th April 2025, and in the 'Witness Statement of Stuart Wakley' dated 19th of May 2025.

45. Other documents and items of correspondence were exhibited in the bundle, Mr. Wakley gave oral evidence during the hearing, and Ms. Hobbs made submissions on his behalf.

46. On behalf of the Respondents Ms. Hobbs of counsel conceded that the amounts and payability of the service charges or 'maintenance payments' were not disputed, but that there were issues over timing and proper service of the demands.

47. Whilst it was conceded that the demands were in the correct format (despite some discussion [Page 210] as to whether the provisions of Section 166 of the Act (as to payments of 'rent') applied in this case) it was argued that either the demands were not sent to the correct address and/or they did not specify a date for payment to be made, so they were 'defective'.

Flat 11.

48. In respect of Flat 11, Mr. Wakley alleged that he had not received any valid service charge demands for the three years in question. He gave evidence that the flat had been let to tenants for many years and he neither visited the property nor gave them a forwarding address for mail.

49. It was submitted on his behalf that both the Accounts and the Demand for the first year, ending 25th December 2021, had been sent directly to Flat 11, rather than to Mr. Wakley's home address at 24 St. Helens Road, Hayling Island, Hampshire P01 10BT .
Thereafter Mr. Wakley submitted that he had never received any valid service charge demands for the relevant period of three years.

50. Mr. Wakely's case was that, even when the demands were eventually received, no timescale or date for payment was given in any of the documentation.

51. However, payment of the full amount of outstanding service charges (£2,980.78) had been tendered by Mr. Wakley on the 16th of April 2025, but the money was rejected and returned to him by the Applicants.

52. Mr. Wakley argued that the Applicants had unreasonably increased their costs by refusing to accept the payment.

Both Flats 9 and 11.

53. In respect of the service charge accounts, it was submitted by Ms. Hobbs that these had not been correctly certified in accordance with the provisions of the Sixth Schedule of the Lease, which states: -
'...the Lessee's liability hereunder to be vouched and ***certified*** *by the Managing Agents for the time being of the Lessor whose certificate shall be final and binding upon all parties...' [Page 50].* (Tribunal emphasis).

54. The Tribunal was referred to the case of *Rita Akorita and Marina Heights (St. Leonards) Limited [2011] UKUT 255(LC) LT Case Number : LRX/134/2009,* in which Woodfall's Law of Landlord and Tenant was referred to on the issue of certification. The relevant paragraph (7.180) states that: -
'Where a lease provides for the amount (of service charges) payable to be certified by the landlord's surveyor or accountant, the issue of a valid certificate will usually be a condition precedent to the tenant's liability to pay.'

55. It was therefore submitted, on behalf of the Respondents, that arguably no service charges were payable unless and until the accounts were properly certified.

56. When Mr. Davies interjected to state that no point had been taken on the issue of certification at any stage in these or previous proceedings until the day of this hearing (when the authority of *Marina Heights* had been produced at the last minute) and that the Respondents should be estopped from raising it now, Ms. Hobbs indicated that she would not be pursuing this particular argument.

57. However, it remained Ms. Hobbs' case that the burden was on the Applicants to prove that valid service charge demands had been properly served on the Respondents.

Costs -

58. On behalf of the Respondents Ms. Hobbs submitted that although the Lease provided for repayment of costs incurred in contemplation of forfeiture proceedings under Section 146 of the Law of Property Act 1925, it did not specify how or when payment of such costs should be made. It was therefore not clear at what point the Respondents could be said to be in breach of that particular covenant.

59. It was further argued that the Respondents were entitled to a breakdown of the landlord's costs before they made payment, and the Lease provision did not simply give them 'carte blanche' to charge whatever they wished. The Tribunal should consider what had been the intention of the parties when drafting the lease, and costs should be reasonably and properly incurred in order to be payable.

60. Finally, Ms. Hobbs pointed out that this was a lease of residential property not commercial premises, and she invited the Tribunal to exercise their discretion under Rule 13 of the (First Tier Tribunal) (Property Chamber) Rules and determine that the costs were not payable in their entirety.

Flat 9

61. In respect of the service charges for Flat 9, Mr. Wakley stated that he was unaware of any demand for payments relating to the period ending 24th March 2025 until he received the Letter before Action from Rawlins Davy Reeves on the 30th of October 2024. The sum demanded in that letter was £741.28 plus costs.

62. Mr. Wakley immediately replied by email [Page 225], stating that he had not received any demand for that period but that he would pay the outstanding amount 'this week', without costs.

63. Mr. Wakley asserted that he had then suffered from health problems during the latter part of 2024, and therefore he did not pay the charges.

64. In December 2024 Mr. Wakley was contacted by his mortgage lenders, Birmingham Midshires, because the Applicant's solicitors had demanded payment from them.

65. On the 20th January 2025 Mr. Wakley paid the £741.28 to the Applicants by bank transfer.

66. The money was returned to him by cheque on the 14th of February 2025. The Applicant's solicitor stated [letter at Page 201] that they could not accept this payment because of the associated costs still outstanding.

67. Mr. Wakley continued to dispute the costs, and he paid the same amount again on the 4th of April 2025. Once again, the payment was rejected and a cheque was returned to him.

68. In respect of the Flat 9 service charge for the period 25th September 2024 to 24th March 2025, Ms. Hobbs reiterated that the burden was on the Applicant to prove that a valid and proper demand had been served on the Respondent.

Costs –
69. Similar submissions were made by Ms. Hobbs in respect of Flat 9 as had been made in respect of Flat 11. The Tribunal was invited to find that no schedule or breakdown of costs had been produced, and no date was given for payment, and therefore the Respondents could not be said to be in breach of the covenant in the Lease requiring them to pay the landlord's costs.

FINDINGS AND DETERMINATION

70. The Tribunal found that the amounts demanded by the Applicants under the 'Maintenance payment' provisions in the two leases were not 'Rent' as per Section 166 of the Commonhold and Leasehold Reform Act 2002, but they were in fact 'Service charges' as defined by Section 18(1) of the Landlord and Tenant Act 1985.

71. Accordingly the requirements of the Landlord and Tenant Act 1985 applied, and the Tribunal found that the Applicants had correctly served valid and proper demands in respect of the disputed payments for Flat 11.

72. No issue was taken by the Respondents in respect of either the amounts claimed or the liability to pay those amounts: the Tribunal was not invited to determine whether the service charges were reasonably incurred or whether they were payable.

Flat 11.

73. As to the explanation given by Mr. Wakley for non-payment, the Tribunal did not accept his evidence that he had not received any valid demands for the years in question, i.e. those for the years ending 25th December 2021, 25th December 2022 and 25th December 2023. Even if the first demand was sent to Flat 11 rather than to the St. Helen's Road address, the second demand (containing all relevant information about outstanding charges) was sent to the correct address and yet no payment was made.

74. As to the absence of certification of the accounts, Ms. Hobbs did not pursue this argument further in the light of Mr. Davies' submission that an 'Issue estoppel' had arisen.

75. However, the Tribunal distinguished the subject case from the *Marina Heights* authority in any event on several grounds.

76. Firstly, in the *Marina Heights* case the provision in the lease was very specific, in that it required the service charge accounts to be certified by the landlord's surveyor '*…in his capacity as an expert…*' as a condition precedent before the sums became payable.

77. Secondly, as Mr. Webb did not have a managing agent, the director of his company could properly act in her capacity as '*managing agent for the time being*' and that person's signature and affirmation, together with the accountant's certification, was sufficient in the particular circumstances of this case.

78. Thus the Tribunal found that each of the three years' service charges was validly and properly demanded, and the total figure of £2,980.78 was payable in respect of Flat 11.

79. As to time of payment, the Tribunal did not find that the service charges were payable simply 'on demand' as suggested by Mr. Davies: the Lease clearly states that payment should be made on the 25th of March each year.

80. The Respondents had no good reason for not making payment in time even though no specific date for payment was given on the correspondence: they should have familiarised themselves with the terms of the Lease.

81. Mr. Wakley had failed to make payment by the due date in each of the first 2 years in dispute. In respect of the third year, when the 'Demand' appeared to have been sent out on the 10th of April, the due date had already been passed but Mr. Wakely still failed to make any payment.

82. **Accordingly, the Tribunal determined that there were clear breaches of the covenant contained in the Sixth Schedule of the Lease.**

Flat 9

83. In respect of Flat 9 the situation was somewhat different. The Sixth Schedule to this lease (as set out above in Paragraph 12) provides for six-monthly 'Maintenance payments' on the 25th of March and the 29th day of September each year.

84. The payments are to be made in respect of expenses incurred by the Lessor *'…during the six months period ending on the **preceding** 25th day of December or 29th day of September…'* (Tribunal emphasis).

85. Although the wording of this clause is ambiguous, the Tribunal found that if the Lease was to be construed logically each March payment would relate to the expenses incurred during the 6 months to September of the previous year, and each September payment would relate to the 6 -month period to March of that year.

86. In this case the 'Service Charge Demand' [at Page 223] was dated the 23rd of September 2024, and it purported to cover charges for the 6-month period *from* 24th September 2024 to 24th March 2025: i.e. payment was being demanded in advance for costs yet to be incurred rather than for costs in the preceding 6-month period. This demand is not in accordance with the terms of the Lease.

87. From the figures set out in this same document it appears that the Respondent had paid £741.28 on the 14th of June 2024, as the record states '*Payment received thank you'* against the first entry in the Credit column. There is nothing to indicate what service charge period was covered by the payment on the 14th of June.

88. There is then a list of debits totalling a further £741.28, which appears to be demanded as payment forthwith (as of 23rd September 2024) – although no date or deadline for payment is given.

89. On the facts of this case the Tribunal found that there was no non-payment of sums properly and duly demanded, whatever construction was put on the wording of the Lease. The reasoning is as follows: -

i) If the relevant period for calculating service charges payable on the 29th of September 2024 is the 6 months up to the 25th of March 2024, then the demand is incorrectly drafted (as it gives the wrong dates) and it is therefore not valid.

ii) Only if the Lease provided for calculation and payment of service charges in advance (which it does not) would the payment for the year ending 25th of March 2025 be due at the half-year point in September 2024.

iii) Even if, conversely, the Lease provided for calculation of service charges on the basis of expenses incurred during the 6-month period *immediately* prior to the due date on 25th March 2025 (which it does not), then Mr. Wakley would have complied with his obligations by paying the full amount early, on the 20th of January 2025.

90. **In the light of the above finding, the Tribunal determined that the Respondents were not in breach of the covenant in respect of service charges for Flat 9.**

COSTS

91. The Tribunal found that the costs in dispute in this case were contractual costs, not discretionary costs to be awarded under Rule 13 of the procedure rules.

92. The wording of the Flat 11 Lease (Schedule 2 (1)(d)) does not refer to 'reasonable costs' or 'costs reasonably incurred', it simply obliges the lessee to pay '*…**all** costs charges and expenses (including solicitors costs and surveyors fees)…'* incurred by the Lessor in or in contemplation of proceedings under Section 146 and 147 of the Law of Property Act 1925. It was common ground that the costs were incurred in contemplation of such proceedings (for forfeiture) in this particular case.

93. In the light of the wording of the Lease as above it is not possible to infer that the parties intended anything other than full liability for all costs, and the conduct of either side is not a relevant consideration.

94. Thus if the Tribunal finds that there have been breaches of covenant, as they did here, the costs in connection with that particular application become payable.

95. **The Tribunal determines that the Respondents are liable to pay £7,500 costs in accordance with the Lease for Flat 11.**

96**. In respect of Flat 9, as there was no determination of breach of covenant no costs are payable.**

RIGHTS OF APPEAL

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

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28 day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.