



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
and
THE COUNTY COURT AT
WORTHING**

Case reference	:	CHI/45UH/LSC/2024/0042
Court Claim no.	:	KoQZ7N3M
Property	:	Flat 3, 9 Western Place, Worthing, BN11 3LU
Applicant	:	APH Worthing Limited
Representative	:	Mr Stan Gallagher of counsel instructed by Commonhold and Leasehold Experts Limited
Respondent	:	Mr Darren John Lee
Type of application	:	Transferred Proceedings from County Court in relation to service charges and related
Tribunal Members	:	Judge J Dobson Mr P Smith FRICS Mr E Shaylor MCIEH
County Court Judge	:	Judge J Dobson
Date of hearing	:	28 th and 29 th April and 2 nd May 2025
Dates of re- convenes	:	16 th May 2025 to 18 th September 2025
Date of Decision	:	18 th September 2025

TRIBUNAL DECISION AND COURT ORDER

Summary of the Tribunal Decision

1. **No service charges within the claim are payable after reduction by set- off.**
2. **Directions have been made in respect of costs.**

Summary of the County Court Decision

3. **The Applicant's claim fails and is dismissed.**
4. **The Respondent' counterclaim succeeds in the sum of £1736.60.**
5. **Directions have been made in respect of fees and costs.**

Background

6. The Applicant is the freeholder of 9 Western Place, Worthing, BN11 3LU ("the Building"), since 2014 [251- 253], which is oriented east to west with an addition to the original building at the rear. There are two directors of the Applicant, one of whom is Mr Philip Haslam, who is also the leaseholder of Flat 2 since 2007 [258- 259]. The Respondent is the lessee of the top floor flat, namely Flat 3, 9 Western Place, Worthing, BN11 3LU ("the Property").
7. The Building is a former single house which now comprises 3 flats. The Respondent's flat is situated on the second floor and comprises a living room to the front, a kitchen off that, two bedrooms and a bathroom (plus an internal hallway/landing from which the rooms are accessed). There is a staircase from the first floor to the second floor which falls within the Respondent's demise, with the entrance door being situated at the bottom of that staircase.
8. The Applicant has employed managing agents to manage the Building, currently ADJ Property Management Limited from August 2020. Prior to that Vale Management until early 2017 and Morrissey Property Management Limited from then until summer 2018. That company operated as Whittington and Co Estate Agent Limited for some or other period. The agent was then Allen Conway Property Services from August 2018 to August 2020. There are mentions of those below.

Brief History of the Case

9. In September 2023, the Applicant issued a money claim [4- 9] in the County Court for £30,237.67 service charges and ground rent, what were described as contractual costs (£3,642.00), and including interest (£7,037.60) to the date of issue, for sums during a period 24th March 2017 to 28th September 2023 inclusive. The Respondent served a Defence and Counterclaim [11- 12] particularly raising issues about

maintenance of the Building and the effects on the Property in the sum of £31,142.00, subsequently varied to £36,087.00. The Applicant's Reply and Defence [16- 18] admitted water ingress into the Property during the period May 2019 to early/ mid 2021 but otherwise took issue with the matters raised by the Respondent.

10. The proceedings were transferred to the Tribunal by District Judges Hatt and Melville- Walker sitting in the County Court at Worthing by Orders dated 9th January and 14th February 2024 respectively [47- 48]. It was provided that the Tribunal would determine matters within its jurisdiction and the Tribunal Judge would decide all issues outside of the jurisdiction of the Tribunal sitting as a Judge of the County Court. The proceedings had already been allocated to the multi- track.
11. Directions were issued by the Tribunal and the Court in combined documents [49- 74, 80- 84 and 101- 114] for the preparation of the parties' cases in the Tribunal proceedings, including provision of hearing bundle and the preparation of schedules of disputed service charges and items of disrepair [115- 127 and 156- 164] respectively. The County Court aspects were released by the Designated Civil Judge to be heard at District Judge or equivalent level. The hearing was originally to be listed for 2 days, taking account of stated effects medical conditions of the Respondent, principally tiredness and potential need for additional breaks. That was subsequently varied to up to 3 days.
12. The Applicant provided a bundle of 820 pages. That included duplicate to multiple copies of certain documents. Whilst the Court and Tribunal make it clear that they have read the bundle, many of the of the documents are not referred to in detail, or in many instances at all, in this Decision, it being unnecessary to so refer. It should not be mistakenly assumed that they have been ignored or left out of account. Insofar as reference is made to any specific pages from the Tribunal 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.
13. The bundle included various photographs of the Property and/ or the Building, including by surveyors who attended. The Court and Tribunal were content that they did not need to inspect and possessed ample information in respect of the Property to reach the required determinations in this case
14. Whilst this is an imperfect time to do so, the Court and Tribunal identify that the Decision aims to focus on the key issues and does not cover every last factual detail. Although the Tribunal directive has rather failed in this instance to meet the directive from the Senior President of Tribunals to seek to keep decisions relatively short, because the Tribunal considers that parts appeared to necessitate some discussion, aside the Tribunal has attempted to provide its reasons and not to recite evidence at length. Therefore, this Decision does not mention specific evidence unless considered necessary. Not every

matter requires any finding to be made for the purpose of deciding the relevant issues in the case. Findings of fact are made on the balance of probabilities.

The Lease

15. The Lease of the Property [261- 292] is provided in the hearing bundle, The term commenced on 29th September 1990.
16. The specific wording of most clauses of the Lease is not directly relevant and a summary will suffice in respect of most aspects of some relevance. It merits mention that the Lease defines what is called the Property in this Decision as “the Premises” and whilst “the Building” is used in equivalent manner, the Lease also refers to “the Property”, by which it means the land and buildings upon it as a whole.
17. The ground rent until 23rd December 2023 is £50.00 per year, payable on 25th March and 29th September, although it subsequently rises, which the Respondent covenants to pay in clause 3 of the Lease. The Respondent’s share of the service costs- described as the Annual Maintenance Cost- is 1/3, which the Respondent agrees to pay pursuant to clause 4)(1).
18. The demise to the Respondent is set out in the First Schedule. That includes the interior face of external walls, ceilings and floors, the windows including the glass and window frames and the entrance door to the individual Property and the staircase from the first floor to the second floor. Usual rights are granted. The Respondent is required to decorate every 7th year.
19. The service charge provisions are principally contained in clause 4, including 4(1) as above. 2 payments are required to be made by the Respondent on account on 25th March and 29th September. There is no specific provision for a budget being prepared on which those payments should be based, the payments are whatever the Applicant or its agent “in their absolute discretion” consider appropriate. However, clause 4(3) requires that as soon as practicable after 25th March in every year, the Applicant or its agent serve “the Annual Maintenance Account” and certify the actual amount of the Respondent’s liability. There is provision for a balancing payment to be made “forthwith” or potentially a credit, subject to the Applicant being able to apply the amount to sums due or payable for another period.
20. Clause 4(5) sets out the expenditure which the Annual Maintenance Cost includes. There is little obviously unusual but as part of the provision is directly relevant to an issue below, part of the clause is set out as follows:

“(5) The Annual Maintenance Cost shall be the total of all sums actually spent by the Landlord during the period to which the relevant Annual Maintenance Account relates in connection with the management and maintenance of the

Property and shall without prejudice to the generality of the foregoing include:

.....

The costs of an incidental to compliance by the Landlord with every notice regulation or order of any competent local or other authority in respect of the Property or any part of parts thereof”

21. There is also provision at 4(5)(f) for recovery of fees, charges and expenses of professionals and other advisors in connection with maintenance and management of the land and Building. That said, there is an attempt (clause 4(7) to prevent the Respondent challenging any item of expenditure on the ground that the materials work or service might have been provided or performed at a lower cost, which the Tribunal considers purports to exclude its jurisdiction and so it treats the relevant part of that clause as void. For the avoidance of doubt, reference is made to a reserve fund and to fees of agents.
22. An additional element is clause 4(4), which provides in respect of service charges unpaid after 21 days of them becoming due that they carry interest at the higher of 4 per cent over the base rate of Midland Bank as it then was or 12% until payment.
23. The Applicant’s covenants are set out in clause 5. In particular, clause 5(2) provides as follows:

“That the Landlord will when and as necessary maintain repair cleanse repaint redecorate and renew:-

 - (a) The roofs pipes conduits and all drains and other devices for conveyancing rain-water from the Building
 - (b) The main structure of the Building including in particular but not by way of limitation) the foundations and exterior walls thereof and will be responsible for the painting and decoration of the external surfaces of the windows and window frames
 - (c) The passages staircases landing entrances and all other parts of the Building (including the ceilings thereof) enjoyed or used by the Tenant in common all or any of the other tenants or occupiers of the Building
 - (d) The gas and water pipes conduits ducts sewers drains and electric wires and cables (including television and radio wiring and aerials) and all other the gas water sewerage drainage electric and ventilation installations in under or upon the Building and enjoyed or used by the Tenant in common with all of any of the other tenants or occupiers of the Building but excluding such installations and services as are incorporated in and exclusively serve the Premises

.....”
24. There is no condition precedent such that the requirement to repair and maintain only arises upon payment of the service charges by the lessees.
25. Clause 8 seeks to limit the liability of the Applicant to the Respondent as follows:

“PROVIDED FURTHER and it is hereby agreed (a) that the Landlord shall not be liable or responsible for any inconvenience injury accident or damage which may at any time be suffered by the Tenant (either personally or in respect of the Premises or any property of the Tenant therein) or by any member of the Tenant’s family or any employees servant invitee or licensee a of the Tenant and whether by reason of any act neglect or default of the Landlord or any servant of the Landlord or of any other tenant or through any defect in any fixture fitting pipe wire guttering drain cable staircase balcony or other thing in or about the Building or any part thereof (including the Premises) unless the Landlord shall have been give previous written notice of such defect by the Tenant and shall have failed to remedy the same within a reasonable period

.....”

26. Mr Gallagher made specific reference to liability being, he submitted, conditional upon written confirmation. Clause 8 in an important one in this case. Mr Gallagher also identified exclusions for tenant neglect and interruptions due to circumstances beyond the reasonable control of the Landlord.
27. The Respondent is generally required to maintain, repair and decorate the Property itself (clause 3(3)). At clause 3(8), the Respondent is bound to permit the Applicant and its surveyors or agents to enter to view the state of repair and condition of the Property, subject to an appointment during reasonable hours. There is a provision in respect of the Applicant’s costs and fees.

The Construction of Leases

28. It is well- established law that 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.”

29. 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.”

30. Other paragraphs give additional guidance and other case authorities have followed but the Tribunal considers the above sufficient for these purposes. Given that there are specific matters to construe, the Tribunal carefully bears in mind the above and the relevant law generally when undertaking that exercise.

The Hearing

31. The hearing took place in person at Havant Justice Centre on the 28th and 29th April and then on 2nd May 2025. In the event, the full 3 days to which the length of hearing had been varied in the event needed was required.
32. Mr Stan Gallagher of counsel represented the Applicant company. He was accompanied by Mr Jeremy Donegan of the Applicant’s representatives and by Mr Philip Haslam, director of the Applicant.
33. The Respondent Mr Darren Lee represented himself.
34. Mr Gallagher also provided a Written Submissions, in effect a Skeleton Argument, and a Chronology on behalf of the Applicant comprising 10 and 4 pages respectively.
35. There had been detailed written cases, including a statement of case [198- 216]; witness statements on behalf of the Applicant from Mr Haslam [217- 244]; Mr Jamie Howell (of the Applicant’s agents) [758-759 excluding exhibits]; Mr Jeremy Donegan, the Applicant’s solicitor; and Ms Rebecca Jenkins MRICS of Sussex Surveyors LLP [767- 793 including her report in respect of internal matters and specification], who inspected the Property in January 2021. It is worth emphasising that Ms Jenkins was permitted by the Directions to give evidence of fact, but she had not provided a complaint expert report and no permission to call her as an expert witness had been granted. A very minor issue arose from a page of her statement being omitted from the bundle but that was easily resolved.

36. There was a statement of case [165- 197 including exhibits] for the Respondent, together with witness statements from Mr Lee [801-904] and Mr Andrew Elliot [805- 806] for the Respondent.
37. The parties each separately send in the report of Mr Stephen Pook MRICS of Stuart Radley Associates, Chartered Building Surveyors dated 26th June 2019 which had been prepared following an inspection on 12th June 2019. Although the subsequent specification was included, the report had been omitted from the bundle, but that was also easily resolvable [401- 401D]. It should also be identified that report was strictly simply a document, albeit of considerable use. It was not an expert report prepared for the purpose of the proceedings with permission, and Mr Pook had not prepared even an equivalent witness statement to that of Ms Jenkins (nor did he attend the hearing). However, the report was prepared for the Applicant and both parties accepted the contents to be correct, except as to the middle bedroom..
38. The Respondent subsequently provided in advance of the 3rd hearing day an Autism Assessment Report. The Respondent also provided copies of other documents regarding internal works to the Property and quotes for redecoration which the Tribunal had already seen in the bundle.
39. Oral evidence was received at the hearing from Mr Halsam (on service of notices), Mr Donegan (on a service point) and Ms Jenkins and for the Applicant and from Mr Lee and Mr Elliot (remotely by video) for the Respondent. The Applicant had wished to call Ms Jenkins remotely by video but that was not permitted and so she attended in person.
40. Closing submissions were made by both Mr Gallagher and Mr Lee on the third day.
41. A matter was raised by the Court and Tribunal as to how clause 8 of the Lease applied in light of statute law and previous caselaw- *British Telecommunications v Sun Life* [1994] 2 EGLR 66 being particularly mentioned, specifically the suggestion that the Applicant was not liable even for matters within its own demise unless written notice had been provided by the Respondent. The question of whether the Applicant could require a report of disrepair where the problem emanated from part of the Building occupied by or in the possession of the Applicant was potentially very relevant.
42. That had not specifically been addressed by the parties and the Court and Tribunal considered that it was not appropriate to limit the parties to such submissions as they could make at that late juncture. Therefore, provision was made for the parties to provide written submissions. Mr Gallagher did so on behalf of the Applicant in a document titled "Additional Closing Submissions on behalf of the Applicant" of 4 pages, together with a further 81 pages of commentary and case authorities. Mr Lee did not provide anything further. The Court and Tribunal address the point below.

43. The Court and Tribunal are grateful to all of the above for their assistance with this case.
44. Given that the hearing took the 3 full days and that the Court and Tribunal could not reach any decision until the Additional Submissions had been received and considered, it was necessary to arrange re-convenes on dates from 16th May 2025 to today.
45. The Court and Tribunal are very mindful of the delay in the issue of this Decision and are very grateful to the parties for their forbearance. Very regrettably, heavy other commitments delayed the preparation of a Decision which was no short task and required further discussions by the Tribunal members. The time of year caused additional delay in all members of the Tribunal being able to consider drafts and hold discussions to enable the Decision to be finalised.

THE TRIBUNAL DECISION

The jurisdiction of the Tribunal

46. 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. Service charge is in section 18 of the Landlord and Tenant Act 1985 (“the Act”) defined as an amount “payable, directly or indirectly, for services, repairs, maintenance[, improvements] or insurance or the landlord’s costs of management and .. the whole or part of which varies or may vary according to the relevant costs.”
47. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable (section 27A). Section 19 provides that a service cost is only to be taken account of in relation to the service charges demanded insofar as it is reasonably incurred and the services or works to which the cost relates are of a reasonable standard. The Tribunal may take 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. Where charges are on account and there have not been final figures, the question is whether they are reasonable on the information at the time.
48. The jurisdiction includes determining any argument that charges are not payable because of the amount of any entitlement on behalf of the lessee arising from breach of covenant by the lessor. Consequently, if such arguments are raised, it is established law that it is for the Tribunal to determine the merits of any such argument and the amount which the lessee should be entitled to have set off against service charges which would otherwise have been payable, up to a maximum of the full amount of those charges, such that the actual payable service charges are only any net amount following that offset. Any sums to which the lessee might be entitled beyond the service charges otherwise payable are matters for the County Court if applicable.

49. A couple of the many case authorities about service charges merit mention with regard to some relevant general principles. *Cos Services Ltd v Nicholson and another* [2017] UKUT 382 (LC) (and also earlier authorities such as *Carey Morgan v De Walden* [2013] UKUT 0134 (LC)) applies such that there is a two- part approach of considering whether the decision making was reasonable and whether the sum is reasonable. It is also well established that a lessee's challenge must be based on some evidence that the cost is unreasonable. Whilst the burden is on the landlord to prove reasonableness, the tenant cannot simply put the landlord to proof of its case. Rather the lessee must produce some evidence of unreasonableness before the lessor can be required to prove reasonableness (see for example *Schilling v Canary Riverside Development Limited* [2005] EW Lands LRX 26 2005, although the Applicant specifically relied on *Enterprise Developments LLP v Adam* [2020] UKUT 151 (LC), which is also often cited on the point).
50. Certain other case authorities and statutory provisions are referred to below where directly relevant to specific issues in the case.

Are the Service Charges payable, subject to set- off, and in what sum?

51. The Respondent set out service cost items challenged in the relevant schedule.
52. It merits identification that it had been raised at the pre- trial review hearing that the Respondent's position was that he had not challenged relatively small items of service cost because the Applicant had not at the time provided the evidence of those. However, as the Respondent's share was somewhere between £400.00 and £1000.00, so that was the maximum in issue if the items were disallowed in full, and amendment of the Respondent's Defence would have required amendment of other documents and additional other evidence and would have required the vacation of the trial dates, it had been determined not appropriate to allow that late amendment.
53. The service charges demanded comprise various amounts sought on account twice yearly on 29th March and 25th September and various balancing sum. The net effect is that all sums involved relate to costs that have been incurred and none related to solely budgeted amounts on account of anticipated costs during the service charge year.
54. The Applicant's position as summarised by Mr Gallagher was, perhaps unsurprisingly, that the sums referable to works to the Building, insuring etc. are modest, unremarkable and represent expenditure reasonably incurred. It was argued that the Respondent had not raised sufficient of a challenge for the Applicant to meet. The Tribunal does not accept that argument is correct in relation to all of the service charges and so considers it necessary to take each item in turn.

55. The Tribunal also noted that it was clear, most obviously from the table of sums claimed in the Particulars of Claim that the payments sought on account each year were the same for the service charge years from 25th March 2027 to 24th March 2019 and then slightly higher from 25th March 2020 to 24th March 2020- £500.00 per year for the first period comprising 2 payments requested of £250.00 each and £600.00 for the later years comprising 2 payments of £300.00 each. The obvious inference to draw from those very round figures, and which the Tribunal does draw, is that there was no detailed budget for expenditure drawn up on which those sums were based, budgets being unlikely to have yielded such round sums consistently. Rather, where specific items arose of greater size, those were then requested as additional payments. The Respondent raised no issue about that.
56. The advance charges did vary 25th March 2021 onward and the Tribunal considered reflected budgets produced.
57. The largest single entry, which related to major works as discussed below, was a payment of some £10,005.00 demanded by way of balancing charge for the year ended 24th March 2020. That was very substantially greater than any other payment which had been demanded, resulting in service charges for that year which were very significantly higher than previous ones. However, the Respondent took no point on that difference.

Service charges other than for the major works

58. The Tribunal first addresses service charges other than in respect of the major works. The outcome is that the Respondent has only successfully challenged one of those items. The Tribunal takes them item by item, particularly noting the comments by the parties in the Scott Schedule for the given item and other related comments. The Tribunal understands, and proceeds on the footing that, the sums are the original service costs, which reflects how they are identified in the Applicant's statement of case [207] and is logical on the figures involved. It follows that the service charges to the Respondent relevant are 1/3 of those amounts.

- Insurance cost, Allianz Insurance 9th June 2017 (2017/8)- £803.54

59. The Respondent contended the cost to be high, asserting nearly double previous cost and suggesting that the sum ought to be approximately £450.00. The Applicant stated that the insurance was arranged by independent brokers. The difference in service charges which would be payable by the Respondent is one third of the disputed cost. The Applicant contended that the cost of insurance varies year to year and Respondent had provided no alternative evidence as to cost. It appeared to be implicit in the Applicant's case that the premium was the best, or otherwise a reasonable one, obtained by the brokers doing their job properly in the course of their business. Policy documentation was provided [128- 155].

60. The Tribunal noted the actual cost, which was not in its experience unusually high. The Tribunal finds that there is no evidence presented by the Respondent which supported the cost being higher than it ought to have been and unreasonable. There was no evidence of excess cover or anything else which could obviously impact on the cost.
61. It follows that the Tribunal allows the insurance costs or more accurately the consequent service charges in full.
- Fire doors, Morrissey Management 3rd January 2018 (2017/8)-£680.00 [594]
62. The Respondent disputed that he was liable for the cost of the replacement front doors to the other flats than his own within the Building. The Applicant relied upon clause 4(5)(d) of the Lease and the fire door work being required in order to comply with a fire risk assessment and requirements of the local council, Arun and Worthing District Council.
63. The Tribunal noted the matters covered in the demise of the Property which specifically includes the entrance door to the flat and the lack of evidence provided by the Applicant that the demise of the other flats in the Building were any different. The Tribunal also noted the matters which it is stated in the Lease the Applicant is liable for, which makes no mention of the entrance doors to the flats, as might be expected from them being included in the demise of the flats.
64. The Tribunal determines that there is nothing elsewhere in the Lease which requires or enables the Applicant to undertake works to the front doors of the flats in the circumstances in which the works were undertaken. The Tribunal accepts that the local council required works to improve fire safety. The Tribunal considers that any notice requiring works to the door to the Property ought properly to have been addressed to the Respondent as the owner of that dwelling of which the door is provided by the Lease to form part and indeed the council served one on the Respondent [367-]. In any event, the council's requirement for works cannot grant the right to the Applicant to interfere with the property of another person which the Applicant otherwise lacks.
65. The Tribunal determines that the Respondent was not entitled to replace the front doors to the flats and to charge the costs as service charges.
66. The Tribunal determines that the £680.00 of service costs were not payable. Hence, £226.67 of service charges charged to the Respondent.
67. The Applicant has made other reference to the Respondent's refusal to allow the Applicant to replace his front door. The Tribunal determines that any issues which arose between the parties because of the Respondent's refusal to allow the Applicant to do something that it was not entitled to do cannot properly be held against the Respondent. It is

not necessary to comment on wider fire safety issues mentioned in the bundle for the purpose of the determinations required. The Tribunal was informed that in the event the local council had paid for the fire door to the Respondent's Property. As to whether that is on the basis of recharge to the Respondent was not clear but is also not relevant to these proceedings.

- Gutter clearance, Morrissey Management t/a Weatherseal Roofing- January 2018 (2017/8)- £150.00

68. The Respondent disputed the undertaking of work to clear the rear gutters in January 2018 or, implicitly in the alternative, that the works were undertaken to a reasonable standard. His argument centred on the extent of plant growth remaining in the gutters- which may or may not be that which appears to be shown in an undated photograph [404]. The Tribunal noted that Mr Pook in June 2019 identified the back gutter at the junction of the rear addition roof and the rear elevation of the main part of the Building "was completely filled with vegetation". That is a strong statement of fact to make and the Tribunal has no reason to doubt it.

69. The Tribunal identified potential merit. However, in the event the Tribunal could not identify exactly what the 2018 work had related in order to know whether it ought to have tackled and resolved the problem identified by Mr Pook. The Tribunal lacked enough from the Respondent to discount the potential for the gutter having been cleared and become filled with vegetation in the intervening approaching a year and a half. Bearing in mind the email report by the Respondent in November 2018 discussed below, the Tribunal harbours some doubts that the particular gutter was properly cleared and then filled to the extent described but accepts that the two are not necessarily inconsistent- proper clearance and substantial vegetation being present 18 months later is not implausible.

70. On balance the Tribunal concluded that it lacked anything tangible on which it could determine that the standard of the work fell below a reasonable standard and that there was any other basis on which the service cost should be reduced. As to the work being undertaken in isolation and the adequacy of that as a response to condition of the Building is another matter entirely and addressed later in this Decision.

- Solicitor's costs, Bate and Albon, 5th July 2019 (£900.00), 11th July 2019 (£915.00) and 1st May 2020 x 3 (£390.00, £420.00 and £1680.00) (2019/2020 and 2020/2021)

71. The Respondent challenges each of the 5 sums, not in respect of the particular amounts but in respect of the ability of the Applicant to recover them as service charges at all.

72. It was said by the Applicant that some of the amount stated as solicitor's costs is not service charges but rather is claimed against the Respondent alone as part of the claim for contractual costs. The

Tribunal accepts the Applicant's position in respect of the single sum of £915.00 not claimed as service charges being correct and so leaves those to be determined by the County Court.

73. The remaining items are said by the Applicant to relate to maintenance of management of the Building. The Applicant relied upon the ability in clause 4(5)(f) to recover professional fees. The Tribunal accepts that the Respondent's sweeping assertion that solicitor's costs cannot be recovered is incorrect.
74. The Tribunal determined that as that was the limit of the Respondent's challenge and does not succeed, the proper determination is that the solicitor's costs are service costs reasonable and the service charges which relate to them are payable.
 - Fees for Stuart Radley surveyors- £441.00, £1500.00, £639.10, £533.72, £383.54 (2020/1 and 2021/2)
75. This relates to a number of inspections and reports. There are long comments in the schedule of disputed items [120 onwards specifically] which because of their length and the nature of the schedule as not as simple to follow as might have been ideal.
76. The Respondent's argument was broadly that the reports were inadequate and that they arose from defects caused by the Applicant's breaches of its repairing covenants and so should not be charged to him as service charges, perhaps not least when his Property had been affected by the consequences of the breaches.
77. The Tribunal is not unsympathetic to the Respondent's point made as a lessee. However, the surveys relate to maintenance obligations of the Applicant and in the usual course are therefore chargeable as service charges.
78. The survey by Mr Pook principally related to the exterior and there was no dispute about his findings about that. The Respondent's issue was that there were other internal effects not noted. There was a dispute about why that was referred to more fully below. The Applicant says that Mr Pook offered to return without additional charge.
79. The Tribunal is not persuaded that the cost for the report is not payable in full. The service costs are allowed of that £441.00.
80. The next fee of £1500.00 from August 2019 is disputed on the basis of being unnecessary but for the historic neglect. The Applicant says that it was incurred for the necessary preparation of a detailed specification of works. It is common ground that the specification [411- was prepared and formed the basis for the major works undertaken some while later.
81. The Tribunal addresses the historic neglect aspect at some length below. However, for the simple purpose of whether the service charge

is payable subject to that historic neglect argument and wider set-off, the Tribunal accepts that the specification was required. The Respondent has not disputed the level of fee for the work. The Tribunal allows that £1500.00 at this stage.

82. In respect of the £639.10, £533.72 and £383.54 sums from 31st December 2020 onward, the Respondent's argument is again that the works would not have been required, which the Tribunal addresses in respect of historic neglect. However, in terms of cost of contract management for the works which were undertaken, the Tribunal accepts the costs to be reasonable at 11% of the contract sum and the service charges payable at this stage.

- Fire Alarm Servicing 25th November 2021- £161.04

83. The figure above represents the sum the Tribunal understands to remain in dispute by way of service cost. That is on the footing of an original cost of £432.00 and a partial refund having been given of £270.96, both of which figures appear to be common ground. The Applicant states that it is the above net figure and the replace contractor's invoice amount in total which appears in the accounts.
84. The Respondent has referred to the original figure and the amount of the refund but has not made any comment about the balance. So, no case is advanced as to why that is not payable and hence there is nothing for the Applicant to meet about that. The Tribunal therefore determines that the £161.04 service charges are payable by the Respondent.

Major works- (stated as) £10,744.50 and £11,437.52= £22,182.02

85. The Tribunal next addresses the major works subject to the issue addressed after that of historic neglect. These works constitute the substantial majority of the amount in dispute.
86. More specifically, the major works in the "Specification of Works for External Redecoration and Repair" of Mr Pook [412-648] involved works to the gutters (including front parapet and rear valley) and provision of aprons; rendering to various elevations, brickwork, areas of roof slates and redecoration/ painting to all previously painted external areas, amongst other matters. They also included works to the Property itself involving hacking off various areas of plaster (some 12sqm to the living room and 16sqm to the rear bedroom). Scaffolding was required in order to facilitate the works. The condition of the Building is returned to below.
87. There is no dispute about that Specification, such that it is clear what work was required when it was undertaken. In addition, the Respondent did not demonstrate that the works were undertaken at below a reasonable quality. Hence, subject to the other matters considered below, the costs would have been found to be reasonable and the resulting charges to the Respondent payable.

Lack of receipt of section 20 consultation notices

88. In summary, where the landlord enters into a contract for works at a cost which will produce service charges of over £250.00 per lessee, the service charges recoverable are limited to the sum of £250.00 unless the landlord has followed the consultation process required by section 20 of the Landlord and Tenant Act 1985. Alternatively, the landlord has applied to the Tribunal for dispensation from the consultation requirements and that has been granted by the Tribunal (and any conditions imposed have been complied with).
89. The Applicant's case was that appropriate notices had been served in respect of the consultation said to have been undertaken in relation to the major works. The evidence of Mr Howell related to the service of the Notices by post as above. The evidence of Mr Doneghan was limited to his hand delivery of the second Notice. The Respondent denied that, asserting lack of receipt. He questioned Mr Howell about lack of use of recorded delivery but the Tribunal did not find that had been required.
90. The details of notices as contended by the Applicant were firstly a Notice of Intention dated 1st July 2020 posted to the Respondent by the managing agent; secondly a Statement of Estimates dated 18th September 2020 also posted to the Respondent by the managing agent plus hand delivered by Mr Donegan; finally a Notice of Reasons dated 11th December 2020 for awarding works contract to Packham Construction Limited ("PCL") posted to the Respondent by the managing agent. It was said that Ultimate Finishes Limited ("UFL"), which was the lowest tenderer was unable to undertake works and that PCL was the second lowest. Otherwise, the relevant third Notice would have been in respect of award of the contract to UFL.
91. An issue arose as to whether any those Notices had been properly served. The Applicant was dismissive of the Respondent's case but without identifying what the Tribunal considers to be the key point about the nature of the service attempted.
92. It was established that the Building has a single letterbox into the communal hallway. Post is therefore placed through that letterbox and lands in the hallway. The hallway forms part of the Building; it does not form part of the Property. Mr Howell had posted the Notices by normal first- class post. He accepted having no knowledge of who collected their post from there. Mr Donegan did not hand- deliver the second Notice to the Respondent personally or to the Property specifically. Rather he placed it through the communal letterbox such that it will have fallen into the communal hallway.
93. The Tribunal was mindful that the specific question of whether the Notices being posted through a communal letterbox for a wider Building but not to the individual Property was not specifically part of the arguments raised by the Respondent, but the Tribunal determines that the issue does fall within the boundaries of the dispute. The

Respondent had challenged the service of the Notices and the question of receipt: the Applicant asserted that it did serve. It was necessary to establish whether the Applicant did in fact serve. It is within the parameters of that to consider circumstances which may be factually or otherwise relevant to that.

94. Mr Gallagher provided an extract from a publication which argued that there are no specific statutory provisions in relation to service of such notices. The commentary provided by Mr Gallagher includes a decision of the Lands Tribunal (the equivalent of the Upper Tribunal) where a notice was left by the Royal Mail in the entrance hall of the building and did not come to the attention of the lessee. The Lands Tribunal held that was not good service. However, the facts of that case differ from those in this case in that the tenant no longer lived in the flats as the lessor knew (although the agent did not). Another case authority is mentioned (and was referred to orally) where section 196 of the Law of Property Act was treated as incorporated into the particular lease and posting was sufficient, but it seems that was to a particular flat not left in a communal area.
95. The Tribunal does not find any of the above actions to necessarily amount to service of the Notices, whereas the Applicant's case was firmly that it had been served. Specifically, the hand delivery to the Building added nothing. Mr Gallagher argued in closing various other points, but the Tribunal does not consider those took matters further. He also argued that there was nothing else that the Applicant could do, but of course the Applicant could have ensured that the Notices were pushed under the door of the Property if that were possible or handed to the Respondent specifically so that contention is clearly wrong (and the instruction of a process server to hand- serve a notice in possession proceedings, as one example, is not unknown).
96. The Tribunal however determines that the Applicant is saved- and the Tribunal uses that word deliberately- by the evidence of the Respondent receiving 2 Notices. He specifically acknowledged those dated 18th September 2020 and 11th December 2020 in emails to the Applicant dated 26th September and 15th December respectively and so the only question was whether he had received the first Notice. The Respondent also accepted in closing that the email sent by Mr Howell on 18th September did relate to the Notice of Estimates having not previously done so.
97. There was no acknowledgement by the Respondent of the Notice of Intention in the manner that there was of the other Notices. However, the Tribunal finds that although the approach taken to service of the Notices was inadequate to enable complete confidence in them reaching the individual Property and the Respondent, the fine balance of probabilities is that the Respondent did also receive the Notice of Intention that he could not recall receiving and so did not concede receiving. There is no specific reason to consider that where the other 2 Notices, notwithstanding the above issues, did come to the attention of

the Respondent, the earlier one did not- the lack of a specific email acknowledging it not being sufficient on its own. The Respondent has not demonstrated enough to prevent the Notice coming to his attention being the more likely on the balance of probabilities.

98. On that rather narrow basis, the Tribunal finds that the section 20 consultation notices were on this occasion sufficiently served. The Tribunal therefore determines that the Applicant did comply with the consultation requirements and that the service charges payable in respect of the major works are not limited to £250.00 for that reason.
99. For completeness, it was said in Mr Gallagher's Skeleton Argument that the Applicant sought dispensation from consultation if it were found that there had been a failure to meet the consultation requirements. That was not relevant in the event. However, the Tribunal observes that if such an application had been necessary, it could not have been determined at this the hearing. Rather the Applicant would have been required to file an application with the relevant fee and that would have required service on each lessee, with time for each to then respond. The Tribunal would in this case have been limited to the fact that dispensation had not been granted.

Historic neglect

100. The outcome of this issue and the impact on other issues is such that this is the key aspect of this Decision. The short answer is that the Tribunal determines that there was historic neglect and that the Respondent is entitled to offset damages arising from that against the service charges generally. There is room for criticism of both sides in relation to different matters. The Tribunal explores the specific of that, to the extent considered necessary, in relation to the amount of set- off. There is something of an overlap between matters related to historic neglect and cost of the major works in itself and the wider set- off and a danger of considerable duplication if both are considered separately. Hence, the Tribunal has, accepting it to be an imperfect division, dealt with the law and facts up to the point at which damages to the Respondent can be applied to sums otherwise payable in this section. The Tribunal deals with the amounts and relevant disputes about the facts under the heading "Set- Off".
101. Much of the comments of the parties are contained in the Schedule of Alleged Disrepair [156- 164] to which the Tribunal refers below where appropriate. The Tribunal noted the various aspect of documentary and oral evidence.
 - General law and specific effect of the Lease
102. The law in relation to failure to undertake works and increase in the works subsequently required, often termed "historic neglect" can be sufficiently summarised as follows.

103. There are two strands to considering such arguments, as explained in a decision of the Lands Chamber, the predecessor to the Upper Tribunal (Lands Chamber) and the decisions of which are equally binding on this Tribunal. That is *Continental Property Ventures Inc. v White* [2007] L. & T.R. 4. Firstly, the reasonableness of service costs must be assessed at the time at which the costs are incurred. The question is whether the cost is a reasonable one to incur in the circumstances existing at that point. Secondly, in terms of whether service charges are payable in respect of those costs and to what extent, the lessee is entitled to set off damages which would be payable to him or her in consequence of the delay, including a sum for the additional cost, by way of equitable set-off). That essentially would be likely in the usual course to get the parties back to the position that they would have been in had work been undertaken at the time it ought.
104. It should be clarified, that does not limit the claim for set-off about breach. Insofar as that exceeds the amount of additional service charges because of the increase in costs arising from the historic neglect or other effects of the neglect, there can be set-off against service charges otherwise payable generally. Necessarily some care is needed to avoid duplication and that has informed the approach below.
105. As to the application of the Lease in particular, the important question of the effect of clause 8 related to whether the contracting parties could by the provisions in the Lease contract out of any relevant statute law so that the effect of that statute law did not apply.
106. The Tribunal determines that the phrase “shall not be liable or responsible for any inconvenience injury accident or damage which may at any time be suffered by the Tenant” includes damages which would be payable to the Respondent in consequence of the delay. The Tribunal considers that the use of the word “any” in respect of “damage” and similar means just that. The natural meaning of the word encompasses all such damage and similar and does not allow for the exclusion of certain types.
107. That raises the question of whether the Applicant’s liability is indeed limited to the time of written notice from the Respondent where the disrepair is to a part of the Building to which the Respondent has no access and which is at all times in the possession of the Applicant. As explained above, the parties were invited to provide additional written submissions in respect of that matter.
108. Mr Gallagher argued that section 11 of the Landlord and Tenant Act 1985 does not apply at all here because the lease is for a term of more than 7 years. In that instance, the landlord is not liable until told of the defect or its effect but is not the occupier of the dwelling in disrepair and is taken not to be able to know unless told. Clause 8 effectively seeks to provide that the position is the same where disrepair arises to the retained or common parts as it would be to disrepair within a individual dwelling the landlord is liable to repair.

109. Further that section 4 of the Defective Premises Act 1972 applies where the landlord is obliged to maintain or repair the premises let, and there will be liable having received notice or there being implied notice, which Act does not include retained and common parts. He argued that the Landlord is not required to maintain or repair any part of the specific Property.
110. The Tribunal accepts those arguments on behalf of the Applicant. Consequently, Mr Gallagher's arguments that statutory provisions and case authorities about notification of defects and notice of defects related to the above sections have no application were also accepted by the Tribunal. Whilst Mr Gallagher put forward other points if the Tribunal determined that section 4 did apply after all, the Tribunal need not discuss those.
111. It also follows that the inability of parties to contract out of the above statutory provisions has no application here- the provisions do not apply anyway. The Tribunal was not entirely happy with the scenario that a party not in possession of a part of the Building is in order to be entitled to damages required to tell the party that is in possession would be and able to check the condition at any time. The provision provides a disincentive for the Applicant to check the condition of its demise and seek to avoid deterioration with an impact on the lessee and in contrast gives something of an incentive to wait until problems materialise for a lessee to the extent that the lessee tells the landlord of them. That would not ordinarily be regarded by the Tribunal as attractive.
112. The fact that the particular clause then adds the further limit on the Applicant's liability for damages that the notification must be in writing whereas notice given orally, however clear and however much objectively it should be acted upon, does not give rise to liability, produces an even less attractive result.
113. However, the Tribunal considers that there is no basis to disapply the provision and nothing else within the Lease to provide a basis to do anything other than to adopt the natural meaning of the words used in the clause. The phrase, "unless the Landlord shall have been given previous written notice of such defect by the Tenant" can only have one construction.
114. The Tribunal determines that the Applicant is liable for damages for any inconvenience, injury, accident, or damage suffered by the Respondent by reason of any act, neglect or default of the Applicant/ its agent in respect of any part of the Building for which the Applicant is responsible but only where the Applicant has been given previous written notice of the defect by the Respondent and has then failed to remedy the defect within a reasonable period.
115. Mr Gallagher argued in his further written submissions that the express requirement for notice to be given negates the common law position of

the landlord being liable virtually immediately for disrepair of the landlord's retained parts, as held in, for example *British Telecommunications PLC v Sun Life* mentioned above, by which the Tribunal understands him to mean that the Applicant contends the landlord is not in breach virtually immediately. The Tribunal rejects that argument. Rather, the Tribunal determines that if the Applicant has failed to comply with the obligations provided in clause 5(2) to "maintain repair cleanse repaint redecorate and renew", the Applicant is in breach in itself. It is so in the manner common law provides and because the retained parts are solely in the demise and occupation of the Applicant. That is because Clause 8 does not address breach or lack of breach in itself but rather only limits liabilities for damages for the Respondent's losses and effects. The Tribunal determines that the clause cannot be extended beyond what the words say.

116. If the contracting parties had wished to agree that the Applicant would not be in breach at all unless and until there were a written report, they could have done so. However, clause 5 makes no mention of any requirement for a written report. It states what the Applicant's obligations are. There is no linking of the written report which triggers an entitlement to damages to the repair and maintenance obligation itself.
117. The common law position as identified in *British Telecommunications* therefore applies in respect of the breach. Hence, the Applicant is in breach of its obligations when it fails to maintain and similar and any of retained or common parts fall into disrepair. Mr Haslam's assertion in oral evidence that he cannot see the rear of the Building from the front and cannot be aware of issues at the rear until notified does not reflect the position in law (much as it reflects the limit to a damages claim imposed by the Lease).
118. The Tribunal briefly mentions the construction of the word "defect" in particular. Clause 8 refers to that. There appear to the Tribunal to be two possible interpretations of that. The first is that the contracting parties literally meant the specific defect. The second is that the proper construction is there being a defect.
119. The Applicant has not discernibly argued that the Respondent had to give written notification of the specific defect, although Mr Gallagher veered towards that to an extent in closing, and the Tribunal considers wisely. The Tribunal has little doubt that if the point had been in issue, it would have determined that the correct construction is the latter.
120. In essence, a requirement for the lessee to inform the landlord of the exact defect would involve the lessee investigating and is likely to require access to parts of the building beyond the demise to the lessee. The lessee may have to carry out the landlord's job of identifying the maintenance or repair which the landlord should undertake and may need the landlord's permission for access in order to do that. If the lessee could not go that far, the landlord would escape liability for

effects. The Tribunal determines that would be nonsensical. It would be to impose a considerable, potentially an impossible, burden on the Respondent in order to be compensated for a breach by the Applicant.

121. It is implausible that the contracting parties intended that and no other wording demonstrates them having done so. The Tribunal would therefore have been highly likely to construe the word in the only manner which it considers a sensible construction- that the word “defect” in respect of the written notice means “the existence or likely existence of a defect”, enabling the Applicant to investigate and take action if it has already done so.

- Factual matters

122. The Applicant’s case was that it did not purchase the freehold until December 2014, that works were undertaken to clear gutters in January 2018 and August and October 2019 (and implicitly that work was undertaken to appropriate standard each time)- the fact that work was undertaken in itself is not in issue between the parties- and there was no evidence of increase in costs. It was also argued that additional work would have produced additional service charges which obviously could be true as far as it goes. Equally the Tribunal observes that there may have been the same work or there may have been lesser work at an earlier time- at lower cost- that is something to determine.
123. The Respondent’s case was that there were reports made and a refusal by the Applicant to act until the service of an Improvement Notice by the local council dated 17th April 2020. He contended that if “basic, regular maintenance” had taken place, there would have been no need for extensive works. He complained in his Defence that internal works to his flat remained outstanding. It merits pausing at this point to identify that there are two elements to works relevant. The first is to the external defects and the second is to the internal effects of those.
124. The Tribunal determines that the date of acquisition of the freehold has no direct relevance. The Tribunal finds there to be no demonstrated pre-existing liability for damages in 2014 and so nothing turns on this. The Tribunal noted that the Defence contended that there had been no maintenance for 10 years but did not accept was a sweeping lack of maintenance for 10 years prior to the Defence. The Applicant was, on the other hand, unable to identify any works of maintenance other than works to gutters prior to 2021 and the Tribunal concludes the limited maintenance works in advance of the major works to be very much inadequate.
125. Mr Haslam accepted in oral evidence that the Applicant had not arranged any survey of the condition of the Building prior to or following purchase, relying on the agents addressing anything required. Lack of being made aware by the agents is no answer. Any repair and maintenance appropriate was not established by the Applicant. It may be that if there had been a programme, there would have been more

sets of work, or there may not. In any event, the Applicant's argument that the Respondent somehow benefitted overall is rejected.

- 2016 or earlier report
126. The Tribunal finds as a fact that the Respondent first reported water ingress to the Applicant by around or about Spring 2016, by way of telephone call made to the managing agents, then trading as Whittingtons. Mr Gallagher cross-examined Mr Lee about it but the Applicant adduced no evidence from Whittingtons to refute the Respondent's statement. The issue would have been significant if the Tribunal had not accepted the Applicant's liability for damages to only arise upon a written notification.
127. The Tribunal carefully considered and accepted the oral evidence of the Respondent and such evidence of Mr Elliot as supported that. Essentially, his supportive evidence was that he had been present in the Respondent's flat regularly on dates in 2016 to watch football matches in the European Championships- so in and about June 2016. Further, that at that time he noticed damp and musty smells in the flat, he saw mould and water damage below the window hallway and he saw ferns growing behind the window at the top of the stairs. He also saw discolouration high up on the front (living room) wall he said in oral evidence. He had not noticed anything previously, he had been to the flat before on occasion. The Respondent was said to have told him that he had previously contacted the agents. Mr Elliot did not state that the Respondent told Mr Elliot exactly when he did so- so certainly not that it had been long before. Mr Elliot was not present when any report was made. Mr Haslam said that he had delegated all maintenance to managing agents and only became personally involved around 2018- so could offer nothing about 2016. It was established that since purchase by the Applicant in 2014, he had attended the Building a handful of times when tenancies had ended.
128. There was something of a gap between the oral notification and the written one. The Tribunal is mindful that having made an oral notification and there having been no response, There is a level of expectation that a party might have chased matters up and the lack of that casts some doubt on the asserted notification itself. The Tribunal also noted that in the Schedule of Alleged Disrepair, the Respondent said, "It is hard to pinpoint exact date but I believe this was when Whittingtons were the management agents". "I believe this" is a rather less confident statement. than the Respondent's oral evidence. All of that cast some doubt on credibility of an oral report. In contrast, whilst Mr Haslam said that he was unaware of anything before the email below, the Tribunal does not find that weighs, given his limited involvement.
129. However, the Respondent's next email after the written notification referred criticises previous agents and specifically refers to the previous agents taking photos- which the Applicant did not challenge. That is consistent with an earlier report and indeed with the earlier agents

attending the Building in response. The work to the gutters in 2018 [654] undertaken on behalf of the Applicant also lends some support to a problem having been identified in advance of that and the agents having arranged work.

130. The Tribunal does not make a finding of an earlier oral report than Spring 2016 and hence the starting time was earlier. The Tribunal noted that the Respondent in his statement said he had called since around 2015 but that is vague and from the viewpoint of 2024 when the statement was prepared could easily include mid- 2016. There is obvious imprecision about the time of the report such that whilst the Tribunal accepts a date earlier than June 2016, there is no direct evidence or safe inference to determine a specific earlier time.
131. Having weighed matters which went against Mr Lee's evidence, the Tribunal came to the above finding that it accepted his evidence and so that is the factual basis on which the Tribunal proceeds. In the event, there having been an oral report is something of a double- edged sword for the Respondent.
132. The Tribunal finds as a fact that the Respondent was experiencing water ingress at that time to the hallway/landing area and that arose from matters arising from the external condition of the Building, particularly the wall which includes the length by the landing. The Tribunal finds that there was disrepair to the Building at the time of the Respondent's oral report. Further that was the responsibility of the Applicant- the responsibility and liability for effects limited in clause 8 being determined to be different. Irrespective of legal liability for damages and losses of the Respondent, it follows that as a matter of fact, the Applicant, having been told of water ingress at that point (via its agent), knew, or in any event should have known, that there was an issue requiring attention.
133. There was sufficient at that stage, even if not before, that the Applicant should have been prompted to investigate and the Tribunal finds that in order to comply with its contractual obligations the Applicant should have investigated. The Tribunal finds on balance that the exterior being in a poor condition, although not as poor as in 2019, would have been identified. Additionally, that if the Applicant had done so appropriately, it would have properly identified the issues and ought to have taken appropriate steps to address them. The Applicant was in breach of its covenants in clause 5 of the Lease, having failed to maintain and repair the Building for which it was responsible. The Tribunal finds that if appropriate steps had been taken by the Applicant within a reasonable time of the oral report, on balance at least some of the further problems experienced by the Respondent after that time would never have arisen. The Tribunal has found below that a reasonable time from later written notification was 10 months. The Tribunal finds that the works required in 2016 will not have been greater and may have been lesser, such that the reasonable time to attend to the matters which would have been apparent in 2016 or so

cannot be longer than 10 months, giving a date of up to approximately March 2017. The Tribunal notes, although it may be no more than coincidental that would take matters to around the point of the first unpaid service charges for which the claim is brought.

134. The Tribunal finds that the lack of action, led to further deterioration externally and further internal effects to wall areas by gutters, including damp. The Tribunal accepts the Respondent's case that water spillage from gutters remained an ongoing problem and that in combination with a lack of maintenance of rendering such that it was inadequately waterproof and other problems with the Building, enabled further water penetration into the Respondent's Property.

135. The Tribunal considers it very likely that there was disrepair earlier than the Respondent became aware of the effects of the disrepair to report them- there has been no evidence presented of any catastrophic event and so gradual decline to the extent that matters became apparent within the Respondent's Property is far more likely. However, there is no evidence of when the condition of the Building fell into disrepair other than there was disrepair which led to water penetration into the Respondent's flat on or a little before the day of his oral report. The Tribunal could not sufficiently identify disrepair to have existed on an earlier day to make any finding of it.

- 2018 report and period for works

136. It is agreed that the Respondent made a written report by email on 6th November 2018 to Ms Tina Conway of Allen Conway [343]. That notification informs the Applicant's agents that he is vulnerable and disabled, enclosing a medical certificate. The email then says:

"May I also take the opportunity to inform you that my flat has suffered a great deal of damp due to inadequate maintenance from the freehold ie outside property maintenance."

137. There were subsequent emails, including the immediate follow up mentioned above. The Tribunal noted the concession by Mr Haslam in oral evidence that he had not taken notice of the email from the Respondent in November 2018- he thought the issue was minor- and that led to a delayed response to it- he accepted the response should have been sooner. Mr Haslam said of the Applicant, that he was a "serial complainer", "His response to get something done is to report something else", "I you cry wolf too many times, you are not necessarily taken seriously".

138. The Tribunal is grateful for Mr Haslam's candour in the hearing, although that does not make the response or delay satisfactory. The Tribunal finds that there were issues already between the parties, albeit rather less than there later became. The Applicant treated the report as the Respondent seeking to distract from sums which may have been owed/ other matters. It is also somewhat different to the contents of his

witness statement in which he blamed what was described as a short delay in obtaining legal advice. It is apparent that the Respondent had good cause to complain about the damp and the clear lack of maintenance.

139. The Tribunal rejects the argument made by Mr Gallagher that the Applicant was only liable for a blocked rear gutter specifically and nothing more. The Tribunal refers to its discussion of “defect” above. There was no requirement to report each new or developing effect. In any event, the email referred to damp and lack of outside maintenance, not to gutters specifically. The Tribunal determines that the email was comfortably ample for the Applicant to be required to investigate the condition of the gutters to the Property and the also wall and roof areas which might be the cause of the damp. It is amply clear investigation would have revealed the significant problems with the Building which.
140. The Applicant argued that the period from 8th November 2018 until Spring 2021 was a reasonable period for the undertaking of the works, and hence there was no breach of covenant for that reason. The Tribunal determines that to be unsustainable- and would have been even if the Tribunal had not accepted Mr Lee’s evidence of his oral notification.
141. The Tribunal finds that the reasonable time for taking the required works in response to the difficulties at that time was a period of a maximum of 10 months, up to September 2019. Applying that 10-month period determined above, the Applicant’s liability for losses of the Respondent commences at the start of September of 2019.
142. In calculating that period, the Tribunal has allowed for a small number of weeks for any initial inspection by the managing agents, assuming inspection by them to be appropriate and which should have been in early course, and then any (further) inspection by a surveyor and a report. The very maximum period that the Tribunal consider could have been reasonable for that if the Applicant acted with appropriate purpose would have been 8 weeks. The Tribunal has no hesitation in finding that the report would have identified the need for major works, as indeed Mr Pook’s subsequent report did, or that the Applicant should have moved to take action to repair swiftly thereafter.
143. The bulk of the period is then for the preparation of a specification of works to address the significant damp and defects and obtaining of tenders and the consultation process. In broad terms, a period of up to 2 months for each would be the extent of the reasonable period from the survey report to the first notice (including a schedule of works) and between each notice, so 6 months at most in combination- the Tribunal is aware that the actual consultation process took 4 months or so but with quite a gap between the first and second Notices and problems with the chosen contractor impacting on the third, so that is not a reliable guide to an inability to progress more swiftly, although equally the Tribunal needs to consider a range of possible reasonable times.

The remaining 2 months or so is a period for the undertaking of works by the contractor, who it is expected would have pencilled in the works following tendering, would have been contacted further on behalf of the Applicant and would have been able to commence within a small number of weeks of the completion of the section 20 process, although probably not instantly.

144. The Tribunal considered the period given by the local council for the works included in the April 2020 Improvement Notice- fire safety, the exterior of the Building, matters within the Property, the latter 2 of which were essentially (as a summary and so not precise) the relevant matters in that Notice reflected Mr Pook's report but with the addition of apparently more plaster to the middle bedroom of the Property. That period was 6 months plus a further 2 months to arrange redecoration of the Property, then extended by 3 months for the former (so also putting back the date for the latter). A different Mr Elliott- James Elliott- dealt with matters on behalf of the Council. The Tribunal accepts that the period which the council considered to be an appropriate one for the purpose of the Improvement Notice provides some useful guidance. However, that was not determinative. Further, by the time of the Notice, the covid- 19 pandemic was highly relevant in a manner which did not exist in 2019.
145. In the event, the external works were commenced in January 2021 and completed in or about April 2021. The internal works have not been completed.

Additional cost arising from delay?

146. So, having established that there was historic neglect, the Tribunal considers whether the Respondent has demonstrated that the cost of the works and consequent service charges were in real terms greater. The Tribunal finds that the Respondent has not demonstrated that.
147. The Tribunal determines that the high likelihood is of further external deterioration from 2017 until early 2021. It is at least possible that resulted in greater work to repair. Mr Gallagher argued that there was not even a prima facie case advanced, but the Tribunal considers in this instance that the reference to delay is sufficient to provide an initial argument for potential increased work and cost.
148. However, the Tribunal considers that there is no evidence of what the repair work would have been likely to be in 2017 or its cost in real terms. There is no evidence that the work would have been reduced and at lower relative cost. Rendering, for example, would have to been likely to be required at any given time. Works to high areas of the Building inevitably required scaffolding.
149. The Tribunal takes general notice that the cost of building works increased between 2016 and 2020/ 2021, inflation impacting as it did with other expenditure. The Tribunal nevertheless lacks information to

know whether the cost increased in real terms allowing for the difference in the value of money year on year. The Respondent made a general assertion but was not able to provide anything like the necessary detail to succeed.

150. Hence, the Respondent is not entitled to damages of a sum for additional cost to reduce the charge for the actual cost, no additional cost having been demonstrated.

Other damages for the historic neglect

151. The Tribunal determines that the Respondent is entitled set off damages which would be payable to him or her in consequence of the delay to the full extent of the service charges which relate to the major works, indeed as will be seen below to some way beyond that. The Tribunal does not consider it possible- without clarity as to the exact service charges related to the major works- or necessary to divide the set- off between the historic neglect aspect and the remainder of the set- off. Hence the discussion of damages generally below.
152. It will follow from the Tribunal's determinations below that whilst there was no limit to the recoverable service charges for the major works arising from deficiencies in a consultation process or challenge to their amount, in the event no part of the service charges for the major works are payable.

The defence of set- off

153. The Respondent served a Defence and Counterclaim in the Court proceedings, subsequently amended as explained above. That in effect contends that no service charges are payable and additionally claims a sum by way of counterclaim but where that latter element is a matter for the Court. It is imperfect to describe that as a defence in terms in Tribunal proceedings but a useful shorthand title.

Law and general approach

154. The question in this section is therefore whether the Respondent has demonstrated that any sum should be offset against the service charges which the Tribunal has found to otherwise be payable because of historic neglect and/ or other breach of covenant, and if any then the appropriate amount. It is not in issue that the defence of set- off is a matter for determination by the Tribunal. That was also confirmed in *Continental Property Ventures*.
155. Much of the relevant factual matrix has been addressed in relation to the historic neglect argument above. So too the legal effects. The Tribunal has found that the Applicant was first in breach in 2016 and indeed action then would have prevented ongoing effects from 2018 onward. The Tribunal has determined for the purposes of potential sums payable to the Respondent that a reasonable time to address the defects present as at November 2018 runs to the start of September

2019. Hence, the question is the amount of those damages for the period from the start of September 2019 until Spring 2021 and any relevant period beyond. The Respondent's damages claim does not end at April 2021 if he still suffered unresolved impact from the breach until that time which should have been resolved, which he did- see further below.

156. The first element is the damages because of reduction in amenity experienced by the Respondent in respect of the Property in consequence of the damp and other disrepair to the Property arising from the Applicant's breach. The second is the damages for specific elements of cost or loss. The Tribunal takes those in order.
157. Mr Gallagher asserted in his submission that the appropriate amount of damages, and implicitly of set- off, is 10% of the letting value, which he argued to be £90.00- based on a letting value of £900.00. The Tribunal does not agree with that valuation but addresses first the basis of the relevant calculation.
158. Whilst Mr Gallagher did not refer to any specific case authorities specifically in his written submission, it is apparent to the Tribunal that he had in mind at the time authorities such as *Calabar v Stitcher* [1984] 1WLR 287 and *Earle v Charalambous* [2007] HLR 8 and indeed he provided a copy of the latter as part of a set of Additional Authorities. In the first of those, it was held that an award of damages should restore the lessee, as far as money could, to the position he or she would have been in if there had been no breach and was not limited to diminution of rent paid, very low as that was in the particular case, but rather was to be the appropriate sum for the unpleasantness of living in the flat.
159. *Earle* held that a long lessee was not limited in a damages claim to discomfort and inconvenience, which was only a symptom of the wider interference with enjoyment of the asset suffered. The starting point, but not necessarily the end point, was the resulting reduction in rental value arising from the disrepair. The Property was not rented out with a direct impact on the market rent: it was occupied by the Respondent who therefore experienced the direct effects. So, the reduction in letting value, whether of 10% or otherwise, is relevant, but not the whole story applying the case authorities.

What is the end point for the damages claim?

160. The simple answer is that the end point for the damages claim is the time at which the effects of the breach are rectified or would have been rectified but for matters preventing that which means that the end point should be treated as earlier. The Tribunal addresses the matter in two parts, firstly external works and secondly internal works.
 - External works

161. In respect of external works, the Tribunal adopts the actual date for the undertaking of the external works, the Tribunal does not find any other dispute should have prevented the external works being undertaken sooner having found nothing from the Respondent which should have delayed those.
162. The Respondent made the written report in November 2018. Ms Tina Conway from the managing agents inspected on 28th May 2019 and it will be easily identified that is approaching 7 months (6 months and 22 days to be precise) later than the written notification. The Respondent relied upon an email seeking to arrange that [171]- which notes there is said to be damp penetration. Ms Conway found damp to both the front and the rear.
163. It will readily be gleaned that the Tribunal is not impressed by the Applicant's speed of response even after the written notification and Mr Haslam's candour in the hearing does not mitigate that. The Applicant says that it became aware of the extent and nature of the damp to the Respondent's flat when Ms Conway attended, which is plainly correct that in practice, although the fact that is what did happen does not assist the Applicant given the Tribunal has no difficulty in finding that the Applicant would have known earlier if it had acted more quickly in respect of the email, even leaving aside any earlier time. The prompt action of Ms Conway in May 2019 to instruct a surveyor does not overcome the lack of speed otherwise and indeed highlights the progress which could be made with appropriate focus.
164. It has been identified that Mr Pook prepared a report- June 2019- and a specification of works- August 2019. That is broadly consistent with the timescale considered appropriate by the Tribunal above. In August (the Tribunal understands front) and October 2019 (rear) clearance of gutters at the Building took place. However, it is abundantly clear those were no more than a temporary measure and did not negate the need for the much more extensive in schedule for the major works the fabric of the Building. Nor did the work identifiably improve matters within the Property.
165. The Applicant did not demonstrate anything to have happened to make progress thereafter for some months. The Respondent's assertion that nothing was done until the council became involved as below is not markedly out of kilter with the events the parties identified.
166. As identified above, the council served an Improvement Notice in April 2020. That month the documents from Mr Pook were sent to the Respondent. Irrespective of the effect of anything which happened after, the Respondent could have done nothing to reduce the period for which damages are payable until that point plus the period thereafter by which external works would realistically have been undertaken. That has been identified above as 7 to 8 months so around the end of November 2020 give or take a couple of weeks. Any reduction of period

of damages for external works not being undertaken and their effects could only be from December 2020 to end of April 2021 at most.

167. The major works pursuant to the specification drawn up by Stuart Radley Associates were due to start in late 2020. They actually started in January 2021, delayed because of the contractors. The Tribunal does not regard the original contractor pulling out due to internal problems which arose at the particular time being relevant to the period for the undertaking of works. It is a foreseeable problem, but the Tribunal determines does not here go to alter the period of delay to be considered, not least where work ought to have been long since completed before that issue arose.
168. The Tribunal considered the issues which arose in practice with persons entering the Respondent's Property- a lot was said about that by witnesses and in documents and some is returned to below. However, the Tribunal finds none of that prevented the Respondent accessing the exterior of its own Building in any event and the issues arose after the Applicant knew the external works to be undertaken and the dispute between the parties related to only certain elements of internal works with no identified effect on the external ones. For example only, whilst Ms Jenkins only undertook her inspection of the internal condition specifically in March 2021 that did not prevent the progress that was made with external works which had started before then.
169. The timing of the external works was rather a reflection of the point at which the Applicant acted on Mr Pook's specification and the rate at which it did so, the first Notice being a few weeks after the Improvement Notice, the remainder taking the next months and the external works starting when the contractor could from that point. The timing in practice is again longer than the Tribunal considers the most reasonable in light of the condition of the Building and the internal effects of that, so again is down to the Applicant.
170. The Tribunal accepts that limits were imposed by the Covid 19 pandemic to an extent from March 2020 onwards. However, that did not prevent the undertaking of external works albeit some additional precautions may have been required (or indeed internal works, although subject to various requirements at times). Mr Halsam in oral evidence said that was not a major contributor. Plainly the pandemic had no impact prior to March 2020 when the Tribunal has found the works should have been complete. There is not enough demonstrated reduce the period to earlier than when the works were undertaken.
171. The Applicant contended that the section 20 process was delayed because of disputes about fire safety but the Tribunal does not accept that as sufficient reason. There was no need to focus upon one to the detriment of the other and of course the Applicant had not been correct in its approach to the doors.

172. It should be said that the statement of case indicated the works were complete by March 2021 but that was signed by Mr Donegan and the witness statement of Mr Haslam who was directly involved in matters talked about “substantially complete by April 2021”. The Tribunal cannot adopt March in the face of that and indeed perceived that at least some work must have remained by May 2021, otherwise the word “substantially” would have been unnecessary. However, the Tribunal is content to adopt April 2021 as the appropriate approximate time.
173. Hence the damages claim in respect of the external defects arising from the Applicant’s breach is for the full period September 2019 to April 2021 inclusive.
174. The losses from September 2019 do not include until later the separate water damage to the living room ceiling asserted by the Respondent. That was, he contended, reported in January 2020, so separately to the email- and of course after September 2019. The Schedule of Alleged Disrepair did not explain how a report was made in January and in particular that it was made in writing. There was mention in an email of 22nd April 2020, very brief but enough that it should have prompted the Applicant to investigate if it was not already aware. The Tribunal notes that the Improvement Notice of April 2020 includes reference to water dripping through the living room ceiling, which the Tribunal infers to be the same defect. That is not a notification by the Respondent but rather by a third party and not on behalf of the Respondent but because of its own responsibilities. However, that has no impact because of the Respondent’s own email around the same time. The Tribunal does not accept the Applicant’s assertion in the disrepair Schedule of a report only in 2021.
175. The Tribunal finds that specific water ingress to the ceiling would not on balance have occurred if the major works had been completed when they should. However, the Tribunal does identify that this particular item impacts no more than marginally on loss of enjoyment and damages further in the context of the other defects.
- Internal Works
176. There is no good evidence of the Applicant having intended to undertake internal works until the external ones were complete and indeed the Tribunal’s conclusion as to the Applicant’s position is that one would have followed the other. At best, the suggestion of Bate and Albon Solicitors [505] that the internal works would not commence until external works were well advanced might have brought forward the date of internal works a little, but the Tribunal considers that the less likely scenario.
177. To the extent that the Applicant delayed the external works, the Tribunal finds that the matters which caused internal effects were ongoing. There can be no question that the Applicant is liable for the

ongoing, and any increasing, internal effects. That makes the answer in respect of damages for internal effects simple to at least April 2021.

178. The rectifying of the external disrepair does not of itself cure the internal effects, much as it may prevent them worsening, so they remain suffered by the Respondent. The contractors, or other contractors, would then have needed to undertake the internal plastering and related works. Assuming ongoing occupation by the Respondent- and there has been no suggestion that a decant might have been paid for- there would have been a need to work around him and his possessions and to move items from rooms being attended to into rooms not at that time the subject of work. Even in the absence of any other issues, it would have been likely to be engaged in some discussion with the Respondent as to decoration and would have needed to obtain quotes. A decision would have been required as to who to instruct and contractors engaged. There would have been some delay in availability- and indeed one of other contractor may have been rejected due to the extent of the delay. The decorating could not have been undertaken until the plastering was complete and the plaster had dried sufficiently for paint and similar to be applied.
179. The Tribunal determines that if good progress that could realistically have occurred in or about September 2021. The Tribunal considers that the realistic period would have been six months assuming that both parties focussed on having the works addressed without unnecessary delay. The Tribunal will not limit any set- off to that point if it finds the Applicant did not act to arrange works to be completed within that period: likewise the Applicant should not be penalised if the Respondent caused the works to be undertaken more slowly.
180. It is at this point that the actual events from April 2020 onwards come into sharper focus. There was quite some hearing time devoted to such matters by the parties and to allegations and counter- allegations and quite some focus on those events in documents. The Tribunal does not find it helpful to set those out in so much detail and rather sets out its conclusions and the reasons and relevant facts for those.
181. The Respondent was unhappy on receipt of the specification in April 2020 that Mr Pook had not identified some of the internal disrepair the Respondent asserted existed, most significantly to the middle bedroom, and refused to permit him to return to address that, which was the Applicant's first proposal. In essence there was a dispute about whether the Respondent had showed Mr Pook the areas of dampness (and so not the middle bedroom) or he had been left to inspect any room he wished.
182. Whilst the Tribunal recognises the Respondent's own unhappiness as what he considered to be missed elements, irrespective of why those arose they were limited and the Tribunal does not accept the Respondent's approach to be objectively reasonable. The report identifies the external disrepair and there has been no issue that it was

correct about that or that the works required were not appropriate. It also identified various internal effects, the Tribunal finds the comfortable majority. The Respondent said aspects were missing, which is unfortunate but not outrageous given the extent of the defects considered overall. Insofar as the Respondent considered that items were missing and Mr Pook offered to return to look at those, that was entirely reasonable. The disagreement as to why the items had not been identified the first time in the context of Mr Pook's overall inspection and report ought not to have caused the difficulty it did.

183. The Improvement Notice served in April 2020 [368- 388] included requirements for the large missing areas of plaster identified to the middle bedroom amongst the water ingress into various areas, high damp reading and windows. However, it focuses on hazards to health and does not proffer an opinion as to any breaches having caused those.
184. In any event, provided any disagreement about internal works had been resolved by Spring 2021, the internal works could follow on from the external one.
185. The Applicant's case is that it would have undertaken any necessary replastering works and any consequent redecoration but for the disputes raised by the Respondent. The Respondent's position was essentially that there were issues with all of the surveyors instructed by the Applicant, including Mr Pook as above, although the Tribunal does not accept much of that to be well- founded.
186. The Tribunal accepts that April 2020 was a difficult time for the Respondent. The Tribunal is mindful that the Respondent was vulnerable because of medical conditions and so the pandemic is likely to have a significant effect, including reasonable concerns about entry into his Property. In addition, his mother fell very ill and sadly died. The Tribunal extends its sympathies. To quote the Respondent, "This year has hit me for six with losing my mum to cancer" [513].
187. It is not apparent that the Respondent's medical situation was fully explained to the Applicant at time, which is unfortunate as that may have assisted relations by increasing understanding (although as noted, lockdown should have been irrelevant as work should have been completed), but the Applicant did make relevant references and so the Applicant ought to have had some knowledge and could have sought more. That the Respondent has autism and motor neurone disease. may very well have affected his reaction to matters. The Tribunal lacks the evidence on which to say more. Nevertheless, the Tribunal finds that the Applicant largely treated the Respondent's response as simple awkwardness and does not appear to the Tribunal to have given much consideration to the above covid and medical features. Had it done so, some of the approach taken and language used might sensibly have been tempered.

188. It is far from irrelevant to events during the above period that the Respondent had by say March 2021 experienced effects for some 28 months since his email in November 2018 and longer insofar as there had been problems since 2016. It is very clear from Mr Pook's report that the Property was in an unpleasant condition. The Respondent will understandably have been unhappy about that- and was very clear that he was unhappy about conditions he described as squalid- leaving aside the other events described above. At a point much closer to the oral notification, relations between the parties would have been likely to have been better, at least from the Respondent's perspective. At a point much closer to the written notification similarly although perhaps a little less so.
189. As to events, the Applicant sought to arrange a different surveyor to attend from the same company to review the internal effects, one Mr Thoms MRICS. The Respondent refused that stating he had no faith in the company. He also stated in July 2020 that he would not agree access due to Covid [500] but an hour later changed his mind and relented about that. He later said he would allow Mr Pook if he apologised but retracted that on being served with the second Notice.
190. The Applicant sought to arrange an alternative company and, in the event, instructed Sussex Surveyors Limited. However, when the surveyor, a Mr Westgate, attended the Respondent required more of a survey to be carried out than the Applicant intended, which was limited to the middle bedroom and loft area. Given that Mr Pook had addressed most internal areas to the extent of a specification (and there was the Improvement Notice) the Tribunal finds it was unnecessary for the further surveyor to do more than the Applicant had instructed. The Respondent subsequently also expressed unhappiness that the surveyor said he arrived 5 minutes late when the Respondent it was 10 minutes late. He was additionally unhappy that the surveyors referred to the Applicant as landlord when R owns his flat. The Tribunal finds the former of no relevance to the overall picture and notes that it has used the term landlord in this Decision, as often the freeholder with leaseholders will be.
191. Another issue arose when surveyor attended in January 2021 because of concern at the Respondent's dog, which it was said jumped up. It is far from clear that was an aggressive action. Whilst it was sufficient to deter Mr Westgate from inspecting, the Tribunal sets no great store by it.
192. In March 2021, Ms Jenkins provided her report and specification [769-792] limited to the internal works required to the Property, her attendance having been arranged instead of that of Mr Westgate. Ms Jenkins did not identify water ingress into the middle bedroom and did not comment on the effect of water ingress elsewhere in the Property on this room in her report. She identified effect of water ingress in the rooms Mr Pook had and along the same lines. The works specified were, as the statement of Mr Haslam identified, very much in

accordance with those specified by Mr Pook. Reference was made, at least specifically with regard to the living room, to lime plaster.

193. If all had been well, that would have been ample to enable the agreed internal works to be addressed following completion of the external ones (or even a little sooner). Hence, the specifics of the earlier events and the merits or otherwise of the Respondents approach to attendances did not much alter the progress there could have been. The Tribunal considers on balance there was a modest degree of delay because if the survey report had been sooner, it is at last possible that the Applicant would have taken some steps towards obtaining quotes- from the contractor or others- for the internal works and they would have been closer to being able to commence. Equally, nothing in the history suggests that they would have followed immediately.
194. On 19th May 2022, so a significant time later, the Respondent emailed Mr Halsam querying Ms Jenkins opinion [554]. Given there were no works identified as needed to the middle bedroom, that the same query had been raised about the report of Mr Pook but the bedroom was mentioned in the Improvement Notice, that is not wholly surprising. However, the question was whether the Applicant was obliged to undertake additional work.
195. Tackling that specific matter, the Tribunal identifies that two surveyors inspected the Property. It is unclear whether Mr Pook did not identify works to be carried out by the Applicant because he did not look in the room (or if it were correct was not shown the room) or alternatively because he considered there was nothing that the Applicant was obliged to address. Ms Jenkins also did not require the Applicant to undertake work to the room. The Tribunal notes it plausible that damp was contributed to by the water penetration to the Property by way of the higher amount of moisture within the Property than otherwise there would have been and to the encouragement of damp and mould to surfaces but there was no evidence demonstrating that. There was deterioration of areas of plaster, which the Improvement Notice included but without demonstrating responsibility of the Applicant under the Lease.
196. Before continuing on the timeline, it is appropriate to pause. There had been no earlier query from the Respondent but yet the Applicant was not ready to arrange the internal works.
197. Mr Haslam referred in his statement to sending the report of Ms Jenkins to the Respondent and Mr James Elliott of the council. It is unclear when. However, as the response was dated 21st July 2021, it appears the provision was not immediate upon the Applicant receiving the report. It took the Applicant until December 2021 to obtain the 3 quotes it received: it appears that the major works contractor was not approached. One plaster queried the need for lime plaster. There was then contact with the Respondent who, also on 19th May 2022 proposed the use of Limelite plaster as an alternative.

198. There is an insinuation from Mr Haslam in his statement that contractors were put off by the Respondent, but no tangible evidence and certainly no evidence that the timescale would have been reduced. The Tribunal could not make such a finding on the evidence. There was no indication of marked other progress before the Limelite suggestion. Equally, the suggestion of Limelite was regarded as a reasonable one. On the other hand, the Tribunal finds it likely that the approach of the Respondent to internal works and the dispute about the middle bedroom played some part in delaying the Applicant making progress.
199. In October 2022, again a while later, Ms Jenkins prepared an addendum report which sought to address suitable plaster [793] and allowed for Limelite. Mr Haslam describes that as in his statement “belatedly” and it is certainly quite some time- 5 months- after Limelite was identified as suitable. The Tribunal understands that Ms Jenkins was reverted to because of the Improvement Notice which the Tribunal accepts as sensible.
200. In practice, the Applicant would have needed to return to those who had provided quotes and asked for revised ones, which they may or may not have provided, and/ or- most would have needed to obtain quotes from new contractors. Even assuming an improvement in pace from the Applicant and availability of contractors, a period of at least 4 months for the works is considered by the Tribunal probable. If the Applicant had been pro-active, which the Tribunal finds the less likely possibility, so that contractors had quoted in the expectation of Ms Jenkins agreement, works would most likely have been completed by late winter 2023. If no contractor was instructed by the Applicant to even quote for work until after Ms Jenkins had responded, the more likely time for completion would have been at least April 2023.
201. On 22nd December 2022, the Improvement Notice was revoked [556]. The Applicant says that was due to the Respondent’s intransigence and the council’s knowledge of that and that the Respondent would never be satisfied, although there is no other evidence of that and rather the reason expressed was:
- “Substantial works have been completed and the risk to an occupier’s health and safety has been reduced to an acceptable level. Some decorative work remains to be completed, but it is appropriate for the Council to revoke the Notice and to allow the leaseholder and freeholder to arrange this work as a civil matter”.
202. Nothing turns on the council’s reason specifically. As for whether there was actually intransigence on the part of the Respondent and that has effectively prevented the internal works being undertaken is far more relevant.
203. The statement of Mr Haslam indicates effort by the Applicant effectively ended at that point, it gave up. There is no suggestion of the Applicant attempting to make further progress with the internal works as identified by the surveyors. No payment for the Respondent to deal

with the works or credit against any other sums is mentioned. The statement says twice that the payment by the Applicant for internal works- and implicitly seeking to arrange them- would have been a goodwill gesture. Mr Haslam expresses his view that the Respondent should pay for the internal works. It may be Mr Haslam perceived them to be something the Applicant was not required to do, but if so, the Tribunal unequivocally determines that to be wrong and rather the Applicant was obliged to address the internal effects of its lack of external maintenance.

204. The Tribunal has considered carefully how to apply that and also the contribution by the Respondent to delay and lack of internal works to the damages claims.
205. The Tribunal finds that the internal work was not undertaken principally because Applicant ceased attempting to undertake it despite the effects of its breach continuing. The Respondent contributed to the work not being undertaken and completed as above and in doing so failed to mitigate his loss. The Respondent was insistent about work being undertaken to the middle bedroom where there is no dispute work was appropriate to that, but the evidence does not support that being in consequence of the Applicant's breach and that the Applicant was required to address it, and that insistence was a significant cause of the Applicant's efforts to undertake the internal works ceasing.
206. Notwithstanding that the Applicant had scarcely assisted the situation by the substantial delay in tackling the condition of the Building- from Spring 2017 on the Tribunal's findings- the Respondent's approach is regrettably a major cause of the internal works having not been completed following the external ones and so that needs allowing for. The Tribunal does not know to what extent that has been affected by medical matters and other events, but the Tribunal determines that in any event in fact the Respondent failed to limit his loss by not agreeing works other than to the middle bedroom.
207. The Tribunal considers that the appropriate course to take with regard to mitigation of loss in respect of both general and special damages is to limit the Respondent's general damages, which could otherwise extend to the present date and ongoing, to December 2022 as the most practical way of taking account of the degree of the Respondent's contribution to delay. That is both the likely effect in 2022 but also the extent to which by April 2021 obtaining quotes and similar steps for internal works were behind the position the Applicant would have otherwise achieved. Equally, the Tribunal is content that up to that point and notwithstanding that the Respondent did not wholly help matters, it has not been demonstrated that the Applicant would have attended to the internal effects from the Applicant's breach of covenants sooner.
208. In contrast, the Applicant having decided that it was not going to make further efforts to complete the works and to leave the Respondent to

pay for those, the Applicant did not remedy its breaches and did not incur the costs that it would and should have to address the internal effects of its breaches. So, the end point is not an end point for a claim for special damages. The Tribunal determines that the Respondent remains entitled to special damages for the cost of undertaking the internal works to cure the effects of the Applicant's breach. The Tribunal makes clear, for the avoid of doubt, that it determines that the above limit to general damages addresses any failure to mitigate loss in respect of both general and special damages.

Disrepair to the Property

209. The Tribunal takes the matters principally from the report of Mr Pook, which whilst only a document for these purposes has at no point been suggested to contain contents in any way incorrect- much as there is the Respondent's assertion it should have added more. That is dated June 2019 as previously identified. It is a good indication of the condition of the Property as at September 2019 and plainly the internal condition will not have improved between then and April 2021 when the external works were completed and indeed the effects of the external disrepair remained thereafter.
210. The Tribunal regards the report of Ms Jenkins as primarily confirming that there had been no marked change by March 2021. The Tribunal was a little troubled by it being apparent that Ms Jenkins had not seen the report of Mr Pook, until the morning of the final hearing, or the Improvement Notice served by the local council- she said in evidence that she met Mr James Elliot at the Property, but it was not clear how that assisted. The particular documents would have been of obvious relevance. It is therefore surprising both that the Applicant/ its agents did not provide the documents to Ms Jenkins and also that Ms Jenkins did not enquire about the existence of any such documents- at the very least when she was being asked to consider the interior only which is the less than usual situation, but also because there was plainly work being undertaken to the Building when she attended and a high likelihood of documentation regarding that. It cannot be known how Ms Jenkins report would have been presented with the benefit of the report of Mr Pook and it may be that the conclusions would not have altered given that the evidence of each regarding the interior was similar, although it would be surprising if there had been no impact at all. The Tribunal was also surprised that she said in evidence she saw blocked gutters but did not mention attending to them. The Tribunal cannot take the matters set out in Ms Jenkins' report as agreed facts. Given those matters, the Tribunal does not find the report of Ms Jenkins or her other evidence, limited as it was to fact, of much assistance further to the report of Mr Pook.
211. The Tribunal agrees with the Respondent- who raised the point with Ms Jenkins- that the witness statement summarises that there were two contributors to damp- water penetration and condensation, much of the latter being put down to matters outside or potentially outside

the responsibility of the Applicant. At that point, Ms Jenkins is a witness for the Applicant and is not an expert witness able to present opinion evidence. The Tribunal therefore ignores those aspects. The Tribunal does accept that Ms Jenkins reasonably sought to refer to her much longer report and that referred to evidence of water ingress and that in oral evidence she accepted that walls which are wet are likely to be colder and so more vulnerable to condensation. A number of questions were asked on that theme.

212. So, in terms of the internal disrepair from external defects, firstly, there was damp to the landing area within the demise beneath the high- level window together with salt efflorescence and deterioration to the plaster of that wall, also affected by staining (including by water running down the wall) and deterioration of decoration. Damp meter readings were high. Whilst that is only a document for these purposes, there has been nothing demonstrating the contents to be incorrect. There had been or more likely still was, water penetration into that area.
213. Secondly, the main (rear) bedroom is affected by high damp readings to the (north) wall which included that by the landing, extending down from the ceiling to approximately windowsill level. Lower readings were identified elsewhere in the room, which the Tribunal finds to have been affected by the high damp to the particular wall. The Tribunal adds to that the additional disrepair to plaster set out in the Improvement Notice.
214. Thirdly, as to the living room, the effects are described as evidence of damp to the same wall as the landing window and onto other walls, being particularly high to the top of the corner between that wall and the front wall. Staining, cracking and deterioration are described. The Tribunal finds that the probability is that those problems with the same wall as afflicted in the landing are related to the matters reported by the Respondent. Mr Pook describes damp to the north end of the beam between the main room area and the bay, with further cracking, staining and deterioration to plaster. The Tribunal notes that beam is situated below a valley gutter- Mr Pook so stated in the document and that has not been disputed- and content that proper investigation of the gutters and action would also have avoided that. The (front) east wall is affected by the north wall. There is also evidence of damp penetration to the far front corner of the room to the south- east, which the Tribunal finds will also on balance have related to the other defects.
215. As discussed above, there is no evidence which provides a link between water penetration and the condition of the middle bedroom and so the Tribunal excludes the room from its consideration of effects of the Applicant's breach for the purpose of damages and any reference below to the condition of the Property does not include it. Hence the point is not repeated each time.
216. The Tribunal has considered how the blocked- up vents fit with the remainder of the position. The purpose of the vents is of course to

assist with ventilation. The Tribunal considers that ventilation is important to assist with avoidance of condensation and consequent mould growth. The water ingress is significant for adding to the moisture otherwise present in the Property which arises from normal use of the flat.

217. Whilst in a somewhat broad and vague statement it is likely that if the vents had been open, they might have assisted in reduction of condensation because of the aid to airflow, there is nothing which enables the Tribunal to make any proper assessment. The Respondent has referred to the matter as if the vents are something that the Applicant may have been obliged to address, although it is unclear why. Equally, the Applicant has not suggested that the blocked-up vents added to the effects on the Property of water ingress and that there was any contributory negligence or similar by way of the Respondent not taking the step of unblocking the vents. In those circumstances, the Tribunal does not make any adjustment one way or another in this instance in consequence of the blocked vents.
218. There is relatively limited mention of windows. Mr Pook describes the windows as lacking putty seals, to not be openable- but not why- and to lack external maintenance. The Applicant denied that the condition of the windows fell within the written notification given but did not dispute what Mr Pook described as accurate. As explained below, the Respondent's claim for the cost of window replacement fails for other reasons.
219. In the event, areas of window were boarded up. The Respondent's case was expressed as being that the frames rotted due to lack of maintenance externally, that the windows became loose and that one blew out of the frame. He said that the blocking up was by the managing agents (or the Tribunal perceives as being more likely was on their behalf). The evidence of the extent was not clear to the Tribunal- a photograph [732] from June 2023 showed a small area of boarding to a side window to living room bay but that was the only one. The Tribunal is unable to attribute any element of the damp or other deterioration to that- the evidence of any impact is too unclear. It is notable that the significant areas of damp and deterioration identified by Mr Pook however arose without the windows having been blocked up and so any attributable effect could only at most be some part of any worsening. So, whoever may have blocked up the areas of window and for whatever reason, it has no impact on the overall outcome.
220. It is relevant that responsibility for the windows was shared by the parties. In effect the Applicant is responsible for effects of not painting the frames- the Tribunal accepts in general terms that if a wooden window frame is not repainted periodically, the paint will flake, the wood will not be protected and will get wet in wet conditions and then dry again in dry ones and that will cause deterioration. However, the Respondent is responsible for unrelated deterioration- the windows form part of the Property and their maintenance is a matter for him

and not for the Applicant, except for the painting of the frames. The Respondent has not demonstrated it to be lack of painting as opposed to any aspect of maintenance for which he is responsible for to be the cause of the windows themselves- the glass- becoming loose and the glass is part of the Respondent's responsibility. The putty seals, which Mr Pook identified the windows to lack, for example, fell within the responsibility of the Respondent. Although lack of painting and the effects may have impacted on deterioration of the seals, good evidence of a causal link is lacking. It is insufficiently clear where the effects of failure by one ends and by the other starts.

221. The Tribunal determines that it cannot have regard to the in respect of the condition of the Property for the purposes of the damages claim. The Tribunal the impact on the damages claim would have been modest at most. The Tribunal considers it unnecessary to go further.
222. The above condition as described by Mr Pook, where appropriate to consider it, is therefore the condition, or very close to it, that the Property was in at the time at which the Applicant commenced liability for damages towards the Respondent.

Respondent's claim for damages for historic neglect/ wider set- off

223. The time period of breach relevant is therefore in round terms 37 months from the start of September 2019 until the first half of December 2022 inclusive.
224. The Tribunal is aware from its general experience that the Local Housing Allowance paid by the local council for a 2- bedroom flat is £940.00 and that the market rent is likely to be at least that sum for the majority of similar properties. The LHA is something of a baseline without wishing to be over- simplistic. That said, the Tribunal needs in any event to consider the appropriate level of market for the average of the end of 2018 until September 2021.
225. The Tribunal determines that the market rent for a broadly average two- bedroom flat in the area in which the Property is situated would have been between £850.00 and £1,000.00 per month. The Tribunal of course has the determination of market rents as one of its major jurisdictions and is content that it can properly apply expertise to the determination. On balance, the Tribunal is prepared to accept the level from which Mr Gallagher worked of £900.00. The Property is on the second floor and not the largest, so lower within the range rather than towards the top of it is considered by the Tribunal to be appropriate.
226. The Tribunal values the Property with the defects identified, to four rooms or areas, so the majority of those in the Property. The Tribunal determines, taking the effects in the round that the average appropriate month by month rental figure for the Property during the period in the condition arising from the Applicant's breach would have been £550.00.

227. The Tribunal accepts that just about any property in just about any condition is capable of being rented at the appropriate price- although there are exceptions in extreme situations. Equally, in any location, and that last factor will be relevant. The Tribunal has considered the defects and the sort of reduction likely in order to facilitate letting of the Property in that condition in arriving at the above figure.
228. That reduction takes account of the whole of the effects of disrepair. The Tribunal is not awarding damages for all of that. Instead, the relevant damages are for the condition of the Property during the period September 2019 onwards less the condition of the Property by September 2017 when the Applicant should have completed works and was first in breach (albeit not at that liable to pay damages). The Respondent cannot claim damages for matters which do not arise from a breach by the Applicant. Hence the description above of the finding that an oral notification was made as something of a double- edged sword- it brought forward the date of breach by the Applicant but it does reduce not increase damages.
229. It was identified by Mr Andrew Elliot in his evidence that there was a musty smell in summer 2016 and black mould at a high level below the window together with a damp patch and mould growth.
230. Having identified that there was not a catastrophic event and that disrepair increased over time, the damp and mould growth will have been worse by September 2017 but not close to the level it had reached when Mr Pook prepared his report in June 2019 and which remained in September 2019 and onward. By then, most of a further two years had passed. That is most of two years of ongoing water penetration, damp and deterioration. The Tribunal determines that most of the condition as it had become by June 2019- and remained or worsened- will have arisen during the period after September 2017. On the balance of probabilities, the Tribunal has found above similar effects will have been present by September but to a much- reduced extent, including somewhat less deterioration of plaster and less visible damp.
231. There is likely by September 2017 to have been some concern about rental of the flat and other properties without that concern available, with impact on rental value which is at first blush out of proportion to the relative effects at the time as compared to September 2019 but reflects the market.
232. The Tribunal determines that as at September 2017, the effects on the Property would have reduced the rental value of £750.00 per month.
233. It follows that the Tribunal determines that the reduction in rent arising from the Applicant's breach is £200.00 per month. Coincidentally, that is the sum the Respondent suggested, although the Tribunal has concluded that it should not be restricted by that if it determines the effect as set- off should be greater.

234. That reduction in rental value is the starting point and not the end point for the interference with enjoyment and so the next question is one of any addition which should be made to reflect the actual loss of amenity and to take account of the fact that the Respondent was in occupation and experiencing the effects.
235. The Tribunal having noted the evidence that the Respondent experiences autism and motor neurone disease considers that there is sufficient to identify that the Respondent has conditions which could potentially be exacerbated in one way or another by either damp arising from water ingress or from delays in undertaking works, related stress and similar. The report also indicates that the Respondent is sensitive to poor living conditions. Mr Andrew Elliot expressed his personal opinion that there has been mental deterioration, but the Tribunal cannot rely upon that as not medical evidence.
236. The Respondent did not seek and was not given permission to rely upon expert evidence of medical conditions and effects upon them. The report is not expert evidence. That is a substantial point in itself. It is also right to say that in any event the report does not address the conditions at the Property, the conditions and any effect on them which could support a personal injury claim. Mr Gallagher correctly noted that the qualifications of the author, specifically it might be said to comment on the particular situation and effects, are not known.
237. The Tribunal does not have to receive expert evidence in order to make a determination of medical impact. Mr Gallagher referred to Court protocols, but the Tribunal is considering set- off. The approach which ought to be taken by a Court to a personal injury claim and under different rules of evidence is not irrelevant as a consideration but is not the complete answer even if the Tribunal were considering set- off due to specific injury, whether exacerbation of a condition or otherwise. In any event, the Tribunal is not at this point considering that. Rather the Tribunal is considering any impact on the appropriate sum for loss of amenity and related.
238. The Tribunal accepts on balance and on the Respondent's own evidence alone that the effects upon him are greater than the average. The Autism Assessment Report, treated as a document, lends some support. Regards should be had to the Respondent himself. Even the average potentially merits a degree of addition to reduction in rent alone. The Tribunal considers that the Report does not enable additional effects on the particular Respondent to be identified clearly but both that and other evidence merit some cautious addition.
239. But for any addition, the Tribunal would have increased the monthly sum for loss of amenity by 15% in this instance from the relevant loss of rent and to allow for the Respondent's occupation and direct experience of the problems, so by £30. In the circumstances, the Tribunal considers that an additional £10.00 per month is appropriate.

240. Taking matters in the round, the Tribunal determines that loss of amenity adds a £40.00 per month in this instance.
241. The interference of enjoyment is therefore valued at £240.00 per month for the relevant period of 37 months. (It necessarily follows that the Applicant's argument for £90.00 per month is rejected.) That provides a total of £8,880.00.
242. The Tribunal determines that the Respondent has failed to demonstrate any successful claim for personal injuries as such.
243. The Tribunal accepts that such an injury does not include ordinary discomfort or inconvenience resulting from disrepair, unless this has resulted in disease or impairment of the tenant's mental condition.
244. The Tribunal does agree with the Applicant that the Respondent has not provided any medical evidence, strictly expert evidence or not, which supports it being more likely than not that there was an exacerbation in, or any other effect upon, any medical condition of the Respondent. The evidence provided which demonstrates the Respondent to experience medical conditions and there to be sensitivity, did not provide that confirmation. In particular, and which the Tribunal gave particular thought to, the Respondent asserted that stress from the situation had required treatment for mental health conditions, which suggested there could be something amounting to an injury- so more than loss of enjoyment- but there was no medical evidence which drew that connection.
245. There is no inference which can safely be drawn from the information available. The fact that the Respondent has conditions which could be affected, does not mean that there is sufficient for the Tribunal to determine that they actually were adversely affected giving rise to a personal injury claim.
246. The Respondent sought in closing to provide an explanation for the lack of expert medical evidence. The point about new information explained above applies to that. However, in summary the Respondent gave two reasons. The first was the death of his dog and the impact on him. The Tribunal also extends its sympathies in respect of that. The second is the additional time and effort which the Respondent considered would be involved in dealing with medical evidence in addition to the quantity of time already being spent by him on the case. He also considered that the instruction of a solicitor and medical experts would be required. At least the last of those is undoubtedly correct and it is the lack of medical evidence which is explained above to have prevented the claim being able to succeed. The Tribunal appreciates that additional elements to a case inevitably add to the time and effort involved.
247. However, even ignoring that information largely being new in closing, none of it actually assists the Respondent. The Tribunal can understand and sympathise with the reasons: that does not alter the

fact that the Tribunal did not have the evidence that it would have required and it can only make determinations on the basis of actual evidence (including where that enables the drawing of other inferences).

248. As Mr Gallagher accepted, the above any sum should reflect general damages is plus a further 10% to reflect the Court of Appeal's decision in *Simmons v Castle* [2012] EWCA 128. That increases the relevant figure of £8,880.00 by £888.00 to £9,768.00. There was no assertion on behalf of the Applicant that the 10% does not apply to damages for set-off, although the Tribunal considers that if there had been such a limit, it would not then apply in the County Court which would add the 10% so the end result in financial terms as between the parties would be the same.

Specific losses

249. In respect of Special Damages, there are three significant elements set out by the Respondent in his counterclaim (And set-off). Those are costs of re-plastering the Property, costs of redecoration and cost of replacement windows. The Tribunal bears carefully in mind in respect of each of them that if the work had been undertaken by the Applicant, that would have been in 2023 on the findings made.
250. The Applicant in the statement of case asserted in a bald statement that the Respondent was estopped from claiming any special damages. The basis for estoppel was not properly explained and was not followed up with at the hearing. The Tribunal considers it can amply leave the point at the Applicant having failed to demonstrate any adequate basis for that contention and so does consider the special damages claims.
251. Mr Gallagher's written submissions argued that the Respondent should not recover special damages as the disrepair schedule did not include sums. The Directions had required a schedule of loss but in the Respondent's statement of case but in any event matters were overtaken by the permission to amend the claim granted subsequently.
252. The Applicant is liable for the internal effects of its failure to maintain, the limiting of the general damages period not changing that principle.
253. In respect of the largest element, the plastering claimed at £14,400.00, the first question for the Tribunal to consider was the extent to which that was shown to be defective
254. Mr Pook identified in June 2019 variable deterioration due to damp, stating some areas would require removal but without stating in terms which. Nevertheless, he considered that plaster affected by salt efflorescence would require removal, which the Tribunal has no doubt to be correct, and identified the external landing wall, and various areas of wall to the living room and locations in the rear bedroom specifically. That supports full re-plastering of the rear bedroom and at least the plastering of the other specific walls. That said, that was the

position in June 2019, prior to the months of further water penetration and damp and potential deterioration. Applying its expertise to the available evidence, the Tribunal determines that other areas of plaster will later have deteriorated to the extent of requiring replacement, including at least the living room and rear bedroom ceilings.

255. The estimate from Mr Spight, provided to the Respondent is very brief. It is very much a general estimate for a job, no doubt the job identified to the plasterer where the Tribunal finds it likely the middle bedroom is included. That makes sense in itself. It is difficult to make much of a one sentence quote from Mr Spight, indeed the lack of detail casts some doubt on how keen he was to undertake the work and to what extent he may have over-quoted to a point at which he might be prepared to undertake it. The Tribunal has somewhat insufficient information.
256. There is also the rather more detailed document which the Respondent also exhibited to his statement of case which is an email from M J Field [186- 188] dated 8th September 2021, originally contacted by the Applicant. That explains work considered to be involved and why. The indicated figure, including a provisional element, is £7600.00 for the relevant rooms (not the middle bedroom). The Respondent has stated (in particular in a note on the quote) that it does not involve the correct plaster and he considers the actual cost would therefore be higher. The Applicant considers it too high. The quote of Mr Field has sought to link work to Ms Jenkin's survey but neither Mr Haslam nor the Respondent were demonstrated by the evidence to be happy with the approach he sought to take.
257. The Applicant has provided other evidence of what cost it might have incurred. There are 2 quotes obtained by it, in 2021, for £5,225.00 and £5,000.00. The Applicant has argued that the Respondent should be limited to the lowest of those quotes. There were also various pages in the bundle printed from the internet about plastering costs and decorating costs. The Tribunal did not find those pages of assistance.
258. Mr Haslam also asserted that the quotes involved the application of lime plaster and not the Limelite plaster agreed, which it is said would have made the work quicker and, he considered, cheaper. The Tribunal is content with the use of Limelite. However, there is insufficient specific evidence for the cost produced.
259. The Tribunal is mindful of the age of the Property and impact of that, the damage and the work needed in respect of the room where effects of external disrepair were demonstrated. The Tribunal does not consider that £5,000.00 is the appropriate limit and has weighed the quotes and its experience and expertise.
260. It is right for the Applicant to state that the works would have been undertaken by its own contractor but for the dispute. However, the Applicant stopped trying and the limit of general damages to the point at which the Applicant might reasonably otherwise have undertaken

the works, allowing a reduction for delay caused to then by the Respondent, does not alter the fact that the Applicant did not undertake the works and the Respondent was left with the effect of the Applicant's breach which he is entitled to have had remedied (or receive the cost of remedying). There ought to be some caution about awarding the Respondent a sum greater than the Applicant would have incurred in 2023 where it can be said that the Respondent did not do all that he ought to have to facilitate that and so failed to mitigate his loss.

261. Taking all of those matters together, the Tribunal determines that the appropriate award, is £7,000.00, inclusive of any VAT.
262. With regard to the next element, the re- decoration, in a claimed sum of £5,400.00
263. The Applicant's case is that account should be taken of cyclical re-decoration, that is to say that the Respondent should have decorated from time to time in any event and the cost of that should be deducted. In principal, the Tribunal accepts that the Respondent would have decorated from time to time, whether in accordance with requirements of the Lease or otherwise. In any event, if there had been cyclical redecoration, it is at least quite likely that the Respondent would have undertaken that himself- there is no contrary evidence. In contrast it is well established law that if work is required due to the default of another, the party need not undertake the work but rather is entitled to have the work undertaken by a contractor. The Tribunal rejects the Applicant's argument that the condition did not worsen between breach and 2021 for the reasons already explained.
264. The Tribunal determines the Respondent entitled to the cost of professional decoration following the completion of the plastering- and the other- works. Nevertheless, the amount claimed is high and can only be recovered to the extent of redecoration shown to be in consequence of breaches by the Applicant. The Tribunal finds the Applicant wrong to interpret one document in respect of decoration as demonstrating the work to have already been undertaken.
265. The Tribunal accepts that the whole of a ceiling should be allowed for. Similarly, all four walls if one is affected. The Respondent is entitled to all of a given area or related set of areas being in the same condition following redecoration, rather than say a part of a ceiling being newly decorated and the remainder not being. The extent of the re- plastering does not dictate the limit to the recoverable decoration.
266. There are 2 redecorating quotes, of £4,900.00 and £4,000.00 [193 and 194]. The higher quote refers to being of a "full re- fresh", indicating the entirety of the rooms. It is not clear from either quote whether the decorator considered that necessary. It is an oddity that both quotes only seek to redecorate 1 bedroom, not least where the second bedroom was the cause of issue between the Respondent and Mr Pook and a

cause of delay with internal works. However, neither quotes indicates what the cost of decoration of the second bedroom would have been and how that would have affected the overall quote. Mr Haslam in his statement indicates an estimated cost of £2000.00 for a 2- bedroom flat but the Tribunal finds that too general to put much weight upon it in respect of the particular Property.

267. The Tribunal determines that redecoration cost is recoverable in the sum of £4,000.00.
268. The Tribunal rejects the Applicant's argument of betterment in respect of the above elements of the set- off. It is rather obvious that new plaster should be better than plaster in situ for a long time previously. However, one set of plaster is replaced with another. Likewise, decoration. There is no other way of remedying the effects of the breach by the Applicant and so the works and the outcome of works do not extend beyond repair. There is no basis for reducing the sum payable.
269. As to the windows, for which the claim is £6,687.00 (broken down during the course of the claim into 3 separate sums-£1400, £1850, £3,437. The Respondent provided quotes [181 onwards] from one company totalling the first sum and in relation to 3 windows. There are receipted invoices from the other companies- the number of windows within which is not clear and indeed there is no mention of windows at all in the scant information but for a much higher cost than the 3 windows quoted for- from another company. Even if there were no other considerations, that documentation would throw up a number of questions and provide unclear evidence of actual expenditure.
270. There are significant problems with the Respondent's claim in respect of the windows which comfortably defeat that claim succeeding. That problem is not specifically with the condition of the windows. As noted above, the document from Mr Pook describes the windows as lacking putty seals, to not be openable and to lack external maintenance and the Tribunal has no difficulty accepting that the windows were in poor condition on the evidence provided. The report of Ms Jenkins is broadly similar and provides for repairs to the windows rather than replacement of them, although the Tribunal does not accept the Applicant's assertion that the condition of the windows did not worsen from when the breach commenced- that is implausible from the lack of maintenance and problems described.
271. The first difficulty for the Respondent as found above is that the windows form part of the Property and most of their maintenance is a matter for him and not for the Applicant. The Respondent has not demonstrated that the condition was all or in the main in consequence of breach by the Applicant as opposed to being the effect of other matters the responsibility of the Respondent instead or in an uncertain combination. The Tribunal does not consider that the evidence demonstrates an impact from the lack of painting such that

replacement of the windows can be said to arise from the Applicant's breach.

272. Hence, the Respondent would not have succeeded with this head of claim even but for the significant problem as described above.
273. The particular and significant problem however is that the Respondent explained that Mr Pook's report enabled him to obtain grant planning approval [720- 730 for application] from a local council surveyor and a grant from the local council for the complete removal and replacement of the windows. There is certainly an invoice [807] from a window company to the council, although also one for £360.00 to the Respondent. The Respondent challenged the statement in Ms Hawkin's inspection report that the windows were largely sound in light of that and Mr Pook's comments. The Tribunal has no expert evidence of either Mr Pook or Ms Jenkins and whilst for example a statement that there is no putty to a given location would be a statement of fact, any assessment of the impact and any view formed of the condition of the windows generally is a matter of expert evidence.
274. The Respondent stated that he opted for UPVC sliding sash lookalike hermetically sealed double glazed units. The Tribunal understands that those were more expensive than the amount of the grant but that was the Respondent's choice, so if he has contributed to cost whether the £360.00 or otherwise, he has not demonstrated that was unavoidable. The Respondent could on the evidence have obtained replacement windows at no demonstrated additional cost and so sustained no loss.
275. The pertinent point is that the Respondent has not demonstrated that he has incurred any cost. That includes that any sum which he might have recovered from the Applicant would have been repayable to the local council and so any such provision has any relevance. He has not indeed demonstrated that any sum is repayable to the council by him. He has not demonstrated any additional fitting cost, if there was any. The Respondent has failed to. The Tribunal determines that the Respondent is not consequently entitled to claim any cost of the replacement windows as damages.
276. For the avoidance of doubt, the fact that they are single glazed in wooden frames is of no direct relevance- those are the windows installed and if they were as effective as single- glazed windows in wooden frames should be, that is not an item of disrepair. It may well mean that the windows do not meet the preferred standards in current times, but that does not amount to disrepair. Equally, the fitting of double- glazing should not be regarded as an improvement and not a repair if, as very likely, it was the more cost- effective approach- provision of single- glazed wooden windows is now non- standard.
277. The Tribunal notes that the Schedule of Alleged Disrepair also included water damage to the carpet in the hallway and to artwork in that room. However, the Tribunal does not regard that as disrepair but rather as

effects of disrepair. The items form part of the claims for special damages. The Respondent states [196] that no claim is made due to a lack of invoices. As to the carpet, there is evidence of a payment of £800.00 but not more than that. Given the Respondent does not seek to make a claim, no more need be said.

278. For completeness, whilst the Applicant's case is indicated to be that the professional or other nature of the Applicant as the Applicant categorises it and the profit or lack of it is relevant, the Tribunal disagrees. No part of the appropriate calculation of any damages to which the Respondent may be entitled and which should be offset against the service charges otherwise payable has anything to do with the professionalism or otherwise of the Applicant- not that it is wholly clear what the Applicant means by that, but it matters not- or the profit taken by the Applicant or lack of it.
279. The overall sum in which the Respondent therefore succeeds by way of set off is the full service charges, as lower than £20,768.00. Any additional sum is a matter for the County Court.

THE COUNTY COURT DECISION

280. The County Court issues have been considered by Judge Dobson alone, having regard to the findings and determinations of the Tribunal in respect of the service charges.
281. The claim as issued identified £19,258.07 of service charges. The Defence and Counterclaim claims £31,042.00 by way of counterclaim. A further £300.00 of the Applicant's claim related to ground rent. £3,642.00 was claimed in respect of solicitor's costs Those together produced the £23,200.07 total of the claim made, excluding interest.
282. The Court takes each of those elements in turn.

Service Charges

283. The determination by the Tribunal are fundamental in respect of this aspect of the Court claim, given that the question of the payable service charges was specifically referred to the Tribunal for determination.
284. The Tribunal determined that the payable service charges for the relevant period amounted to £19,031.40 (£19,258.07 less £226.67). However, the amount of set-off of was up to £20,768.00. Necessarily the set- off is capped by the payable service charges.
285. The County Court has carefully noted the findings made and the reasoning applied by the Tribunal. The County Court agreed with those. In those circumstances, the Court does not consider it necessary to set out findings and determinations repeating the equivalent by the Tribunal, to no identifiably useful purpose. The Court assures the

parties that is has considered the matters and has not simply slavishly adopted the Tribunal's approach.

286. The County Court therefore determines no service charge claimed to be due. No other determination in respect of the amount of service charges remains to be made by the Court.

Ground Rent

287. The ground rent fell outside of the jurisdiction of the Tribunal and is solely a matter for the County Court. The element was perhaps surprisingly involved for such a modest sum. The issue was covered at some length in cross- examination.

288. There was no dispute between the parties that the Applicant served ground rent demands of £25.00 twice yearly across the 6 relevant years (total £300.00) or that the Applicant was entitled to do so. No argument was raised in respect of service or the form of the demand. Rather the Respondent's argument was that he had paid the ground rent by way of three payments of £70.00 in Spring/ Summer of 2018 [96], so £210.00 in total and also that he had paid £300.00 in respect of ground rent in November 2024. There was indeed no dispute about the fact that the Respondent had made those payments.

289. As to the 2018 sums, the Applicant did not accept those as payments of ground rent. The Court finds that the Respondent has failed to demonstrate that the payments were ones of ground rent. The payments did not obviously refer to being ones of ground rent and were certainly not sums which correlated with the £50.00 per year payable by two sets of £25.00, either individually or in their total of £210.00. There was insufficient evidence to demonstrate that the £210.00 total payments clearly made [684] had been ones of ground rent as opposed to payments more generally. There was insufficient to demonstrate that the Applicant had been unable properly to apply the amounts of the payments to the service charge account.

290. However, the Court finds that the £300.00 payment did relate to ground rent. That is a simple finding to make because the communications between the parties specifically refer to the payment as that and there has been no suggestion that the categorisation as payment of ground rent was incorrect.

291. The Applicant's argument was that it had not accepted the payment and had returned the sum to the Respondent. It was made clear that the Applicant had done so because it did not wish to accept any payment from the Respondent which would recognise the continuation of the Lease and detract from any ability of the Applicant to seek to forfeit the Lease. The Respondent paid the sum again. The Applicant sought to return the sum again. However, the Respondent changed his bank account and it was both clear and accepted that he did so in order to prevent the Applicant being able to return money to that account and

so argue that the net effect was no sum had been gained by the Applicant. The Court doubts that could have succeeded as an argument where the Respondent had actually paid but matters moved on in any event. The bundle included communication about the above.

292. Most recently, the Applicant has purchased postal orders for the sum and has sent those to the Respondent. The Applicant has expended the sum (or a little more) than the payment by the Respondent. The Respondent has not in practice received the £300.00 back as he has not sought to cash the postal orders. His evidence was that he had destroyed them but not before providing the serial numbers to the Respondent's managing agent. It was said by the Respondent, and there was some acceptance of the likely correctness on behalf of the Applicant, that the Post Office would refund the amount of the postal orders on provision of the details of them and the fact of them not being cashed being established. Hence it is within the Applicant's power not to be out of pocket for the £300.00.
293. The payments were specifically stated to relate to ground rent. Whilst the Court is entirely satisfied that in the usual course a party receiving payments is entitled to apply them to any sum outstanding, in the usual course the oldest sum due, the Court finds that in this instance the payments were so specifically in respect of ground rent and so clearly understood by the Applicant to apply to ground rent (as amply demonstrated by the Applicant's attempts to return them rather than seeking to apply them to other amounts said to be due) that the payments can only be treated as payments specifically in respect of ground rent and nothing else.
294. The Court considered Mr Gallagher's argument that the Respondent had not pleaded a defence of tender. The Court considers that as the Defence was prepared by an unrepresented party, the exact legal terms cannot be expected and the question is one of identifying what the case presented amounts to in legal terms. That is a common requirement in cases with unrepresented parties. It does follow from the findings about that the Court does not consider that there was tender prior to the issue of proceedings in any event.
295. Mr Gallagher in his written Submission referred to a case authority of *Tropical Zoo* [2024] L & TR 31 as to the return of unsolicited rents not waiving the right of forfeiture. It is not for the Court at this time to make any observation in respect of potential forfeiture about which issues may arise in subsequent proceedings. The Court identifies that it understands the reasoning applied by the Applicant but that it not a complete answer for the Applicant where it has sought to bring a claim.
296. The difficulty for the Applicant in these proceedings is that it seeks a judgment for sums which the Respondent paid. It is because the Applicant sought not to accept them and to return them that it may be out of pocket for all or any part of the sum, if indeed it is. Irrespective of any wider merit the Applicant may perceive in not accepting

payments from the Respondent- who accepted he was concerned to avoid the prospect of forfeiture- which is a matter for the Applicant, the specific situation in this case is caused by the Applicant's own approach of seeking to return to the Respondent payments which it is common ground the Respondent made.

297. The Applicant has caused its own problem in relation to ground rent by seeking not to accept payments made. In contrast, the Respondent is not in breach of the provisions of the lease as the time of the trial- the payments were made by him during the course of the proceedings. The Applicant was perfectly entitled to bring the claim when it did so. It is not now entitled to judgment in respect of the paid sum.
298. The Applicant's claim in respect of ground rent fails.

Legal costs claimed as part of the claim

299. The inclusion in claims of legal costs as part of the substantive claim is troublingly prevalent. The amount of the claim itself as issued is inevitably higher than it otherwise would be and interest is invariably sought on that higher sum. A greater Court fee is often paid than would otherwise have been necessary. The defendant is presented with claim to one extent or another- and often a significant extent, particularly proportionate to the remainder of the claim- greater than the claim faced would otherwise be.
300. In this instance, that claim for legal costs as part of the substantive claim was £3,642.00. That is no small sum. In the Particulars of Claim, that was divided into 2 parts, which was explained to reflect a bill having been raised on a particular date.
301. Mr Gallagher was asked to explain the legal basis for the approach taken. He was unable to do so. The best that could be offered by him, as very experienced and senior counsel, was that there was perhaps some drafting precedent taking that approach. It will come as no surprise for the Court to observe that is not remotely an adequate explanation.
302. The Court accepts that the Lease includes a provision, at clause 3 (15) that the Respondent will pay costs incurred in contemplation of forfeiture proceedings. That was the basis for the contractual costs claim. The Tribunal concentrates on the claim as brought in the Claim Form and Particulars at this time rather than any matter relevant to any costs assessment.
303. The Court determines that does mean that the costs can, without rather more, be claimed as part of the substantive claim.
304. Most obviously, there has been no identifiable breach in respect of costs by the Respondent. There is no identifiable cause of action.
305. The Court can accept that where there is a basis for claiming legal costs as administration charges (although that would then have been a

matter for the Tribunal here) and if the legal costs had been validly demanded in advance of the issue of proceedings as administration charges and the relevant period for payment of those had elapsed without payment being made, the lessor is likely to be able to bring a claim for the unpaid sum(s). The sum(s) would have become payable and not have been paid.

306. However, no sums are payable as administration fees unless and until validly demanded. Any sums demanded but not validly are not payable until there has been a valid demand. There will be a reasonable time for the lessee to make payment, or such time as the lease specifically provides for. Until that point, there is no breach by the lessor in not paying the sum(s).
307. In addition, whilst a contractual provision for payment of costs is a matter for the Court to consider on the undertaking of a costs assessment, it does not alter the fact that the question of costs is a matter for the Court pursuant to the Senior Courts Act 1981. No contractual provision can alter that. Subject to the paying party agreeing to pay the costs, they are not payable unless and until the Court so determines and then in such sum as the Court assesses.
308. On the evidence presented on behalf of the Applicant, the Applicant had made no valid, or any, demands for any of the legal costs claimed in the Claim Form to the date of issue of the proceedings. There could not possibly be a cause of action. The Applicant was not therefore entitled to any sum in respect of legal costs at that time.
309. The portion of the claim which relates to contractual costs as part of the claim itself therefore fails and was always bound to do so.

Counterclaim

310. The determination by the Tribunal is again very significant. The Tribunal has determined that the Respondent would be entitled to set-off the sum of £20,768.00 against service charges had there been sufficient service charges. Taking that determination, the additional sum which extends beyond the level of the payable service charges is a potential counterclaim.
311. The Court has again carefully noted the findings and reasons and agrees with them. The Court can identify no reason to do anything other than to award the additional sum to the Respondent by way of success in the Counterclaim.
312. Hence the Counterclaim for sums beyond the level of the set-off against service charges succeeds in the sum of £1,736.60.

Interest

313. The award of interest and the amount of any award is a matter for the Court.

314. The Court notes that where there is a contractual provision for costs which has been agreed by the parties or the original contracting parties that applies and Mr Gallagher relied upon the provision of the Lease that interest shall be recoverable at the rate of 12%. However, that was in respect of claim by the Claimant. That is not relevant in the event.
315. That aside, the Court can award up to 8%. The Bank of England base rate is currently 4%, although that is not the be all and end all. Taking matters in the round, the Court determines that the appropriate rate is 5% in this case, to be applied from the date for payment provided for in the Court Order if payment remains outstanding.

Court Order

316. The outcome is therefore that the Applicant fails in its claim. The Respondent succeeds in his counterclaim in the sum of £1736.60. The relevant Court Order provides for payment.

LEGAL COSTS AND FEES

317. The Court and Tribunal have not sought to make any determinations in respect of costs or fees of either set of proceedings. Each have their own jurisdiction in respect of costs of their own proceedings, save if there may be particularly circumstances which might entitle a Court to deal with costs of Tribunal proceedings which in any event are not relevant here.
318. The parties will no doubt consider in light of the outcome and any other relevant matters whether they seek payment of any costs and fees and if so, then to what extent.
319. It has been identified on behalf of the Applicant, and quiet correctly, that any claim for costs of the multi- track Court proceedings must, at least in the usual course, be the subject of detailed assessment if not agreed. In contrast, the result is that the low end of County Court small claims track value in favour of the Respondent. The Court is currently inclined to the view that any such costs can be summarily assessed appropriately, subject to the parties' agreement to that.
320. The power of the Tribunal to award costs between parties is heavily proscribed by rule 13 of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 such that an award of costs is rare. There are separate provisions in respect of fees.

Direction

321. The parties shall identify any claim for costs or fees they wish to make and make submissions as to how any such should be addressed by 3rd October 2025. The Court and/ or Tribunal will consider the position further in light of any such submissions.

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.
8. 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.
9. 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.
10. 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

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