FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BR/LSC/2024/0242**
Property	**:**	**Apartment 19 Worsley Point, 251 Worsley Road, Swinton M27 0YE**
Applicants	**:**	**Mr Peter Hodgkiss (1)** **Mrs Marcelle Hodgkiss (2)**
Respondent	**:**	**Worsley Point Residents Company Limited**
Type of Application	**:**	**Determination of liability to pay and reasonableness of service charges - Landlord and Tenant Act 1985 – s 27A & s 20C**
Tribunal Members	**:**	**Judge J Stringer** **Mr J Elliott, MRICS**
Date of Decision	**:**	**3rd November 2025**

DECISION

Decision

1. The sums paid or payable by the Applicants in relation to service charges for Apartment 19 Worsley Point, 251 Worsley Road, Swinton M27 0YE for the service charge year ending 31st March 2021 are reduced by £48.49.

REASONS

Preliminary Matters

Attendance

1. The Applicants both attended the hearing, acting in person. The Respondent was represented by Mr Joshua Griffin, Counsel, and Miss Dayle, Respondent witness, attended.

Evidence

2. The Tribunal was provided by a 512 page, agreed, hearing bundle. The hearing bundle contained, amongst other documents the parties' statements of case, written witness evidence (including from the Respondent's witnesses - Mr Marsden, owner of a flat in the Property and director of the Respondent company, and Miss Dayle, owner occupier, and director of the Respondent company) and supporting documents, the Respondent's accounts and service charge documentation, contractor invoices and reports, and various photographs.

3. Oral evidence was given at the hearing by Mr Hodgkiss and Miss Dayle.

4. The Tribunal carried out an external and internal common parts inspection of the Worsley Point prior to the hearing.

5. The Tribunal has carefully considered all the written material contained in the hearing bundle.

The Law

6. The Tribunal had regard to sections 19 and 27A (reasonableness of, and liability to pay, service charges) and 20C of the Landlord and Tenant Act 1985 ("LTA 1985").

Background to the application

7. The Applicants' property, Apartment 19 Worsley Point, 251 Worsley Road, Swinton M27 0YE ("the Property"), is a flat within a purpose-

built block of flats known as Worsley Point, at 251-3 Worsley Road, Swinton M27 0YE ("the Building"). There are 20 flats in the Building. The Buidling is surrounded by a lawn area, with a rectangular perimeter, with trees and a walled boundary.

8. The Applicants are the leaseholders of the Property under a lease dated 26 November 2007 ('the Lease').

9. The Respondent is a resident's management company, and party to the Lease in that capacity (referred to in the lease as the "Residents Company").

10. The Respondent has instructed managing agents to manage the Property, instructing Fords Residential ('Fords') until October 2016, Advance Building Management ('ABM') from 28 October 2016 to 30 June 2025, and subsequently Oakland Residential Management Limited ('Oakland').

11. The relevant provisions in the lease are that: the Lessee covenanted to pay 1/20th of the costs, expenses and outgoing from time to time incurred or to be incurred by the Residents Company in complying with its obligations in the Fifth Schedule; the Residents Company covenanted, subject to the payment by the Lessee of the Service Charge, to observe and comply with the provisions of the Fifth Schedule; and there are standard provisions for the production of accounts and the payment of an advance contribution towards the Service Charge followed by a balancing payment in the event that the actual expenditure exceeds the estimated expenditure.

12. The Residents Company covenants in the Fifth Schedule include:
    a. To keep in good and substantial repair the main structure, exterior, common parts and service media of the Building, and to keep the Reserved Property and all fixtures and additions thereto in a proper state of repair decoration and condition including the renewal and replacement thereof ("the Repairing Covenants");
    b. To pay the costs of cleaning lighting and providing floor covering for the common parts of the Building, and to clean the exterior of the windows of the Building ("the Common Parts Covenant");

c. To insure by or on behalf of the Lessor (i) the Building from loss or damage by fire explosion or other risks and special perils normally insured and other such risks as the Lessor may from time to time require,11 and (ii) against liability for personal injury to persons on the Reserved Property ("the Insurance Covenants");
d. To do all such acts matters and things as may in the reasonable discretion of the Residents Company be necessary or advisable for the proper maintenance or administration of the Flat and of the Building ("the General Maintenance and Administration Covenant");
e. To employ Managing Agents (if required) and auditors to be approved in writing by the Lessor ("the Agents Covenant").

Issues

13. The issues identified by the Tribunal, and agreed by the parties, for determination by the Tribunal are 17 matters, relating, firstly, to the reasonableness, or Applicants' liability to pay, service charge items, relating broadly to two categories: a. items relating to general administration and management, including legal fees; b. matters relating to the repair and maintenance of the Building/Estate. Secondly, to other items including Reserve Fund interest, Building insurance commission, an alleged breach of lease, and service charge arrears.

Relevant Written and Oral Submissions and Evidence, and the Tribunal's Conclusions on the Matters Raised by the Applicants

14. In accordance with the 'Practice Direction from the Senior President of Tribunals: Reasons for decisions', this decision refers only to the main issues and evidence in dispute, and how those issues essential to the Tribunal's conclusions have been resolved.

Respondent's submission in relation to construction of the Lease

15. The Respondent made a broad submission, relevant to a number of the matters raised, as to how the Tribunal should construe the Lease. That submission was that the Lease contemplates that each

leaseholder of a property in the Building would be a shareholder of the Respondent - see in particular clause 4(a) and 4(b) of the lease:

a. Clause 4 – "The Lessee hereby CONVENANTS with the Lessor and the Residents Company
b. Not to assign or transfer the Flat except to a person who has committed himself to apply to become registered as a member of the Residents Company
c. That so long as the Lessee retains any estate or interest in the Flat he will not resign from or dispose of the rights attached to his membership of the Residents Company to any person other than a Mortgagee of the Flat".

16. Further, the lease contemplates that the only funds of the Respondent would be those collected by way of Service Charge, payable by the member Lessees.

17. The Respondent submitted that, given the nature of that relationship between the Respondent and the Lessee members, the Tribunal should construe the Lease as intending to give the Respondent a wide discretion to incur expenditure, paid for by the service charge (and particularly so, given this Lease has been granted for a term of 999 years).

18. The Tribunal accepts this submission, and finds that, in construing the Lease, a wide discretion as to expenditure should be afforded to the Respondent, given the close and direct relationship between the Respondent and the Lessees, the degree of control over the Respondent provided to the Lessees, and the direct financial interest of the Lessee members in the expenditure of the Respondent. This is subject, of course, to the Tribunal being satisfied that the any disputed expenditure is, in all the circumstances, reasonable.

Matter 1 - Secretarial Fees

19. For some of the service charge years, the Respondent has incurred secretarial fees. The Applicant's case is that there was no reason for an additional secretarial fee, over and above the standard managing agent's fees, and that the General Management and Administration Covenant in the Lease relied upon by the Respondent, was "too

broad" and not intended as a "sweeper clause" for, "all sorts of things". The Respondent's evidence was that these fees do not form part of the standard managing agent's fees and is charged separately (ABM charged an annual fee for these services, typically around £120, and this was not included in the standard management fee for ABM). The work includes maintaining the company's accounts and filings to maintain compliance with the Respondent's legal requirements, and that the company secretary has recently been updated to Oakland.

20. The Tribunal is satisfied, firstly, that on the evidence (their being no credible evidence to challenge that of the Respondent on this matter) the secretarial fees relate to discrete and identifiable work, which work was undertaken and required to be paid; secondly, that the secretarial fees are properly recoverable pursuant to the General Management and Administration Covenant (having regard, in particular, to the acceptance by the Tribunal of the construction point, referred to above) because where secretarial fees are required to be paid in addition to the management fees and the work is discrete and identifiable, the fees fall within reasonable discretion of the Residents Company as being necessary and/or advisable for the proper administration of the Property and of the Building.

Matter 2 - Interest on Reserve Funds

21. The Applicant's case is that, in respect of the years 2017-2014, no interest on reserve funds has been accounted for. The Applicants submitted that whilst interest rates were minimal up until 2022, subsequently rates have been high and the potential interest sums were significant. Further, no bank statements had been disclosed. The Respondent's case is that any interest which has accrued on service charge funds held by the Respondent is not a matter which falls within the Tribunal's jurisdiction under s.27A of the LTA 1985 and, even if it were, the evidence from the Respondent's witnesses is that interest which has been earned on the reserve fund is de minimis and AMB have advised that this interest has been absorbed into the reserve fund.

22. The Tribunal finds that the issue of interest on reserve funds is not a matter within the Tribunal's jurisdiction, section 27A being expressly limited to liability to pay "service charges". If the Tribunal is wrong in this analysis (for example, on the basis the matter fell within its jurisdiction by reason of going to the extent of charges to which the Applicant was ultimately liable to pay), there is no basis for the Tribunal to disregard the evidence of the Respondent's witnesses, both because the Tribunal is satisfied it is substantively credible and reliable, and, for the reasons already given in relation to the broad construction of the Lease, the Respondent has a financial interest in limiting or reducing its expenditure by reason of its constitution. Further, the Tribunal take judicial notice of the fact that many bank accounts provide for no or minimal interest – in the absence of specific evidence that this particular account or type of accounts attracted more than minimal interest, there is no basis for the Tribunal to reject the Respondent's evidence.

Issue 3 - Cost of Plants and Lawn Treatment

23. The Applicant's case is that the costs incurred in relation to Green Thumb (a commercial gardening service), and plants in 2020, were unreasonably incurred or not of a reasonable standard, on the basis that the initial work to eradicate the moss was ineffective, and there has been no subsequent work to address moss growth in the lawn (work last done to address this in 2023), and, in relation to the plants, those plants "died in just a few days".

24. The Tribunal rejects those submissions. On the inspection the grounds appeared to be reasonably maintained; the lawns had extensive moss growth; insofar a costs were incurred initially in attempts to reduce or eradicate the moss there is no basis to find that that work was not reasonably incurred expenditure or not of a reasonable standard; nor, that intial work subsequently having been found to be ineffective, is the decision to stop lawn treatment work unreasonable. Similarly, given that there is no evidence as to why the plants planted in 2020 died within a short period of being planted, the Tribunal is unable to find that the costs associated with this amounted to unreasonable costs or that the work related to the costs was not of a reasonable standard.

Issue 4 - Building Insurance

25. The Respondent did not dispute that ABM received and retained commission it received for placing the building insurance. The Applicant submitted that that commission should have been "added to the reserve funds". It is not clear whether the commission was received directly from the insurer, independently from the insurance premium, or whether it comprised an element of the cost of the premium. The Tribunal finds that if the commission was paid directly, without any direct or indirect effect on the premium, the Tribunal has no jurisdiction – it cannot compel a managing agent to pay sums over to the reserve funds which are unrelated to that fund. Insofar as the commission did have a material effect on the amount of the service charge (for example, by way of an increased premium) then the Tribunal is satisfied that this was reasonably recoverable pursuant to the covenants, in particular the Insurance Covenants, or the Agents Covenant, because it was expenditure that would have been incurred in relation to the work of the managing agent or some other party identifying and effecting insurance.

Items 5 and 6 - Leaks, Decorating, Roof Inspection/Investigation and Balcony Repairs

26. The Applicant's case there was initially a lack of transparency/disclosure in relation to this expenditure, and subsequently, following disclosure, that: a. poor gutter cleaning was likely contributing to leaks to flats below, and that repairs to leaks, following an NHBC settlement in 2015 were done inadequately by the Respondent's chosen contractor, or that the Respondent was responsible for subsequent remedial costs for further work because the chosen contractor for the initial work was not NHBC approved (which, the Applicant alleged would have resulted in a 6 year guarantee for the work); further, the costs of subsequent work could have been mitigated by professional indemnity insurance (which has not been taken out). The Respondent did not accept the Respondent was liable for internal decoration to flats affected by the leaks, and that the expenditure associated with this was within the terms of the Covenants, or reasonable. The Applicant also submitted that the costs of the works were such that they fell within the section

20 consultation requirement, and no consultation had been carried out.

27. Miss Doyle confirmed, in her written and oral evidence, that the Property has been affected by various leaks from balconies, affecting Flats 17, 11, 14 and 8. The Respondent made a claim on the NHBC guarantee and repairs were carried out. Further leaks occurred after the NHBC settlement and after the NHBC guarantee had expired, which led to the Respondent carrying out further repairs and redecoration works. Miss Doyle was unable to provide specific evidence as to what work was required or carried out. Insurance claims were submitted for the subsequent work.

28. The Tribunal is satisfied, firstly, that all the relevant works were within the Covenants in the Fifth Schedule to the lease, in particular: a. gutter cleaning falls within the wide discretion afforded by the General Maintenance and Administration Covenant, structural repairs to the balcony and associated flats fall within the Repairing Covenant, and the redecoration costs, insofar as they were not met by insurance claims fell also the General Maintenance and Administration Covenant (because the Tribunal accepts that there was clearly a legal obligation on the Respondent to meet the costs of redecoration in circumstances were that redecoration was in consequence of a breach of, in this case, the Repairing Covenant).

29. Secondly, the Tribunal is satisfied the all the expenditure was reasonably incurred and reasonable in amount because: a. there is no evidence that the gutter cleaning was carried out negligently or that inadequate gutter cleaning caused or contributed to any subsequent cost associated with leaks; b. the contractor instructed to carry out the work was recommended by the managing agent and his work was authorised by the NHBC – it was not unreasonable in the circumstances for the Respondent to instruct him; further, whilst the Tribunal acknowledges that Mr Marsden's evidence (at para. 26 of his statement) is that "Approximately 2 – 3 years later, I understand that faults to some of the balconies reappeared. It became apparent that the work completed by Steve Gorge was completely sub-standard" there is no reliable, expert evidence as to the reason for the need for further works, and, in any event, for the reasons already given, the Tribunal does not accept that at the time

Mr Gorge's company was instructed, it was unreasonable to instruct that company, nor, for the avoidance of doubt, given the evidence of lack of assets of Mr Gorge's company, was it unreasonable, insofar as it might have been possible, not to pursue a claim against that company. The Tribunal is satisfied, on the documentary evidence, that appropriate insurance claims were submitted, and that any further, unmet, expenditure was likely related to insurance excesses or unrecoverable items.

30. In relation to the section 20 LTA 1985 point, the works were clearly discrete works, at different periods of time, and the value of those works did not exceed the appropriate amount having regard to the number of contributing flats.

Items 7, 8 and 9 - Legal Advice and Legal Fees

31. The Applicant submitted that legal fees were not permissible in the absence of "precise and unambiguous language" in the lease, which was not present in the covenants in the Lease; the Applicant referred to the Leasehold Advisory Service report on the Upper Tribunal decision in *Thanet Lodge (Mapesbury Road) RTM Company Limited v Arun Mirchandani* (2024) UKUT 205 (LC). That case concerned the cost of legal advice on the membership of a Right to Manage company. The Tribunal is satisfied that case, and others referred to in the Applicants' statement of case, are distinguishable, and that whether legal costs are permitted in this case, and their reasonableness, is fact specific. However, in principle, the Tribunal is satisfied that the General Maintenance and Administration Covenant is sufficiently wide to encompass reasonable legal costs.

32. The Applicant specifically challenged legal fees incurred in relation to three matters. Firstly, in respect of unauthorised work carried out by one of the leaseholders to a patio. Secondly, legal costs in pursuing the Applicants for alleged arrears. Thirdly, defending a claim brought by the Applicants against the Respondents for harassment.

33. In relation to the first matter, the Applicant queried whether the costs were reasonable given there seemed to be no purpose to the advice, because the patio of itself was not objectionable (in the

opinion of the Applicants) and because no other remedial steps have ever been taken in relation to the unauthorised work (which remains in place).

34. The Tribunal is satisfied that obtaining legal advice in relation to an ongoing breach of the Lease was reasonable; the fact that no enforcement action has been taken is irrelevant and in any event outside the scope of section 27A LTA 1985.

35. In relation to the second aspect of the legal fees, the Respondent accepts that the legal costs that it incurred in pursuing the Applicants for the alleged arrears (totalling £969.60) were not reasonably incurred (because they relate to the costs of pursuing the Applicants for service charge costs which, it is accepted, they were not liable to pay, that is, a Property Ombudsman fee. The Respondent accepts that the Applicants should have their service charge liability reduced for the year in question by the amount of £48.49 (that is, their 1/20th contribution towards the £969.60 costs), and the Tribunal finds that is an appropriate concession.

36. The third element of disputed legal fees relate to the Respondent's legal costs in defending a claim brought by the Applicants in the County Court against the Respondent, for harassment. The alleged harassment (the Tribunal understands) was of the Applicants by the Respondent by way of the Respondent seeking to recover from the Applicants the fees relating to the Property Ombudsman complaint. The Tribunal is satisfied that legal costs arising from an action against the Respondent (noting it is a leaseholder owned company) and in respect of its management functions are properly recoverable pursuant to the General Maintenance and Administration Covenant in the Lease, and that they were reasonably incurred in this case, defending the County Court proceedings; the Tribunal is satisfied they were reasonably incurred because there is no reliable evidence of harassment, the County Court claim was dismissed (it is understood, on its merits), and the Tribunal is satisfied that claim was unreasonably brought, in particular, because the Applicants had an alternative remedy in relation to the disputed service charge, that is, by way of application to this First-tier Tribunal, and of which they did not avail themselves.

Item 10 – Cost of an Asbestos Survey

37. The Applicant disputed the reasonableness of the Respondent incurring this cost on the basis that the construction of the Property post-dated the lawful use of asbestos. The Respondent's case was that AMB advised that the survey was helpful in dealing with conveyancing requisitions and ABM arranged for this survey to be carried out, and was accordingly reasonably incurred. The Tribunal is satisfied the report was reasonably incurred because, applying its specialist knowledge, it is satisfied that asbestos reports are not exclusively required for pre-2000 buildings, and that asbestos management reports are appropriate in relation to the management of asbestos in the 'common parts' of purpose-built flats which post-date 2000 (such as the Property), and that they were reasonably required in relation to the Respondents' obligations in relation to conveyancing processes.

Item 11 - Sundry Expenses in 2021

38. The Applicant disputed these charges on the basis that no receipts had been disclosed.

39. The Respondent's evidence in relation to these matters (on the basis of information provided by the Respondent's accountants, acting on material from the managing agent) was that they relate to miscellaneous costs including: (i) postage and filing of the annual Return - £304, (ii) fees which were recoverable from a Leaseholder of £157, (iii) credit paid to flat 19 of £57 (the Applicants' apartment), and (iv) a cost of £30 described as 'co.seal' (which the Tribunal is satisfied is likely to be costs related to Companies House documentation). The Tribunal accept the Respondent's evidence in the absence of any evidence to the contrary, in the absence of any grounds for questioning its credibility, and having regard to the sums involved.

Item 12 - Breach Of Lease

40. This item relates to the Applicant's allegation of a breach of a term of the lease by reason of the failure of the then managing agent (ABM) to permit the Applicant to inspect documents. The Tribunal accept the Respondent's submission that the Tribunal does not have jurisdiction under s.27A of the LTA 1985 over claims for (alleged) breaches of the Lease (noting the Respondent's assertion that, in any event, ABM have dealt with the Applicants' requests for information and access to documents, which assertion was not challenged by the Applicant).

Item 13 - Fire Risk Assessments, 2023 and 2024

41. The Applicant challenged the reasonableness of these charges on the basis that matters highlighted by the assessments have been ignored (in particular, and as referred to on the inspection, hallway doors are not fire doors, personal and cleaning items continue to be stored in meter cupboards, which are also unlocked, and the third floor smoke vent does not operate as intended, that is, by being linked to the fire system).

42. The Tribunal is not satisfied this is a ground to find the assessments were unreasonably incurred. Fire risk assessments are carried out by the local authority. The Respondent denies that the reports have not been acted upon, and asserts that there is a cycle of reporting, inspecting, and (if necessary) remedying, which is ongoing. Even if the Tribunal were to be satisfied on the evidence that matters highlighted in the reports had been "ignored" (which on the evidence the Tribunal is not satisfied is proven), that of itself does not make fire risk assessments unreasonable expenditure.

Item 14 – Cost of Emptying Grit Box

43. The Applicant submits this cost was "woefully overcharged", on the basis that the grit box was "only partially full, and could have been emptied in a couple of minutes". The Respondent's evidence was the £250 cost was in respect of an engineer attending, emptying the grit sandbox, drilling holes for drainage and supplying and filling the grit box with sand. On the basis of the Respondent's evidence, and, in the absence of any alternative evidence as to the

cost of the works, the Tribunal is not satisfied the expenditure is unreasonable.

Item 15 - Boundary Clearance, Supply and Install Safety Edge, Remove Rubbish, Wall Repair

44. The Applicant submits that there was no consultation in relation to these 2022 service charge costs, which total £1848.00. The Respondent's evidence is that in 2022, costs were incurred cutting back trees along the boundary of the Property, as the trees (many of which are mature trees) had become overgrown and were blocking light. The works were in response to complaints from residents and were necessary. The Tribunal is satisfied that the cost of this work clearly would not require a consultation, and, on the basis of the Respondent's evidence, it was reasonable pursuant to the Respondent's maintenance obligations.

Item 16 - Gutter Cleaning

45. The Applicants submitted that the gutter cleaning work was not carried out to a reasonable standard (referring in particular to the cleaning taking only a matter of minutes, and that no "gutter vacuum was used", which, according to the Applicants, would simply lead to debris being pushed along the gutters and the gutters overflowing), that the moss on the roof (pointed out on the inspection) should have been dealt with before any gutter cleaning was undertaken. The Respondent's evidence was that cleaning of the Property's gutters was completed on an ad hoc basis and arranged by ABM; that the contractors instructed appeared to do a good job of cleaning the gutters when they attended, and that there were problems reports or any other grounds for suggesting the works were not done to a reasonable standard. In the absence of clear, objective evidence that the work to the gutters was not of a reasonable standard, or of alternative costings, the Tribunal is not satisfied the costs associated with this work were unreasonable.

Item 17 - Service Charge Arrears

46. This item was not pursued at the hearing by the Applicants and the Tribunal find (in accordance with the Respondent's

submission) that an application under s.27A LTA 1985 does not entitle an Applicant to obtain information about other leaseholders' service charge arrears - this is not something that falls within the Tribunal's jurisdiction.

Remedy

47. The application is successful only to the extent of the Respondent's concession in relation to legal fees, which is reflected in the order.

Costs

48. The Applicants apply for an order pursuant to s 20C LTA 1985.

49. The Tribunal is not satisfied that it appropriate to make such an order, having regard to its broad discretion, the facts of the case and the Tribunal's findings. Whilst it accepts that to some degree there have been delays or failures to disclose documents to the Applicants, the Applicants have been unsuccessful in their application save to the extent of the concession by the Respondent. Having regard to this, and the fact that the Respondent is a leaseholder-owned management company the application for a section 20C LTA 1985 order is refused.

J Stringer

Tribunal Judge 3rd November 2025