FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference **HMCTS Code**	**:**	**CAM/26UD/LSC/2024/0004** **F2F**
Properties	**:**	**2,3 and 4 Woodcock Lodge, Epping Green, Hertfordshire SG13 8ND**
Applicants	**:**	**1.Mark and Leah Bretton** **2.Tyrone and Lisa Koursaris** **3.Barry King**
Representative	**:**	**Mark Bretton**
Respondent	**:**	**Yasmin Shariff**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal members	**:**	**Judge Ruth Wayte** **Ms Marina Krisko FRICS**
Date of Hearing	**:**	**21 January 2025**
Date of decision	**:**	**6 February 2025**

DECISION

Decisions of the tribunal

(1) The cost of the driveway repairs in 2019 is limited to £250 per leaseholder.

(2) The Respondent's legal costs in 2020, 2022 and 2023 are not payable as a service charge.

(3) The disputed costs of the "garage project" in 2021 and 2022 are not payable as a service charge.

(4) The leaseholders' share of £768 is payable in relation to the guttering costs in 2021 (by 2 and 3 Woodcock Lodge only). Nothing else is payable for the "Flat 5 works" in 2021 and 2022 as a service charge.

(5) The tree surgery costs in 2022 are payable as a service charge.

(6) The cost for guttering in 2023 is payable as charged.

(7) The cost for pump and render repairs in 2023 is not payable as a service charge.

(8) The credit held by the Respondent on behalf of the Applicants in the reserve fund account should be offset against any outstanding service charges owed by the Applicants or used for external decorations in 2025, at the Applicants' direction and following adjustments to take account of the tribunal's decisions in respect of the disputed charges.

(9) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to the Respondents through any service or administration charge.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the payability of certain service charge items from 2019 through to 2024. The application stated that the total amount in dispute was £15,564.34. The Applicants also made an application for orders under section 20C of the 1985 Act and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"), seeking to prevent the Respondent from adding the costs of these proceedings to either the service charge or as an administration charge.

2. The application was supplemented by submissions in an "expert's report" provided by BM Maunder Taylor, of Maunder Taylor Chartered Surveyors. Directions given by this tribunal on 11 September 2024 gave permission to the Applicants to rely on that evidence/submission and any updated report, although in the event none was provided.

3. Both parties complied with the directions, the Applicants relying on their application and the evidence/submission by Mr Maunder Taylor and the Respondent on her own witness statement and a statement of

case drafted by counsel Ashley Thompson. The hearing was listed for 21 and 22 January 2025. The tribunal inspected the property at 10am on the first day and the hearing was held at Hertford County Court, following that inspection. Mr Bretton represented all the Applicants at the hearing, accompanied initially by Mr Maunder Taylor who left at the lunchtime break (by agreement with the tribunal and the Respondent). Ms Shariff represented herself. The hearing concluded on the first day, with Mr Bretton agreeing to provide copies of invoices relating to disputed charges in 2023 within 7 days as they were provided to him too late to be put into the hearing bundle.

4. The Applicants had prepared the hearing bundle and also provided a further schedule on the day of the hearing which was used by the tribunal and the parties to link the relevant documents to each item in dispute.

5. Having heard evidence and submissions from the parties and considered the documents provided, the tribunal has made determinations on the various issues as follows. The relevant legal provisions are set out in the Appendix.

The property and background to the dispute

6. Woodcock Lodge is a large pebble-dashed rendered heritage farmhouse, which is Grade II Listed. The Lodge has substantial grounds, including a moat, woodlands, formal yew walks and lawns. It shares a driveway with three other freehold properties (the Coach House, Rosewood and Orchard Cottage). The Lodge was purchased by the Respondent's late husband in 1972 and divided up into five units: house numbers 1 and 2 and flats 3-5. Numbers 2,3 and 4 were sold with garages on 999 year leases. Mr Sharp retained number 1 and 5, a "granny flat" which the Respondent rents out. She remains in residence at number 1.

7. Mr Sharp's vision for the property was that it would be run as a community and arrangements for the service charge developed alongside the provisions in the leases and without regard to other legal protections for leaseholders, largely operated by consent. The Brettons bought number 2 in 2002, Mr King brought number 4 in 2008 and Mr Koursaris bought number 3 in 2021. Relations between the parties began to break down in or about 2019 due to concerns about some of the service charges and the majority of the residents, including the Respondent, considering putting their properties on the market.

8. In 2020 a dispute also arose between the Respondent and the owners of the Coach House in respect of the location of their boundary, in particular that part which runs alongside an area of woodland. The Applicants maintain that the dispute arose due to plans prepared by DSA, an architect's practice run by the Sharps, for planning permission

purposes which appeared to conflict with the boundary shown on the Land Registry plan.

9. DSA managed the property until July 2022 when the Respondent appointed Block Management 22 as her managing agents. Attempts to settle the dispute were unsuccessful, culminating in the issue of these proceedings in December 2023. The particular concerns relate to works to the shared driveway, legal fees, garages, the exterior of 5 Woodcock Lodge, tree surgery and sundry repair items.

The leases

10. The leases are in materially similar terms, with a couple of important differences, as identified below. The property is defined as the whole freehold estate as shown in varying colours on the plan and the building as Woodcock Lodge itself. The lease for house number 2 demises "*all that Western portion of the building together with the attic and roof space thereover*"; the demise for flat 3 is "*all that flat situate on the first floor of the Building together with the attic and roof space thereover and the external door entrance passage and stairway leading to the said Flat*" and the demise for flat 4 is "*all that Flat situate on part of the ground floor of the Building*". Each demise includes a garage (two for 2 Woodcock Lodge), private gardens and gives rights of access to the woodland, moat and ornamental gardens. The rights to the woodland and ornamental gardens are terminable on notice in the event that the lessor wishes to sell them with outline planning permission.

11. The demise of 2 Woodcock Lodge expressly includes the foundations beneath the ground floor of the premises but has no express reference to the internal and external walls or the roof. 3 Woodcock Lodge (described as Flat 4 in the lease) includes the internal and external walls and the roof of the building together with the structure thereof so far as the same constitutes the roof of the demised premises and 4 Woodcock Lodge again expressly includes the internal and external walls of the demised premises.

12. The tenants' covenants are in clause 2 and include a covenant at 2(2) to pay the service charge defined in the Second Schedule at the time and in the manner specified. The contributions in the lease are stated as one third for number 2 and one sixth for numbers 3 and 4, unless the costs and expenses incurred by the landlord are payable by any of the adjacent (freehold) premises. The tenants' covenants to repair apply to the whole of their demised premises. There is separate provision at 2(8) for payment on demand of a rateable or due proportion of expenses incurred in relation to drains, pipes or gutters used by the lessee in common with the lessor or other lessees or occupiers of the property. At 2(15) the lessee covenants to pay all of the lessors'

expenses (including solicitor's costs) in or in contemplation of any proceedings.

13. The lessor's covenants described in all three leases as being subject to payment of the service charge are the same but, unfortunately, appear as clause 6 in the lease for 2 Woodcock Lodge and clause 5 in the leases for the flats at 3 and 4. This is due to a new clause 5 in the lease for number 2, which contains covenants by the lessor effectively to observe similar covenants by the lessees in respect of the retained property at 1 and 5 Woodcock Lodge. The lessor's covenants in clause 6 (or 5 for the flats) are in relation to the painting of the exterior of the building, maintenance of boundary walls and fences, roadways and paths, lawned areas, woodlands and ornamental gardens. Clause 5/6 also deals with insurance and provides for the payment of such contractors agents or porters or servants as the lessor thinks fit.

14. As stated above, the Second Schedule contains provision as to payment of the service charge, described in general terms as the sums expended or incurred in connection with the management and maintenance and insurance of the building and of those areas coloured on the lease plan. Specific paragraphs then follow, including a reference to the lessor's covenants in clause 5 in all three leases. The Respondent's statement of case claimed that meant the service charge included the freeholder's costs of maintenance of the retained premises. However, that would only apply to the Brettons as there is no equivalent of clause 5 in the lease for 2 Woodcock Lodge in the flat leases. In the circumstances, the tribunal considers that the reference to clause 5 in the Second Schedule of the lease to 2 Woodcock Lodge is a typographical error and that it should read clause 6, so that all three leases are on the same footing in terms of the calculation of the service charge. This interpretation was given to the Respondent during the hearing, who confirmed that she had never knowingly sought to include costs of repairing her own premises as part of the service charge.

15. Paragraph (c) provides for the payment of all reasonable fees payable to any solicitor (and others) employed by the lessor in connection with the management and/or maintenance of the property.

16. Paragraph (e) provides for a reserve fund which shall be brought into account every 5 years by applying any credit against the next service charge due. The service charge year runs from 1 January and contributions are payable 6 monthly in advance on 31 December and a second instalment mid-way through the year on 1 July. An account should be taken at the end of each year.

17. The Respondent's witness statement listed the differences in terms of how the service charge and other repair items had been billed prior to the appointment of the managing agents in 2022. In particular, the service charge account had been apportioned at 3/7ths for the

respondent, 2/7ths for the Brettons and 1/7th for each leasehold flat. Annual budgets and accounts were undertaken; however, emergency items and repairs to the driveways and gutters were charged separately. Works to the shared access road were charged in proportions of 1/8th to reflect the 5 properties in Woodcock Lodge and the three adjacent freehold houses. Works to the driveway for Woodcock Lodge were charged in proportions of 1/5th. The reserve fund accrued for 7 years in line with the covenant to repaint the exterior every 7 years and was designated only for that purpose. Management was conducted by DSA and a management fee of 10% was levied on each item of expenditure.

Disputed service charges 2019

18. The Applicants were unable to find any budget for 2019 but it is clear from the contemporaneous emails that the disputed work to the driveways was carried out without any consultation and with little warning. The main objection was that the Respondent had stated that the works would be free of charge and then presented the leaseholders with a bill for £872.82 each, apparently payable on demand. The Brettons had paid £500 towards the works and the other leaseholders had paid in full.

19. The initial email from the Respondent to the Applicants was dated 31 August 2019, it reads: "*Hi. Just to let you know that I am taking advantage of some spare labour and at cost cobbles to sort out the roundabouts and verges. I was not expecting anything to happen so quickly – hence no warning. I will not be charging you for this. Kind regards Yasmin*". The invoice was sent on 24 November 2019 with an email stating that the contractor had invoiced separately for repairs and maintenance of the drive (£5,371.20), in addition to the invoice for the new works which would be paid by the Respondent. The invoice for £872.82 was calculated by charging the leaseholders 1/8th of half the total, to reflect the 3 separate properties and five units in Woodcock Lodge which used the main drive and 1/5th of the other half in respect of works said to have been carried out to the parts of the drive used by the residents of Woodcock Lodge only.

20. Mr Bretton was away at the time but responded to the email objecting to the charge primarily on the basis that the Respondent had said she would pay for the works but also the division between the various properties and the different types of work. He maintained that the "improvement works" should have cost far more than the repairs and the Coach House in particular should have paid a greater share as much of the damage had been caused by builders' vehicles during works to their property. The subsequent accounts for 2019 omitted the invoice altogether.

21. The Respondent's Statement of Case pointed to the lessor's covenant in clause 6 to maintain the roadways and denied that the email dated 31

August 2019 amounted to a representation that such works would not be charged to the leaseholders (as opposed to the work mentioned in that email). It was admitted that payment was sought by way of an ad hoc demand and no consultation was undertaken in breach of section 20 of the 1985 Act. The Respondent argued that the Applicants should be estopped by convention from insisting on strict compliance with the lease due to her previous service charge practice which had been followed over a significant period of time, without complaint. She also applied for retrospective dispensation from consultation.

22. As to the total cost of the works, the Respondent produced a separate invoice for £10,722.56 (including VAT) which she had paid personally. That invoice included scaffolding to 1 Woodcock Lodge and materials for works to the chimneys but also detailed the works to lay the granite sets (cobbles) to the "roundabout" and other edges. The invoice for the driveway repair and maintenance for £5,371.20 referred to an adjoining breakdown which was not included in the bundle. The Respondent also provided a series of emails between her and the other leaseholders. They showed that Mr King had also expressed dissatisfaction with the cost of the repair works, supporting Mr Bretton's objection to the division of costs both between the parties and the other freehold properties. Mr Bretton paid £250 towards the repair works, £250 towards the improvements and stated he would consider making a further payment if the driveway held up to use over the following two years. Mr and Mrs Koursaris only bought their property in 2021 and therefore did not pay the service charge in dispute.

The tribunal's decision

23. Maintenance of the shared driveways is a service charge item as stated in clause 6 of the Brettons' lease and clause 5 of the flat leases. In those circumstances, any intended repairs should form part of the budget and/or the end of year reconciliation. It also follows that the usual contributions should apply, subject to any additional contribution from the adjacent freehold premises which are obliged to pay a fair proportion of the cost of repairing and maintaining the roadway used by them calculated according to user. It seems to the tribunal that the practice of dividing the cost in equal shares to reflect the number of freehold and leasehold properties is not fair to the leasehold flats, which should pay a smaller share. A fairer method would be to divide the cost of works to the main drive by 4 to reflect the number of buildings and those costs together with the driveway used by the residents of Woodcock Lodge only in accordance with the contributions in the leases. That said, the tribunal has not been asked to reapportion the costs for this service charge, the principal challenge is that they are not payable at all.

24. In particular, the leaseholders were entitled to the protection of statutory consultation under section 20 of the 1985 Act, regardless of

any previous service charge practice operated by consent. The Respondent now accepts that she should have consulted in relation to any works which incurred a service charge greater than £250 per property. An application for retrospective dispensation from consultation was made in these proceedings, which is objected to by the Applicants on the basis that they have been caused prejudice. The principal claim is that no charge at all was expected as a result of the Respondent's email dated 31 August 2019. Both the Brettons and Mr King further object to the alleged cost of repairs, stating that their bill should have been far lower as by far the majority of the work was in relation to the "improvement" works as opposed to filling in various potholes. They also both consider that the Coach House, in particular, should have paid a greater share of the works due to damage caused by their builders' vehicles.

25. The Respondent's email clearly led both Applicants to believe that no charge would be made for the works and the additional works took them by surprise. Given the contemporaneous evidence that additional work had been caused by the Coachhouse and the fact that the contributions sought do not reflect the proportions due under the leases, the tribunal agrees with the Applicants that they have been caused prejudice by the Respondent's failure to consult with them in respect of that part of the works which was to be recharged to them. In particular and following its inspection of the property before the hearing, the tribunal accepts that the division of the costs appears unreasonable – the majority of the work and materials would clearly have been due to or follow from the laying of the granite sets (including the majority of the gravel). Given the lack of dispute about the issues caused by the work to the Coach House, the tribunal also finds that it would have been reasonable to ask those owners to make a greater contribution towards the works. By presenting the Applicants with a "fait accompli", this opportunity to reduce the cost to Woodcock Lodge was lost. In the circumstances the application for retrospective dispensation is refused.

26. This means that the service charge in respect of this item is limited to £250 per relevant leaseholder. This is what the Brettons paid (the additional payment of £250 was clearly expressed as a voluntary contribution towards the "improvement works"), meaning that Mr King is due a rebate of £622.82.

Disputed service charges for 2020

27. The Applicants disputed the legal charges of £1,059.77 (which included a 10% management fee) and the reserve fund on the basis that the Respondent operated it as a 7 year cycle and the lease clearly limits it to 5. The Respondent has agreed this interpretation and therefore the reserve fund should be credited to the service charges requested for 2025 or used for major works, by agreement with the leaseholders.

Again, the service charge payable for this year only affects the Brettons and Mr King.

28. In terms of its recovery of legal costs, the Respondent relies on paragraph 1(c) of the Second Schedule which includes within the service charge "*all reasonable fees charges expenses and commissions payable to any Solicitor Accountant Architect Structural Engineer Surveyor Valuer Manager Agent or Porter whom the Lessors may from time to time employ in connection with the management and/or maintenance of the Property*".

29. The objection to the service charge was that the costs were incurred in relation to a dispute with the Coach House in respect of a boundary, caused at least in part by drawings made by DSA when seeking planning permission for an extension which was presumably designed by the firm. The Applicants therefore maintained that the costs were not within the contemplation of clause 1(c).

30. The Respondent maintained that the advice sought from Farrer & Co related in part to general advice on management as well as concern in respect of the boundary with the Coach House, which would affect liability for maintenance of part of the adjacent wooded area. After the hearing, she provided a client care letter dated 10 February 2020. Although that letter mentioned the Respondent's objective in ensuring that the management of Woodcock Lodge was administered correctly, it went on to state that "*for present purposes*" Farrer & Co were instructed to consider the enforceability of a covenant in the deeds for the Coach House in respect of the maintenance of a Cypress hedge by them and to advise as to a potential adverse possession claim against the Freehold. The tribunal had not given permission for any additional evidence to be provided by the Respondent and the Applicants objected to the letter but it seems to the tribunal that it provides useful clarity which will assist in the tribunal reaching a fair and just determination. The letter is therefore admitted into evidence.

The tribunal's decision

31. Given the clarification in the client care letter of the scope of the advice in 2020, the tribunal agrees with the Applicants that it was clearly not in connection with the management and/or maintenance of Woodcock Lodge. The focus was the interest of the Respondent as the owner of the freehold and in the context of a dispute with her neighbours at the Coach House. There is nothing in the client care letter which links the advice to management or maintenance of Woodcock Lodge. In the circumstances, the costs are payable by the Respondent and not as part of the service charge. Nothing is payable by the Brettons or Mr King in relation to these costs and again a rebate is due of the amount paid.

Disputed charges for 2021

32. The main item was in respect of the "garage project", with £2,374.56 charged to the leaseholders through the service charge. The Applicants also challenged £2,106.99 paid in respect of "Flat 5 works" and the reserve fund. Mr Koursaris became registered for his lease part way through this year and it is therefore assumed that he paid his share of the disputed items. There is no need to consider the reserve fund again for this year or others in dispute.

33. By the time of the hearing, both parties accepted that the garages assigned to the leasehold properties were included in the demise of 2,3 and 4 Woodcock Lodge. The lease for number 2 refers to "*two garages (including the land upon which they are built) (hereinafter called the garages) the situation of whereof is shown on Plan A and edged red including the rear wall and doors of the garages (a side wall being a party wall severed medially)*". One garage is included for each of 3 and 4 and the demise also includes the word "*roof*" before "*rear wall and doors*" etc. Under the leases, the tenants covenant to keep their demised premises in repair and therefore the costs cannot form part of the service charge (there was no argument or evidence that the Respondent was carrying out the works in default). The parties therefore maintained that the costs were outside the jurisdiction of the tribunal in respect of flats 3 and 4 but due to the omission of the word "*roof*", the Respondent's Statement of Case maintained that the roof of the Brettons' garage was not demised to them and therefore the tribunal would have jurisdiction in relation to those costs. The objections were that there was no consultation, poor management of the works and that the cost was unreasonable due to an overspend.

34. In respect of the "Flat 5 works", the Respondent's Statement of Case pointed out that the Service Charge provisions referred to the costs incurred by the lessor of complying with her covenants in clause 5 of the lease, which included keeping that part of the property used or occupied by her in repair. However, the main argument in favour of the service charge was that the works actually related to watercourses which were used in common by different parts of the property, including the fixing of a drain and guttering which carries water from the roofs of numbers 2 and 3, as well as number 5. The invoices were at 21.11 and 21.32 of the bundle and clearly refer to guttering and drainage. As stated above, clause 2(8) of the lease contains the covenant to pay a due proportion of the costs of repairing all sewers, drains and gutters used or capable of being used in common with other parts of the property. The objection was that the work was in respect of Flat 5, in particular the render repairs.

The tribunal's decision

35. The tribunal determines that both garages assigned to the leaseholder, including the roof, are contained in the demise for 2 Woodcock Lodge - despite the omission of the word "*roof*" in that part of the lease. A

natural reading of the clause indicates that the intention was to demise the whole structure ("*two garages (including the land upon which they are built)"*) and it would make no sense to exclude the roof of those garages when the roof to the garages for flats 3 and 4 is expressly included in the leases of the flats. The omission is most likely to be a further error. In any event, the largest part of the disputed charge appears to relate to the rear wall of the garages which are expressly within the demise for all three leases and/or works to the Respondent's own garage or on her land at the rear of the garages. For the avoidance of doubt and as stated in paragraph 14 above, the tribunal rejects the argument that the Brettons' lease obliges them to pay for the maintenance of the Respondent's retained property as part of their service charge. There is no equivalent provision in the leases for either flat. This means that nothing is payable in respect of those works as part of the service charge, although of course each tenant has entered into a covenant to keep their demised property in repair and it would make sense for all the owners to agree any future works in advance (and take responsibility for them being carried out) bearing in mind there is one garage block. Again, a rebate is due in respect of any payments made.

36. In respect of the "Flat 5 works", the position is slightly more complicated. The invoice dated 27 October 2021 for works to guttering and drainage appear to the tribunal to relate to watercourses which are shared by 2,3 and 5 Woodcock Lodge and therefore a contribution is due under clause 2(8) of the leases in respect of those properties (but not number 4). The earlier and larger invoice dated 25 February 2021 was addressed to the Respondent at 5 Woodcock Lodge. Looking at the location of the works, which was the private patio for number 5, the tribunal determines that they were not in respect of communal drains. Certainly, the new slot drain and render repairs are clearly for the sole benefit of flat 5. Again, the tribunal rejects the interpretation of the Brettons' lease as including the cost of works to the Respondents' retained property as part of their service charge.

37. In the circumstances, nothing is payable in relation to that invoice by the leaseholders as part of the service charge. This reduces this item to a total of £768 including VAT, which was originally charged in sevenths to all leaseholders, together with a 10% management fee. It seems to the tribunal that such works are not part of the service charge under the lease, clause 2(8) is a covenant for each lessee to pay a share of the cost of works to gutters etc used in common. However, since the works were conducted by the freeholder and under clause 2(8) the cost is to be shared by the freeholder, 2 and 3 Woodcock Lodge, it makes sense to include the cost in this decision but excluding the 10% management fee. On balance, it seems appropriate to divide the cost by three given the location of the works. The total cost of £768 is therefore payable in equal shares of £256 by the Respondent, 2 and 3 Woodcock Lodge. Nothing is payable by flat 4. There was no challenge to the

reasonableness of the cost or the lack of consultation for these works. Any overpaid amounts need to be returned to the leaseholders.

Disputed charges for 2022

38. Legal costs of £3,583.65 are disputed, together with a further £2,365.44 in respect of a garage overspend, tree surgery costs of £1,494.85, more "Flat 5 works" and the reserve fund. The garage and reserve fund do not require further consideration given the decisions made above.

39. The challenge to the legal costs was again that they did not fall within paragraph 1(c) of the Second Schedule i.e. in connection with the management and/or maintenance of the property. The invoices from Farrer & Co all referred to "*Management and boundary advice*", although it was conceded by the Respondent that they had initially also included the costs of possession proceedings in relation to her tenant in Flat 5, which had been repaid once that error had been pointed out. A breakdown of those invoices by Farrers was included as an annex to Mr Maunder-Taylors' submissions on behalf of the Applicants and describes the work solely in terms of the boundary dispute. That is confirmed by the Respondent's witness statement which makes no reference to management issues other than the potential burden of the cost for tree works depending on the location of the boundary.

40. That leads to the tree surgery costs. £1,494.85 is challenged on the basis that the owners of the Coach House had initially offered to pay for the works and the Respondent had unreasonably refused that offer due to her dispute with them. Shortly after the costs were paid by the leaseholders, the Respondent put the woods up for sale and the Applicants felt that they had been taken advantage of by the Respondent. The Respondent accepted that she refused the offer by the owners of the Coach House to fell the tree, during the hearing she confirmed that she had been concerned that they would argue possession rights if she allowed them onto the land.

41. The final item in dispute again concerned works allegedly to Flat 5. The leaseholders paid a share of £290.40 which represented 4/7ths of the gross costs of £385 + VAT plus 10% management fee charged by DSA. The challenge was again that the works were for the sole benefit of Flat 5. The relevant invoice refers to a gutter and down pipe to that property. The Respondent states that the lease allows her to recoup the cost of works to Flat 5 but since the work is to the guttering and drainage, it is properly part of the service charge in any event.

The tribunal's decision

42. The tribunal again determines that nothing is payable by the leaseholders in respect of the legal costs of the boundary dispute with

the owners of the Coach House. No clear link has been made by the Respondent with management issues or evidence provided as to how the costs have provided clarity in respect of service charge costs or maintenance of the property. The tribunal considers that this clause is intended to deal with costs incurred for the actual management and/or maintenance of the property, including any disputes with the leaseholders as opposed to any disputes with the freehold owners of the adjacent properties. Again, the leaseholders are entitled to a rebate in respect of anything paid towards these costs.

43. While the tribunal understands that the Applicants consider the tree removal costs were unreasonably incurred by the Respondent, due to the refusal of the offer by the Coach House to carry out the works, this work is covered by the lessor's covenants in clause 5/6 of the leases which expressly refers to the service charge. On balance and in the light of the dispute between the Respondent and the Coach House, the tribunal determines that the full amount claimed from the leaseholders is payable. This was again levied at a slightly lower percentage than the contributions due under the leases.

44. Finally for this year, the invoice for the guttering again refers specifically to Flat 5. In the absence of evidence that the guttering is shared, that item is not liable to be recharged via clause 2(8) of the lease. The tribunal also rejects the argument that the Brettons' lease provides for the cost of works to the Respondent's retained property to form part of their service charge. Therefore nothing is payable for this item as part of the service charge and any payments made by the leaseholders need to be refunded.

Disputed items for 2023

45. Due to concessions by both sides and a repeat of the Reserve Fund item, three items remained in dispute by the time of the hearing. A contribution towards guttering works of £1,124.57, legal fees of £311.43 and £1,357.72 for decorative works to the pump and render.

46. The challenge to the guttering was that the costs were inflated and that no consultation was carried out despite the charge to the leaseholders exceeding £750. The Respondent admitted the latter but submitted that the works were necessary, of reasonable quality and had applied for dispensation from consultation. She had also provided copies of the invoice and pointed out the area for the works during the tribunal's inspection of the property.

47. The legal fees were in relation to this application. Since the Applicants have made applications under section 20C and paragraph 5A for the costs of the proceedings to be excluded as a service or administration charge, the tribunal will consider these costs when looking at that application at the end of this decision.

48. The works to the pump and render were again challenged on the basis that the works were not of a reasonable standard. Again, the amount sought was above the consultation limit, which was accepted by the Respondent who applied for dispensation. Some further details of the works were provided in her response to the application but not the extent of the repair works to her own property which are referenced in the invoice. Photographs of the condition of the wall to 2 Woodcock Lodge and the pump before the works were provided and the tribunal examined each area during its inspection.

The tribunal's decision

49. The guttering works appear reasonable given the extent of the replacement items pointed out during the inspection and in the absence of any lower comparable quotes. As pointed out previously, the contribution is actually due via clause 2(8) of the leases on the basis of shared use rather than as a service charge. There may also be an argument that the flat leaseholders did not use the gutters to the front elevation, although the invoice includes a reference to more general works and the cost has been divided so that the flats only paid 1/7th of the total. On balance, the costs are payable as demanded.

50. Again, the pump and render repairs are within the respective demises rather than forming part of the service charge obligations of the Freeholder. In particular, the pump is on the external wall of 2 Woodcock Lodge and obviously the render repairs were carried out to various parts of the external walls. The lease for 2 Woodcock Lodge does not refer to the walls expressly but clearly demises "*all that Western portion of the building*". Taken with the other demises for the flats, the tribunal determines that it was intended that each owner would repair their own part of the building, including the external render. That is also consistent with the agreement by all the parties that each owner is responsible for their own roof. As stated before, the tribunal has rejected the Respondent's argument that the Brettons' lease provides for their service charge to include works to the Respondents' retained property. In those circumstances, nothing is payable in respect of this item as part of the service charge. That said, given that each owner is responsible for works to the exterior of their part of Woodcock Lodge and in the light of the other decisions made by the tribunal, it is hoped that the Brettons can now reach an agreement with the Respondent in respect of the cost of the works carried out on their behalf, together with any other leaseholders who benefited from this item.

The budget for 2024

51. Although the Applicants had previously challenged the budget for 2024, due to the lack of unforeseen expenditure that year, Mr Bretton withdrew the challenge as he hoped it would be possible to agree any

payment due for the actual year with the agents. The tribunal has therefore not considered the disputed items in detail. One item that was queried was an allowance for a Fire Risk Assessment. There are no internal common parts in respect of the leases, each owner is responsible for their part of the building, including the exterior and in those circumstances, it is not clear that the Freeholder bears any personal responsibility under the Fire Safety Order. The agents should therefore consider whether this item is strictly necessary, particularly given the limited nature of the freeholder's obligations under the leases and the extent of each individual demise.

Application under s.20C and paragraph 5A in respect of the Respondent's costs

52. The Applicants had made applications for orders under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 so that none of the landlord's costs of the tribunal proceedings may be passed to them through any service or administration charge.

53. As anticipated by the Respondent in her Statement of Case, the success of those applications inevitably depends on the outcome of the Applicants' challenge to their service charge. The tribunal also considers that the behaviour of the parties prior to the application being made is relevant. Given that the Respondent and her practice have been managing the property for a long time, it is unfortunate that she did not have a full understanding of the leases. In particular, the extent of the demises and the limitation of the service charge provisions. She also did not appear to be aware of the duty to consult and there is no doubt that the unexpected invoices for the driveway and legal costs led to the challenge. The Applicants have been largely successful in respect of those issues. It is also unfortunate that despite apparently seeking advice in 2020, the Respondent used the service charge to seek payment for works to the garages and other works which are not payable under the service charge provisions in the leases. On the other hand, the Respondent had paid 3/7th of the service charge costs as opposed to the 2/3rds contribution provided in the leases.

54. The Applicants have also incurred costs in preparing for the hearing, in particular the costs of Mr Maunder-Taylor. The tribunal cannot make an order for the payment of those costs absent unreasonable behaviour by the Respondent in defending the proceedings, of which there is no evidence.

55. In the circumstances, the tribunal considers that it is just and equitable for each party to bear their own costs of these proceedings. An order is therefore made as sought that the Respondent cannot seek her costs of these proceedings against the leaseholders either as a service or administration charge. This means that the legal costs charged in 2023

(and any other costs incurred by the Respondent in respect of these proceedings) are not payable by the leaseholders.

56. As stated above, there are some issues with the lease for number 2 which should be remedied in order to clarify each party's responsibility for the costs of maintaining the property and correct apparent errors. It is hoped that the parties may be able to agree suitable amendments to avoid further dispute. An account will also need to be taken of the adjustments due to each leaseholder following this decision. Given the length of the leases and the extent of the demises, the parties should try and return to Mr Sharp's original vision of running the building co-operatively, with an equal share of responsibility for works to the building and fewer surprises in respect of any costs which are properly shared under the leases.

Name: Judge Wayte **Date:** 6 February 2025

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then 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 tribunal sends written reasons for the decision to the person making the application.

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.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

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

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

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

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

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

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, Paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.