FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/43UD/LBC/2019/0021
Property	**:**	18 Chasefield Close, Guildford, Surrey GU4 7YR
Applicant	**:**	Anchor Hanover
Representative	**:**	Ms Debbie Matusevicius FIRPM Home Ownership Business Partner
Respondent	**:**	Mr Ivor Edwards
Representative	**:**	Mr Laurie Scher Counsel
Type of Application	**:**	Determination of an alleged breach of covenant
Tribunal Member(s)	**:**	Judge Tildesley OBE Mrs J Coupe FRICS Mrs J Herrington
Date and Venue of Hearing	**:**	Guildford Magistrates Court 2 December 2019 11 December 2019 (reconvene in the absence of the parties)
Date of Decision	**:**	22 January 2020

DECISION

Decisions of the Tribunal

1. The Tribunal decides that Mr Edwards has not breached the covenants at clauses 4.8 and 4.13 of the lease, and that the Application should be dismissed.

2. The Tribunal's determination for each incident relied upon by the Applicant is set out in paragraphs 201-246.

3. Although Mr Edwards has been successful with his defence to the application, this does not mean that the Tribunal finds that his conduct was beyond reproach throughout the period in question. The Tribunal found in three incidents there were potential breaches of covenant but two of those breaches had been waived by the Applicant, and the third did not engage the covenant at clause 4.13. The Tribunal found in respect of other breaches, that the Applicant did not fully appreciate that this was legal process and that it was necessary to bring more compelling evidence to the Tribunal to establish its case. Equally there were some incidents where more consideration should have been given to Mr Edwards and his disability.

The Application

4. On 28 May 2019 the Applicant landlord sought a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that Mr Edwards, the leaseholder of Flat 18, was in breach of Clauses 4.8 and 4.13 of the lease dated 6 June 2013 and made between Anchor Trust of the one part and Mr Edwards of the other part for a term of 99 years.

5. The chronology of the proceedings is set out in the "Further Directions" issued 27 September 2019 which are incorporated at Appendix 2 as part of this decision.

6. The Application was due to be heard on 24 October 2019. Mr Edwards, however, suffered a car accident and was admitted to hospital around 20 October 2019. Judge Tildesley adjourned the hearing until 2 December 2019.

7. On 2 December 2019 Ms Debbie Matusevicius, Home Ownership Business Partner, acted as representative for the Applicant. Ms Alicja Olszewska, the Estate Manager for Chasefield Close, and Mr Antony Hesford, Housing Solicitor, were also in attendance and gave evidence for the Applicant. Mr Marc Thorn attended as an observer.

8. Mr Laurie Scher of Counsel represented Mr Edwards pro bono. Mr Edwards attended and gave evidence. A speech to text operator was appointed to enable Mr Edwards to participate in the proceedings.

9. The Tribunal admitted the parties' documents bundles in evidence. References to the documents in the respective bundles are in [ ] prefixed by "A" for the Applicant's bundle and "R" for the Respondent's bundle.

10. Mr Scher supplied a skeleton argument. The Tribunal gave the Applicant time to read it.

11. The Tribunal completed the evidence at around 4.15pm. The Tribunal reconvened on 11 December 2019 in the absence of the parties to discuss their decision.

12. The relevant legal provisions are set out in Appendix 1.

The Background

13. The property is a one bedroom flat within a block of four flats located on a sheltered housing estate comprising of eight flats and 18 bungalows. The estate was built in the 1980s and provided specially for retired persons of pensionable age. The properties are all held on long leases. The terms of which prohibit assignment of the lease unless it is to an elderly person who is in the opinion of Anchor in need of sheltered housing and who is not unsuitable for sheltered housing in accordance with the criteria laid down by Anchor.

14. Under the terms of the lease the Applicant is required to maintain, repair and decorate the main structure of the estate and to insure the estate against loss or damage by fire and other perils. The lease allows the Applicant to employ a warden (now referred to as an Estate manager), for the general supervision of the estate and to make arrangements for the answering during the night of emergency calls of the leaseholders. The lease, however, specifies that the estate manager cannot be responsible for medical or other care of the leaseholders.

15. A leaseholders is obliged to pay a service charge including a deferred charge for the services provided by the Applicant, and to keep the interior of his dwelling in good repair and decorative order.

16. The Tribunal did not inspect the property or the estate. The Tribunal, saw photographs of the estate and the exterior of the property by downloading them from Google Maps. The Tribunal shared the photographs with the parties.

17. The Applicant is a Charitable Community Benefit Society and Housing Association and is the owner of the freehold of Chasefield Close under Title Number SY577516.

18. Mr Edwards owns the long leasehold of 18 Chasefield Close under title number SY812607. The flat is located on the first floor of a block of four flats. Mrs King is the owner of Flat 17 which is immediately

below Flat 18 on the ground floor. Mrs Gould is the leaseholder of the other ground floor flat (19) in the block. Mr Ajimal owns Flat 20 situated on the first floor opposite Flat 18.

19. On 6 June 2013 Mr Edwards moved into his Flat. On 16 June 2013 Mrs Rosalie Khadragi, the previous estate manager, found Mr Edwards unconscious in a comatose state in his flat. Mr Edwards was rushed into hospital and diagnosed with Meningitis. Mr Edwards remained in a coma for three months. When Mr Edwards came out of the coma he was totally deaf and unable to walk. While in hospital Mr Edwards had five toes amputated due to gangrene setting in because he is diabetic and he had learn to walk again. Mr Edwards underwent a cochlear implant operation which failed and is now permanently totally deaf. Mr Edwards returned to his home in February 2014.

The Applicant's case

20. The Applicant's case as set out in its extended reasons dated 23 July 2019 [A56-57] stated that

> Between the period July 2017 to July 2019
>
> - Mr Edwards acted in an aggressive manner towards other residents and subjected them to verbal abuse.
> - Mr Edwards physically assaulted another resident.
> - Mr Edwards was found to be kicking and banging on a resident's property door and shouting through their letter box.
> - Mr Edwards had made a death threat to the estate manager.
> - Mr Edwards used racially abusive language towards another resident.
> - Mr Edwards made a racist remark to the estate manager.
> - Mr Edwards has acted in an abusive manner towards other employees of the Applicant.
> - Mr Edward's behaviour had caused other residents to be fearful and distressed.
> - Mr Edward's behaviour has caused the estate manager to feel anxious to the effect that she no longer feels safe working in Chasefield Court.
> - Mr Edward's behaviour had resulted in calls for the Police to attend Chasefield Close on a number of occasions.

21. The Applicant argued that Mr Edward's conduct constituted a breach of the following covenants:

> **Clause 4.13:** Not to do or permit or suffer any waste spoil injury damage destruction to or upon the Dwelling or any part or parts of the Estate nor to do or permit or suffer thereon an act or thing which shall or may be or become illegal or immoral or a nuisance damage annoyance detriment or inconvenience to Anchor or the owners tenants or occupiers of any premises situate in the neighbourhood or which may reduce the value of any other premises.
>
> **Clause 4.8:** To observe the regulations contained in the Fourth Schedule hereto and such other regulations as may be made by Anchor and notified in writing to the Lessee from time to time for the better management of the Estate or for the general benefit of the lessees of the dwellings in the Estate.

22. In respect of Clause 4.8 the Applicant relied on Regulation (ii) of the Fourth Schedule, namely:

> Not to do anything in the Dwelling or within the Estate or make a noise which may be of annoyance or nuisance to lessees and occupiers of other dwellings in the Estate or in the neighbourhood and in particular not to play a wireless or television or other noise making equipment or instruments so as to be audible outside the dwelling between the hours of 11.00pm and 7.00 am.

23. The Applicant called Ms Alicja Olszewska, the estate manager, to give evidence. Ms Olszewska supplied an impact statement [A68] and a witness statement [A 69-83]. Mr Anthony Hesford also gave evidence. Mr Hesford did not provide a witness statement but he had met with Mr Edwards to discuss his conduct and was the author of the "Warning Letter Before Action" dated 25 May 2018 [R99] and the Follow up letter from the Meeting on 29 May 2018 dated 17 July 2018 [A164 & 165].

24. The Applicant supplied copies of an Anti-social behaviour incident witness statements from Mrs Jean Gould (Flat 19) [A58-60], Mrs Heather King (Flat 17) [A63-64], and Mrs Lisa Atkin, the cleaner engaged by Mrs Gould and Mr Ajimal [A 65-66]. The three statements related to the incident on 2 January 2018 where it is said that Mr Edwards kicked the front door of Flat 17 occupied by Ms King.

25. The Applicant provided a witness statement of Mr Kalwant Ajimal (Flat 20) which concerned the alleged assault on him by Mr Edwards on 9 July 2018 [A61-62].

26. The Applicant supplied a witness statement of Dale Williams, a Customer Relations Advisor employed by Anchor Hanover [A67]. Mr Williams' statement dealt with the personal effect upon him by the constant accusations of incompetence by Mr Edwards. Mr Williams

also said that Mr Edwards had threatened to visit him at the Head Office in Bradford and at his home.

27. The Applicant chose not to call the residents at Chasefield Close because the Applicant said that they were old and vulnerable and in fear of Mr Edwards. The Applicant did not offer a reason why Mr Williams was not called but relied on the contents of the correspondence from Mr Edwards to the Customer Relations Team.

Mr Edward's Case

28. Mr Edwards strenuously denied he was in breach of the various covenants under the lease. Mr Edwards believed that he had been unfairly treated by Mrs King since his release from hospital.

29. Mr Scher submitted that the Applicant's case was not specific about dates and details of the incidents on which it relied. Mr Scher said that Mr Edwards who was acting in person until November 2019 has had to piece together the details of its case from the various witness statements and had addressed what he considered to be the issues in a series of statements.

30. Mr Edwards supplied witness statements from Mrs Rosalie Khadragi, who was the estate manager prior to Ms Alicja Olszewska [R 114-115], and from Mrs Sonya Masters, Mr Edwards' carer [R116-117].

31. Mrs Khadragi believed that Mr Edwards was being targeted over the smallest things. Mrs Khadragi said that she "had seen this happen before and unless it was nipped in the bud it becomes war". Mrs Khadragi added

> "Sadly the older people get (I'm an old lady myself now) the less tolerance and empathy they seem to have with others, especially people less able than them. They seem to think once you have any sort of disability then you should move on. I have seen this happen many times in my years of employment as an estate manager".

32. Mrs Masters echoed similar sentiments to Mrs Khadragi saying that she had witnessed other people's lack of empathy and intolerance to the situation.

33. Mr Edwards had included a "Note" from PC Damon Young of the Surrey Constabulary who had attended the door incident on 2 January 2018 [R11] and an email from Inspector Andrew Hill of the Surrey Constabulary based at Guildford dated 16 October 2018 which concerned the alleged assault on Mr Ajimal [R25].

Consideration

34. The purpose of bringing proceedings under section 168(4) is to enable a landlord under a long lease of a dwelling to serve a section 146 notice to forfeit the lease for breaches of covenant by the tenant other than non-payment of rent. If proceedings are brought the Tribunal is required to determine whether the tenant has committed an actionable breach of covenant. A finding against a tenant potentially could result in the tenant losing a valuable asset and in this case his home.

35. The term actionable breach was considered by Judge Huskinson in *Swanston Grange (Luton) Management Limited v Eileen Langley Essen* LRX 12/2007. Essentially the Tribunal's jurisdiction under section 168(4) is limited to a finding of fact on whether a breach has occurred. Judge Huskinson added that the Tribunal can decide whether the landlord was estopped from asserting the facts on which the breach of covenant is based. Judge Huskinson, however, went on to say the Tribunal's jurisdiction did not extend to determining whether the breach had been remedied. This was a question for the court in an action for forfeiture.

36. In the Tribunal's view, the structure of section 168 is such that an action under section 168 (4) should only be brought if the tenant does not admit the breach. In the Tribunal's view, it follows from the structure of section 168 and the potential severe consequences for the tenant, the landlord is responsible for proving the breach on the balance of probabilities. It also follows the landlord should give the tenant an opportunity to admit the breach and put matters right before bringing proceedings under section 168(4) of the 2002 Act.

37. At the beginning of the hearing the Tribunal required the Applicant to specify which parts of Clause 4.13 and Regulation (ii) it was relying on and to identify the incidents that formed the factual basis of its case. As well as identifying the incidents, the Applicant referred to 13 items of correspondence. Mr Scher proposed that it was not proportionate for the Tribunal to consider 13 items of correspondence, and suggested that the Applicant choose two or three letters which formed the high point of their case against Mr Edwards. The Applicant agreed to Mr Scher's suggestion and opted for the correspondence exhibited at A103 and A111.

38. The Applicant placed reliance on the following part of Clause 4.13: *"not to do or permit an act or thing which shall or may be or become illegal or immoral or a nuisance damage annoyance detriment or inconvenience to Anchor or the owners tenants or occupiers of any premises situate in the neighbourhood…*"

39. In respect of Regulation (ii) the Applicant relied on *"Not to do anything in the Dwelling or within the Estate or make a noise which*

may be of annoyance or nuisance to lessees and occupiers of other dwellings in the Estate and in particular not to play a wireless or television or other noise making equipment or instruments so as to be audible outside the dwelling between the hours of 11.00pm and 7.00 am".

40. The Tribunal does not consider that the wording in Regulation (ii) adds to the Applicant's case. Essentially it is aimed at conduct which may cause a nuisance to lessees and occupiers of other dwellings which is already catered for under Clause 4.13. The distinctive feature of Regulation (ii) is noise from wireless or television or like equipment. The Tribunal understands that Mr Edwards because of his deafness does not make use of such equipment.

Evidence and Findings

41. The Tribunal now will consider each of the identified incidents relied on in turn.

Cascading Water in July 2017

42. Ms King complained of being startled by water cascading past her window ("nearly jumped out of her skin") [A 69].

43. Mr Edwards stated that he was cleaning the inside of his window, and that he was entitled to do that. Mr Edwards said that water would naturally fall past Ms King's window if it was being cleaned. Mr Edwards said that water falling passed Ms King's window happened whenever the outside of the window was cleaned by the contractor. Mr Edwards produced a photograph of the contractor cleaning the outside window using an extended hose/brush [R16]

44. Mr Edwards believed that Mrs King's complaint about cascading water was symptomatic of Mrs King's negative attitude towards him since his release from hospital. According to Mr Edwards, Mrs King had made a series of futile complaints about him including sweet wrappers on the pavement (Mr Edwards is diabetic and does not eat sweets), and leaving tissues outside (Mr Edwards uses a handkerchief).

45. The Tribunal accepts Mr Edwards was cleaning the inside of his window at the time of the incident, and that as a consequence water is likely to fall from the upstairs window. The Tribunal finds that the act complained of is "cleaning windows".

Shouting and Kicking the Door on 2 January 2018
"Go Back to Poland" on 4 January 2018

46. Mrs King said that on 2 January 2018 at around 2.30 pm she found the front security door open on her return from going into town. Mrs King said there was a note on the door asking for it to remain open

but she closed it because it was cold. Mrs King said that shortly afterwards there was a lot of shouting and banging on the door of her flat together with constant ringing of the doorbell, and persistent kicking of the door. Mrs King said she was very frightened and phoned the Police who arrived promptly.

47. Mrs Gould said that she heard Mr Edwards kicking the door and that she became very worried for the safety of Mrs King because Mr Edwards was shouting very loudly and his behaviour was threatening. Mrs Gould stated that she was aware that Mr Edwards was awaiting medication and that Mr Edwards had told her that Mrs King kept closing the front door. Mrs Gould commented that every time Mr Edwards kicked the door of Mrs King's flat it was slightly giving in. Mrs Gould tapped Mr Edwards on the shoulder and asked him to stop.

48. Mrs Atkin said that she was working in Mr Ajimal's flat when Mr Edwards knocked on the door of Flat 20 asking if Mrs Atkin had closed the front door. Mrs Atkin told him it was not her, and Mr Edwards went away. According to Mrs Atkin, about 10 minutes later Mr Edwards was swearing on the stairs saying very loudly that somebody had locked the "fucking door again". About 15 minutes later Mr Edwards again went downstairs and found the door closed. Mrs Atkin said she heard Mr Edwards being aggressive to Mrs Gould saying I bet it is her (Mrs King) and what sounded like him kicking and punching the door. Mrs Atkin then heard Mrs Gould say to Mr Edwards that you are going to break the door. Mrs Atkin then said that Mr Edwards returned upstairs saying that he was going to see the estate manager. About five minutes later the Police arrived.

49. Mr Edwards explained that there is an automatic locking system on the block of four flats which unlocked the door in early morning and locked it in the afternoon. Mr Edwards said that any delivery man calling after hours would press the bells for the tradesperson and the flat owner for attention. Mr Edwards stated that this arrangement would not work for him because of his deafness. Mr Edwards stated that Mrs Castleton Hext, the then manager of Ms Olszewska, agreed to alter the timing for the automatic locking of the door until 8pm to meet the specific circumstances of his disability. Mr Edwards reported that this arrangement worked well until Mrs King learnt about it and started to lock the door by using the manual lever.

50. Turning to the incident on 2 January 2018, Mr Edwards said he had been given the wrong medication when he was discharged from hospital at 7pm on 29 December 2017. Mr Edwards became very ill the following day and was treated by paramedics who gave him a temporary supply of medication until the 2 January 2018 when he would receive his full prescription. Mr Edwards ensured that the front door was open so that the medication could be delivered straight to his Flat. Mr Edwards knew that Mrs King might lock the door so he decided to check it and found that someone had pushed the manual

lever down. Mr Edwards released the lock and went back to his Flat. Mr Edwards then checked the lock again 10 minutes later and found that the manual lever had been pushed down again. Mr Edwards said he saw the back of Mrs King returning to her flat, and assumed that it was her who kept locking the door. Mr Edwards decided to ignore Mrs King's conduct and instead left a note on the door explaining why it was necessary for it to remain open. Mr Edwards hooked the door on its fully opened position. Some minutes later he found that the door had been closed once again. At this point he checked with Mrs Atkin that she was not responsible for closing the door. Mr Edwards then decided to speak to Mrs King about her behaviour. He rang the door bell and received no answer despite knowing that Mrs King was inside her Flat. Mr Edwards then knocked on the door and still received no reply. Mr Edwards decided to shout through the letter box which did not yield a response. Finally Mr Edwards said he started to shout and kicked the door twice. It was at this point that Mrs Gould walked up and tapped him on the shoulder. Mr Edwards then went to Ms Olszewska and asked her to intervene.

51. Mr Edwards said that the Police were not interested in taking the matter forward. Mr Edwards produced a note from a Police Officer [R11] which advised him not to see Mrs King and that if he had any problems he must speak to PC Damon Young. The note ended *"I understand your view. Let us see if we can help her (Mrs King)".*

52. Mr Edwards asserted that Mrs King's actions of closing the door put his welfare at risk and that it was done out of malice and spite, and for no other valid reason.

53. Mr Sher questioned Ms Olszewska about whether she was asked by Mr Edwards to intervene. Ms Olszewska said that Mr Edwards had come to tell her that Mrs King had closed the door. Ms Olszewska declined to answer Mr Sher's question about whether Mrs King's behaviour was good and neighbourly but Ms Olszewska accepted that it was annoying and inconvenient. Ms Olszewska asserted that Mr Edwards should not have been kicking the door or shouting which frightened Mrs King.

54. Ms Olszewska reported the incident to the Customer Relations Team on 3 January 2018 and it was agreed that Ms Castleton-Hext would meet with both Mr Edwards and Mrs King on 9 January 2018.

55. On 4 January 2018 Mr Edwards came into Ms Olszewska's office and asked why she had told his carer, Mrs Masters, that he had kicked the door. Ms Olszewska said that's what she had been told by other people at which point Ms Olszewska stated that Mr Edwards raised his voice and began shouting that there was no evidence of him kicking the door and that she was on "Thin ice" and said "Go back to Poland".

56. Mr Edwards strenuously denied that he said to Ms Olszewska "Go back to Poland". Mr Edwards stated that he did not even know that

she was Polish, and said with a name spelt like hers, Ms Olszewska could have originated from several countries.

57. Ms Olszewska said she did not remember that she had told Mr Edwards that she was from Poland. Ms Olszewska believed that she may have had conversations with his carer, Mrs Masters, about where she was from.

58. Ms Olszewska accepted that she had kept no notes and no emails about the incident of "Go back to Poland". Ms Olszewska, however, said she reported it to her manager and was adamant that Mr Edwards had said these words to her.

59. On 9 January 2018 Ms Castleton-Hext and Ms Olszewska held separate meetings with Mrs King and Mr Edwards to discuss the incidents on 22 July 2017 and the 2 January 2018[1]. Also on the 9 January 2018 Ms Castleton-Hext raised with Mr Edwards the "Go back to Poland" incident after Ms Olszewska had left the meeting. According to Ms Olszewska, the Applicant sent letters to Mrs King and Mr Edwards about the incidents including the one of 4 January 2018. The letters were not included in the Applicant's bundle of evidence

60. Following the meeting on 9 January 2018 Mr Edwards complained to the Applicant's Customer Service Team about Ms Olszewska and her allegation of racist language, and also made a complaint to the Housing Ombudsman. Details of these complaints were not included in the Applicant's bundle.

61. On 11 April 2018 Mr Tony Mann, Interim District Manager for the Applicant, met Mr Edwards to discuss his complaints. Ms Olszewska said she was told by Mr Mann that Mr Edwards had made comments at the meeting which could be seen as threatening. According to Mr Edwards, Ms Castleton-Hext was present at the meeting with Mr Dann, and that they were saying to him, *"Why don't we forget the whole thing and put it behind us*", and that *"Its all been a misunderstanding*".

62. The Tribunal finds in relation to the incident on 2 January 2018 that (1) The Applicant had arranged for the door to be unlocked until 8pm as a reasonable adjustment to Mr Edward's disability. (2) Mrs King had no good reason to keep the door locked at 2.00 pm. (3) Mr Edwards required the door to be open so that he could receive urgent medication, Mrs King and Mrs Gould were aware of that fact. (4) Mr Edwards' attempts of dealing with the problem by re-opening the door and leaving a note were the actions of a person behaving reasonably in what would have been a very stressful situation. (5) Mr Edwards was entitled to ask Mrs King to desist from closing the door,

[1] The Applicant did not cite Mr Edward's behaviour at the 9 January 2018 meeting as one of the incidents upon which it relied to establish a breach of covenant. Given those circumstances the Tribunal has not given a narrative of what took place at the meeting.

particularly after she ignored the note. (6) Mr Edwards resorted to kicking Mrs King's door twice and shouting only after Mrs King had failed to acknowledge the knock on the door, and the shouting through the letter box. (7) The Tribunal is satisfied that the actions of kicking the door and shouting were out of frustration rather than a violent act. It is telling that Mr Edwards stopped kicking the door after he was tapped on the shoulder by Mrs Gould. (8) Mr Edwards then asked for Ms Olszewska's help. (9) The Police had been summoned by the time that Ms Olszewska arrived on the scene. (10). The Police took no action against Mr Edwards, and the evidence suggested that the Police believed that the problem rested with Mrs King rather than with Mr Edwards.

63. The Tribunal finds in relation to the incident on 4 January 2018 that the allegation of "Go back to Poland" is racist conduct which potentially is a criminal act. The Applicant has the burden of proving the allegation on the balance of probabilities. Where the allegation is serious the Tribunal would expect the Applicant to adduce persuasive evidence. The Applicant relies solely on Ms Olszewska's testimony, which is not corroborated by a contemporaneous note of what happened on 4 January 2018. The Applicant did not produce in evidence the letters purportedly sent to Mr Edwards after the meeting on 9 January 2018. Mr Edwards flatly denied that he said the racist comment and denied that he knew that Ms Olszewska was Polish. Ms Olszewska fairly said that she could not remember whether she had told Mr Edwards that she was Polish. The Tribunal is satisfied that the Applicant had failed to establish on balance of probabilities that Mr Edwards had made the racist comment.

64. The Tribunal considers the account of the meeting on 11 April 2018 is relevant in that it would appear that the Applicant decided to take no further action against Mr Edwards in respect of the incidents on 2 and 4 January 2018. The Applicant adduced no evidence to dispute Mr Edward's version of the conversation with Mr Dann and Ms Castleton-Hext who said that they should all put it behind them, it was a misunderstanding. The Tribunal accepts Mr Edwards' account of the meeting. The Tribunal finds that the conversation which took place on 11 April 2018 undermined the Applicant's case in respect of the events on 2 and 4 January 2018, and also questioned the validity of the Applicant's action of resurrecting these events some 18 months after they occurred.

Alleged threat to kill on 16 May 2018

65. Ms Olszewska said that around 2pm on 16 May 2018 she came out of her bungalow to take out rubbish. At the same time Mr Edwards was leaving his flat to get into his car. According to Ms Olszewska, Mr Edwards then pointed at her and said very loudly *"If you tell any more lies about me, I will fucking kill you"*. Ms Olszewska said that she did not engage with Mr Edwards, and carried on to the bin area where she met the gardeners who had been working on the estate. Ms

Olszewska returned to her Office and reported the incident to Mr Dann. Ms Castleton-Hext reported the incident to the Police.

66. Mr Edwards said that he was elsewhere when the alleged threat to kill took place. Mr Edwards stated that around 1pm he went to visit his niece, Ms Nicola Davey, who lived at The Croft, Ash, Surrey and took with him some models for Ms Davey's son for his toy army collection. Mr Edwards left with his niece from her home around 1.45pm for him to attend his appointment at the Podiatry Clinic which was at 2.10pm. Mr Edwards stated that he arrived at the Clinic around 1.55pm and was called in at 2.05pm. After the clinic Mr Edwards and Ms Davey completed a food shop at the Co-op on Aldershot Road. Mr Edwards dropped off his niece at her home just before her daughter arrived back from school.

67. Mr Edwards exhibited a copy of his appointment at the Podiatry Clinic confirming the time of 2.10pm [R110], an unsigned confirmation that he attended the appointment on 16 May 2018 at 2.10pm [R111], an extract from his diary for 16 May 2018 [R112], and a witness statement from Ms Davey corroborating Mr Edwards movements on 16 May 2018 [R113].

68. Mr Edwards challenged Ms Castleton-Hext on why the Applicant did not take statements from the gardeners who were in the immediate vicinity at the time when the alleged threat to kill took place. According to Mr Edwards, Ms Castleton-Hext's response was that she thought about it but decided not to ask the gardeners. Mr Edwards said he enquired of the gardeners and asserted that not one of them heard or saw anything to corroborate Ms Olszewska's allegation of a threat to kill.

69. When cross examined Ms Olszewska said that she did not consider it appropriate to ask the gardeners about what they saw and heard of the incident because in Ms Olszewska's opinion it was not right to involve the Applicant's contractors. Ms Olszewska also stated that she did not think about requesting her manager to ask the gardeners. Ms Olszewska said that she did not know Ms Davey, Mr Edwards' niece, and could not comment on her witness statement. Ms Olszewska asserted that she was not a liar and she was very upset by the incident.

70. Ms Matusevicius for the Applicant argued that the statements of Ms Davey and Mr Edwards were very similar, and that Ms Davey's statement included comments about the weather which were not correct. Ms Matusevicius stated that it would only take Mr Edwards ten minutes to drive to the Podiatry Clinic so it was perfectly feasible for Mr Edwards to have been on the estate when the alleged threat to kill took place and make his appointment at the clinic at the allotted time.

71. Ms Olszewska said that the Police contacted her on 23 May 2018 and was advised that the Police could not do much about the incident

because there were no witnesses. On 30 May 2018 Ms Olszewska received a visit from a Police Community Support Officer who told her that he was not going speak to Mr Edwards about it and he offered to refer Ms Olszewska to support services because of the distress that she had suffered from the incident.

72. On 29 May 2018 Ms Castleton-Hext and Mr Hesford arranged to meet with Mr Edwards to give him a letter dated 25 May 2018 warning him about his conduct to Ms Olszewska and the Applicant's staff [R100].

73. The letter of 25 May 2018 said that

> "We (*the Applicant)* confirm that your behaviour as described above is completely unacceptable and threats of any kind (made to anyone) cannot and will not be tolerated at our locations. By behaving in this way you are also breaching the terms of your lease with Anchor".

The letter then went to say the matter had been referred to the Applicant's legal department to consider whether legal action should be taken which might include applying for an injunction or alternatively looking to take forfeiture action against Mr Edwards to recover possession of his property.

74. Ms Olszewska reported that Ms Castleton Hext had told her that at the meeting on 29 May 2018 Mr Edwards tore up the warning letter and that he had denied issuing the threat to kill. Further Ms Castleton-Hext and Mr Hesford had decided not to take any further action against Mr Edwards because he said he was not a threat to Ms Olszewska.

75. Mr Hesford on 17 July 2018 sent the follow up letter from the meeting on 29 May 2018. In the letter Mr Hesford said:

> "At our meeting, we discussed the incident which is alleged to have taken place on 16 May 2018. You denied that the incident took place and explained that you were not at Chasefield close when the incident was alleged to have taken place as you were attending a medical appointment elsewhere. You also gave us assurances that you do not pose a threat to our Estate Manager. You have since confirmed this in our email exchanges. Because of this I explained that at the time we would not take any further action against you but that we would have to monitor the situation very closely as the allegations made were serious and we had very real concerns".

76. Mr Hesford disagreed that the decision not to take any further action against Mr Edwards in respect of the "threat to kill" precluded the Applicant from using it now as a ground to support an application for breach of covenant. Mr Hesford said that he went to see Mr Edwards to hand him a warning letter personally, and to give Mr Edwards a chance to explain which he refused to do. Mr Hesford considered the

purpose of the letter was to keep the matter under review and that if further incidents occurred, the Applicant would instigate proceedings.

77. The Tribunal considers a threat to kill an extremely serious allegation. The Tribunal agrees with Mr Scher's submission that a finding of Mr Edwards uttering a threat to kill required compelling evidence on the part of the Applicant.

78. The Tribunal finds that the Applicant's evidence is weak when set against the entirety of the evidence given at the hearing. The Applicant relied entirely on Ms Olszewska's testimony. The Applicant made no attempt to question the gardeners who were working in close vicinity of where the incident happened. Mr Edwards has produced reliable evidence that he was elsewhere when the said incident took place, and his account is supported by a witness statement of his niece, Ms Davey. The Tribunal was not convinced by the Applicant's attempts to undermine Mr Edward's evidence.

79. The Tribunal's view about the weakness of the Applicant's case is reinforced by Mr Hesford's decision on 25 May 2018 not to take any further action against Mr Edwards in respect of the allegation of "threat to kill". The Tribunal questions the propriety of the Applicant's decision to include the threat to kill as a ground for the present application for breach of covenant when it previously said that it would take no further action.

Alleged Assault on Mr Ajimal on 9 July 2018

80. Mr Ajimal provided a witness statement dated 18 July 2019 [A61 & 62] on the alleged assault but was not called by the Applicant to give evidence.

81. Mr Ajimal stated that on the 9 July 2018 he was working at home and at 7.49pm he received a text from Mr Edwards saying that his car had broken down in Sainsbury's car park, and could Mr Ajimal collect him. Mr Ajimal duly brought Mr Edwards back home and helped him with his shopping. According to Mr Ajimal, Mr Edwards then received a text from the AA to say that they would be arriving at Sainsbury's car park within 25 minutes. Mr Ajimal asked Mr Edwards to stop what he was doing and to leave for the car park. Mr Ajimal asserted that as he was walking out of Mr Edwards' flat and about to open the front door, Mr Edwards immediately sprang to his feet and lunged towards him and trapped him in the corner. Mr Edwards then grabbed Mr Ajimal by the shirt collar and squeezed it hard putting pressure on his neck, Mr Edwards used his other hand to push his chin upwards. Mr Ajimal said he was terrified and in acute pain. Mr Ajimal was able to write a note to Mr Edwards stating "You have assaulted me". Mr Edwards apologised and followed Mr Ajimal downstairs and was then driven by Mr Ajimal to Sainsbury's car park. Mr Ajimal said that he was left in a state of fear and despair after the

assault. Following the alleged assault Mr Ajimal will not engage with Mr Edwards and will avoid meeting him.

82. Ms Olszewska testified that Mr Ajimal reported the incident to her by e- mail the following day. Ms Olszewska said that she was in her bungalow on the night when the alleged assault took place and heard Mr Edwards shout something like "I am not fucking waiting here for two hours". Ms Olszewska then saw Mr Ajimal and Mr Edwards go to Mr Ajimal's car.

83. Mr Edwards denied that he assaulted Mr Ajimal on 9 July 2018. Mr Edwards accepted that he texted Mr Ajimal to ask him to collect him from Sainsbury's car park because his car would not start and he had his shopping with him. Mr Edwards could not phone a taxi because of his deafness. Mr Edwards pointed out that he had helped Mr Ajimal in the past when Mr Ajimal was without his car, and that Sainsbury's car park was only ten minutes away from Chasefield Close. Mr Edwards stated that Mr Ajimal insisted on calling the AA contrary to Mr Edwards' instruction. Mr Edwards did not want to go out again in the evening and he knew that the AA could do nothing with the car except to tow it to the nearest garage. Despite Mr Edwards' reluctance, Mr Ajimal contacted the AA which told them that the AA Patrolperson would be there in two hours. Mr Edwards then shouted at Mr Ajimal and swore at him that "he could not wait two fucking hours for the AA to arrive". Mr Ajimal then called the AA again to say that they would arrive at Sainsbury's car park within 25 minutes. Mr Edwards asserted that at no time did he assault Mr Ajimal when he was in his flat.

84. Mr Edwards stated that Mr Ajimal had made no complaint about him prior to the incident on the 9 July 2018. Since then Mr Ajimal has made a series of complaints about Mr Edwards regarding the parking of his car, making good a repair on the stairs and jointly with Mrs King about noise coming from his flat.

85. Mr Ajimal reported the alleged assault to the Police. It would appear that the original officer who attended the incident considered Mr Edwards to be the offender and recorded the matter under "Community Resolution".

86. Ms Olszewska was given by Mr Ajimal a copy of Note that the Police Officer wrote to Mr Edwards which read:

> "The fact that you have apologised to me is enough for Kal (Mr Ajimal) he accepts this and this matter will be filed as community resolution. Kal would like it if you respect that this incident has damaged your relationship and would like you to not contact him or knock at his door. Kal feels that he has wasted time and money trying to help someone who does not want help".

87. Inspector Hill was then asked by Mr Edwards to look into the matter. Inspector Hill decided in an email dated 25 October 2018 [R25]:

> "There are clearly two sides to an incident and having read your account below I don't believe showing you as the Offender or recording this under a Community Resolution is appropriate. You have explained what happened and that your actions were in defence. I have asked for this to be rescinded and so there is no culpability or blame on you".

88. On the 18 October 2019 the Tribunal requested the Applicant to comment on Inspector Hill's email. Ms Matusevicius replied the same day:

> "It is the Applicants position, that there is no indication that this decision was based on any evidence being provided that the Respondent (Mr Edwards) did not commit the assault, but rather there was a counter claim made against Mr Ajimal and no witnesses to support either party. It is the Applicants position that this incident should be viewed in the context with the other incidents relating to the Respondent's behaviour".

89. The Tribunal considers that in these circumstances where there is a clear conflict in the versions put forward by the participants to the incident, the Applicant should have called Mr Ajimal to give evidence so that the Tribunal could assess the credibility and reliability of his evidence. The Tribunal finds that Mr Ajimal's account of being throttled but still able to write a note to Mr Edwards implausible.

90. The Tribunal gives weight to the outcome of Inspector Hill's investigation which decided that no culpability and no blame could be put on Mr Edwards for the alleged assault. The Tribunal is not persuaded by the Applicant's response to Inspector Hill's decision. The Tribunal considers that the Applicant was put on notice that the Tribunal was likely to place weight on Inspector's Hill's investigation. The Tribunal may have found the Applicant's response more convincing if enquiries had been made of Inspector Hill before it gave its view on Inspector Hill's decision.

Abusive Comment to Ms Olszewska on 27 September 2018

91. Ms Olszewska said that on 27 September 2018 Mr Edwards came into her office wanting to talk about various complaints he said he had already raised with Ms Castleton-Hext. Ms Olszewska advised that she could not comment on these issues and that he needed to raise them either with Mr Dann or Ms Castleton-Hext. At which point Ms Olszewska stated that Mr Edwards started to shout at her and accused her of telling the electrician not to replace the heater in the lounge. According to Ms Olszewska when she told him that he was shouting at her and then asked him to leave the Office, Mr Edwards responded *"Go fuck yourself. You are the cause of all this trouble. You told Ms Castleton-Hext that I told you to go back to Poland"*. Mr Edwards then apparently said if she pulled something like this again this would not be the end of it. Mr Edwards then left the Office.

92. Mr Hesford sent an email to Mr Edwards on 27 September 2018 [A 162] stating that in May 2018 he had agreed not to contact Ms Olszewska, and to direct his enquiries to Ms Castleton-Hext. Mr Hesford asked Mr Edwards to abide with his agreement. Mr Hesford then added that

> "When we met on 29 May 2018 I gave you a warning letter which explained that your behaviour was unacceptable and that if it did not stop we would be left with no choice but to consider legal action against you. By your behaviour this morning you have demonstrated that you will not voluntarily change your behaviour. We cannot allow our member of staff to be subjected to the types of behaviour you have demonstrated on a number of occasions and we are now going to make application to court for an anti-social behaviour injunction against you. You will hear further from us in due course. I am also going to consult my colleagues in our leasehold team in relation to the breach of covenants in your lease and potential consequences of this".

93. Ms Olszewska said that Mr Edwards sent Mr Hesford several emails which contained derogatory remarks about Mr Hesford and Anchor. The Applicant did not exhibit the emails.

94. Mr Scher cross examined Mr Hesford about why the Applicant did not carry out its intention to apply for an anti-social behaviour injunction. Mr Hesford said that the Applicant decided in December 2018 that an injunction would not be effective which was why the Applicant chose to go down the breach of covenant route. Mr Hesford denied Mr Sher's suggestion that the Applicant did not have sufficient evidence to pursue an injunction. Mr Hesford accepted that an injunction was the less serious option than forfeiture proceedings.

95. Mr Edward did not respond directly to the allegation. Mr Scher contended that an isolated act of swearing did not amount to a breach of covenant.

96. The Tribunal accepts Ms Olszewska's evidence of the incident on 27 September 2018.

DIY work on the Communal Stairs on 12 to 14 October 2018

97. Ms Olszewska said she received an e-mail from one of the residents in the block of flats where Mr Edwards lived saying there was a lot of noise caused by banging, drilling and items hitting doors and stairs. Following receipt of the email Ms Olszewska spoke to the residents in the block and was told that the noise went on during the weekend of 12 to 14 October 2018 until around 10.30pm to 11pm on the Friday, 3pm to 8pm on the Saturday and to around 4.30 to 5pm on the Sunday. Ms Olszewska stated that after checking the building she saw that all surfaces in the staircase were covered with a layer of dust which she wiped from the railings and the cleaner did a thorough job next day.

98. Mr Edwards said he had complained to Customer Relations about the need to carry out repairs to the staircase, and had been told that it would be done when the internal decorations would be carried out [R77]. Mr Edwards had no confidence that the Applicant would undertake the works. Mr Edwards pointed out that no internal decorations had happened for the five years that he had lived in the Flat. Mr Edwards took it upon himself to effect the repairs to the stairs.

99. Ms Olszewska reported that Customer Services e-mailed Mr Edwards telling him not to carry out any work in the communal areas, to restrict DIY to his Flat and garage, and to consider his neighbours and keep noise to a minimum when working late in the evening.

100. The Applicant did not exhibit the emails from the neighbour and Customer Services in its bundle.

101. The Tribunal finds that Mr Edwards did works to the communal stairs for which he had no authority to carry out. The Tribunal observes that the Applicant has not pleaded "unauthorised works to communal areas" as a breach of covenant. Instead the Applicant asserted that Mr Edwards was doing an act which was annoying to the other residents in the block of flats. On the information provided the DIY did not take place during the hours of 11.00pm to 7.00am which were the times specified in clause (ii) of the Fourth schedule for not making an audible noise outside the dwelling. The Applicant did not substantiate the allegation with a witness statement from the resident concerned or with the e-mail sent to Ms Olszewska. The Tribunal is not prepared to make an adverse finding against Mr Edwards in the absence of direct evidence from the persons affected by his DIY activity.

Racist Comments to Mr Ajimal on 22 October 2018

102. Mr Ajimal reported to Ms Olszewska by email on 31 October 2018 that Mr Edwards had come to his front door and called him "Asian bastard". According to Ms Olszewska, Mr Ajimal also complained that Mr Edwards deliberately parked his cars at the rear and front of Mr Ajimal's car which meant that he was unable to manoeuvre his car out of the parking space except with help from the Police.

103. Ms Olszewska said that Mr Ajimal made a statement to the Police about both incidents and that the Police had visited Mr Edwards twice and requested him to attend an interview at the Police Station but refused to do so.

104. Ms Olszewska stated that a Police Officer had visited her on 7 November 2018 about the two incidents but the Officer explained that the Police could not do anything because there were no witnesses to the making of the racist remark.

105. According to Ms Olszewska, Mr Edwards emailed Mr Ajimal immediately following the visit of the Police Officer on 7 November 2018 in which Mr Edwards allegedly described Mr Ajimal as *"A very sick person", "You are not a man but a worm because such conduct on your part is not the action of a normal person and it is obvious that you have a very sick and unstable mind". "You are simply a retarded troublemaker, and nothing more than a very unstable mentally deranged toe-rag".*

106. Ms Olszewska said that Mr Edwards copied Inspector Hill in the email sent to Mr Ajimal. Mr Ajimal advised Ms Olszewska that Inspector Hill would reply to Mr Edwards telling him that he found the personal and attacking nature of the email to be totally unacceptable. The Applicant did not provide the Tribunal with copies of Mr Edward's email to Mr Ajimal or Inspector Hill's response to Mr Edwards.

107. Mr Edwards categorically denied that he called Mr Ajimal an Asian bastard and saying that it was lie by Mr Ajimal.

108. Mr Edwards believed that Mr Ajimal was making up complaints about him out of spite following Inspector Hill's decision on 16 October 2018 to rescind the Community Resolution finding against Mr Edwards in relation to the alleged assault on Mr Ajimal on 9 July 2018. Mr Edwards placed on record his fears about Mr Ajimal pursuing false complaints against him in an email to Inspector Hill on 24 October 2018 [R27].

109. Inspector Hill responded to the email by stating that

> "I appreciate you are having issues with your neighbour. The last thing we all want is for this to escalate or for you to be under the spotlight for taking matters into your own hands. You are perfectly within your rights to challenge your neighbour when you see fit but as always this has to be reasonable and within the law. I can't describe every situation and eventuality you may face, but I'm keen this situation is resolved as soon as possible. Would you be available to meet with an officer to discuss this?"

110. The Tribunal has no direct evidence from Mr Ajimal in respect of the alleged racist insult. The Applicant again has not supplied copies of the emails relied on and the correspondence from the Police. The Tribunal prefers the evidence of Mr Edwards because he has given an explanation for why Mr Ajimal may have made up these complaints against him. Mr Edwards has exhibited correspondence with Inspector Hill which is emollient in tone and supportive of Mr Edwards' predicament.

Disabled Car Parking Space: 28 January 2019

111. Mr Edwards had successfully applied to the Council to have one parking bay on Chasefield Close reserved for disabled persons with a Blue Badge. The necessary works were carried out by the Council on 13 December 2018.

112. On 17 December 2018 Ms Olszewska emailed Katie Chesher, District Manager, about Mr Edwards putting a note on a car parked in the disabled bay. Ms Olszewska asked Ms Chesher to contact Mr Edwards advising him that disabled parking bays were advisory only and there was nothing stopping people parking there even without a blue badge. Ms Chesher agreed for Customer Relations to write to Mr Edwards about this and also advise him not to approach Ms Olszewska if there were problems with persons parking in the disabled bay.

113. The incident on 28 January 2019 involved Mrs Berry who lives at 26 Chasefield Close and her friend, Mrs Hooker. They both sent emails to Ms Olszewska about their encounter with Mr Edwards. Mrs Berry said that on the 28 January 2019 she had parked her car in the designated disabled car parking space. Mrs Berry was not the holder of a blue badge. At about 12.45pm Mrs Berry left her house with Mrs Hooker to go out in Mrs Hooker's car. Mr Edwards approached them as they were getting into the car asking Mrs Berry if it was her car that was parked in the disabled bay and whether she had a blue badge. Mrs Berry asserted that Mr Edwards became abusive when he discovered that Mrs Berry did not have a blue badge. Mrs Berry said that Mr Edwards used "fucking" every other word, and that Mr Edwards threatened to damage her car, and told her to watch out. At this point Mrs Berry felt that the conversation was going nowhere so she and Mrs Hooker drove off. The following morning Mrs Berry moved her car from the disabled bay.

114. Ms Olszewska said that Mrs Hooker confirmed Mrs Berry's account of the incident. Mrs Hooker said that Mr Edwards was very abusive, his language was foul, and that he would see Mrs Berry in hospital.

115. Mr Edwards painted a different picture of the incident. He believed that Mrs Berry had been attempting to provoke him by persistently parking in the disabled bay. Mr Edwards said when he approached Mrs Berry on 28 January 2019 he noticed Mrs Berry saying something and waving an A4 sheet of paper in her hand. Mr Edwards asked Mrs Berry to write down what she was saying in his notebook as he was deaf. Mrs Berry started to write something down but in the end gave him the A4 sheet of paper which contained advice from a Government website stating that disabled bays are advisory markings only and that there was no power to enforce their use by blue badge holders. After he read the A4 sheet, Mr Edwards managed to lip read Mrs Berry stating that "*any one can park here*". According to Mr Edwards, Mrs Hooker then suddenly appeared to lose her temper. Mr Edwards lip read Mrs Hooker as saying *"Oh why don't you go away"*. According to Mr Edwards, Mrs Hooker was waving her arms and her right had caught Mr Edwards by the side of his right temple hitting his glasses.

At which point Mr Edwards shouted at Mrs Hooker, *"Don't you fucking dare do that to me"*. After this Mr Edwards said he got into a shouting match with Mrs Berry.

116. Mr Edwards reported the incident to PC Damon Young who stated that Mr Edwards was probably right that they were doing this to wind him up, and that he should not lower himself to their level [R29].

117. Mr Edwards pointed out that it was only Mrs Berry of the 26 residents at Chasefield Close who persisted in parking in the disabled bay. Mr Edwards also could not understand why the Applicant did not intervene on his behalf in respect of the use of the disabled parking space.

118. The Tribunal acknowledges that the disabled bay parking space at Chasefield Close is advisory and that there are no powers to restrict its use to blue badge holders. The Tribunal, however, considers that motorists appreciate the purpose of the bays and that the responsible thing to do is not to park in such bays if they do not hold a blue badge. The Tribunal finds that the Applicant advanced no good reason why Mrs Berry parked her vehicle there. The Tribunal agrees with Mr Edward's assessment that Mrs Berry's act of parking her car there was intended to provoke him and cause trouble. What followed was a shouting match between Mrs Berry and Mr Edwards where it appeared that both of them gave as good as they got. The Tribunal is satisfied that the Applicant adduced no evidence to indicate that Mrs Berry and Mrs Hooker were distressed by the incident.

Loud Banging: 13 June 2019

119. On 14 June 2019 the residents in block 17-20 Chasefield Close informed Ms Olszewska that loud banging was heard from Mr Edwards' flat the evening before on 13 June 2019. According to Ms Olszewska, the residents reported noises sounding like very loud hammering lasting for about 10 minutes around 8 pm and then later at around 10pm for 15-20 minutes. Apparently one of the residents was worried that the ceiling come down. Another resident called Anchorcall via the pull chord who called in to Mr Edwards' flat but during the call no noise was heard.

120. Mr Edwards could not recall the incident. The Tribunal is satisfied that that the allegation has no substance. The Applicant has chosen not to identify the complainants. Further the operators of Anchorcall did not hear any noises during their contact with Mr Edwards. Finally even if Mr Edwards was hammering at the times and duration alleged, the Tribunal does not consider that so unreasonable as to cause a nuisance.

Acted in Abusive Manner to the Applicant's Members of Staff

121. The Applicant relied on the witness statement of Dale Williams, a Customer Relations Advisor [A67], and selected correspondence with Mr Edwards to substantiate its allegation of abusive behaviour towards its staff.

122. At the commencement of the hearing the Tribunal requested Ms Matusevicius to specify the correspondence she said supported the Applicant's case. Ms Matusevicius identified 13 items of correspondence [A101, 103, 104, 107, 109, 111, 112, 117, 118, 137, 144, 147 and 154].

123. Mr Scher submitted that it was not proportionate for the Tribunal to consider all 13 items of correspondence and requested Ms Matusevicius to choose a limited number of the correspondence which demonstrated the high point of the Applicant's case against Mr Edwards. Ms Matusevicius agreed with Mr Scher's suggestion and highlighted the correspondence at [103] and [111].

124. The Tribunal, therefore, will determine the allegation of abusive behaviour in the context of Mr Williams' statement and the two highlighted items of correspondence.

125. The background to the allegation of abusive behaviour is Mr Edward's proclivity to complain about the services provided by the Applicant and his view that the Applicant has not dealt with his complaints in a prompt and efficient manner. The Tribunal understands that Mr Edwards escalated his dissatisfaction with the Applicant's complaint handling to the Housing Ombudsman. The parties' hearing bundles included passing references to the Ombudsman. The Tribunal asked the parties the outcome of the Ombudsman investigations and received conflicting responses about whether Mr Edward's complaints were upheld.

126. Turning now to the evidence, Mr Williams has worked in customer service for 16 years and for the Applicant's Customer Relations Team for 15 months. Mr Williams first came in contact with Mr Edwards in July 2018 when he took over the case management for the London and East area.

127. Mr Williams stated that he has never come across somebody who had subjected him to the amount of accusations against his good character that he had from Mr Edwards. Mr Williams asserted that Mr Edward's constant accusations of incompetence and of obstructing him in his case against the Applicant was bringing him down. Mr Williams said that Mr Edwards had threatened that he would visit him at the Applicant's Head Office and at his home, and that Mr Edwards told him that he could interpret this statement how he liked. Mr Williams, as a father of a young family, said he was fearful of these threats against him.

128. Mr Edwards' email at [A103] to Mr Williams dated 17 March 2019 raised six matters of complaint.

129. The first concerned Mr Edward's allegation of improper use of his personal details. Mr Williams had responded to the effect that one of the residents at Chasefield Close had put together the list containing Mr Edwards' personal details and the Applicant had nothing to do with it. Mr Edwards did not accept Mr Williams' response, saying:

> "I want this matter fully investigated by you or else one can conclude that you have something to hide. I am far from satisfied in the way you and your department have handled various complaints I have made to date, if you and your department wish to make matters personal by blatantly abusing your positions by fobbing off my valid complaints for personal reasons by persistently treating them with a totally negative attitude, then be prepared to take the fall out of your actions".

130. The second concerned a claim for compensation in respect of "prints" which would be connected to the refusal to allow Mr Edwards access to his garage after it had been sealed.

131. The third was a complaint against Ms Castleton-Hext who Mr Edwards said was evasive about when repairs would take place.

132. The fourth involved the increase in service charge. Mr Edwards said:

> "I can't abide Anchor ripping off elderly residents while the service charge includes repairs that are not being carried out thanks to the bloody mindedness of individuals like Castleton Hext who should be stacking shelves in Tescos. As for your Warden when I go to court and prove beyond a shadow of doubt that I was not in Chasefield Close at the time she alleges I made a threat to her to be sacked for such a obnoxious and malicious lie. I have no intention of letting her get away with it while you ignore it and back her lies up".

133. The fifth concerned Mr Edward's request for a visit from a senior member of staff, which he says was totally ignored.

134. Finally Mr Edwards recorded that he wanted the repair on the stairs done *"without having to put up with stupid, immature, ignorant and bias excuses from feeble minded morons"*. Mr Edwards signed off his email with *"well time for my cocoa and bed …. Us senile old codgers have to be in bed by ten with hot water bottle to keep us company"!*

135. Mr Edwards' e-mail at [A111] to Mr Williams dated 22 March 2019 followed on from the email sent on 17 March 2019. Mr Edwards pointed out to Mr Williams that he had not responded to his emails. Mr Edwards went onto say that

> "if you think for one minute that I intend to tolerate you abusing your position and failing to answer my questions and investigate my valid complaints in a responsible manner and take me for a fool in the

process, then expect to pay the consequences of your devious and underhanded actions. I want answers to my questions and a response to my mail from you regarding the five points made or would you prefer it (as you are blatantly abusing your position and treating me as a fool) that I call at your home to rectify the prevailing situation which I am more than entitled to do under the circumstances and no-one can stop me …. The choice is entirely your decision".

"I am still waiting for your Mr Hesford to proceed with threats to take me to court where I serve subpoena on several members of staff".

136. On 25 March 2019 Kris Hall, Customer Relations Team Manager, responded to Mr Edwards in respect of the above email [A110]:

"I refer to your note below, in which I consider that you have made a direct threat to a member of the Customer Relations Team. We have written to you many times in the past to ask that you moderate the way in which you speak to colleagues, which you have chosen to ignore and we have advised also that we will not keep replying to your concerns which we believe we have already dealt with.

As you have made the choice to disregard these requests I am writing to you today to advise that from this point on we will no longer correspond with you. Any email you send to us will be sent onto to our legal team for review and a decision will be made as to whether we take any action but we will not acknowledge or reply to you any further. Should our legal team deem it appropriate they will issue the relevant acknowledgment.

I can assure you that this is not a reaction solely to the email below but rather your consistent refusal to engage with us in a respectful way, despite us asking that you do this many times and ensuring that we have been professional at each step. I understand that many of our replies have not met with your approval, but this does not mean that they are incorrect or that we have given you incorrect information.

I will be providing a copy of this email to my team, along with our CEO's office and any other relevant colleague so that they are aware we have taken this step".

137. Mr Edwards replied to Kris Hall's email the same day stating that [A112]

"If you read under the yellow lines which you placed on my letter I wrote that I intended to serve a subpoena on various members of your staff, including I might add Dale Williams. I or anyone else is entitled to call at the home of any member of staff to serve them with a subpoena so don't try and twist my words to suit your own devious means. As for me not writing to various members of your staff in a respectful manner …. Then simply my reply to that is that I hold the evidence to show that they do not deserve to be treated in a responsible or respectable manner. All you have done is to try and twist my words and make a feeble excuse to stonewall me thus refusing to review my mails so that you do not have to reply to my questions which place Anchor on the spot".

138. Mr Edwards' response to Mr Williams witness statement is at [R52]:

> "Dale Williams produced a letter to the Tribunal regarding the comments I made regarding Anchor and in which he "whines and whinges" regarding my opinion of his abilities, also his persistence in failing to carry out his duties in a reasonable and satisfactory manner.
>
> Someone should explain to him that unlike North Korea, Iran or Russia we in the UK have freedom of speech and constitutional rights which include constructive criticisms regarding various individuals.
>
> As is more plain to see this letter it appears that Dale Williams is now full of self doubt regarding his ability to do his job. Well not before time I might add. For a less stressful vocational experience I suggest he should be encouraged to leave Anchor and apply for a post with Customer Relations at Toys R Us".

139. Ms Olszewska submitted an "Impact Statement" dated 23 July 2019 (unsigned) [A68]. Ms Olszewska said that the whole situation with Mr Edwards had caused her a great deal of distress and upset. Ms Olszewska stated that as she could not avoid Mr Edwards completely because she lived on site. Ms Olszewska said that Mr Edwards had been verbally aggressive towards her, and asserted that Mr Edwards had breached his agreement not to approach her except in an emergency which have gave following the alleged death threat. Ms Olszewska concluded that the incidents with Mr Edwards had affected her ability to do her job because she felt unsafe in her office and anxious that she would meet Mr Edwards.

140. Mr Edwards described Ms Olszewska's impact statement as "utter baloney" [R92]. Mr Edwards said that Ms Olszewska had approached him on several occasions when asked not to do so. Mr Edwards said that he was aware that Ms Olszewska locked the Office door from the inside but never knew the reason why. Mr Edwards asserted that when he had called on her, Ms Olszewska always unlocked the door to speak to him and at no time had Ms Olszewska sent him an email asking him not to call at the Office.

141. The Tribunal finds that Mr Edwards has been a persistent complainant. The Tribunal considers that his complaints have raised legitimate matters in relation to the tenant and landlord relationship with the Application. The Tribunal identified that the complaints appeared to focus on three principal issues: repairs and maintenance, level of service charges, and the apparent failure of the Applicant to address Mr Edward's concerns. The Tribunal is not in a position to assess whether Mr Edward's complaints were justified. The Tribunal notes that Mr Edwards referred the Applicant's handling of complaints to the Housing Ombudsman. The outcome of the Ombudsman's investigations is not known to the Tribunal.

142. The Applicant relied upon the manner in which Mr Edwards pursued his complaints to substantiate its assertion that Mr Edwards had breached covenants in his lease. The Applicant said that Mr Edwards was disrespectful and abusive towards members of its staff. The Applicant highlighted two emails from Mr Edwards to substantiate its assertion.

143. The Tribunal finds that the language used by Mr Edwards in the first email [A103] uncompromising and rude about the competence of certain members of staff ("not to fit to stack shelves at Tescos"). The Tribunal is satisfied that Mr Edwards' description of the Applicant's staff as "feeble minded morons" is insulting and offensive. The Tribunal accepts Mr Williams' statement that he was brought down by Mr Williams constant attacks on his competence, and that Mr Williams was not just "whinging and whining" as suggested by Mr Edwards.

144. The Tribunal considers that Mr Edwards' reference in the second email [A111] to visiting Mr Williams at his home unfortunate and capable of being interpreted as a threat of violence. The Tribunal observes that Mr Edwards corrected the misunderstanding on whether it was meant to be a physical threat immediately after it was pointed out by Kris Hall when Mr Edwards responded to the effect that his intention was to serve a subpoena on several members of staff including Mr Williams.

145. The Tribunal's interpretation of Kris Hall's email of 25 March 2019 [A110] is that following Mr Edward's email of 22 March 2019 [A111] the Applicant's Customer Relations Team would no longer respond to Mr Edward's complaints and pass any future complaints to the Applicant's lawyers to decide what action to take, if any. The Tribunal finds it significant that Kris Hall did not choose to refer the email of 22 March 2019 to the lawyers for advice on potential proceedings against Mr Edwards.

146. The Tribunal considers Ms Olszewska's impact statement should be considered in conjunction with the specific events involving Mr Edwards and Ms Olszewska that the Applicant relies on to establish a breach of covenant against Mr Edwards.

Discussion

147. The issue for the Tribunal is whether Mr Edwards has breached the covenants at Clauses 4.13 and 4.8 of the lease.

148. The determination of this issue is primarily a question of fact. The Tribunal is required first to make findings in respect of each incident relied upon by the Applicant, and then if need be consider whether the findings constitute a breach of the said covenants.

149. As explained earlier the Tribunal did not consider that Regulation ii (the specified regulation under Clause 4.8 of the lease) added to the Applicant's case.

150. The Tribunal's understanding is that the Applicant sought to establish that *the acts complained of were unlawful or constituted a nuisance damage annoyance detriment or inconvenience to the Applicant or the owners, tenants or occupiers of any premises situate in the neighbourhood.*

151. Ms Matusevicius, for the Applicant did not elaborate upon the meaning of the words used in Clause 4.13 or indicate which consequence from the alleged acts of Mr Edwards it relied upon.

152. The Tribunal's construction of the relevant words in Clause 4. 13 is that a covenant against an unlawful act may be committed even though there has been no criminal prosecution for the acts complained of (*Duraven Securities v Holloway* [1982] 2 E.G.L.R.

153. The Tribunal refers to the *Encyclopaedia of Housing Law and Practice, Volume 1 Chapter 1* 1-002 for the meaning and scope of nuisance and annoyance:

> ""Nuisance" includes behaviour which would amount to the tort of nuisance, e.g. excessive noise, making a lot of dust, allowing water to overflow onto the premises of another, creating foul odours: *Chapman v Hughes (1923) 129 L.T. 223*; *Parker v Elvin (1944) 143 E.G. 129, CA*); ..... But is not to be confined to nuisance in this technical, legal sense: *Harlow DC v Sewell [2000] E.H.L.R. 122* but construed in a natural way, and "annoyance" is in any event a term with a wider meaning, although it must be such as would annoy an ordinary occupier, not an ultra-sensitive one: *Tod-Heatly v Benham (1888) 40 Ch.D. 80*;
>
> The phrase "nuisance and annoyance" should be given a broad common sense meaning to the extent that sending abusive letters to the landlord's offices came within the definition *Kensington Housing Trust v Borkwood [2005] J.H.L. D75.....*
>
> "Nuisance and annoyance" encompasses such acts as threatening behaviour, use of bad language, graffiti and vandalism. It has also been held to include racial and sexual harassment: *Woking BC v Bistram (1993) 27 H.L.R. 1, CA*, and *Kensington & Chelsea RLBC v Simmonds (1997) 29 H.L.R. 507, CA*)".

154. The Tribunal construes damage and detriment in similar terms as causing a loss to the persons who are the object of the convenant. The Tribunal interprets inconvenience as causing trouble or uneasiness to those persons.

155. The Applicant acknowledged that these proceedings had potentially serious consequences for Mr Edwards and could result in the loss of

his home. The Applicant chose not to take the less serious option of applying for an injunction against Mr Edwards under the Anti-Social Behaviour, Crime and Police Act 2014. Mr Hesford, the Applicant's solicitor, disagreed with Mr Sher's suggestion that the Applicant did not have sufficient evidence to opt for the injunction route. Mr Hesford said that the Applicant believed that the injunction would not be effective in view of the warnings he said that Mr Edwards had received from the Police.

156. The Applicant's approach in its statement of case was to coalesce a group of incidents involving Mr Edwards over a period of two years, and ask for a determination that Mr Edwards had breached Clause 4.13 and paragraph (ii) of the Fourth Schedule to the Lease. The Applicant made no attempt in the statement of case to analyse the incidents and state why the facts relied upon constituted a breach of the relevant clauses of the lease. At the outset of the hearing the Tribunal asked the Applicant to identify which incidents formed the basis of its case.

157. Arguably this is a matter that the Tribunal should have sorted out earlier. The Tribunal, however, would refer to the "Further Directions" issued 27 September 2019 which sets out the difficulties particularly with Mr Edwards that the Tribunal had in getting these proceedings to a hearing. The Tribunal also took the view that the Applicant is a professional landlord which has the necessary expertise to prepare a case for hearing and that the Tribunal should be reluctant to enter into the arena and tell a party how it should conduct its case. Finally the Tribunal considers that if it had taken this step, Mr Edwards would have perceived the Tribunal as favouring the Applicant.

158. The essential feature of this case was that Mr Edwards disputed all the facts relied upon by the Applicant to establish its case. The Tribunal procedures are not geared towards determining the credibility of witnesses. The proceedings are intended to be informal with evidence not normally upon oath.

159. The Tribunal's task in evaluating the evidence was made more difficult by a range of features associated with the case. The Tribunal will consider these features before returning to its findings on each incident relied upon by the Applicant.

160. The alleged breaches of covenant concerned Mr Edwards' conduct. As a rule applications under section 168 of the 2002 Act involve discrete actions by the tenant such as allegations of unauthorised works or allegedly contravening prohibited uses of the dwelling. In such circumstances the fact finding is relatively straightforward and normally capable on the evidence of a definite answer. In this case the evaluation of Mr Edwards' actions have to be viewed in the context of the circumstances in which the conduct took place and the actions of the other persons involved.

161. Mr Edwards is 73 years of age. In 2013 Mr Edwards contracted Meningitis and was in a coma for three months. As a result of his illness Mr Edwards experienced significant life changes. He became totally deaf and for a while was unable to walk after having five toes amputated. The Tribunal made reasonable adjustments to enable Mr Edwards' participation in the proceedings which included organising the hearing at his local court and arranging for a screen to text operator so that Mr Edwards could follow what was being said. Mr Edwards secured the services of Counsel pro bono through his own efforts.

162. Mr Scher in his skeleton raised the issue of the Equality Act 2010. Mr Scher referred to section 15 of the 2010 which states that a person discriminates (A) against a disabled person (B) if A treats B unfavourably because of something arising in consequences of B's disability, and A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

163. Mr Scher also cited section 35(1) which requires a person (A) who manages premises must not discriminate against a person (B) who occupies the premises … by evicting B (or taking steps for the purpose of securing B's eviction).

164. The Applicant did not address the question of Mr Edwards' disability in relation to its evidence on his alleged conduct. The Tribunal observes that a frequent allegation made against Mr Edwards was that he shouted at people. The Tribunal noted in the hearing that Mr Edwards spoke in a very loud booming voice which was intimidating and in the Tribunal's view a consequence of him being deaf. At this stage the Tribunal registers that Mr Edwards' disability added another layer of difficulty when evaluating the evidence against him.

165. The Applicant in its statement of case declared that Mr Edwards' behaviour had caused other residents to feel fearful and distressed. Ms Matusevicius submitted in closing that Mr Edwards' behaviour had made peoples' lives a misery.

166. The Applicant said that there were two groups of persons affected by Mr Edwards' behaviour. The first group comprised the residents who lived in the same block of flats as Mr Edwards (Mr Ajimal, Mrs King and Mrs Gould) and Mrs Berry of 26 Chasefield Close and her friend Mrs Hooker. The second group comprised the staff employed by the Applicant, Ms Olszewska and Mr Williams.

167. The Applicant did not secure comprehensive witness statements from the residents who were said to be affected by Mr Edward's behaviour. The witness statements of Mrs King and Mrs Gould were described as Anti-social behaviour incident forms and restricted to the incident on 2 January 2018. Mr Ajimal's witness statement dealt only with the

alleged assault on 9 July 2018. The Applicant supplied no witness statements from Mrs Berry and Mrs Hooker.

168. The Applicant chose not to call the residents to give evidence at the hearing. Ms Matusevicius said that the residents were too petrified of Mr Edwards to attend the hearing but this was not substantiated by direct evidence from the residents. Ms Olszewska believed that Mrs King and Mrs Gould were in their eighties, whilst Mr Ajimal was in his seventies.

169. The Applicant principally relied on Ms Olszewska to prove the case on behalf of the residents. Ms Olszewska's evidence in respect of the incidents involving the residents was largely hearsay. Although the Tribunal is not bound by the strict rules governing admissibility of evidence, the Tribunal is likely to attach less weight to hearsay than it would to direct testimony.

170. The Applicant's approach in respect of its evidence for the incidents involving the residents posed challenges for the Tribunal when assessing questions of credibility in the absence of the principal witnesses to the events. The Tribunal observes that a consequence of the Applicant's approach was that the voices of the residents were not heard at the hearing.

171. The hearing effectively pitched Ms Olszewska against Mr Edwards. Ms Matusevicius pointed out that Ms Olszewska was an experienced and valued member of staff who had worked for the Applicant for over 12 years. Ms Matusevicius argued that Ms Olszewska had no reason to lie about the events in question.

172. In circumstances where it is one person's word against another the Tribunal will look at what other evidence is available outside the protagonists.

173. The Applicant in its statement of case put forward as one of its grounds that Mr Edward's behaviour had resulted in calls for the Police to attend Chasefield Close on a number of occasions. The Applicant did not include any statement from the Police in its documents bundle. In contrast Mr Edwards included Notes from PC Young at [R11] and [R29 30] which concerned the door incident on 2 January 2018 and the disabled car parking space on 28 January 2019, and emails from Inspector Hill [R25] & [R27] dealing with the incidents involving Mr Ajimal.

174. Mr Edwards acknowledged that the Notes from PC Young were not formal witness statements. The origin of the Notes is that PC Young was obliged to write down his comments in order to communicate with Mr Edwards because of his deafness.

175. The Tribunal finds that PC Young's Notes were supportive of Mr Edwards and indicated that the actions of the other residents involved

were unreasonable. Inspector Young exonerated Mr Edwards from culpability in respect of the alleged assault on Mr Ajimal.

176. The Tribunal gave the Applicant an opportunity to comment on the documents from the Police officers included in Mr Edward's bundle.

177. In respect of Inspector Young's email the Tribunal sought the Applicant's response prior to the hearing. Ms Matusevicius' response was:

> "It is the Applicants position, that there is no indication that this decision was based on any evidence being provided that the Respondent (Mr Edwards) did not commit the assault, but rather there was a counter claim made against Mr Ajimal and no witnesses to support either party. It is the Applicants position that this incident should be viewed in the context with the other incidents relating to the Respondent's behaviour".

178. At the hearing Ms Matusevicius said that the Police Officers were very reluctant to take action given the age of the persons involved.

179. The Tribunal considers that the Applicant was put on notice of the potential probative value of Inspector Hill's statement, and that it was incumbent upon the Applicant to seek at the very least clarification from Inspector Hill of the Police's position in respect of the various incidents if it wished to present an alternative explanation of what had been said by the various Police Officers involved. It also became apparent during the hearing that there appeared to be documents from the Police which had been sent to Mr Ajimal, however, none of those documents had been included in the Applicant's hearing bundle.

180. Mr Edwards produced statements from Mrs Khadragi and Mrs Masters. The Tribunal notes that Mrs Khadragi was the former Estate Manager of Chasefield Close and Mrs Masters was Mr Edwards' carer and had been employed in the past by the Applicant.

181. The Tribunal asked Ms Matusevicius and Ms Olszewska for their views on Mrs Khadragi's evidence. Ms Matusevicius said that Mrs Khadragi's employment had ended on the 4 February 2014 and that she had only dealt with Mr Edwards for a matter of weeks. Ms Olszewska was asked about Mrs Khadragi's comment that Mr Edwards had been targeted by other residents. Ms Olszewska accepted that it was very difficult to find out what was genuine and what was not but she did not think it was fair to say he had been targeted. Ms Olszewska said that she had taken steps to prevent escalation of the dispute by speaking to residents and explaining there will always be noise in blocks of flats and that she would say if complaints were unfounded.

182. Although Mr Edwards had obtained the statements of Mrs Khadragi and Mrs Masters, the Tribunal considered that they brought an independent perspective to the circumstances of the case.

183. The Tribunal noted that Mrs Khadragi had worked for the Applicant for 28 years and had continued to keep in touch with many of the residents of Chasefield Close. Mrs Khadragi's comments that she believed that Mr Edwards was being targeted over the smallest things and that unless nipped in the bud it becomes war and that the older people get, the less tolerant and empathy they have with others especially people less able than themselves resonated with the Tribunal when it evaluated aspects of the case.

184. Mrs Masters highlighted the personal difficulties facing Mr Edwards who suddenly in his sixties had to adapt to a world of silence and learn to walk again. Mrs Masters also sadly witnessed other peoples' lack of empathy and intolerance to his situation. Mrs Masters pointed out that Mr Edwards had no control over the volume of his speech as a result of his deafness and talked louder than before. Mrs Masters said she never found communication with Mr Edwards a problem provided the person was patient and wrote things down for him.

185. Mrs Masters also said that she had witnessed several incidents which appeared to be part of a vendetta against him. Mrs Masters referred to unmeritorious complaints about him, such as considering his walker a fire risk and of noise emanating from his Flat when he was not there.

186. Mrs Masters cited various incidents when repairs to the Applicant's Flat were not attended to promptly which included the emergency call system and meant that Mr Edwards was without any form of emergency assistance over Christmas.

187. The Tribunal highlighted earlier that the burden of proof on the balance of probabilities rests with the Applicant. The Tribunal's duty as a fact finding Tribunal is to determine the disputed facts on the evidence and should only resort to burden of proof to resolve a disputed question of fact in exceptional circumstances.

188. Recently the Upper Tribunal in *Eldersan Limited and Radan Covic* [2020] UKUT 0003 identified the relevant Authorities which sets out the circumstances when a fact-finding Tribunal can properly fall back on the burden of proof to resolve a disputed question of fact.

189. The Tribunal cites a selection of the Authorities mentioned by the Upper Tribunal.

190. The Court of Appeal case in *Ashraf v Akram* [1999] EWCA Civ 640, concerned a fight between the claimant and the defendant, each of whom sued the other for assault. The trial Judge dismissed both claims on the ground that neither had satisfied the burden of proof. Sedley LJ began his judgment by saying this:

> "The authorities confirm what one would expect, namely that a trial judge's duty is to decide the issues relevant to his judgment and not to evade them. But the authorities also recognise that there will be the occasional case in which the common path to the resolution of the ultimate issue, namely who is telling the truth, is blocked by an intractable evidential tangle. In such a case it may be not only legitimate but inevitable that the judge will hold that the plaintiff has failed to show a preponderance of evidential probability in favour of his case. Where there are cross-claims, in such a situation the counterclaim will also logically fail."

191. A recent review of the relevant authorities is contained in the judgment of Rose J (with whom Kitchin LJ agreed) in the decision of the Court of Appeal in *Constandas v Lysandrou* [2018] EWCA Civ 613 at [22]-[27]. Rose J began her review by referring to *Stephens v Cannon* [2005] EWCA Civ 222, and the following propositions ([46]):

> "(a) The situation in which the court finds itself before it can despatch a disputed issue by resort to the burden of proof has to be exceptional.
>
> (b) Nevertheless, the issue does not have to be of any particular type. A legitimate state of agnosticism can logically arise following enquiry into any type of disputed issue. It may be more likely to arise following an enquiry into, for example, the identity of the aggressor in an unwitnessed fight; but it can arise even after an enquiry, aided by good experts, into, for example, the cause of the sinking of a ship.
>
> (c) The exceptional situation which entitles the court to resort to the burden of proof is that, notwithstanding that it has striven to do so, it cannot reasonably make a finding in relation to a disputed issue.
>
> (d) A court which resorts to the burden of proof must ensure that others can discern that it has striven to make a finding in relation to a disputed issue and can understand the reasons why it has concluded that it cannot do so. The parties must be able to discern the court's endeavour and to understand its reasons in order to be able to perceive why they have won and lost. An appellate court must also be able to do so because otherwise it will not be able to accept that the court below was in the exceptional situation of being entitled to resort to the burden of proof.
>
> (e) In a few cases the fact of the endeavour and the reasons for the conclusion will readily be inferred from the circumstances and so there will be no need for the court to demonstrate the endeavour and to explain the reasons in any detail in its judgment. In most cases, however, a more detailed demonstration and explanation in a judgment will be necessary."

192. Rose J then referred to the fact that the propositions in *Stephens v Cannon* had been refined by the Court of Appeal in *Verlander v Devon Waste Management* [2007] EWCA Civ 835. The issue in that case concerned the circumstances in which an industrial accident had taken place. Auld LJ expressed the relevant principles as follows:

> "19. …First, a judge should only resort to the burden of proof where he is unable to resolve an issue of fact or facts after he has unsuccessfully attempted to do so by examination and evaluation of the evidence. Secondly, the Court of Appeal should only intervene where the nature of the case and/or the judge's reasoning are such that he could reasonably have been able to make a finding one way or the other on the evidence without such resort.
>
> 24. When this court in *Stephens v Cannon* used the word "exceptional" as a seeming qualification for resort by a tribunal to the burden of proof, it meant no more than that such resort is only necessary where on the available evidence, conflicting and/or uncertain and/or falling short of proof, there is nothing left but to conclude that the claimant has not proved his case. The burden of proof remains part of our law and practice - and a respectable and useful part at that - where a tribunal cannot on the state of the evidence before it rationally decide one way or the other."

193. The Tribunal has highlighted in the preceding paragraphs the evidential challenges encountered with this Application. The Tribunal has resorted to the burden of proof in respect of some of the incidents relied upon by the Applicant to establish a breach of the covenant. The Tribunal's reasoning for adopting that route is explained in its findings on the relevant incidents.

194. The final issue before evaluating the findings on each incident is the question of waiver of breach of covenant.

195. Judge Huskinson in Swanston Grange (Luton) Management Limited v Langley-Essen LRX/12/2007 established that the Tribunal had jurisdiction under an application under section 168 (2)(a) of the 2002 Act to establish whether the landlord had waived the right to assert against the tenant that the admitted facts constituted a breach of the covenants at all.

196. Judge Huskinson went on to explain his reasoning on the Tribunal's jurisdiction:

> "The purpose of a determination under section 168(2)(a) is in my judgment to bring the parties to the same position as would be reached if section 168(2)(b) was engaged by reason that "the tenant has admitted the breach". This contemplates an admission by a tenant that it has committed an actionable breach of covenant. Paragraph (b) does not contemplate an admission by a tenant that it has done an act which, judged strictly, would be a breach of covenant but which the

tenant asserts the landlord is not entitled to complain about for reasons of waiver/estoppel.

It is important to note that the LVT, when concluding that the Appellant had waived the relevant breaches, was using this expression to mean not that the Appellant had waived the right to forfeit the lease on the basis of the relevant breaches but in the sense that the Appellant had waived the right to assert against the Respondent that the admitted facts constituted a breach of the covenants at all.

Accordingly in answering the question posed by section 168(2)(a) as to whether the breach has occurred the LVT needs to decide (and must consequently have jurisdiction to decide) whether at the relevant date the covenant was suspended by reason of a waiver or estoppel (in which case a breach will not have occurred) or whether at the relevant date the covenant was not suspended (in which case a breach will have occurred if the facts show non-compliance with the terms of the covenant)".

197. There was some doubt on whether Judge Huskinson's decision was binding upon the FTT because it preceded the formation of the FTT and UT structure. Also some commentators considered that the decision was obiter because it involved one party and was not fully argued. Those reservations were put to rest by the Upper Tribunal decision in *Roundlistic Limited v Nathan Russell Jones and Aileen Mary Seymour* [2016] UKUT 0325[2] which confirmed the Tribunal's jurisdiction to determine whether the landlord had become estopped from relying upon the covenant or had waived the right to do so.

198. Mr Hesford explained in evidence that the Applicant had an Anti-Social Behaviour policy[3] which had been applied in the case of Mr Edwards. Essentially the policy required the Applicant to give a final warning letter to the effect that the Applicant would take action against the tenant if s/he committed the behaviour again. The application of the policy is relevant to whether there has been a waiver. The issue is whether the Applicant's indication that it would take no action in respect of the alleged breach but would take action in the event of a future breach amounted to a suspension of the covenant by waiver at the relevant date.

199. The Tribunal raised the question of waiver with the Applicant at the hearing. Mr Hesford did not consider that the Applicant had waived the breach connected with the allegation of the threat to kill. Ms

[2] At the end of the hearing Mr Scher on reading *Roundlistic* sought to put forward a case on Unfair Contract Terms. The Tribunal is satisfied that Mr Scher's submission was "Off the Cuff" and did not merit consideration.

[3] A copy of the policy was not included in the Applicant's documents bundle.

Matusevicius argued that there was no waiver because the Applicant had decided to take no action at that point.

200. The Tribunal now turns to its findings on each incident.

Cascading Water in July 2017

201. The Tribunal accepted that Mr Edwards was cleaning the inside of his window at the time of the incident, and that as a consequence water is likely to fall from the upstairs window. The Tribunal finds that the act complained of is "cleaning windows".

202. The Tribunal decides that the act of cleaning windows does not constitute a breach of the covenant at Clause 4.13.

Shouting and Kicking the Door on 2 January 2018

203. The Tribunal finds in relation to the incident on 2 January 2018 that (1) The Applicant had arranged for the door to be unlocked until 8pm as a reasonable adjustment to Mr Edward's disability. (2) Mrs King had no good reason to keep the door locked at 2.00 pm. (3) Mr Edwards required the door to be open so that he could receive urgent medication, Mrs King and Mrs Gould were aware of that fact. (4) Mr Edwards' attempts of dealing with the problem by re-opening the door and leaving a note were the actions of a person behaving reasonably in what would have been a very stressful situation. (5) Mr Edwards was entitled to ask Mrs King to desist from the closing the door, particularly after she ignored the note. (6) Mr Edwards resorted to kicking Mrs King's door twice and shouting only after Mrs King had failed to acknowledge the knock on the door, and the shouting through the letter box. (7) The Tribunal is satisfied that the actions of kicking the door and shouting were out of frustration rather than a violent act. It is telling that Mr Edwards stopped kicking the door after he was tapped on the shoulder by Mrs Gould. (8) Mr Edwards then asked for Ms Olszewska's help. (9) The Police had been summoned by the time that Ms Olszewska arrived on the scene. (10). The Police took no action against Mr Edwards, and the evidence suggested that the Police believed that the problem rested with Mrs King rather than with Mr Edwards.

204. Ms Matusevicius highlighted Mr Edward's admission that he had kicked the door. Ms Matusevicius submitted that such action should not be trivialised, and asserted that residents in their eighties would be traumatised by such action.

205. The Tribunal considers that the interpretation of the act of kicking should be viewed in the context of all the circumstances. Mrs King and Mrs Gould knew the reason why the door had to remain open so that Mr Edwards could be assured of receiving vital medication. The Tribunal finds on the facts presented that there was no good reason for Mrs King to close the door and that she must have known that her

actions would have exacerbated what would have been a stressful situation for Mr Edwards. It is telling that Mrs Gould tapped Mr Edwards on the shoulder when he was kicking the door which suggested that Mrs Gould was not fearful of Mr Edwards.

206. The Tribunal is satisfied that Mr Edwards did his best to act reasonably throughout this whole unfortunate episode and that the actions of kicking the door and shouting were out of frustration and in response to the unreasonable actions by Mrs King. The Tribunal does not consider the actions of Mr Edwards on 2 January 2018 constitued a breach of the covenant at clause 4.13 of the lease.

207. The Tribunal finds that if there was a breach of covenant the Applicant waived it. The Applicant decided to take no action in respect of this incident, and its attempt to resurrect it after 18 months would plainly be unjust.

"Go Back to Poland" on 4 January 2018

208. The Tribunal found in relation to the incident on 4 January 2018 that the allegation of "Go back to Poland" is racist conduct which potentially is a criminal act. The Applicant had the burden of proving the allegation on the balance of probabilities. Where the allegation is serious the Tribunal would expect the Applicant to adduce persuasive evidence. The Applicant relied solely on Ms Olszewska's testimony, which was not corroborated by a contemporaneous note of what happened on 4 January 2018. The Applicant did not produce in evidence the letters purportedly sent to Mr Edwards after the meeting on 9 January 2018. Mr Edwards flatly denied that he said the racist comment and denied that he knew that Ms Olszewska was Polish. Ms Olszewska fairly said that she could not remember whether she had told Mr Edwards that she was Polish.

209. The Tribunal considers this is a case where it is required to resort to burden of proof. The only way this can be resolved on the facts is a clear finding that one of the parties was lying. The Tribunal is unable to reach such a determination because the accusation of lying was not put to either Ms Olszewska or Mr Edwards by the representative from the other side.

210. The Tribunal found that the Applicant's case was weak which was further undermined by the events of the Applicant's meeting with Mr Edwards on 11 April 2018.

211. The Tribunal is satisfied that the Applicant has failed to establish on balance of probabilities that Mr Edwards made the racist comment with the result that there is no breach of the covenant at clause 4.13 of the lease.

212. The Tribunal also finds that if there was a breach of covenant the Applicant waived it. The Applicant decided to take no action in respect

of this incident, and its attempt to resurrect it after 18 months would plainly be unjust.

Alleged threat to kill on 16 May 2018

213. The Tribunal finds that a threat to kill an extremely serious allegation. The Tribunal considers that a finding of Mr Edwards uttering a threat to kill required compelling evidence on the part of the Applicant.

214. The Tribunal finds that the Applicant's evidence is weak when set against the entirety of the evidence given at the hearing. The Applicant relied entirely on Ms Olszewska's testimony. The Applicant made no attempt to question the gardeners who were working in close vicinity of where the incident happened. Mr Edwards produced reliable evidence that he was elsewhere when the said incident took place, and his account is supported by a witness statement of his niece, Ms Davey. The Tribunal was not convinced by the Applicant's attempts to undermine Mr Edward's evidence.

215. The Tribunal's view about the weakness of the Applicant's case is reinforced by Mr Hesford's decision on 25 May 2018 not to take any further action against Mr Edwards in respect of the allegation of "threat to kill".

216. On the strength of the evidence the Tribunal is satisfied that Mr Edwards was elsewhere when the alleged threat was made. The Tribunal decides that there has been no breach of the covenant at clause 4.13 of the lease.

217. The Tribunal questions the propriety of the Applicant's decision to include the threat to kill as a ground for the present application for breach of covenant when it previously said that it would take no further action. In the Tribunal's view if the said threat had taken place the Applicant's actions amounted to a waiver of the said breach.

Alleged Assault on Mr Ajimal on 9 July 2018

218. The Tribunal finds that in these circumstances where there is a clear conflict in the versions put forward by the participants to the incident, the Applicant should have called Mr Ajimal to give evidence so that the Tribunal could assess the credibility and reliability of his evidence. The Tribunal finds that Mr Ajimal's account of being throttled but still able to write a note to Mr Edwards implausible.

219. The Tribunal gives weight to the outcome of Inspector Hill's investigation which decided that no culpability and no blame could be put on Mr Edwards for the alleged assault. The Tribunal is not persuaded by the Applicant's response to Inspector Hill's decision. The Tribunal considers that the Applicant was put on notice that the Tribunal was likely to place weight on Inspector's Hill's investigation. The Tribunal may have found the Applicant's response more

convincing if enquiries had been made of Inspector Hill before it gave its view on Inspector Hill's decision.

220. The Tribunal finds on the evidence that the alleged assault did not take place and that there was no breach of the covenant at clause 4.13 of the lease.

Abusive Comment to Ms Olszewska on 27 September 2018

221. The Tribunal finds that Mr Edwards said to Ms Olszewska on 27 September 2018 *"Go fuck yourself. You are the cause of all this trouble. You told Ms Castleton-Hext that I told you to go back to Poland and that if Ms Olszewska pulled something like this again this would not be the end of it.*

222. The Tribunal is satisfied that Mr Edwards' use of "Go fuck yourself" and his statement "if Ms Olszewska pulled something like this again" directed to Ms Olszewska amounted to foul language and threatening behaviour. The Tribunal finds that such behaviour and language constituted an act which may be illegal, and a nuisance and annoyance to Ms Olszewska.

223. Mr Scher submitted that an isolated act of swearing did not breach the covenant at clause 4.13 of the lease. The Tribunal disagrees. The act of swearing was accompanied by a threat and there was no justification for Mr Edward's behaviour. The Tribunal is satisfied that Mr Edwards' conduct to Ms Olszewska crossed the threshold of the prohibited behaviour as set out in clause 4.13 of the lease.

224. The next question is whether the Applicant waived the breach of covenant. The Tribunal accepts in this case that Mr Hesford in his communication of 27 September 2018 told Mr Edwards that the Applicant would not tolerate his unacceptable behaviour and that action would be taken against him. This was different from the other warnings given to Mr Edward where the Applicant indicated that it was not taking action on the complained conduct but would do so in the future if he repeated the unacceptable behaviour.

225. Mr Hesford informed Mr Edwards that the Applicant would apply to court for an anti-social behaviour injunction and that he would consult his colleagues in the leasehold team about the breaches in his lease. Mr Hesford did not specifically state that proceedings would be taken for breach of covenant. Mr Hesford said that in December 2018 the Applicant decided not to pursue the injunction but instead go down the breach of covenant route. The Applicant provided no evidence that its decision not to pursue the injunction was communicated to Mr Edwards. Equally there was no evidence that the Applicant had advised Mr Edwards that it was going to take proceedings for breach of covenant. Following this incident in September 2018, there were other incidents where the Applicant

could have instigated proceedings for breach of covenant straightaway but chose not to do so.

226. The Applicant's application for breach of covenant was made on the 14 May 2019, nearly eight months after the events on 27 September 2018. The Application did not specify the incidents upon which the Applicant relied to establish its case for a breach of covenant. Mr Edwards would not have known that his conduct on the 27 September 2018 formed part of the Applicant's case until he received a copy of Ms Olszewska's witness statement which was dated 23 July 2019 some ten months after the alleged incident.

227. The Tribunal finds that the Applicant's inaction for a period of eight months in respect of the breach of covenant committed on 27 September 2018 and its delay of 10 months in identifying the circumstances of the breach of covenant amounted to a waiver of the breach with the result that the Applicant is disentitled from asserting that it was a breach of covenant.

DIY work on the Communal Stairs on 12 to 14 October 2018

228. The Tribunal finds that Mr Edwards did works to the communal stairs for which he had no authority to carry out. The Tribunal observes that the Applicant has not pleaded "unauthorised works to communal areas" as a breach of covenant which potentially would have fallen under clause 4.5 of the lease.

229. Instead the Applicant asserted that Mr Edwards was doing an act which was annoying to the other residents in the block of flats. On the information provided the DIY did not take place during the hours of 11.00pm to 7.00am which were the times specified in clause (ii) of the Fourth schedule for not making an audible noise outside the dwelling. The Applicant did not substantiate the allegation with a witness statement from the resident concerned or with the e-mail sent to Ms Olszewska. The Tribunal is not prepared to make an adverse finding against Mr Edwards in the absence of direct evidence from the persons affected by his DIY activity.

230. The Tribunal finds that Mr Edwards did not breach the covenants at clause 4.8 (regulation (ii) of the Fourth Schedule) and clause 4.13 of the lease.

Racist Comments to Mr Ajimal on 22 October 2018

231. The Tribunal has no direct evidence from Mr Ajimal in respect of the alleged racist insult. The Applicant again has not supplied copies of the emails relied on and the correspondence from the Police. The Tribunal prefers the evidence of Mr Edwards because he has given an explanation for why Mr Ajimal may have made up these complaints against him. Mr Edwards has exhibited correspondence with

Inspector Hill which is emollient in tone and supportive of Mr Edwards' predicament.

232. The Tribunal finds that the incident on the 22 October 2018 did not constitute a breach of covenant at clause 4.13 of the lease.

Disabled Car Parking Space: 28 January 2019

233. The Tribunal finds that the Applicant advanced no good reason why Mrs Berry parked her vehicle there. The Tribunal agrees with Mr Edward's assessment that Mrs Berry's act of parking her car there was intended to provoke him and cause trouble. What followed was a shouting match between Mrs Berry and Mr Edwards where it appeared that both of them gave as good as they got. The Tribunal is satisfied that the Applicant adduced no evidence to indicate that Mrs Berry and Mrs Hooker were distressed by the incident.

234. The Tribunal considers that Mr Edwards' behaviour on 28 January 2019 should not be looked at in isolation of the circumstances. The Tribunal finds that it was reasonable for Mr Edwards to raise with Mrs Berry the issue of parking her car in the disabled parking bay. The Tribunal does not understand why Mrs Berry chose to park her car there. The fact that the disabled parking bay is advisory is not the point. Responsible citizens understand that they should not be parking in those bays unless they have a blue badge.

235. The Tribunal accepts that it has not heard from Mrs Berry direct and that she may have a perfectly good explanation. However, that was for the Applicant to arrange and the Tribunal can only base decision on the facts it heard.

236. Mr Edwards accepted that he used an expletive once and got into an argument with Mrs Berry. The Tribunal, however, finds that the use of the expletive in the circumstances was understandable, and that Mrs Berry and Mrs Hooker bore equally responsibility for the ensuing argument.

237. Having regard to all the circumstances the Tribunal decides that Mr Edward has not breached the covenant at clause 4.13 to the lease.

Loud Banging: 13 June 2019

238. The Tribunal is satisfied that that the allegation has no substance. The Applicant has chosen not to identify the complainants. Further the operators of Anchorcall did not hear any noises during their contact with Mr Edwards. Finally even if Mr Edwards was hammering at the times and duration alleged, the Tribunal does not consider that so unreasonable as to cause a nuisance.

239. The Tribunal decides that Mr Edward has not breached the covenant at clause 4.13 to the lease.

Acted in Abusive Manner to the Applicant's Members of Staff

240. The Tribunal finds that the language used by Mr Edwards in the first email [A103] uncompromising and rude about the competence of certain members of staff ("not to fit to stack shelves at Tescos"). The Tribunal is satisfied that Mr Edwards' description of the Applicant's staff as "feeble minded morons" is insulting and offensive. The Tribunal accepts Mr Williams' statement that he was brought down by Mr Williams constant attacks on his competence, and that Mr Williams was not just "whinging and whining" as suggested by Mr Edwards.

241. The Tribunal considers that Mr Edwards' reference in the second email [A111] to visiting Mr Williams at his home unfortunate and capable of being interpreted as a threat of violence. The Tribunal observes that Mr Edwards corrected the misunderstanding on whether it was meant to be a physical threat immediately after it was pointed out by Kris Hall when Mr Edwards responded to the effect that his intention was to serve a subpoena on several members of staff including Mr Williams.

242. The Tribunal is satisfied that Mr Edwards had no good reason to use insulting and offensive language in the email. The Tribunal acknowledges Mr Edwards' dissatisfaction with the competence of the staff employed by the Applicant but that does give him the right to use offensive and insulting language to express his dissatisfaction. The Applicant opted to rely on the contents of the email at [A103] as an example of his continuing abusive behaviour towards the Customer Relations Team. The Tribunal accepts that it is not an isolated act but part of a course of conduct directed at the Customer Relations Team.

243. The Tribunal accepts that Mr Edwards immediately corrected the interpretation of a threat placed by Mr Kris Hall on the words used in the second email[A111]. The Tribunal, however, agrees with Mr Hall's interpretation, and that Mr Edwards was reckless in the manner in which he phrased it. It was not obvious to the Tribunal when reading the email [A111] that it referred to a subpoena.

244. The Tribunal finds that language used in the two emails constituted an act which may be illegal, and a nuisance and annoyance to Mr Williams. The Tribunal is satisfied that Mr Edwards' conduct to Mr Williams crossed the threshold of the prohibited behaviour as set out in clause 4.13 of the lease.

245. The Tribunal's interpretation of Kris Hall's email of 25 March 2019 [A110] is that following Mr Edward's email of 22 March 2019 [A111] the Applicant's Customer Relations Team would no longer respond to Mr Edward's complaints and pass any future complaints to the Applicant's lawyers to decide what action to take, if any. The Tribunal finds it significant that Kris Hall did not choose to refer the emails of

the 17 and 22 March 2019 to the lawyers for advice on potential proceedings against Mr Edwards.

246. The Tribunal is satisfied that Kris Hall's email of 25 March 2019 evinced a clear intention on the part of the Applicant that it would take no action in respect of the offensive language used in the two emails but would take action in the event of future repetitions of such conduct. The Tribunal finds that this amounted to a suspension of the breach of covenant and that the Applicant waived its right to pursue proceedings for breach of covenant.

Decision

247. The Tribunal decides that Mr Edwards has not breached the covenants at clauses. 4.8 and 4.13 of the lease, and that the Application should be dismissed.

248. The Tribunal's determination for each incident relied upon by the Applicant is set out in paragraphs 201-246.

249. Although Mr Edwards has been successful with his defence to the application, this does not mean that the Tribunal finds that his conduct was beyond reproach throughout the period in question. The Tribunal found in three incidents there were potential breaches of covenant but two of those breaches had been waived by the Applicant, and the third did not engage the covenant at clause 4.13. The Tribunal found in respect of other breaches, that the Applicant did not fully appreciate that this was legal process and that it was necessary to bring more compelling evidence to the Tribunal to establish its case. Equally there were some incidents where more consideration should have been given to Mr Edwards and his disability.

RIGHTS OF APPEAL

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

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

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

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

Appendix 1

Relevant legislation

Commonhold and Leasehold Reform Act 2002

Section 168

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

(2) This subsection is satisfied if—

(a) it has been finally determined on an application under subsection (4) that the breach has occurred,

(b) the tenant has admitted the breach, or

(c) a court in any proceedings, or an arbitral tribunal in proceedings pursuant to a post-dispute arbitration agreement, has finally determined that the breach has occurred.

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

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

Section 169

(7) Nothing in section 168 affects the service of a notice under section 146(1) of the Law of Property Act 1925 in respect of a failure to pay—

(a) a service charge (within the meaning of section 18(1) of the 1985 Act), or

(b) an administration charge (within the meaning of Part 1 of Schedule 11 to this Act).

Appendix 2

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	CHI/43UD/LBC/2019/0021
Property	**:**	18 Chasefield Close, Guildford, Surrey GU4 7YR
Applicant	**:**	Anchor Hanover
Representative	**:**	---
Respondent	**:**	Mr Ivor Edwards
Representative	**:**	---
Type of Application	**:**	Determination that a breach of covenant has occurred
Tribunal Member(s)	**:**	Judge M Tildesley OBE
Date and venue of CMH	**:**	---
Date of Directions	**:**	27 September 2019

FURTHER DIRECTIONS

This is a formal order of the Tribunal which must be complied with by the parties. The Tribunal directs that the parties must comply with the STATEMENT ON TRIBUNAL RULES AND PROCEDURE issued 1 February 2019 which is enclosed with the first set of directions.

Background

1. On 28 May 2019 the Applicant landlord sought a determination under subsection 168(4) of the Commonhold and Leasehold Reform Act 2002 ("the Act") that a breach of covenant contained in the Respondent's lease has occurred. In particular, the Applicant asserts that the Respondent has committed acts of nuisance, annoyance, detriment or inconvenience to other owners, tenants or occupiers of premises in the neighbourhood, arising from his alleged anti-social behaviour.

2. The Applicant landlord is Anchor Hanover which describes itself as the largest provider of specialist housing and care for older people in England.

3. The Landlord's, extended reasons for the Application dated 23 July 2019 stated that

> Between the period July 2017 to July 2019
>
> - That Mr Edwards (the Respondent) acted in an aggressive manner towards other residents and subjected them to verbal abuse.
> - That Mr Edwards physically assaulted another resident.
> - That Mr Edwards was found to be kicking and banging on a resident's property door and shouting through their letter box.
> - That Mr Edwards has made a death threat to the Estate Manager.
> - That Mr Edwards used racially abusive language towards another resident.
> - That Mr Edwards made a racist remark to the Estate Manager.
> - That Mr Edwards has acted in an abusive manner towards other employees of the Applicant.
> - That Mr Edward's behaviour has caused other residents to be fearful and distressed.

- That Mr Edward's behaviour has caused the Estate Manager to feel anxious to the effect that s/he no longer feels safe working in Chasefield Court.

- That Mr Edward's behaviour has resulted in calls for the Police to attend Chasefield Close on a number of occasions.

4. On 4 July 2019 the Tribunal directed the Applicant to send extended reasons to Mr Edwards and the Tribunal by 25 July 2019. Mr Edwards was required to provide his statement of case by 15 August 2019. The parties were directed to supply dates to avoid during the period 7 October to 15 November 2019.

5. On 24 July 2019 the Tribunal informed the parties that the hearing had been arranged for 24 October 2019 and that it wished to inspect the property.

6. On 25 July 2019 Mr Edwards sent an email to the Tribunal saying that he was recently discharged from hospital after being ill for six weeks and being admitted into hospital with Pneumonia, and that he had to go to St Peters Hospital to have a pre-operation assessment. Mr Edwards added

> "I will not be dictated to by your dept or any other regarding what I should do or should not do regarding dates etc under prevailing circumstances and I will not be bullied intimidated or rushed into things simply to please Anchor Housing. I am not working to your Tribunal's timeline I am working with mine due to my medical circumstances which are serious".
>
> Mr Edwards also questioned the Tribunal's intention to inspect his property. Mr Edwards added that he was deaf and severely disabled.

7. On 30 July 2019 a Procedural Judge reviewed the file and instructed a response to be sent to Mr Edwards which referred to the Statement of Tribunal Rules and Procedure and stated that

    - The Tribunal is unable to respond to general correspondence unless it is copies to the other side.
    - Applications for extension of time must be on a prescribed form
    - If you require any special measures or facilities at the hearing as a result of any disability you should inform the tribunal of these in writing in advance.
    - The Tribunal's inspection would take place in your presence and time be allowed for travel from the property.

8. Mr Edwards sent emails on 31 July and 1 August 2019 which were not copied to the other side. In those emails Mr Edwards complained about

the Applicant's case stating that he received blank statements and that Mr Williams of Anchor said that it would not be appropriate for him to comment. Mr Edwards also advised that he had seen a solicitor and had went to the local CAB, and that he had been advised to seek an extension to prepare the defence case which he said would take him 4 to 5 months.

9. On 2 August 2019 another Procedural Judge advised Mr Edwards to make his application on the correct form and to copy it to the other side.

10. On 5 August 2019 Mr Edwards sent another email complaining about the Tribunal's intended inspection of the property. On 15 August Mr Edwards copied the Tribunal into an email addressed to the Applicant where he told the Applicant the he required a speech to text operator at the hearing.

11. Mr Edwards suppled an email from a Lynne Hartman of Sensory Services to him which stated that

> "I would add at the bottom that you are deaf and although you are able to communicate on a 1:1 basis communicating with more than one person and in a room full of people, causes you great difficulty and you would like to know what measures are being put in place to support you. This is important as you need to be fully involved and able to participate in these proceedings. If you do require a speech to text operator tell them this stating you need to be 100 per cent sure you are getting all the information/questions directed to you".

12. On 15 August 2019 Mr Edwards completed an application for extension of time on the prescribed form. He set ut five grounds for the Application:

    - He was awaiting medical evidence. Mr Edwards said he had cancelled an operation at the end of August in order to prepare for the case.

    - He was applying for Pro Bono Assistance, the papers would be lodged on 2 September with the assistance of Citizens Advice.

    - He had to collate witnesses statements from a number of people. Two witnesses told him that they would have details ready for him by the beginning of September.

    - He finds it difficult to submit his own legal submissions and the fact that he was on medication which caused memory loss.

    - He was trying to collate police evidence".

13. Judge Tildesley granted Mr Edward's request for an extension in part by extending the time for submission of his case from 15 August 2019 to 1 October 2019 (an extension of 6 weeks). Mr Edwards was reminded that the hearing date of 24 October 2019 remained.

14. On 16 August 2019 Mr Edwards expressed his displeasure with the decision. Mr Edwards said he was a respected author and was a lecturer until he contracted a bad case of meningitis and became disabled. Further he said he was a professional investigator who still investigated unsolved murders. Finally he asserted that would not be treated with impunity by anyone regardless of rank or social standing and he would not have his integrity challenged.

15. Mr Edwards provided a scanned copy of a letter from a Dr Sarah Quick of Merrow Park Surgery. Mr Edwards said that he wanted to place some medical evidence with the application for extension but unfortunately Dr Han was in hospital awaiting an operation and the surgery manager was away on holiday. Mr Edwards said he visited the surgery and one of the doctors overheard a discussion he was having with a member of staff. The Doctor invited him and provided a letter which said that

> "Mr Edwards is profoundly deaf and has issues with his memory subsequent to meningitis. He is therefore unable to represent himself at his forthcoming Tribunal and will need legal representation for this. These issues are long term, so there is no possibility of Mr Edwards being able to carry out his own defence at any time in the future".

16. Mr Edwards asserted that he would not attend any Tribunal without legal representation that was his right and the law and that is how matters stood. Mr Edwards stated that he felt that the case was cut and dried from the day the Applicant applied to have the case fast tracked.

17. Judge Tildesley sought the comments of the Applicant regarding a further extension of time for Mr Edwards to prepare his case. The Applicant submitted that the extension to 1 October given to Mr Edwards provided a reasonable length of time for legal assistance if this was considered necessary. The Applicant was also of the view that the hearing date of 24 October 2019 provided an appropriate timescale for Mr Edwards.

18. On 28 August 2019 the Tribunal wrote to Mr Edwards advising that the alleged breaches of covenant did not require the Tribunal to carry out an inspection inside the flat. Further the Tribunal stated

> "With regard to your application for extension of time before the hearing to allow you to obtain legal representation provided you can demonstrate that you have applied for pro bono representation, that this is being considered but that a decision has not been reached by 1 October 2019 you may resubmit an application for an adjournment of the hearing. Bearing in mind the nature of the allegations the landlord

is entitled to have the matter heard by the Tribunal without undue delay and this will have to be weighed in the balance when the Tribunal considers any application to postpone the hearing. The Tribunal hopes and expects you to progress the application for representation with all possible expedition".

19. On 5 September 2019 Citizens Advice informed the Tribunal that Mr Edwards had visited the office and that Citizens Advice was acting as referrer in an application for public funding for the Tribunal hearing. Further the completed application would be posted today to the national Pro Bono Centre together with copies of accompanying documents.

20. On 10 September 2019 Mr Edwards supplied the Tribunal with an email from the Advocate Team for Pro Bono Assistance. Mr Edwards also confirmed that he had collated several witness statements and have several years of evidence to supply which needs placing in order for the Tribunal with the aid of legal representation.

21. The email from the Advocate Team stated they would check whether the application met their criteria. The Team advised that the checks could take up to three weeks when the Advocate Team would inform Mr Edwards whether they required further information, or whether his application was ineligible or whether they would look for a barrister for him. The Advocate Team also said that they could not help everyone, and that Mr Edwards was responsible for the running of his case and that he must comply with the deadlines of the Tribunal.

22. On 15 September 2019 Mr Edwards informed the Tribunal that he had received "a mail" from Ashford hospital about one of his operations and that the hospital wanted him to have an operation in October. Mr Edwards again repeated his assertion that the Applicant's accusations were false. Mr Edwards reiterated his request to grant him an extension so that he can have his operation and gather his papers together and place them before the Pro Bono Unit.

23. On 15 September 2019 Mr Edwards supplied a letter from Surrey Police from a Mr Andy Hill which indicated that he would be rescinding the record under community resolution that Mr Edwards was the offender in the matter regarding the incident with Mr Ajimal. The scanned copy of the letter provided to the Tribunal was not on headed paper and there was no indication of the position of Andy Hill within Surrey Police.

24. On 17 September 2019 the Tribunal advised Mr Edwards that it was seeking the views of the Applicant about his request for further time and that the Tribunal would give a response by 23 September 2019. The Tribunal advised that in the meantime the hearing date of 24 October 2019 remained

25. On 17 September 2019 Mr Edwards responded by stating that he did not understand the last letter referring his request to the Applicant. Mr Edwards repeated that

> "In plain English no extension means no hearing. By law he asserted that he must be legally represented to appear before any hearing as he could not represent himself on medical grounds".

26. On 20 September 2019 Mr Edwards stated that he had heard nothing back regarding his request for speech to screen facilities at the Tribunal hearing. Mr Edwards said he would require transport if the hearing was outside Guildford.

27. On 23 September 2019 Judge Tildesley wrote the following letter to Mr Edwards

> "Judge Tildesley is not prepared to grant an adjournment of the hearing on 24 October 2019.
>
> You were advised in the letter of 28 August 2019 that if a decision had not been reached by the Pro-Bono Unit on representation by 1 October 2019, you may re-submit an application for an adjournment of the hearing on 24 October 2019.
>
> Judge Tildesley notes the email of 10 September 2019 from "Advocate Case Work Team" which indicates that they will provide you with an answer within 3 weeks if you meet their criteria for help. Judge Tildesley wishes to see that email first before he will consider any further request for an adjournment.
>
> Judge Tildesley also notes that "Advocate Case Work Team " advises you that you are always responsible for the running of your case and you must comply with any deadlines.
>
> In this regard Judge Tildesley grants a further extension for submission of your case (4 of directions dated 15 August 2019) until 3 October 2019. Judge Tildesley notes that you have had since 8 July 2019 to prepare your case.
>
> Judge Tildesley notes your request for the hearing to be held in Guildford. He will make enquiries as to whether it is possible to transfer the case from Staines to Guildford.
>
> Judge Tildesley advises that he will not answer any further emails from you until you provide the answer from The Advocate Case Work Team.
>
> Judge Tildesley confirms that the Tribunal is working to the hearing date of 24 October 2019".

28. Mr Edward's first response to the letter was to remind the Tribunal that he could not attend by law any court hearing civil or criminal without legal representation.

29. Mr Edwards also supplied a response from the Advocate Team at the Pro Bono Unit dated 13 September 2019 stating that they were sorry that he was having difficulties with his health and with the Tribunal process and that if he required further time to provide the requested information that they must receive everything by no later than three weeks before any hearing date. The Advocate team reminded Mr Edwards that they required certain information which included all court or tribunal papers, documents relating to the ownership of the Flat and also a clear written summary of his case.

30. Mr Edwards then sent a complaint stating that Judge Tildesley had a strategy in which he had no intention of granting an extension and that Judge Tildesley was discriminating against him on the grounds of disability. Mr Edwards asserted that he did not want Judge Tildesley dealing with his case and would refuse to go before any Tribunal that he was associated with. Mr Edwards stated that his health was of the upmost importance to him and he would not have it either ignored or placed in jeopardy by someone who believed he was above the law and who showed total lack of apathy towards others and in the process took far too much for granted and knew little of justice and fair play due to ignorance.

CONSIDERATION

31. The Tribunal is governed by the Overriding Objective to deal with cases fairly and justly.

32. Dealing with a case fairly and justly includes

> (a)dealing with the case in ways which are proportionate to the importance of the case, the complexity of the issues, the anticipated costs and the resources of the parties and of the Tribunal;
> (b)avoiding unnecessary formality and seeking flexibility in the proceedings;
> (c)ensuring, so far as practicable, that the parties are able to participate fully in the proceedings;
> (d)using any special expertise of the Tribunal effectively; and
> (e)avoiding delay, so far as compatible with proper consideration of the issues.

33. The parties must help the Tribunal to further the overriding objective and to co-operate with the Tribunal generally.

34. The overriding objective requires the Tribunal to be fair to both parties. The Applicant in this case is a non-profit making housing association. The Applicant requested the case to be fast tracked because of Mr Edwards' behaviour towards other residents and members of

staff. Mr Edwards, on the other hand, vigorously denies the allegations and is profoundly deaf and suffers from memory loss.

35. The Tribunal has sought to balance these competing interests by fixing the hearing date some five months after the date of application on 28 May 2019 and giving Mr Edwards almost three months in which to prepare his case from 8 July 2019 when the papers were sent to him. Contrary to Mr Edwards' assertions, the case has not been fast tracked and he has been granted an additional six weeks to prepare his case. Also the Tribunal has formed no view at this stage on the merits of the case.

36. The case concerns allegations that Mr Edwards has broken the covenants under his lease. The Tribunal's jurisdiction is limited to deciding whether a breach has occurred or not. As a general rule such proceedings do not involve difficult questions of law and are decided on the facts. If the Tribunal finds that a breach has occurred, the landlord would then be required to take further proceedings before the Court if it wished to forfeit the lease.

37. There is no requirement for parties to be represented by a solicitor or counsel before the Tribunal. The reason being is that the Tribunal is intended to be less formal than a court to ensure that all parties have access to justice. The Tribunal is experienced in dealing with litigants in person.

38. There is a duty on the Tribunal to ensure so far as is practicable that the parties are able to participate in the hearing. Mr Edwards has informed the Tribunal of his requirement to have speech to screen facilities. The Tribunal is in the process of organising an operator for the hearing on 24 October 2019. The Tribunal has been unable to list the hearing at Mr Edwards' local court at Guildford but has arranged the hearing at Staines. If it is at Staines, Mr Edwards would have to make his own arrangements to travel there. It is not possible to hold the hearing outside court premises because of security considerations. Judge Tildesley has already indicated that he would make another request for the hearing to be listed at Guildford.

39. Mr Edwards asserts that he has right to be legally represented and has produced a letter from a Dr Sarah Quick to support his claim. As explained above there is no requirement for parties to be represented by a solicitor or counsel before the Tribunal. The principal reason for this is that it is the Court not the Tribunal which makes binding orders that may affect a person's right to live in his home. The role of the Tribunal is effectively to decide a question of fact which may be relied on in subsequent Court proceedings.

40. There is no indication in the papers that Mr Edwards lacks capacity to conduct the proceedings. Mr Edwards is explicit in his correspondence with the Tribunal that he understands the issues and what he is required to do to present his case to the Tribunal.

41. Mr Edwards can instruct a solicitor or barrister if he considers that he ought to be represented at the hearing and has the means to do so. The Tribunal has also given him time to seek pro-bono representation. The Tribunal notes that Mr Edwards said that he saw a solicitor on 1 August 2019 about the case. The Tribunal observes that the Citizens Advice sent his application for assistance to the Pro Bono Unit on 5 September 2019. The Tribunal said that it would consider a further application for an adjournment if the Pro-Bono Unit was still considering whether to represent Mr Edwards at the hearing and no decision had yet been made.

42. Judge Tildesley in his letter of 23 September 2019 said he was not prepared to consider an adjournment until he saw the email from the Pro-Bono Unit about whether his application had been accepted or not.

43. Mr Edwards subsequently supplied an email dated 13 September 2019 which said that Mr Edwards had not provided the Pro-Bono Unit with the necessary information in order to process his application. The Tribunal observes that some of the information requested was within the possession of Mr Edwards such as the Tribunal Orders and the lease. Mr Edward has given no explanation for not providing the requested information. The Tribunal notes that the Pro-Bono Unit emphasised that Mr Edwards is responsible for the conduct of his case and that he must observe the deadlines imposed by the Tribunal.

44. Mr Edwards stated that he has cancelled his hospital operations because of the Tribunal, and that he has an operation planned for October. Mr Edwards has supplied no evidence of the letters from the hospital and of the various operations. The Tribunal has not required him to cancel operations because of the pending hearing.

45. Mr Edwards indicated in his application of 14 August 2019 that his two witnesses would have their statements ready for him at the beginning of the September. Mr Edwards has supplied a copy of a letter from Andy Hill which purportedly deals with the evidence from the Police. The Tribunal concludes that it appears that Mr Edwards has collated the necessary evidence to support his case, and all that is required from him is a clear summary of his case.

46. Mr Edwards is obliged to co-operate with the Tribunal in furthering the overall objective. Mr Edwards has persistently failed to copy his correspondence to the other side despite reminders from the Tribunal. Mr Edwards is insistent that he will not recognise the Tribunal's authority to manage the case in the interests of both parties. Mr Edwards appears to drip feed information to the Tribunal as and when it suits his case.

47. The Tribunal has invested considerable resource in managing this case, and in endeavouring to respond to each of Mr Edward's requests.

48. Mr Edwards has indicated that he would not attend a Tribunal where Judge Tildesley is involved. Mr Edwards has put forward no grounds substantiating an allegation of bias on Judge Tildesley's part. The Tribunal on the 24 October would comprise three members including Judge Tildesley.

Decision

49. The Tribunal has concluded that in furtherance of the overriding objective that the hearing will go ahead on **24 October 2019 at 10.30am at Law Courts Knowle Green Staines TW18 1XH**. The Tribunal will use its best endeavors to secure a court room at Guildford and will inform the parties if the venue is changed.

50. The Tribunal decides it is not possible manage the case without seeing the parties in person and hearing from both of them

51. If Mr Edwards chooses not to attend the hearing the Tribunal would decide if there is good reason for his non-attendance. If there is good reason the case would be adjourned. If there is no good reason the Tribunal would proceed in the absence of Mr Edwards.

52. If Mr Edwards attends he is entitled to make application for an adjournment but if not granted the Tribunal would proceed to hear the case.

53. If Mr Edwards attends and has complied with the directions below the Tribunal would hear the case.

54. The same considerations apply to the Applicant if it chooses not to attend or attends and requests an adjournment.

Directions

55. By **7 October 2019** Mr Edwards shall supply the Applicant with a

- A statement in response to the Applicant's case setting out in full the grounds for opposing the application
- Any signed witness statements of fact
- Any legal submissions
- Any other documents upon which Mr Edwards wishes to rely at the hearing, not already provided by the Applicant

56. By **14 October 2019** the Applicant shall provide four copies of its bundle to the Tribunal (in a file, with index and page numbers) and send one copy to the Applicant

57. The bundle shall contain copies of:

- The application

- These and any subsequent directions
- The Applicant's statement of case
- The Respondent's statement of case
- A copy of the lease of the property or its counterpart
- Up to date official copies of the entries on the registers of both the freehold and leasehold titles
- All relevant correspondence between the parties
- Any signed witness statements of fact
- Any legal submissions
- Any other documents upon which the parties wish to rely on at the hearing

58. Any application in respect of reimbursement of fees may be dealt with at the hearing (if any).

59. If a party wishes to make application in respect of the case and or the hearing the application must be on the prescribed form. The Tribunal will not respond to general correspondence by email.