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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	**LON/00AN/LDC/2014/0117 [Dispensation application] LON/00AN/LSC/2014/0361 [Service Charge Application] LON/00AN/LSC/2014/0177 [Service Charge application]**
Property	:	**Chelsea Harbour, SW10**
Applicants	:	**Various Leaseholders (Service Charge applications) Chelsea Harbour Limited (Dispensation application)**
Respondents	:	**All Leaseholders of Chelsea Harbour (Dispensation application) Chelsea Harbour Limited (Service Charge applications)**
Representatives	:	**Mr Bhose QC (Counsel) and Brethertons LLP solicitors for Chelsea Harbour Limited Mr Fieldsend (Counsel) and Pemberton Greenish solicitors for the leaseholder Applicants**
Types of Application	:	**1. Liability to pay and reasonableness of service charges 2. Dispensation from statutory consultation regulations [s.20ZA Landlord and Tenant Act 1985]**
Tribunal	:	**Mr M Martynski Mr S Mason BSc FRICS FCI Arb Mr J Francis QPM**
Dates of hearing Written submissions	:	**27,28,29,30 April, 1 & 5 May 2015 12 May 2015**

DECISION

DECISION SUMMARY

1. All the Service Charges challenged by the Applicant leaseholders are payable save for the following:-

   (a) 50% CHL management fees for the Service Charge years 2009/10, 2010/11, 2011/12 (as conceded)
   (b) Audit fees over the years in question in the sum of £5,000
   (c) Any fees payable in respect of the final quarter of Knight Frank's management that exceed the relevant statutory limit in relation to non-compliance with the statutory obligation to consult
   (d) Legal costs in relation to defaulting leaseholders now charged to the Service Charge account

2. Dispensation is given in respect of the statutory consultation obligations relating to the management contract between Chelsea Harbour Limited and PL Management Limited conditional upon the payment of the Applicant leaseholders' legal costs of £3,030.

3. The parties must by no later than **4pm, 7 July 2015**, send to the tribunal any further written submissions on the question of costs.

NOTE ON THIS DECISION

4. These applications generated five full days of hearing, in excess of 24 ring binders of documents (containing at a conservative estimate over 3,600 pages) and oral evidence from nine witnesses. This decision does not deal in any detail with the vast majority of the material and evidence generated in the application. To comment upon every or even most items of evidence and submissions would be a disproportionate and pointless task. This decision sets out the tribunal's overall impression of the evidence before it and its conclusions on that evidence.

BACKGROUND

The Estate

5. The estate at Chelsea Harbour ('the Estate') consists of 292 apartments (spread over 7 apartment blocks) and 18 leasehold houses. The Estate also contains a number of commercial units including a hotel. There are 310 residential leaseholders.

6. The Estate was developed in the 1980s as a riverside development. The services provided to the Estate include underground car parking (spread over three residential and two commercial car parks), porterage to each of the residential blocks and 24-hour security to the Estate. Entry to the Estate is security controlled.

7. The landlord of the residential and commercial leaseholders at the Estate is Chelsea Harbour Limited ("CHL").

The procedural history

8. By an application dated 31 March 2014 various leaseholders ('the Leaseholders")[1] challenged the Service Charge for the Estate for the year ending September 2010.

9. A Case Management Hearing took place on 22 April 2014 and various directions were made to progress the application. It was directed at that application that the Leaseholders should make a further application to challenge Service Charges for the years ending September 2011 and 2012.

10. A second Case Management Hearing took place on 3 July 2014. At that hearing it was said on behalf of the Leaseholders that the information gathering process had been more difficult than originally anticipated and as a result those Leaseholders had not been able to make the additional application for the years 2011 and 12. Further directions were given and the case was set down for a three-day final hearing on 19-21 November.

11. The second application referred to above was then made by the Leaseholders on 9 July 2014.

12. By an application dated 11 September 2014, CHL made an application to the tribunal for dispensation from compliance with the statutory consultation regulations pursuant to section 20ZA Landlord and Tenant Act 1985 in relation to the appointment of managing agents (PL Management Limited (('PLM')), appointed in January 2010) for the Estate.

13. The parties had difficulties in complying with the directions given in July 2014 and at the joint application of the parties the final hearing set for November 2014 was vacated. A further Case Management Hearing was held in place of the adjourned final hearing. Further directions were given leading to a final hearing commencing on 27 April 2015 with a time estimate of five days.

14. The final hearing ultimately ran to six days (the first day being taken up with an inspection in the morning and tribunal reading in the afternoon).

15. Counsel for the parties then submitted substantial written representations following the hearing.

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[1] Further leaseholders were added as Applicants to the Service Charge applications during the course of the proceedings – the number of leaseholders who are now parties to the applications as Applicants (collectively referred to as "the Leaseholders" in this decision) now total 53

THE INSPECTION

16. We inspected the Estate accompanied by Counsel for the parties, some of the Leaseholders and some representatives of CHL and PLM. Our inspection included a view of a considerable area of the grounds of the estate, the communal interior of some residential parts, the communal interior of some commercial parts, some car parks, the loading bay and the central security office.

THE SERVICE CHARGE – GENERAL

17. The leaseholders' Service Charge contribution is comprised of three elements. First is the Building Contribution, that is a contribution to the costs of each of the residential buildings. An individual leaseholder will only contribute to the costs incurred to that block (on a fixed percentage) in which the leaseholder's flat is situated.

18. Second, there is the Village Charge. The Village is defined as all those areas of the estate that are common to both residential and commercial leaseholders. An individual leaseholder's contribution to this charge is defined in the (common form of) lease as '*a fair proportion of the Village Charge (such proportion to be determined by the Landlord whose decision shall be final and binding)*'.

19. Third is the Car Park charge, the cost of this to an individual leaseholder depends on whether that leaseholder has an allocated parking space.

20. The residential blocks are managed by PLM who make a charge in respect of their management. PLM were appointed to manage in the Estate in late 2010. They took over management from Knight Frank who had a brief and troubled management tenure prior to PLM's management. CHL manages the Village and Car Parks and charges its own management fee in respect of those areas. In addition to this, a percentage of the salaries of some CHL employees are charged to the Service Charge.

21. The Service Charges at the Estate are substantial, even by London standards. One of the Leaseholders gave the following figures for his annual Service Charge bill for the years in issue in this case as:

    Year ending 2010: £13,463
    Year ending 2011: £14,070
    Year ending 2012: £14,258

STRIKING OUT OF PART OF LEASEHOLDERS' CASE

22. The parties' respective cases were set out in a number of documents as follows:-
    (a) Leaseholders' Statement of Case for the year ending 2010

(b) Leaseholders' Statement of Case for the years ending 2011 & 2012
(c) CHL's Statement of Case in response to both the above Statements of Case
(d) Leaseholders' Reply to CHL's Statement of Case
(e) CHL's Rejoinder to Leaseholders' Reply.

23. It was a feature of the Leaseholders' applications throughout the process that they lacked some precision and particularity. A number of complaints were made by CHL and PLM regarding this.

24. The Leaseholders complained that the reason for the generality of much of their application was that they had not been provided with the necessary detail on the Service Charge by CHL in order to properly particularise their complaints.

25. Throughout the course of the proceedings, the Leaseholders' modified their case.

26. Witness statements were exchanged in early April 2015. Statements from leaseholders Mr Stephen Brookson dated 10 April 2015 and Mr Jeremy Hale (dated 10 April 2015) contained within them large numbers of particulars, allegations and issues not previously raised in the Leaseholders' Statements of Case and Reply referred to above.

27. Mr Bhose QC, on behalf of CHL, objected to a number of these particulars being considered by the tribunal on the basis that they had not been raised in the Leaseholders' Statements of Case and Reply and on the grounds that CHL and PLM had not had sufficient chance to prepare for and respond to these issues in between the service of these witness statements and the final hearing (approximately two weeks).

28. In accordance with Rule 9 of the tribunal's rules[2] we decided at the outset of the hearing to strike out the following parts of the Leaseholders' case as were newly introduced by various paragraphs in the witness statements of Messrs Brookson and Hales:-

Mr Brookson

(a) an incident regarding a burglary at Mr Brookson's apartment [paragraph 91(h)]
(b) Car park management insofar as it related to alleged car trading [paragraph 91(i)]
(c) Car park disrepair [paragraph 92(h)]
(d) Mr Brookson's leaking balcony [paragraph 92(l)]
(e) Smells from animals in another flat [paragraph 93(b)]
(f) Building works to a penthouse [paragraph 93(c)]
(g) Lack of respect to a leaseholder [paragraph 93(d)]
(h) Lack of refurbishment to a reception area [paragraph 93(e)]

[2] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

(i) Moth infestation, cabling, exterior of the Quadrangle, entry phone panels, Belvedere lift, lift lobby, leaking balcony, leaks in Thames Quay [respectively paragraph 93(f) sub-particulars iv, vi, vii, viii, x, xi, xii & xiii]

Mr Hales

(a) Disrepair and infestation to buildings [paragraph 9]
(b) Penthouse works [paragraph 15.b.]

29. We made this decision pursuant to sub-paragraph (3)(b) of Rule 9 on the grounds that the Leaseholders had failed to co-operate with the tribunal such that the tribunal could not deal with the additional particulars fairly and justly.

30. The failure to co-operate with the tribunal was the failure by the Leaseholders to fully set out in their Statements of Case and Reply full particulars of their case as they were ordered to do in directions given by the tribunal. Given the lateness of those particulars in the witness statements, CHL were not given a reasonable opportunity to consider and respond to them; this meant that the tribunal could not deal with the further particulars justly or fairly.

31. In addition, the tribunal was concerned that CHL through its representatives had made repeated requests throughout the proceedings for clarity in the Leaseholders' case by way of particulars of their allegations of failure and unreasonableness on the part of CHL and PLM.

32. We were further concerned that some of the matters referred to in the witness statements of Messrs Brookson and Hales were too generalised and/or concerned periods of time outside of the years in question (ending 2010, 11 & 12).

33. In the alternative, we declined to take account of those parts of the statements of Messrs Brookson and Hales referred to above as they did not form part of the Leaseholders' case as set out in their Statements of Case and Reply.

SUBMISSIONS

34. Closing submissions were made by Counsel in writing following the hearing. Our decisions on the various substantive issues are set out below. The decisions follow the same order in which they are set out in the submissions drafted by Mr Fieldsend for the leaseholders and, because we have found mostly in favour of CHL, the reasons for our decision address, in the main, the various points made in the Leaseholders' submissions.

Management fees

35. The management fees challenged are those of both CHL and PLM for the years in question.

CHL Management Fees

36. The Leaseholders claimed a reduction of 50% in the fees charged on the ground that CHL's management was not of a reasonable standard (section 19 Landlord and Tenant Act 1987).

37. This claim was conceded by CHL (so far only as the Leaseholders are concerned, not other lessees who are not party to the applications). It is important to note that the concession was only made on the last day of the hearing and after oral evidence had been given by Mr Antony Burns. Mr Burns is a Senior Asset Manager and has day-to-day responsibility for the running of all aspects of Chelsea Harbour. He reports directly to the directors of CHL.

38. It was specifically conceded that the management of CHL failed to meet a reasonable standard in the years in question in the following respects:-

    (a) There were a number of delays in providing finalised accounts
    (b) The Service Charge accounts for the development were charged in error[3]
    (c) There should have been better managerial oversight of the continued letting of the Security Contract
    (d) There should have been a concluded management agreement with Knight Frank
    (e) The formal agreement with PLM should have been concluded earlier
    (f) The dealings with Mr Brookson and the CHRA following the decision to de-recognise the Residents Association could and should have been handled better

39. In fairness to the Leaseholders, some of the above concessions require further explanation.

40. *Security Contract*: Security for the Estate is significant both in terms that; (a) it is a feature of the estate that existing and potential leaseholders greatly value; (b) the cost of the provision of security is very significant in terms of the overall Service Charge expenditure for

[3] Bank charges were secured on the Service Charge general accounts for the purpose of refinancing. At the time of the hearing this had still not been fully remedied with one of the charges still remaining.

the Estate, it being the single largest expenditure item.

41. As a matter of good practice[4], any service procured by managing agents for a residential property or development should be recorded by way of a written contract. In summary, the significant failings in respect of the Security Contract can be summarised as follows:-

(a) There was no identifiable Security Contract
(b) It was not clear as to with what legal entity the agreement to provide security was made with during the years in question. In October 2004 a three-year contract was awarded to SPM (UK) Ltd, that company had been wound up in 2002 and therefore did not exist at the time that the contract was made. There was no further clear contract nor any clear re-tendering of a contract until 2013.

42. *Knight Frank*: This Company managed the Estate before the current agents PLM took over the management. Knight Frank's tenure was generally agreed to be a disaster, the company resigned before it was sacked. The failing on the part of CHL[5] in respect of Knight Frank was the failure to enter into a proper finalised written contract with that company either at the outset of their management or at any time during their management.

43. The managing agent is a key appointment, it is as important as the contract for security.

44. *PLM*: In the light of the above, it is of great concern that there was no proper contract entered into with PLM until seven months into their tenure. Given the problems with Knight Frank, it was especially important that the appointment of another agent be carried out in accordance with good practice, that is, having in place from the start a written agreement setting out the service to be provided and setting measureable service standards.

45. *Events following the de-recognition of the Residents Association:* We start by noting that that we do not criticise CHL for the de-recognition itself. It had justifiable concerns that Chelsea Harbour Residents Association did not represent a minimum number of the leaseholders at Chelsea Harbour. However CHL, despite a promise to remain open and co-operative, went on to act in a way that was unhelpful and obstructive. They sought to terminate recognition of the Residents Association with immediate effect rather than giving the statutory six-months notice. They relied upon barren technical objections to notices served by or on behalf of the Residents Association[6] and failed to answer correspondence from or on their behalf in a timely fashion[7].

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[4] Such practice is a basic requirement of residential property management - as set out in the RICS Service Charge Residential Management Code [2nd Edition]
[5] We are not blaming CHL for the failings in Knight Frank's management
[6] Requests made for information to inspect records made in 2011
[7] These are delays in responses and information in the latter part of 2011

46. Had CHL not made the concession in respect of their fees for the years in question, there is no doubt that we would have reached the conclusion that management for those years was not provided to a reasonable standard and would have made the reduction sought by the Leaseholders in any event.

PLM Management Fees

47. Whilst we may have some criticisms of PLM's performance, they are not of a nature that would warrant a reduction in their fees and were not of the order which would warrant a finding that their management had not been carried out to an overall reasonable standard (save for the specific issue of audit fees dealt with later in this decision).

48. For the years in question, accounts were produced as follows:-

Year ending September 2010: October 2011
Year ending September 2011: February 2012
Year ending September 2012: January 2014

The primary responsibility for the delay in our view lies with CHL, that organisation having responsibility for producing the overall account covering the Estate (PLM of course only manage the residential blocks, not the overall Estate).

49. There is no evidence that PLM can be blamed for the confusion that followed the handover of management from Knight Frank. The written submissions made on behalf of the Leaseholder's on this point conclude "*Whether the problems with handover could have been avoided will never be known.*"[8]

50. PLM were criticised for having incurred late payment fees on invoices. We did not see any evidence over the years in question, or for any other years, of any pattern of late payment that indicates a poor standard of management. The late payment fees were relatively few.

51. As to the physical management of the residential buildings in the Estate; on our inspection we found the buildings to be in a reasonable state of repair and decoration. We were shown two areas of penetrating damp on the ground floor common parts that had been said to be in existence for some years. The fact that this disrepair had not been dealt with for some time was explained by Heidi Hampton, Associate Director of PLM. She stated that the nature of the disrepair was such that it required remedy by way of a more general repair and internal decoration to the buildings in question rather than specific repair. In any event, it appears that the complaint regarding the damp spans a period outside of the years in question in the Leaseholders' applications.

[8] See paragraph 53 of Mr Fieldsend's submissions

52. We did have some concerns that there was an acceptance by Ms Hampton that routine maintenance and decoration of some buildings had slipped due to staffing problems at PML. However, there is no real specific complaint made regarding this nor is there any evidence that this has had any tangible effect on leaseholders during the years in question or (bar the damp patches referred to above) subsequent to the years in question.

53. Much was made of the delay in repairing a disabled lift in one of the residential buildings (Thames Quay). There was no clear evidence that the delay in repairing the lift (during the years in question or at all) was the fault of PLM.

54. There was no evidence of a delay in responding to queries raised by the Leaseholders for the years in question.

55. We do not accept that there was resistance to providing Service Charge information on the part of PLM.

Salaries and Wages

Recruitment fee - PLM

56. The Leaseholders challenged a recruitment fee in relation to the recruitment of Mr Barnett as an Estate Manager in January 2012. The Leaseholders made reference to a document circulated to leaseholders regarding the appointment of PLM (in late 2010)[9] in which it was stated that amongst the selection criteria for the managing agents was "*on site manager being resourced from within the company i.e. no new recruits*".

57. The on-site manager was in fact initially resourced in-house. Ms Hampton explained that she managed the Estate at first until May 2010 when another manager was recruited part-time. There was then another manager appointed before Mr Barnett.

58. There is no basis on which it could be said that the recruitment fees in respect of Mr Barnet were unreasonably incurred. There was no ongoing or lasting promise on the part of CHL or PLM that there would be no recruitment fees – at any time. The document relied upon by the Leaseholders does not say this and in any event only refers in this context to selection criteria (only one of them being in-house staff), it is not specific to PLM.

Sundry Costs

59. These concern payments made by PLM and then re-charged to leaseholders for:

[9] The document was sent out after PLM had been appointed

(a) statutory maternity pay
(b) benefits to engender a happy working environment
(c) sundry secretarial support

60. We have struggled to understand the basis of these challenges. The Leaseholders' Statement of Case[10] states; "*Whilst the Applicants do not challenge the reasonableness of the management cost (both as charged by the Respondent and PLM) it is their case that the standard of management by both PLM and the Respondent is not reasonable*"[11].

61. It is convenient at this point to note that we found it a feature of parts of the Leaseholders' case that it lacked focus and direction. Large parts of the Leaseholders' Statements of Case were in very general terms. Challenges were made, then disappeared and then new ones emerged either by way of witness statement or in evidence during the hearing.

62. As far as we understand the contractual provision, PLM were to charge all staff costs to the Service Charge. If this is the case, and if the reasonableness of the Management Fee is not challenged but the standard is, then where do these challenges come from?

63. We reject the challenge on the grounds that these sums are contractually payable and do not relate to the standard of management.

Standard of CHL employees

64. A separate charge is made for some apportioned costs of CHL staff to the Village Charge.

65. Insofar as there is a challenge to the reasonableness of the service provided by CHL employees, we consider that this has been sufficiently dealt with in the concession made by CHL regarding its management fees.

Apportionment of CHL fees

66. From hearing the evidence of Mr Andre Rose (Financial Controller employed by CHL), we are satisfied that the apportionment of CHL staff costs to the Service Charge is reasonable and that it does not benefit the commercial tenants to the detriment of leaseholders. Mr Rose accepted in his oral evidence to the Tribunal that some costs of the Office Manager and Commercial Manager in the Service Charge year 2010/11 should not have been charged to the Service Charge payable by residential leaseholders and this is to be rectified.

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[10] That Statement of Case being its Reply to the Respondent's Statement of Case – paragraph 34
[11] See paragraph 34 of the Reply

Audit fees

67. This challenge relates to fees charged by Calders, a firm of accountants, in connection with their work on the Service Charge accounts.

68. Calders levied a discrete charge in respect of work undertaken in relation to the handover from Knight Frank. In the Leaseholders' submissions it was argued that; "*Had KF kept proper accounts and/or CHL effectively managed the handover, it would not have been necessary to incur the costs Calders charged*"[12].

69. There is no clear evidence to show that the extra charges were incurred due to the failings of CHL to manage Knight Frank. The costs associated with Knight Frank's alleged failings should not obviously be borne by CHL. In any event, as referred to later in this decision, there has been a credit from Knight Frank's fees in respect of their failings.

70. The Leaseholders' submissions go on to argue that costs incurred in relation to work undertaken in respect of earlier accounting years, but charged to the current year, are not reasonably incurred.

71. We do not agree that this automatically follows. There may be good reasons for the disparity in charging and years. It is not clear to us that the disparity is not for a good or reasonable reason.

72. It was further argued by the Leaseholders in respect of Calders' fees that "*Matters were delayed and costs increased in consequence of "the significant delays in PLM providing the audit information at the start of the year and again in June when dealing with our main body of our audit queries*"[13]

73. In general, the Leaseholders argued that there was no explanation (where one was called for) for the difference in Building Charges audit fees from £13,149 for the Service Charge year 2011/12 and £74,767 for 2009/10 and £48,548 for 2010/11.

74. We do not accept that it is a valid approach to just compare the figures for the three years above and conclude that the higher figures are unreasonable. The only real evidence that some of the additional costs were unreasonably incurred is in the quote above from the Calder's letter of 10 November 2011. There was no explanation of this from CHL or PLM.

75. There is no indication of how much of the costs referred to in the Calders' letter of November 2011 were attributable to PLM's failings. We do not think however that this should stop us from making a token deduction to mark the failing. We have concluded that a figure of

[12] Paragraph 116 of Mr Fieldsend's submissions
[13] Paragraph 111 of Mr Fieldsend's submissions quoting from letter from Calder & Co dated 10 November 2011

£5,000 should be taken as having been unreasonably incurred.

76. The Leaseholders then make reference to various other comments by Calders in relation to CHL and the accounting exercise that they undertook, and argue that these are evidence that the accounting by CHL was deficient. We do not accept that these comments or the description of the work undertaken by Calders is sufficient to demonstrate that the work done was caused by accounting or other failures on the part of CHL.

77. As to the mechanics of the deduction of £5,000 and, so far as is possible, that sum is to be taken entirely from the charge made to the leaseholders generally (as opposed to the charge on the Service Account generally) and thereafter that amount is to be deducted from the proportion of that sum payable by the Leaseholders.

Knight Frank

Qualifying long term agreement

78. Knight Frank managed the Estate from late 2007 until the end of 2009 when it resigned.

79. The Leaseholders argue that the agreement for management services between CHL and Knight Frank was a Qualifying Long Term Agreement ('QLTA') and accordingly the leaseholders on the Estate should have been consulted prior to the appointment (it is accepted that there was no such consultation).

80. If a landlord enters into a QLTA without the necessary prior consultation, the leaseholders' contribution to costs of the services provided under that QLTA are limited to just £100 per leaseholder[14].

81. The evidence regarding the appointment of Knight Frank reveals the following; There is a letter dated 15 November 2007. That letter states that the parties are to enter a formal management agreement. The fees to be charged are £200,000 per annum. The letter states that the fees are to be reviewed annually. There is then a draft management agreement. As stated above, Knight Frank managed the Estate for in excess of 12 months. There is no commencement date nor any initial contract period in the draft management agreement. The "Term" in the draft is defined as; "*the term of this agreement, starting on the Commencement Date and continuing until termination in accordance with Clause 7*". Clause 7 provides for a three-month notice period. Knight Frank billed quarterly throughout its tenure[15].

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[14] Section 20 Landlord and Tenant Act 1985 and The Service Charges (Consultation Requirements) (England) Regulations 2003

[15] We were told that, in recognition of its poor performance, Knight Frank waived one-quarter's management fee; that waiver does not affect this decision

82. The leaseholders referred to and relied upon the case of *Poynders Court v GLS Property Management Ltd* [2012] UKUT 339 (LC). That case concerned a management agreement entered into by a landlord with a managing agent, the relevant facts are as follows; The agreement provided for an annual fee with a review on fees after a two-year period and thereafter annually. The agreement did not specify its length. There was a three-month notice provision. Schedule II to the agreement set out the management services to be provided, those included the reviewing of contracts every three years[16]; administering the service charge including calculation and apportionment of sums to be collected from the tenants[17]; preparing annual budget costs and statements of income and expenditure for future periods[18]; arranging for the preparation and audit of the service charge account and the preparation of service charge certificates[19].

83. The tribunal found that the agreement was a QLTA. In coming to that conclusion, the tribunal said;

> 10. The Management Agreement is silent as to its term or duration in the sense that it does not explicitly define how long it is to last. However, its effect is that Bells [the managing agents] has contracted or agreed to provide the services therein defined forever, or indefinitely. Whether the provision of those services will be for more than 12 months depends upon the nature of the services to be provided under the terms of the Management Agreement. It is clear from those terms that they will or are intended to be provided for a period which extends beyond 12 months; they relate to the ongoing preparation and collection of the annual service charge, management and maintenance of the building, obtaining insurance, enforcement of the leases and so on for an annual fee which is fixed for two years whereafter it will be reviewed annually with no provision for apportionment on early termination.
>
> 11. As such, it is an agreement to provide those services for a term of more than 12 months.....Whether an agreement is for a term which is more than twelve months depends upon the wording and substance of the contract. In this context, "term" simply means "how long will it last for", there being no requirement for certainty.

84. The essential difference between *Poynders Court* and this case is the fact (as we find it) that there is no concluded written agreement. However, in this case, as in *Poynders Court*, it is clear that the agreement envisioned was one of the usual management services.

85. Mr Bhose for CHL argued that Knight Frank were only ever engaged on a *quantum meruit* basis, subject to agreement to and execution of the terms of a formal management agreement.

86. We disagree. The letter of 15 November 2007 referred to above states in the second paragraph; "*The work being carried out as set out in our letter is on the basis of our fee proposal, which has been agreed at £200,000 per annum....*". Knight Frank's resignation letter of 30

[16] Section 3, paragraph d.
[17] Section 3, paragraph h.
[18] Section 3, paragraph j.
[19] Section 3, paragraph k.

September 2009 gives three-month's notice – "*in accordance with the draft management agreement*".

87. It seems to us that the correct interpretation of the contractual position is that there was an agreement between CHL and Knight Frank for management services. The services envisaged were to be of the kind and nature set out in the draft management agreement. The draft management agreement clearly contained services (as described above) that could only be fully performed over a contract period of greater than twelve months. The initial letter from Knight Frank referred to above provides for an annual review of fees. As it turned out of course, the contract was performed for a period of over twelve months (but that in itself is not determinative of the question). It seems apparent from the dealings between the parties that they intended the agreement to be one which would extend beyond a year, subject to the right on both sides to give notice.

88. It follows therefore that we find that the agreement with Knight Frank was a QLTA. There was no consultation in respect of it. The first Service Charge year in the applications before us is the year commencing September 2009. Therefore the only fees in question are those incurred for the quarter beginning 29 September 2009 until the end of that year, those fees being £50,000. Accordingly, for the quarter of Knight Frank's management in the accounting period in question (2009/10) the fees of Knight Frank payable by the Leaseholders is capped at £100 per Leaseholder.

89. The Leaseholders, in Mr Fieldsend's submissions, argue that the cap should be £25 per tenant, that being one-quarter of the annual cap of £100. We do not understand (subject to any further explanation) the reasoning behind this.

VAT on porterage fees

90. Knight Frank paid VAT on porterage fees. They operated under a system whereby they did not directly employ the porters at the Estate and so paid VAT on their fees. When PLM took over management, they took the porters onto their payroll and thus there was no VAT payable on their wages.

91. The Leaseholders argue that Knight Frank acted unreasonably in dealing with the VAT on the porterage fees and that accordingly they should not have to pay the VAT in question.

92. We do not consider that the way in which Knight Frank dealt with the porterage for the Estate could be considered unreasonable. It is an acceptable way of dealing with the matter and to our knowledge is one that is adopted in other developments.

Security

93. The Leaseholders' final submissions in respect of the costs of security make three points, which we deal with as follows.

QLTA

94. First, the Leaseholders argue that the contract for security during the period in question is a QLTA. There was no consultation in respect of the contract. Accordingly the Leaseholders' contributions to the costs are limited to £100 per annum.

95. The security during the period in question was provided by Secure Residential Guarding Limited (SRG). We find that there was no written contract. The only written documents for the period in question are purchase orders. The first is issued on 8 October 2007 for a period 1 October 2007 to 30 September 2008; the second dates from October 2008 and is for the period November 2008 to September 2009; the third is dated 18 September 2009 for the period 1 October 2009 to 29 September 2010. There is no documentation taking us from September 2010. The next document in time is a letter dated 6 October 2011 granting a security contract to SRG for one year from 1 October 2011.

96. There is accordingly no evidence that the security contracts were for a period of any more than one year nor any evidence that they were intended to be for more than that period. The nature of the services provided were not such that they necessarily needed to be carried out for in excess of year by the same company. It is common in our experience for such contracts to be from month to month or periods of a year or less. We find on the balance of probabilities that the contracts during the period in question were as per the purchase invoices and were for fixed periods of one year or less and were not therefore QLTAs.

97. The Leaseholders argue that the security was being provided on a rolling monthly contract as evidenced by the fact that the payments to SRG were made monthly. Accordingly they argue that, applying the decision in *Poydners Court* (referred to above), the contract with SRG is a QLTA.

98. Putting aside for one moment our factual decision on the matter set out above, we do not consider that even if there were a rolling monthly contract, that applying the decision in *Poynders Court* would necessarily lead to the result that the agreement was a QLTA. It appears to us that the key issues taken into account by the tribunal in reaching its conclusion in *Poynders Court* are set out in the following paragraphs;

    - "Whether the provision of those services will be for more than 12 months depends upon the nature of the services to be provided under the terms of the Management Agreement. It is clear from those terms that they will or are intended to be provided for a

period which extends beyond 12 months:" [paragraph 10]
- The Appellant submits that this approach would embrace casual or routine contracts for the provision of utilities, cleaning services and such like. Whether or not that is so depends upon the wording and substance of any such contracts...." [paragraph 13]

Applying those considerations to the case in point, leads to the conclusion that the management agreement is not a QLTA.

The circumstances surrounding the placement of the security contract warrant reflection in a reduction in the amount that the As are required to contribute to: i. the salaries of ARa [Mr Ramsay] and his PA; and ii. CHL's management fee[20]

99. We consider that this aspect of the security contract has already been adequately dealt with under the heading of the management fees of CHL.

Standard of Security

100. The Leaseholders argued that the standard of the security at the Estate for the years in question was not reasonable. In support of this they relied on various allegations as follows.

101. First, that the directors were not properly licenced during some or all of the period in question. They relied upon screen shots from a website that showed dates when some directors' licences had expired. It is not clear from those screen shots what periods were licenced. We cannot take these screen shots as evidence that the directors were not licenced for the periods in question. Even if they were not, we do not see how that impacts upon the question of the reasonable standard of security provided to leaseholders on the ground.

102. Second, it is alleged that the principal demand on the security officers' time is the commercial elements of the estate. Reliance was placed on an email from Mr Ramsay dated 26 November 2012 which stated:-

> By far the biggest problem is our commercial tenants leaving their offices insecure and commercial lifts breaking down [some words appear to be missing here] It's noise complaints but these are normally generated by just a few flats.....

Reference was also made to Mr Ramsay admitting in oral evidence that there was increased pressure on security consequent on the increased success of the commercial parts.

103. Our note of Mr Ramsay's evidence on this point is that Mr Ramsay in cross-examination was asked whether the commercial elements were a drain on security. His answer was no, the commercial parts have paid extra to meet the extra footfall.

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[20] Mr Fieldsend's written submission – paragraph 178. b.

104. Third, the Leaseholders argued that there were poor levels of visibility of the security guards. Mr Ramsay, in his evidence to the tribunal, said that he had spoken to leaseholders about this before. He said that there were a limited amount of security officers and that two of them at any one time were in the control room leaving just three to patrol an 18-acre site. That taken into account with comfort and other breaks for the officers would mean that security would not be particularly visible. Mr Ramsay said that the cost of each extra security guard would be around £35,000 but no leaseholder wanted to pay the extra for this.

105. The Leaseholders' Statements of Case on the issue gave five very general particulars as to the alleged poor standard of the security as follows:-

- The security staff do not always have the required current or appropriate security certificates
- The Supervisor in the Control Room is not always suitably qualified or certified
- Staff do not always have the necessary skills to manage certain scenarios and situations
- It is believed that overtime payments to staff are often made outside of the proper PAYE & NI system
- Certain employees are older than the contract specifications

No further detail or further evidence was provided in support of the allegations.

106. We were struck by the lack of evidence in support of this head of challenge. We were not referred to any written complaints covering the period in question nor to accounts of oral complaints. Mr Ramsay for CHL gave detailed evidence about the security on the ground giving a good deal of detail about the way in which the security operated and why residents may not necessarily see a visible presence of security.

107. We were similarly struck by Mr Brookson's oral evidence. In cross-examination he said; "*we always knew the standard of security was not good*", and then; "*I don't think the security attracts people. They are attracted because it is quiet*". Mr Bhose completed his cross-examination by asking why, if he was so unhappy about many aspects of the running of the Estate, did he (Mr Brookson) buy another flat in the Estate after selling his first flat. His answer according to our notes was; "*My wife values the security*".

108. The conclusion on this issue is inevitable and it is that there is no evidence to suggest that the general standard of security at the Estate was not, at the material time (or since), of a reasonable standard.

109. This issue provides a good example of the lack of focus and direction that charactarised a good part of the Leaseholders' applications. The evidence on the question of the standard of security could and should

have been more carefully examined and considered; had it been, it is probable that the challenge on this head would not have been made and much time and effort would have been saved on all sides, including on the part of the tribunal.

Apportionment of Village Service Charges

110. The residential leases provide for an apportionment of Village Service Charges so that each leaseholder is required to pay an amount;

> ...Comprising a fair proportion of the Village Charge (such proportion to be determined by the Landlord whose decision shall be final and binding) for each Service Charge Year.....[21]

111. The Village Charge is apportioned on the basis of the historic internal square footages of the buildings on the Estate. Prior to the Estate being built, there were development plans that envisioned an estate that was more extensive (in terms of area and buildings) than was actually ultimately developed and built.

112. In 2007, a Leasehold Valuation Tribunal considered[22] a challenge by a Mr Goldenberg, a leaseholder, to the apportionment (*Goldenberg*). The challenge to the apportionment was recorded as being that the square footage of the commercial premises had been expanded but that there had been no corresponding reallocation of costs as between the residential and commercial parts. The tribunal concluded that, whilst there had been some expansion of the commercial parts over the years, if the relative square footages in the Estate were recalculated, this would only result in a tiny reduction in Service Charge per leaseholder. In the case of the leaseholder making the challenge, the difference would likely to be in the order of £20 or possibly less. The tribunal concluded that CHL were acting reasonably in declining to go to the cost of recalculating the square footages until such time as there may be a more substantial increase in the commercial parts.

113. The Leaseholders' challenge to apportionment was somewhat confused and appeared to proceed on a number of grounds with various proposed reductions in residential Service Charge percentages being put forward. Those grounds included a challenge which appeared in the witness statement of Mr Van de Weyer (a leaseholder) which had not previously been part of the Leaseholders' Statements of Case.

114. The challenges to the issue of apportionment as crystalized in Mr Fieldsend's final written submission, are as follows.

115. *First*, the current apportionment may be based on the more extensive estate as was originally envisaged on the drawing board, not as it was actually built.

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[21] Fourth Schedule, paragraph 2(g)

[22] Chelsea Harbour Ltd and Goldenberg – LON/00AN/LSC/2007/0033

116. This is the new ground set out in Mr Van de Weyer's witness statement. We agree with Mr Bhose's submissions that there is no evidence to support this contention. The evidence that exists suggests the contrary. The lease plan in our main bundle of documents (Bundle 1) and in Mr Van de Weyer's lease shows the Estate as it was actually built. There is nothing to suggest that it would be more likely that the apportionment was based on the Estate as originally planned rather than built. We note that in any event, we do not understand Mr Van de Weyer's calculations that he puts forward for Service Charge apportionment on the basis of the Estate as originally planned.

117. *Second*, that in any event, there has been a significant expansion of he commercial areas in the Estate since it was originally built. There should accordingly be a recalculation to rebalance the Service Charge between residential and commercial.

118. The evidence is that, whilst there has been an increase in the commercial areas, that increase is, as it was in the previous *Goldenberg* case, such that the relative benefits to leaseholders would be outweighed by the cost of the exercise of re-measuring (which it is agreed would be very costly).

119. Mr Antony Burns gave evidence for CHL and stated that the further additional commercial space added since the *Goldenberg* decision amounted to no more than 1,000 square feet, an amount that would have no meaningful effect on the level of Service Charge payable by residential leaseholders.

120. No evidence produced by the Leaseholders cast any real doubt that the figures for the increase in commercial space since the Estate was built was materially different from that as stated by CHL and accepted by the tribunal in *Goldenberg*.

121. We conclude therefore that the apportionment as it currently stands, based on square footage, remains reasonable until such time as there is a more significant development of the commercial areas.

122. *Third*, the Service Charge should be apportioned on the basis of relative benefit rather than on square footage or a mixture of both.

123. The first and most obvious problem with this proposal is that, in this application we are dealing with a minority of leaseholders, all of them residential. If a complete change to the basis of apportionment were to be considered, all Service Charge payers, including commercial, would have be given the opportunity to comment.

124. In our view, there is nothing inherently wrong with apportioning on a square footage basis. It has the advantage of relative simplicity and is commonly used in other buildings and estates large and small. Its disadvantage is of course that it is relatively crude, it does not take account of relative benefit. Relative benefit is however subjective to

some extent, it cannot be precisely measured. It is in the nature of things that in an estate of this kind there will be a myriad of different views as to benefit, so many as may be almost impossible to reconcile. The sheer complexity of trying to work out an apportionment on relative benefit on the Estate should make one very cautious in even considering it. There would be further complications if the Estate grows, as it seems likely it will. On a square footage apportionment basis, the re-calculation of shares to the Service Charge is mechanical and relatively straightforward, that would not be the case with a re-assessment of benefit.

125. We were not presented with any expert evidence as to how a relative benefit apportionment may work.

126. Further, the Service Charge has now for over 25 years been apportioned on the basis of square footage. There would have be, in our view, compelling reasons for that basis to now be reconsidered. Accordingly we reject this challenge.

Unfair contribution to cost centres

127. We do not accept, as alleged by the Leaseholders, that there are a number of cost centres to which they make an unfair contribution.

128. It was far from apparent to us that the loading bay is of predominate benefit to commercial tenants. Whilst it is used as a bay for the goods for use by the commercial tenants, it also contains the compactors for the substantial waste produced by the residential tenants.

129. Again, it was not obviously apparent to us that the workshop was used predominately for the commercial tenants. There appeared be goods and tools in there that could be used to maintain commercial, residential and communal parts of the Estate.

130. We conclude that the square footage method of apportionment as it currently is applied generally and modified in relation to specific costs centres is not unreasonable.

Cleaning

131. The challenges cover cleaning contributions to the Village Charge and the Buildings Charge and are as follows.

Cleaning contracts as QLTA's – Village Charge

132. The evidence regarding cleaning contracts is as follows. There is no contract for the relevant years for the cleaning. There is a contract dating from April 2006, this is for a period of twelve months from 1 April 2006. On 10 February 2009 there is a purchase order for the period 1 November 2008 to 30 April 2009. We were shown various monthly invoices for cleaning. By letter dated 6 October 2011 Mr

Ramsay wrote to cleaning contractors, Interserve, to confirm that they had been awarded the contract for cleaning for one year from 1 October 2011 to 30 September 2012.

133. There does not appear to us to be any evidence that there was any cleaning contract for the period in question which was or which was intended to be for any period greater than one year.

134. As to Mr Fieldsend's submission that; "*it is right in the circumstances to infer a periodic contract which following the Upper Tribunal decision in Poynders Court v GLS Property Management Limited is a QLTA.....*"[23]; we reject this for the same reasons as we rejected the argument in the case of the contract for security dealt with earlier in this decision.

Cleaning contracts as QLTA's – Buildings Charge

135. The evidence here is similar to the Village Charge in that there is no contract, only purchase orders. There is a purchase order dated 15 October 2007 for the provision of cleaning for one year from 1 October 2007 to 30 September 2008; thereafter it appears that the cleaning company was paid monthly.

136. The Leaseholders' made the same submission in respect of this element of the cleaning and we reject it for the reasons given above.

Consequent deduction for poor management of cleaning contract

137. The Leaseholders argue for reductions their share of the costs of:-
- Mr Ramsay's salary
- CHL's management fee
- PML's management fee

On the grounds that the cleaning contract records are poor and that what contracts exist are insufficient.

138. Whilst we agree that the management of the cleaning contracts is poor, we consider that the necessary adjustment has been made by the reduction of the management fees of CHL.

Gardening

139. Two issues were raised by the Leaseholders under this heading as follows.

Standard of gardening

140. The evidence relied upon by the Leaseholders on this issue was:-
- photographs taken in 2013 (said to show the gardens in a similar

[23] Paragraph 222 of his final written submissions

condition to how they were in the years in question)
- Mr Brookson's statement that;
  - there had been a noticeable decrease in the quality of gardening (the period he is referring to is not made clear)
  - Broken irrigation system since at least 2007
  - Large pots now abandoned (photograph of pot – undated)
  - Concrete plinths removed after falling into disrepair
  - General poor maintenance (with one photograph of bags of rubbish by a wall)
  - Equipment for the parking system being left unsecured
- An email from Martin Hurst, a leaseholder, dating from the current year with a complaint about water ponding and litter
- An email from Wonkie Hills, a leaseholder, dating from the current year complaining about poor gardening
- An undated draft statement from another leaseholder, Lady Bridget Nixon, written in the present tense, complaining about the standard and maintenance of the garden areas
- An email from Miki Lund, a leaseholder, dating from the current year complaining that the gardens were not attractive

141. This evidence was countered by evidence from Mr Paul Ray, Building Services Manager employed by CHL. Mr Ray told us that he had regular liaison with the Residents Association gardening sub-committee during the years in question and subsequent to those years and that no complaints of a general poor standard of gardening had been made to him. As to the irrigation system, he explained that there was a constant battle with vermin of various kinds chewing the pipes, he had been asked to look at other methods of irrigation. He gave an explanation as to the plinth that had been taken away and a plant pot containing building rubbish.

142. There was a further complaint that extensive gardening and works had been carried out to the Estate prior to the tribunal's inspection on the first day of the hearing. Mr Brookson described a large amount of activity and the Estate as looking like a 'film set' with the number of people carrying out works. In response, Mr Ray said that he was not aware of the date of the hearing before the tribunal, that there are only six estate workers and that given that it was Spring and the weather was good, the workers were deployed outside to carry out gardening and some other works.

143. There was clearly insufficient evidence on the part of the Leaseholders to make any case regarding the standard of gardening during the years in question. We were not able to form any clear view of a poor standard of gardening on our inspection[24].

Leaseholders benefit from gardening

144. There was no evidence to support the claim that there was a higher

[24] It should be noted that the tribunal has no expert experience on the subject of gardening, all we can do is form the broadest of views

standard of gardening around the commercial areas and that accordingly leaseholders paid an unfair proportion of the gardening charge. It was suggested on the part of CHL that the commercial parts may on occasion spend money directly on additional plants and flowers when there was a promotion in that area.

145. There was a further submission from the Leaseholders that there should be deductions from other heads of the Service Charge due to the failings in gardening. It follows from the above that this submission is rejected.

Reserves

146. The Leaseholders complained that the portion of Service Charge collected for the reserves and so for planned maintenance and major works is not being spent regularly and is being used for day-to-day Service Charge items. It is argued that reserves should not be used for general Service Charge expenditure and that the use of the reserves in this way leads to a lack of transparency in accounting. Further, dealing with the Service Charge in this way is poor management.

147. In addition, it was argued that a lack of major work expenditure in 2012 through to 2014, notwithstanding continuing reserve fund contribution, tells of intentional delay in respect of major works.

148. These problems says Mr Brookson, lead to an apparent deficit in reserve fund bank accounts which gives cause for alarm.

149. In respect of these failings, the Leaseholders sought a reduction in the charge for CHL's accountancy service, their management fee and PLM's management fee.

150. The reserve fund clause in the residential leases is drawn in broad terms as follows:-

> "...The Landlord shall be empowered at its absolute discretion to set aside such sums of money as the Landlord shall reasonably require to meet such future costs as the Landlord shall reasonably expect to incur for replacing repairing maintaining and renewing those items which the Landlord has hereby covenanted to replace repair and maintain or renew and to the extent that the landlord shall propose to set aside or shall set aside any such sums they shall be treated and comprised within the Building Contribution the car park contribution and\or the Village contribution as appropriate."

151. We do not accept that this clause should be interpreted so narrowly so as to only allow expenditure from the reserve fund on specific items for which it was specifically collected (we do not see in any event that there is such specivity in collection in the first place).

152. We do not accept that there is evidence of any alarm from anyone at the Estate regarding an apparent shortfall in reserves apart from Mr Brookson (who is an accountant).

153. We have however already mentioned that there does appear to have been some delay in the progressing of major works in recent years. We do not find that there is any evidence that there has been deliberate under-spending.

154. There is also, what appears to us to be, an unhappy coincidence between the reserve funds remaining in the general service charge account whilst that account has been (entirely wrongly) charged by financiers lending money to CHL.

155. Whilst we accept Mr Bhose's submissions that;

- the accumulation of a reserve fund and planned expenditure from those reserves as being an art rather than a science
- planned maintenance/repair may be postponed due to cheaper options being available or delay in leaseholders' contributions

we do consider that there is scope for confusion when there is a delay in the transfer of reserve funds to the designated reserve account (Mr Jones, an Estate Accountant for PLM, accepted in cross-examination that, in the light of Mr Brookson's concerns, an effort would be made to transfer reserves more quickly) and when there is expenditure from the reserves on general service charge items.

156. In conclusion, we do not consider that the issue of reserves requires any other finding or order.

Legal Fees

157. Two issues were raised as follows:-

Solicitor's charges for specific works

158. Two invoices are specified (both charged to the Buildings Charge). The first is dated 30 July 2012 and is for £1008. The first part of this invoice that is objected to describes the work as; "*Receiving your instructions in relation to the slightly delayed audit*". It was said by the Leaseholders that it was not reasonable for this charge to be payable by them as it related to default on the part of CHL.

159. As we have made some deduction in respect of audit fees, it could be argued that we should disallow some of these charges, the amounts involved however (as per individual leaseholders) are so low that it is pointless making any further analysis as to if any, and then how much, the deduction should be.

160. The next part of this invoice relates to work described as; "*advising you as to Harrods Estates proposed office move*". This was explained on behalf of CHL as being in relation to the visit of the expert instructed by the Leaseholders. The explanation in our view is a reasonable one.

161. The final part of this invoice to which objection is taken reads; "*corresponding with you in respect of somebody from Chelsea Harbour attending residents meeting and reporting to you thereon*". The inference drawn by the Leaseholders is that this is a reference to placing a 'mole' in the Residents Association meeting. This may or may not be correct, even if it were, the amount of the invoice (bearing in mind this work made up only part of the £1,008 fee) is so small as to be insignificant.

162. The second invoice is dated 30 May 2012 for a sum of £4,608. The part of that invoice that is objected to reads: "*Receiving copies of what is held and confirmation where there appears to be no formal written contract to hand; advising you in terms of strategy for continuing to respond on these points*". The objection is that there were no contracts and so it was not reasonable to pay costs in relation to them. We disagree, it is not clear that this work is unreasonably done. The invoice relates to a great deal of other work and the amount therefore involved is probably so small as to be insignificant.

Legal costs and individual lessees

163. These are legal costs incurred in relation to sundry debtors. They were transferred in 2011/12 from the sundry debtors account to the Service Charge account. The Leaseholders called for an explanation as to why these costs were not recovered from defaulting lessees. No explanation has been given.

164. It should in our view be a relatively easy task to recover costs from defaulting leaseholders. Accordingly, in principle, the sums are not reasonably incurred. The problem however is to identify which buildings relate to which charges given that the Buildings Charge (to which the cost was attributed) is specific to each building in the Estate.

Traffic control

165. The Leaseholders challenged the cost of a new traffic control system in their Statements of Case on the grounds that there had not been statutory consultation in respect of that system and on the basis that the system was an improvement rather than a replacement of the old system (and so the costs of which were not payable by leaseholders).

166. These issues were not pursued after evidence was given at the final hearing. The Leaseholders will say that it was only at the final hearing that these concerns were finally addressed by CHL to their satisfaction (those concerns not having been properly addressed in the Respondent's Statements of Case or in enquires made by the Leaseholders prior to the proceedings).

167. It is therefore not necessary for us to make any decision on this issue at present.

THE ISSUES AND OUR DECISIONS – DISPENSATION

168. The Leaseholders challenged the contract between CHL and PLM for management services claiming that it was a QLTA and that there had been no consultation in respect of it.

169. CHL in its Statement of Case[25] denied that the contract was a QLTA. CHL issued an application to the tribunal for dispensation from the statutory consultation requirements in relation to the contract on 11 September 2014 (but in that application re-asserted that the contract was not a QLTA).

170. The Leaseholders reserved their view on CHL's application pending any comment from other leaseholders.

171. The application was served upon all leaseholders, no leaseholder objected to dispensation. The Leaseholders consequently did not object to dispensation on the condition that their costs of £3,030 in dealing with the application were paid by CHL.

172. It was not until the hearing before this tribunal that CHL changed its position and accepted that the contract in question was a QLTA. It argued that dispensation should be given unconditionally or in the alternative that it should contribute only £1,000 to the Leaseholder's costs.

173. We accept that:-
- there was full involvement of the Residents Association in the selection of PLM
- there were no objections to dispensation from any leaseholder
- no issue was taken by the Leaseholders on the matter until 2014 (long after PLM started to manage the Estate and long after a contract was signed with them)
- no prejudice has been argued on the part of any leaseholder

We consider that:-
(a) Dispensation should be granted in the circumstances
(b) Dispensation should be conditional upon all of the Leaseholder's costs being paid

174. The Leaseholders were fully entitled to take comprehensive legal advice regarding the matter. This is especially so taking into consideration the very poor performance of management of contracts at the Estate as dealt with above.

175. CHL assert by way of Mr Bhose's written submissions that the sum claimed for the Leaseholders' costs is not reasonable, no reasons are given as to why it considers the sum unreasonable.

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[25] Paragraph 40

COSTS – SECTION 20C LANDLORD AND TENANT ACT 1985

176. The Leaseholders made an application for an order preventing CHL from charging any of its costs of the Service Charge applications to the Service Charge account payable by the Leaseholders.

177. The parties agreed that they would make final submissions regarding this application after they had received and considered the decision on the substantive Service Charge applications.

178. The parties are therefore required to send to the tribunal further written submissions on this question by no later than 4pm, **10 July 2015**

Mark Martynski
Tribunal Judge

1 June 2015

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	**LON/00AN/LSC/2014/0361** **LON/00AN/LSC/2014/0177**
Property	:	**Chelsea Harbour, SW10**
Applicants	:	**Various Leaseholders**
Respondents	:	**Chelsea Harbour Limited**
Representatives	:	**Mr Bhose QC (Counsel) and Brethertons LLP solicitors for Chelsea Harbour Limited** **Mr Fieldsend (Counsel) and Pemberton Greenish solicitors for the leaseholder Applicants**
Types of Application	:	**Costs [s.20C Landlord and Tenant Act 1985]**
Tribunal	:	**Mr M Martynski** **Mr S Mason BSc FRICS FCI Arb** **Mr J Francis QPM**
Dates of written submissions	:	**9 July 2015 (Applicant), 7 July 2015 (Respondent)**

DECISION

Decision Summary

1. Of the costs incurred, or to be incurred, by the Respondent in connection with the Applicants' applications pursuant to section 27a Landlord and Tenant Act 1985 and dealt with in the tribunal's decision of 1 June 2015; 8% of those costs are not to be regarded as relevant costs to be taken into account in determining the amount of any Service Charge payable by the leaseholders who were parties to

those applications as at the dates of the final hearing (27 April – 5 May 2015).

Background

2. On 1 June 2015 this tribunal published its decision in relation to three applications as follows:
   (a) Two applications made by the Applicants challenging Service Charges pursuant to sections 27A & 20C Landlord and Tenant Act 1985 ('the Act')
   (b) An application made by the Respondent pursuant to section 20ZA of the Act

3. At the parties' request, the decision of 1st June did not include a decision on the Applicants' application in respect of costs pursuant to section 20C of the Act in relation to the Service Charge challenges.

4. In our decision of 1 June, we also dealt with an application from the Respondent in respect of section 20ZA of the Act. The Respondent has made it clear that it does not intend to charge any of its costs of that application to the Service Charge. For the record, even if that were not the case, we would have made an order pursuant to section 20C preventing it from adding the costs to the Service Charge (in respect of any residential leaseholder at Chelsea Harbour).

5. Following directions given in the decision of 1st June, the parties made written representations on the section 20C application. This decision is made having had regard to those representations.

6. In their respective submissions; the Applicants sought an order relating to 33.3% of the Respondent's costs; the Respondent argued for no order to be made at all and in the alternative for the order to be limited to 10% of the Respondent's legal costs from 1 July 2014 (on the basis that it was only on that date that an application was made challenging the cost of CHL's management ((which was an issue which was conceded during the hearing)

The law

7. The relevant part of Section 20C of the Act provides as follows:-

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

8. Whilst there has been much commentary and guidance set out decisions made by superior courts and tribunals on the approach to be taken to applications under section 20C, the tribunal's discretion in deciding whether to make an order and, if an order is made, the terms of that order, is wide. The tribunal, in coming to its decision, is entitled to consider what is just and equitable in all the circumstances of the case.

Matters taken in account

The main decision

9. In deciding whether to make, and if so the terms of a costs order, our main focus has been the decisions that we made in the main Service Charge applications and the reasons for those decisions.

10. On any view of the matter, we decided the applications substantially in favour of the Respondent. In the decision itself, we made something in the order of 22 decisions under various headings. Of those decisions;
- 2 went in favour of the Applicants (Knight Frank fees as a QLTA and legal costs of pursuing leaseholder arrears [1])
- 1 allowed a small part of the challenge (Audit fees [2])
- 1 was conceded in total (CHL management fees [3])
- 1 was conceded in part (apportionment of CHL fees [4])
- 2 issues warranted our concern (PLM management and Reserves [5])

The monetary value of the decision

11. The actual value of our decisions to the leaseholders is very small. Some example figures were provided by the Respondent with its written submissions on the question of costs. The Applicants appear to have valued their various challenges in the millions; the value of the decisions made by this tribunal to the leaseholders who were Applicants in the applications is put at a little over £27,000[6], even if this figure is not correct, the actual proportionate value of the decision to the leaseholders over the value of the challenges as made is going to be very small.

The importance of the decision to the leaseholders

12. As stated above, in money terms, the importance of our decision to disgruntled leaseholders is small. In terms of the way in which the development has been and continues to be managed the decision is arguably marginal to the leaseholders on the development. Some of the more active Applicants in the applications will see the decisions,

[1] See paragraphs 78-88 and 163-164 respectively of the main decision
[2] See paragraphs 67-77 of the main decision
[3] See paragraphs 36-46 of the main decision
[4] See paragraph 66 of the main decision
[5] See paragraphs 52 and 153-154 respectively of the main decision
[6] See paragraphs 23 & 24 of Mr Bhose's written submissions on behalf of the Respondent

concessions and concerns set out in our main decision as significant; that will probably not be the case for most other leaseholders on the estate, the majority of whom have taken no part in these proceedings.

Other matters outside of the conclusions reached in the main decision

13. We noted in our decision, what we saw as a lack of clarity and precision in the challenges to the Service Charge made by the Applicants. We note that, beyond the issues specifically referred to in our previous decision, there were a great many other issues raised by the leaseholders that were not pursued. We further note that, as recorded in our decision, the Applicants sought to introduce yet further issues late in the day (a number of which themselves lacked focus or were outside of the Service Charge years which the Applicants sought to challenge in their applications) many of which we declined to consider.

Decision

14. Taking all of the above into account therefore, we have potentially two questions to ask ourselves; first, should any order be made pursuant to section 20C?; second, if some order should be made, what should the terms of that order be.

Should any order be made?

15. We consider that an order should be made for the following reasons.

16. First, as recorded above, some of the challenges to the Service Charge were successful. The concessions that were made were only made at the hearing and were, in the light of the evidence given at the hearing, inevitable in our view. The concerns that we expressed in our decision were not insignificant. We do not see why the Respondent should be entitled to ask the Applicants to pay the costs of these issues via the Service Charge.

17. We do not consider that the issue of costs on these issues should be left to a further application under section 27A of the Act once those costs have been charged to the Service Charge account. That would place a further unnecessary burden upon the Applicants; this tribunal is best placed to deal the costs of these issues as opposed to, what would be, a differently constituted tribunal on a further section 27A application.

The terms of the order

18. In this case, given; (a) that we do not have a detailed breakdown of the Respondent's costs (the expense of obtaining such a breakdown would, we think, be disproportionate in any event); (b) the complexity of the applications generally; the right approach is to make the order in percentage terms. To express the order in terms of the costs of each separate issue would be disproportionately complex and expensive to calculate.

19. In deciding what the percentage should be, we consider that it would be wrong to base the figure on the number of issues that were decided in the Applicants' favour/conceded in proportion to the number of issues decided upon in the main decision. That approach would; (a) not take account of those issues where we have expressed concern, and; (b) the number of issues that were taken in the proceedings generally but not actually pursued to the end or which we declined to consider (the latter far outweighing the former).

20. Accordingly therefore, the percentage figure must be less than;

$$\frac{\text{Issues on which the Applicants have succeeded/which were conceded}}{\text{Issues decided}}$$

(the result of which would be something in the order of 18-20%)

21. As to the Applicant's suggested reduction of 33%, it will be apparent from our view as set out above that such a percentage would be far in excess of the Applicants' measureable success and the impact of the decision (not just in monetary terms) for the Applicants and leaseholders generally.

22. As to the Respondent's suggested reduction, we do not accept this because we do not accept that it is only in respect of CHL's fees that they were unsuccessful and in respect of which an order should be made.

23. Our conclusion is that the percentage reduction should be 8% of the Respondent's total costs. Beyond the calculations set out above, there is no maths or science in arriving at this figure, it is a general assessment taking into account the parties' written representations and the matters set out in this decision.

Mark Martynski
Tribunal Judge

21 July 2015