

10491



**FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : CHI/00HP/LSC/2013/0138

Property : Flat 17 Oakhurst, 14 The Avenue, Poole,
Dorset, BH13 6HP

Applicant : Fairhold Homes (No 11) Limited

Representative : Mr Azmon Rankohi, Peverel Property
Management

Respondent : Mr Kenneth Lancaster

Representative : -

Type of Application : Liability to pay service charges : section
27A of the Landlord and Tenant Act 1985
("the 1985 Act")

Tribunal Members : Judge P R Boardman (Chairman), Mr D
Lintott FRICS, and Mrs J E S Herrington

Date and Venue : Court 8, Bournemouth County Court,
Deansleigh Road, Bournemouth, Dorset,
BH7 7DS

Date of Hearing : 26 November 2014

DECISION

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Introduction

1. This decision is made subsequent to, and is intended to be read with, the Tribunal's directions dated 9 May 2014, the Tribunal's further directions dated 10 August 2014, and the Tribunal's further directions dated 1 October 2014
2. The issues before the Tribunal, as identified in the directions dated 9 May 2014, are :
 - a. limited to the matters included in :
 - a service charge item dated 1 September 2012 £1466.91, which, although itself a budgeted figure, had had a service charge surplus applied to it, leaving a net figure invoiced of £1402.21
 - a service charge item 1 March 2013 £1450.04, which was a budgeted figure
 - b. limited to the following matters included in those service charge items :
 - house manager's office telephone : £227.49
 - house manager office TV
 - door entry : £1572.55
 - weekly cleaning contract : according to the Respondent the sums in dispute were included in the following sums :
 - cleaning and materials : £5513.75
 - general maintenance : £2458.15
 - planned maintenance £3215.77
 - water supply : according to the Respondent the issue before the Tribunal in this respect was failure to manage properly, and was therefore part of his challenge to the management fee : £14,892.50
 - guard cameras
 - contingency fund : £11377.29
 - redecoration fund : £5000
 - tree surveys/reports : according to the Respondent the sum in dispute was included in the general maintenance figure of £2458.15
 - audits : £620.10
 - house manager council tax : £1328.85
 - guest room and business use of lounge : according to the Respondent the sum in dispute was included in the general maintenance figure of £2458.15
 - apartment smoke alarms
 - ground floor redecoration
 - security, unauthorised entries to private homes : according to the Respondent the issue before the Tribunal in this respect was failure to manage properly, and was therefore part of his challenge to the management fee : £14,892.50

- sundry items and purchases by the house manager and area manager : according to the Respondent the sums in dispute were included in the following sums :
 - sundry expenses and petty cash : £396.84
 - general maintenance : £2458.15
 - main soil pipe structural failure : according to the Respondent the cost of this item was not in dispute as such, but the issue was whether the lease allowed this item to be included in the service charge
 - water soakaway and car park subsidence
 - roof problems
 - administration and management charges : £14892.50 plus VAT
 - house manager's flat rental : £11354
3. By the directions dated 10 August 2014, and confirmed by the directions dated 1 October 2014, the Tribunal debarred the Respondent from relying on any additional evidence, documents or submissions, and directed that his case should be limited to such matters as were :
- a. particularised in his defence dated 30 August 2013 (in the county court proceedings in claim number 3YQ01300) and in his letter to the Tribunal dated 6 April 2014, and
 - b. relevant to the issues before the Tribunal as identified in the Tribunal's directions dated 9 May 2014

Documents

4. The documents now before the Tribunal are those contained in a bundle prepared by the Applicant for use at the hearing, pages 1 to 363
5. References in this decision to page numbers are to page numbers in that bundle, unless otherwise stated

The lease (pages 144 to 180)

6. The lease of the Property by the Applicant to the Respondent was dated 28 September 2006, and included the following provisions referred to by the parties at the hearing :

Fourth schedule (service charge calculation and collection)

1 In this schedule :

1.2 "Annual Service Cost" means the total of all costs.....incurred by.....the Landlord in any Year in connection with the repair maintenance decoration renewal and management of the Estate and the Building and the provision of all Services in the performance of its covenants in respect thereof herein contained.....and.....the same shall include :

1.2.2 *The cost of and incidental to the performance by the Landlord of the covenants contained in the sixth schedule of this lease.....*

1.2.3 *The annual rentals and other expenditure involved in the supply installation and maintenance of a door security system and any other communication system in the Building and such communal television and radio aerial system and any other communal intruder and/or fire alarm system and/or TV video entry or security system as may from time to time be installed in the Building and/or the Premises*

1.2.5 *All fees charges and expenses payable to any professional or other adviser agent or body whom the landlord may from time to time reasonably instruct or employ in connection with the management and/or maintenance of the Estate.....*

1.2.6 *The costs of and incidental to the provision by the Landlord of all Services provided in or in connection with the Estate.....(including.....any Council Tax.....payable by the House Manager)*

1.2.7 *The costs and expenses incurred by the Landlord in making repairing maintaining rebuilding renewing and cleansing all roadways pavements sewers drains watercourses and party walls structures party fences or other items or conveniences which may belong to or be used for the Estate in common with other premises near to or adjoining the Estate*

1.2.8 *The costs of employing staff.....for the performance of duties in connection with the maintenance and/or security of the Estate.....and the provision of Services and expenditure in relation to such employment.....*

1.2.9 *The costs of the management of the Estate and costs associated with the employment of staff in connection therewith and the fees of any agent or agents appointed for the general management of the Estate*

1.2.11 *The costs of providing and maintaining and maintaining in repair and good decorative order accommodation for the House Manager(s) together with rent(s) in respect thereof*

1.2.13 *The expenses of management and of the services provided by the Landlord for the general benefit of the tenants and occupiers of the Building and all other expenses reasonably incurred by the Landlord in or in connection with or relating to the Building and the Estate*

1.2.14 Such sums as the Landlord shall in its discretion and without prejudice to the provisions hereinafter contained regarding the Contingency Fund decide to retain towards future expenditure or costs in the interests of good estate management

4.1 The Tenant will half yearly on the first March and first September in each year.....pay in advance to the Landlord.....such reasonable sum as the Landlord or its agent shall consider appropriate on account of the Service Charge.....

5.5 The Landlord will keep an account of all expenditure to be included in the Annual Service Cost and will ensure that the account thereof is audited by a firm of qualified accountants

10 The sums paid to the Landlord by way of contingency fee under the provisions of the fifth schedule shall be dealt with as follows :

10.1 such sums shall be used to provide a contingency fund.....for.....the costs.....of items of capital expenditure.....

Fifth schedule (Tenant's covenants)

1 To pay.....the Service Charge.....without any deductions whatsoever.....

10.4 [Tribunal's summary : to pay a transfer fee of 1% of the sale price or open market value on sale or underletting]

10.5 [Tribunal's summary : to pay a contingency fee of 1% of the sale price or open market value on sale or underletting]

Sixth schedule (Landlord's covenants)

2.1 As often as may reasonably be required to maintain repair tend cleanse repaint decorate and renew :

2.1.1 The main structure of the Building including.....the roofs and exterior.....

2.1.2 The passages staircases landings lifts entrances and all other parts of the Building enjoyed or used by the Tenant in accordance with the terms hereof

2.1.3 The.....sewers drains.....and all other installations in under or upon the Building and the Estate enjoyed or used by

the Tenant in common with all or any of the other tenants or occupiers of the Building.....

2.1.4 The access road entrance ways paths forecourts and car parking spaces forming part of the Estate.....

3 So far as reasonably practicable to keep cleansed lighted and in a tidy condition.....the passages staircases entrances and forecourts gardens grounds.....and all parts of the Estate enjoyed or used by the Tenant in common with all or any of the other tenants or occupiers of the Building

7 So far as practicable.....to use its best endeavours to provide and maintain the services of a House Manager.....for the purpose of being available to the tenants in the Building during reasonable hours of the daytime to render such assistance in cases of emergency as may reasonably to be expected.....and to supervise the provision of services in the Building and on the Estate.....together with an emergency call system connected to a central control for the purpose of providing assistance in cases of emergency and in the short term or temporary absence of a House manager and whilst the House Manager is off duty

Inspection

7. The Tribunal inspected the exterior of the building on the morning of the hearing on 26 November 2014. Also present were Mr Rankohi, Mr J Parsons, Area Manager of Peverel Property Management, Mr R Sears, House Manager, and Mr Lancaster
8. The Property was a flat in a brick-built block comprising two buildings, one at the front comprising a ground floor with five floors above, and one at the rear comprising a ground floor and four floors above. The two buildings were connected at ground floor level. There was a car park at the front, and lawns on each side and at the rear, with shrubbery and several trees. A small building on the left housed a storage room and a tank room
9. The main entrance was accessed from the car park at the front, with a push-button door entry system. Inside was a residents' lounge, with a servery kitchen, and a hallway leading to a communal WC, a guest suite with two beds, a shower and WC, a laundry with four washing machines and four tumble driers, a caretakers office and a refuse room
10. The House Manager's flat was number 16 on the second floor, and comprised a lounge, a kitchen, two bedrooms (one being used as a dining room), a bathroom and cupboards
11. The parties said that the Property was also on the second floor, and was

a two-bedroom flat and similar to the House Manager's flat, and that the development comprised 11 two-bedroom flats, and 43 one-bedroom flats

The hearing

12. Those attending the hearing on 26 November 2014 were Mr Rankohi, Mr Parsons, and Mr Lancaster

Procedural matters

13. During the hearing Mr Lancaster submitted that it was not fair that the Tribunal had restricted what he could say at the hearing to matters raised in his defence and in his letter dated 6 April 2014. He had been unable to make any comments until he had received all the accounts and invoices, and even now he had not received all of them, because in its directions dated 9 May 2014 the Tribunal had restricted the documents to be sent by the Applicant to those relating to just two service charge demands, whereas his dispute with the Applicant related to matters occurring in all the years from 2006, not just to the two demands selected by the Tribunal. He had now had the opportunity to look at all the documents sent by Mr Rankohi, and had come to the hearing ready to give evidence and make submissions about each point, and it was only fair to allow him to do so. In any event, he had referred to the individual matters in dispute in his letter to the Tribunal dated 2 May 2014, and those matters should now be taken into account
14. In answer to questions from the Tribunal, Mr Lancaster conceded :
 - a. that the letter dated 2 May 2014 had been referred to, and had been taken into account, in the order for directions dated 9 May 2014, and indeed had formed the basis for the Tribunal's identification of the matters in issue before the Tribunal; however, he said that he now wished to refer to it again
 - b. he had received the documents from Mr Rankohi in May 2014 following the Tribunal's directions dated 9 May 2014; however, he said that they had been incomplete because they had not contained all the documents which he was asking for, such as service charge accounts for previous years
 - c. that the Tribunal's directions dated 9 May 2014 had given him two months to respond, but that he had not done so; however, he said that he was now ready and able to do so
15. Mr Rankohi objected. The matter had now been before the Tribunal for about a year. Directions had been given on 9 May 2014, but Mr Lancaster had failed to comply with them, despite being given an exceptionally long time, namely 2 months, to do so. On 10 August the Tribunal had ordered his evidence and submissions to be limited to the contents of his defence and letter dated 6 April 2014. That order had been confirmed after a full hearing of the Tribunal on 1 October 2014. If Mr Lancaster were now permitted to give further evidence and make

further submissions, Mr Rankohi would have to take instructions on the new matters raised, and he could do so only if there were a further adjournment. That would not be fair to the Applicant, and would be disproportionate to the amount in dispute, namely only about £3000

16. Mr Lancaster said that it would be unfair to proceed with the hearing without allowing him to comment on each item
17. After a short adjournment of the hearing to consider the matter, the Tribunal indicated that :
 - a. it had taken account of Mr Lancaster's submission that it would be unfair to refuse to allow him to participate fully in the proceedings and to limit him to matters raised in his defence and his letter dated 6 April 2014; however, the Tribunal found that Mr Lancaster had had ample opportunity to put his case, and to submit any documents, following the directions dated 9 May 2014
 - b. the order barring him from relying on anything not contained in his defence and his letter dated 6 April 2014 had been confirmed, after further directions dated 8 September 2014, following a hearing before the Tribunal on 1 October 2014
 - c. the Tribunal had to consider fairness not only to Mr Lancaster but also to the Applicant, and the Tribunal found that to allow Mr Lancaster now to adduce further evidence and make further submissions would not, in all the circumstances, be fair to the Applicant nor proportionate to the amount in issue nor the costs involved
 - d. the Tribunal therefore confirmed that Mr Lancaster's evidence and submissions should be limited to matters contained in his defence and in his letter dated 6 April 2014
18. At a later point during the hearing, when the Tribunal announced a lunch break, Mr Lancaster said that if the Tribunal was going to insist on limiting his contribution to the contents of his defence and his letter dated 6 April 2014, then there was no point in his attending the afternoon session of the hearing
19. The Tribunal indicated that if Mr Lancaster did not attend, then the afternoon session of the hearing would proceed in his absence, and he would be depriving himself of hearing Mr Rankohi put the Applicant's case and of the opportunity to draw the Tribunal's attention to anything in his defence and his letter dated 6 April which might be relevant to the issues
20. Mr Lancaster did in fact attend the afternoon session of the hearing after the lunch break

The issues

21. The parties' respective cases in relation to each issue now before the Tribunal, and the Tribunal's decision in each respect, are as follows

Matters raised in the Respondent's defence (starting at page 23)

22. Paragraph 1

23. The Respondent stated that the Applicant had breached UK laws and statutory procedures

24. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that it denied the allegations, that service charge accounts were issued to all leaseholders once prepared and audited, and that copies of the relevant service charge accounts, estimates and invoices had been sent to the Respondent on 19 May 2014 in accordance with the Tribunal's directions dated 9 May 2014

25. Paragraph 2

26. The Respondent stated that the Applicant was in breach of section 42 of the Landlord and Tenant Act 1987

27. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that it denied the allegation. The service charge moneys were held in trust for the development, and that, in any event, this was not relevant to the issues before the Tribunal

28. Paragraph 3

29. The Respondent stated that he was therefore entitled to withhold payment of service charges

30. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that it disagreed, and that by paragraph 1 of the fifth schedule to the lease the Respondent was liable to pay the service charge "without any deductions whatever"

31. Paragraph 4

32. The Respondent stated that unauthorised and fraudulent charges had taken place, despite more than 40 letters written and verbal requests to meet to discuss the issues, and that they were detailed in letters, a list of which was attached to the defence

33. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that the letters themselves were not attached to the defence, that the Respondent had not particularised the allegations, and that the Applicant could not ascertain whether any such charges

related to the service charges in issue before the Tribunal

34. Paragraph 5

35. The Respondent referred to failures by the Applicant to provide documents relating to the service charge years 2011 and 2012

36. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that these service charge years were not in issue before the Tribunal

37. Paragraph 6

38. The Respondent stated that he had withheld payment of the service charge demand dated September 2012 because the CEO of Peverel had declined to meet him and because the 2011/2012 accounts had not been sent to him

39. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that this was not relevant to the issues before the Tribunal

40. Paragraph 7

41. The Respondent stated that the March 2013 service charge demand had been paid

42. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that it had not received payment

43. Paragraph 8

44. The Respondent made various statement relating to ground rent

45. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that ground rent was not relevant to the proceedings before the Tribunal

46. Paragraph 9(a)

47. The Respondent referred to a withheld service charge payment for March to September 2011

48. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that this was not relevant to the matters before the Tribunal

49. Paragraph 9(b)

50. The Respondent stated that he had withheld payment of the service charge for September 2012 to March 2013 for reasons set out in "correspondence relating to continued breaches of the law including refusal to provide 2011/12 accounts and unexplained charges arising from serious concerns over specified bills"

51. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that the accounts had been provided. The Applicant denied any breach of the law. In any event, this did not relate to the issues before the Tribunal

52. Paragraph 9(c)

53. The Respondent referred to ground rent

54. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that ground rent was irrelevant

55. Paragraph 9(d)

56. The Respondent stated that he had paid £1450.04 for the service charge for March to September 2013, but the agents had refused the payment

57. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that payment had not been made

58. Paragraph 9(e)

59. The Respondent stated that the sum of £1420.66 for the service charge from September 2013 to March 2014 was not due at the service of this claim

60. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that it was agreed that this demand was not in issue before the Tribunal

61. Paragraph 10

62. The Respondent stated that the claim was not considered to be a financial or debt issue but one of breaches of law, failure to comply with procedures and codes of practice, collusion, fraud and lack of regulation of site managers, enabling the promotion of unreasonable or corrupt charges, and that most leaseholders at Oakhurst were elderly and vulnerable

63. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that the Respondent had failed to particularise his allegations, and the Applicant was therefore unable to consider or respond. The Appellant denied the allegations

64. Documents attached to the defence

65. Attached to the defence was a list of 58 documents (at page 27), a service charge invoice from Peverel dated 1 March 2013 (at page 28), a service charge credit advice from Peverel dated 20 April 2012 (at page 29), and a letter from the Respondent dated 20 February 2013 (at page 30)

66. *The Tribunal's decision*

67. The Tribunal finds that none of the matters raised by the Respondent in the defence affects the payability of the service charge items before the Tribunal, but rather that they relate, respectively, to :

- a. matters not relating to the service charge items identified in the Tribunal's directions dated 9 May 2014 as being in issue before the Tribunal
- b. matters relating to the entitlement, or otherwise, of the Respondent to withhold payment of service charges, as distinct from the payability or reasonableness of the service charges as such, are matters not for the Tribunal, but for the County Court

Matters raised in the Respondent's letter dated 6 April 2014 (starting at page 79)

68. Paragraphs 1 to 3

69. The Respondent referred to discussions with the Applicant

70. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that the parties' attempts to settle the matter were not relevant to the service charges in issue

71. Paragraph 4

72. The Respondent stated that the documents listed in his defence comprehensively detailed all the items and issues in dispute, and were intended to be referred to as required in future correspondence and hearings. He was attaching an updated list of documents

73. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that the Respondent had not submitted to the Tribunal the documents referred to, and the documents therefore did not form part of the Respondent's case

74. Paragraph 5

75. The Respondent stated that he had not considered “figures as a breakdown of Scott Schedules”, and that “cost headings would be less investigated or as relevant if statutory and legislative procedures, UK laws, the lease, and definition of what service charges constitute as detailed in DCLG/ARHM documents were complied with, only authorised purchases were allowed, regulated and trustworthy. Scott schedules do not identify such breaches or where fraudulent practices have occurred or been employed”

76. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that the Respondent had not specified or particularised the allegations that cost headings would be less if the Applicant had complied with matters referred to, so that the Applicant was unable to respond. However, the Applicant denied the allegations

77. Paragraph 6

78. The Respondent stated that the “failure of the Applicant and its agents to comply with LRA and L&T Acts relating to the operation of our trust account (payments and withdrawals) and use of our money is one of the detailed criminal offences as is failure to provide accounts documents. These alone without further considerations justifies, as detailed in DCLG documents, withholding service charge payments, with all provisions in a lease relating to non payment ceasing to be effective. These offences are specifically detailed in defence list of documents which included two examples of monthly bank account statements for October 2010 and August 2012. A further statement is enclosed for July 2008 in order to provide ease of immediate perusal”

79. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that the Applicant denied the allegations, which were vague and unparticularised

80. Paragraph 7

81. The Respondent stated that the “defence list of documents includes detailed requests at director level for the removal of the house manager (sometimes named warden) and area manager from their management duties at the Oakhurst development. The reasons relate to serious issues of collusion, untrustworthy behaviour and criminal offences with police involvement. Discussions have taken place with other organisations on these matters and have been of concern since 2010”

82. The Applicant in its statement of case dated 19 August 2014 (starting at page 87) stated that the Applicant’s letter had failed to raise any challenge to the payability or reasonableness of the service charges in

issue before the Tribunal

83. Documents attached to the letter dated 6 April 2014

84. Attached to the letter was a list of 61 documents (at page 81), and a statement of account from the Applicant dated 31 July 2008 (at page 82)

85. *The Tribunal's decision*

86. The Tribunal finds that none of the matters raised by the Respondent in the letter dated 6 April 2014 affects the payability of the service charge items before the Tribunal, but rather that they relate, respectively, to :

- a. settlement negotiations between the parties
- b. matters relating to the entitlement, or otherwise, of the Respondent to withhold payment of service charges, as distinct from the payability or reasonableness of the service charges as such, which are matters not for the Tribunal, but for the County Court
- c. unparticularised accusations of malpractice and criminal offences by the house manager the area manager, and others, which are matters not for the Tribunal, but for the County Court or a criminal court

The service charge item dated 1 September 2012 £1466.91

House manager's office telephone : £227.49

87. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that the Respondent had not set out any basis for challenging the payability or reasonableness of this item. The costs had been reasonably incurred and were reasonable in amount

88. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted this item to be included in the service charge by virtue of the fourth schedule paragraphs 1.2.3, 1.2.8, and 1.2.13. The relevant invoices and summary were at pages 191 to 218. Those invoices related just to the office telephone. There was another line, separately billed, for the emergency call system

89. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item

90. *The Tribunal's decision*

91. The Tribunal finds that :

- a. the lease permits this category of expenditure to be included in the service charge
- b. the charge has been reasonably incurred and is reasonable in amount
- c. this item is payable by the Respondent by way of service charge

House manager office TV

92. At the directions hearing on 9 May 2014, the Tribunal indicated that Mr Lancaster would have to check the invoices, when received, to see if this item was in fact included in the two service charge demands in issue before the Tribunal
93. At the hearing on 26 November 2014, Mr Rankohi stated that the "TV" referred to was the CCTV monitor, and that there was no charge in that respect in the relevant service charge year, although there had been a charge in previous years
94. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item
95. *The Tribunal's decision*
96. The Tribunal finds that the Tribunal's attention has not been drawn to any item in the service charge for the relevant year relating to this item

Door entry : £1572.55

97. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that the Respondent had not set out any basis for challenging the payability or reasonableness of this item. The costs had been reasonably incurred and were reasonable in amount
98. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted this item to be included in the service charge by virtue of the fourth schedule paragraph 1.2.3. The relevant invoices and summary were at pages 283 to 285
99. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item
100. *The Tribunal's decision*
101. The Tribunal finds that :
 - a. the lease permits this category of expenditure to be included in the service charge
 - b. the charge has been reasonably incurred and is reasonable in

amount

c. this item is payable by the Respondent by way of service charge

**Weekly cleaning contract : cleaning and materials £5513.75,
general maintenance £2458.15, and planned maintenance £3215.77**

102. At the directions hearing on 9 May 2014 the Respondent stated that part of his challenge to these items was also tree surveys/reports, included in the general maintenance figure of £2458.15

103. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that the Respondent had not set out any basis for challenging the payability or reasonableness of any of these items. The costs in each case had been reasonably incurred and were reasonable in amount

104. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted these items to be included in the service charge by virtue of the fourth schedule paragraphs 1.2.2 and 1.2.7 and the sixth schedule paragraphs 2.1.1, 2.1.2 and 3. The relevant invoices and summary were at pages 248 to 278 (cleaning), 286 to 327 (general maintenance) and 328 to 352 (planned maintenance). Mr Parsons said that Peverel instructed local contractors, where possible, for this and other developments under their management. He reviewed their contracts annually, but he did not go out to tender unless a contractor asked for an increase, or if a contractor's work was not up to standard

105. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item

106. *The Tribunal's decision*

107. The Tribunal finds that :

- a. the lease permits these categories of expenditure to be included in the service charge
- b. the charges have been reasonably incurred and are reasonable in amount
- c. these items are payable by the Respondent by way of service charge

Guard cameras

108. At the directions hearing on 9 May 2014 the Tribunal indicated that Mr Lancaster would have to check the invoices, when received, to see if this item was in fact included in the two service charge demands in issue before the Tribunal

109. At the hearing on 26 November 2014, Mr Rankohi said that

there had been no charge for this item in the relevant service charge year

110. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item

111. *The Tribunal's decision*

112. The Tribunal finds that the Tribunal's attention has not been drawn to any item in the service charge for the relevant year relating to this item

Contingency fund £11377.29

113. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that the Respondent had not set out any basis for challenging the payability or reasonableness of this item. The costs had been reasonably incurred and were reasonable in amount

114. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted this item to be included in the service charge by virtue of the fourth schedule paragraph 1.2.14. The accounts (at page 188) showed the balance in the contingency fund, comprising contingency fund contributions from the service charge and additional contingency fund contributions from sales etc under the provisions in the lease in the fifth schedule paragraphs 10.4 and 10.5 and the fourth schedule paragraph 10. Mr Parsons said that the amount of the service charge contribution to the contingency fund was assessed using the experience gained from managing this and other developments

115. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item

116. *The Tribunal's decision*

117. The Tribunal finds that :

- a. the lease permits contributions to a contingency fund to be included in the service charge
- b. the figure charged is reasonable in amount
- c. this item is payable by the Respondent by way of service charge

Redecoration fund : £5000

118. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that the Respondent had not set out any basis for challenging the payability or reasonableness of this item. The costs had been reasonably incurred

and were reasonable in amount

119. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted this item to be included in the service charge by virtue of the fourth schedule paragraph 1.2.14. The accounts (at page 187) showed the balance in the redecoration fund

120. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item

121. *The Tribunal's decision*

122. The Tribunal finds that :

- a. the lease permits contributions to a redecoration fund to be included in the service charge
- b. the figure charged is reasonable in amount
- c. this item is payable by the Respondent by way of service charge

Audits : £620.10

123. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that the Respondent had not set out any basis for challenging the payability or reasonableness of this item. The costs had been reasonably incurred and were reasonable in amount

124. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted this item to be included in the service charge by virtue of the fourth schedule paragraphs 1.2.5 and 5.5. The relevant invoice and summary were at pages 356 to 357

125. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item

126. *The Tribunal's decision*

127. The Tribunal finds that :

- a. the lease permits this category of expenditure to be included in the service charge
- b. the charge has been reasonably incurred and is reasonable in amount
- c. this item is payable by the Respondent by way of service charge

House manager council tax : £1328.85

128. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that the Respondent had not set out any basis for challenging the payability

or reasonableness of this item. The costs had been reasonably incurred and were reasonable in amount

129. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted this item to be included in the service charge by virtue of the fourth schedule paragraph 1.2.6. The relevant invoice and summary were at pages 246 to 247

130. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item

131. *The Tribunal's decision*

132. The Tribunal finds that :

- a. the lease permits this category of expenditure to be included in the service charge
- b. the charge has been reasonably incurred and is, after the adjustments shown on the summary at page 246, the amount charged by the local authority
- c. this item is payable by the Respondent by way of service charge

Guest room and business use of lounge

133. At the directions hearing on 9 May 2014 :

- a. Mr Lancaster said that the sum in dispute was included in the general maintenance figure of £2458.15 in the schedule attached to Mr Rankohi's letter dated 23 April 2014, and was in the context of income from the lounge
- b. Mr Rankohi said that the income from the lounge was shown in the accounts as reducing the service charge

134. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted general maintenance in this respect to be included in the service charge by virtue of the sixth schedule paragraph 3. The relevant invoices and summary were at pages 286 to 327. The income from the guest room, namely £2705, was shown in the accounts at page 186

135. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item

136. *The Tribunal's decision*

137. The Tribunal finds that the general maintenance item of service charge, namely £2458.15, is payable by the Respondent by way of service charge for reasons already given under the heading "Weekly cleaning contract : cleaning and materials £5513.75, general maintenance £2458.15, and planned maintenance £3215.77", and that

income from the guest room, namely £2705, is shown in the accounts

Apartment smoke alarms

138. At the directions hearing on 9 May 2014 Mr Lancaster said that there was no specific sum in the service charge demands in that respect, but he suspected that the cost of this item was included in the fire/smoke figure of £1312.40

139. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that Respondent had not set out any basis for challenging the payability or reasonableness of the fire/smoke figure of £1312.40. The costs had been reasonably incurred and were reasonable in amount

140. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted the fire/smoke item to be included in the service charge by virtue of the fourth schedule paragraph 1.2.3. The relevant invoices and summary were at pages 279 to 282. Mr Parsons said that each flat had a smoke detector, which also triggered a general building alarm

141. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item

142. *The Tribunal's decision*

143. The Tribunal finds that :

- a. the lease permits a charge for fire/smoke to be included in the service charge
- b. the charge for fire/smoke has been reasonably incurred and is reasonable in amount
- c. the fire/smoke cost of £1312.40 is payable by the Respondent by way of service charge

Ground floor redecoration

144. At the directions hearing dated 9 May 2014 Mr Lancaster said that he thought that the cost of this item had been incurred in June or July 2013

145. At the hearing on 26 November 2014, Mr Rankohi said that there was no expenditure in the relevant service charge year in relation to this item, although the service charge for that year did include a contribution to the redecoration fund, as already mentioned

146. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item

147. *The Tribunal's decision*

148. The Tribunal finds that the Tribunal's attention has not been drawn to any item in the service charge for the relevant year relating to this item, apart from the redecoration fund contribution item dealt with earlier in this decision

Sundry items and purchases by the house manager and area manager : sundry expenses and petty cash £396.84 and general maintenance £2458.15

149. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that the Respondent had not set out any basis for challenging the payability or reasonableness of either of these items. The costs in each case had been reasonably incurred and were reasonable in amount

150. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted these items to be included in the service charge by virtue of the fourth schedule paragraphs 1.2 and 1.2.9. The relevant invoices and summary were at pages 219 to 245

151. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item

152. *The Tribunal's decision*

153. The Tribunal finds that :

- a. the lease permits these categories of expenditure to be included in the service charge
- b. the charges have been reasonably incurred and are reasonable in amount
- c. these items are payable by the Respondent by way of service charge

Main soil pipe structural failure

154. At the directions hearing dated 9 May 2014 Mr Lancaster said that the cost of this item was not in dispute as such, but that the issue was whether the lease allowed this item to be included in the service charge

155. At the hearing on 26 November 2014, Mr Rankohi said that he was not sure whether there had even been a charge for this item in the year in question, but submitted that, even if there had, the lease permitted such an item to be included in the service charge by virtue of the fourth schedule paragraph 1.2.7, and the sixth schedule paragraph

2.1.3

156. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item
157. *The Tribunal's decision*
158. The Tribunal finds that :
- a. the lease permits this category of expense to be included in the service charge
 - b. however, that the Tribunal's attention has not been drawn to any item in the service charge for the relevant year relating to this item

Water soakaway and car park subsidence

159. At the directions hearing dated 9 May 2014, Mr Lancaster said that he did not know whether the cost of this item fell within the period covered by the two service charge demands which were within the Tribunal's jurisdiction in this case
160. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted these items to be included in the service charge by virtue of the fourth schedule paragraph 1.2.7, and the sixth schedule paragraph 2.1.4. The relevant invoices and summary were at pages 191 to 218. He said that the general repairs charge included an invoice at page 293 which was probably this item
161. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item
162. *The Tribunal's decision*
163. The Tribunal finds that :
- a. the lease permits this category of expenditure to be included in the service charge
 - b. the only items of expenditure in this respect to which the Tribunal's attention has been drawn, namely those identified by Mr Rankohi, have been reasonably incurred and are reasonable in amount
 - c. those items are payable by the Respondent by way of service charge

Roof problems

164. At the directions hearing dated 9 May 2014, Mr Lancaster said that he did not know whether the cost of this item fell within the period covered by the two service charge demands which were within the

Tribunal's jurisdiction in this case

165. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted this item to be included in the service charge by virtue of the sixth schedule paragraph 2.1. The relevant invoices and summary were at pages 191 to 218. The only two costs relating to the roof which he had been able to find in the relevant service charge year were an item for guttering (at page 312) and an item relating to a bird's nest (at page 316)
166. Mr Lancaster conceded that there was nothing in his defence or his letter dated 6 April 2014 relating to this item
167. *The Tribunal's decision*
168. The Tribunal finds that :
- a. the lease permits this category of expenditure to be included in the service charge
 - b. the only items of expenditure in this respect to which the Tribunal's attention has been drawn, namely those identified by Mr Rankohi, have been reasonably incurred and are reasonable in amount
 - c. those items are payable by the Respondent by way of service charge

Administration and management charges : £14892.50 plus VAT

169. At the directions hearing on 9 May 2014, Mr Lancaster stated that part of his challenge to this item was failure to manage the water supply properly, and security and unauthorised entries to private homes
170. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that the Respondent had not set out any basis for challenging the payability or reasonableness of this item. The costs had been reasonably incurred and were reasonable in amount
171. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted this item to be included in the service charge by virtue of the fourth schedule paragraphs 1.2.5, 1.2.8, and 1.2.9. The relevant invoice was at page 355. In relation to the water supply, the mains water supply was to a tank, from which a supply ran to each flat. Peverel was only the managing agent, and had had no power to alter the way in which the original developer had installed the water supply. The allegation about security had not been particularised and Mr Rankohi could not comment on it
172. Mr Lancaster said that the evidence he wished to rely on was

contained in the documents listed in his defence and referred to in his letter dated 6 April 2014. However, the Tribunal indicated that he had not submitted the documents themselves, despite the directions dated 9 May 2014 requiring him to submit any documents he wished to reply on. Mr Lancaster said that he could not be expected to have copied them at his age, particularly as he had no copying facilities. Mr Rankohi had them and should have included them in his bundle. However, the Tribunal indicated that the directions dated 9 May 2014 had given Mr Lancaster ample opportunity to provide any documents he wished to rely on, and the Tribunal would now be taking account only of those documents actually before the Tribunal, namely those in the hearing bundle provided by the Applicant

173. The Tribunal put it to Mr Rankohi that the charges of £14892.50 plus VAT equated to about £275 a flat plus VAT, which was at what the Tribunal regarded as the top end of the scale for management charges, particularly bearing in mind that there was a full time House Manager on site dealing with day-to-day matters. Mr Parsons said that the fee charged was a reasonable fee for the very high level of service provided. Retirement sites required a top-level service

174. *The Tribunal's decision*

175. The Tribunal finds that :

- a. the lease permits this category of expenditure to be included in the service charge
- b. the charge has been reasonably incurred and, although high in amount, and at what the Tribunal regards as being at the top end of the scale for such charges, is reasonable in amount for the high level of service described by Mr Rankohi and Mr Parsons
- c. this item is payable by the Respondent by way of service charge

House manager's flat rental : £11354

176. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that the Respondent had not set out any basis for challenging the payability or reasonableness of this item. The costs had been reasonably incurred and were reasonable in amount

177. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted this item to be included in the service charge by virtue of the fourth schedule paragraph 1.2.11, and the sixth schedule paragraph 7. He apologised for having inadvertently omitted the invoices from the bundle, but said that he had sent them, with all the other documents, to Mr Lancaster in accordance with the Tribunal's directions dated 9 May 2014. He had brought the invoices to the hearing, and was now applying for them to be admitted in evidence

178. In answer to questions from the Tribunal, Mr Lancaster very fairly and properly confirmed that he had received the invoices from Mr Rankohi some time ago, and had no objection to them now being admitted in evidence
179. The Tribunal arranged for the invoices to be copied and placed on the Tribunal file
180. Mr Lancaster also very fairly and properly confirmed that he was not challenging the figure of £11354 as such, but was challenging the need for a resident house manager, rather than an external house manager. The lease had been compiled by the developer some years ago, and was based on an outdated approach to house managers. Many developments no longer had resident house managers, in the light of current sophisticated care line systems. Oakhurst's own care line system "kicked in" after the house manager's working hours in any event
181. Mr Rankohi said that the Applicant had decided to retain the resident house manager arrangement contemplated by the lease. He submitted that the test for the Tribunal was not whether an off-site house manager would be cheaper, but whether the Applicant's decision to retain the resident house manager arrangement contemplated by the lease was a reasonable decision. He submitted that it was indeed a reasonable decision, as it provided the leaseholders with a top-level service over and above that which would be available if an off-site house manager arrangement were introduced
182. The Tribunal indicated that when discussing its decision after the hearing, the Tribunal would take account of the analogous line of decided cases dealing with the question whether a landlord's choice of insurer was a reasonable decision in the ordinary course of business, despite a tenant providing evidence of cheaper cover
183. Mr Rankohi also asked the Tribunal to take account of the decision in **London Borough of Havering v MacDonald** at page 113
184. *The Tribunal's decision*
185. The Tribunal finds that :
- a. the lease permits this category of expenditure to be included in the service charge
 - b. the charge has been reasonably incurred, and, in making that finding, the Tribunal has taken into account Mr Lancaster's submission that there was no need nowadays for a resident house manager; however, the Tribunal accepts that the Applicant had made a properly informed decision to continue with the resident house manager arrangement contemplated by

the lease, and finds that that decision was a decision reasonably made in the ordinary course of business; on the other hand, the Tribunal expects that if a sufficient number of residents express the view that an off-site house manager would be preferable, the Applicant will take those views into account when deciding whether to continue with the current arrangement in the future

- c. Mr Lancaster has indicated that the figure of £11354 is not in issue before the Tribunal
- d. this item is payable by the Respondent by way of service charge

Service charge item 1 March 2013 £1450.04

186. The Respondent stated at paragraph 9(d) of his defence to the County Court proceedings (starting at page 23) that he had paid £1450.04 for the service charge for March to September 2013, but the agents had refused the payment

187. The Applicant stated in its statement of case dated 19 August 2014 (starting at page 87) and in its schedule (starting at page 138) that the Respondent had not set out any basis for challenging the payability or reasonableness of this item. The item was a budgeted figure, it was a reasonable and realistic budget, and was reasonable in amount

188. At the hearing on 26 November 2014, Mr Rankohi submitted that the lease permitted budgeted service charges to be demanded on account by virtue of the fourth schedule paragraph 4.1. The relevant budget was at page 358. Mr Parsons said that he calculated the budget by looking at the likely expenditure for the forthcoming year under each cost heading. He then held a consultation meeting with residents, which was normally well attended, about 2 months before the final version of the budget was published. The total budgeted expenditure for the relevant year was £112136, which was less than the budgeted figure for the previous year. The figure of £1450.04 represented Mr Lancaster's service charge proportion of one half of £112136

189. In answer to a question from the Tribunal, Mr Lancaster said that he did not dispute the budgeted figure of £1450.04 as a reasonable budgeted figure, but that he reserved the right to apply to the Tribunal under section 27A of the 1985 Act in relation to the actual costs once the service charge account for that year had been published

190. *The Tribunal's decision*

191. The Tribunal finds that :

- a. the lease permits advance budgeted service charges to be payable
- b. Mr Lancaster has indicated that the charge of £1450.04 is not in issue before the Tribunal as a budgeted figure, whilst reserving the right to apply to the Tribunal under section 27A of the 1985 Act in relation to the actual costs once the service charge account

- for that year had been published
- c. this item is payable by the Respondent by way of service charge

Costs

192. At the directions hearing on 1 October 2014 the Applicant applied for an order that the Respondent be ordered to pay the Applicant's costs of and occasioned by the Respondent's application to lift the bar
193. However, at the hearing on 26 November 2014, Mr Rankohi withdrew that application and said that, instead, the Applicant would be seeking costs in the county court proceedings and by way of the service charge under the lease

Transfer back to the County Court

194. The Tribunal now transfers this matter back to the County Court

Appeals

195. A person wishing to appeal against this decision 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
196. 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
197. 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 admit the application for permission to appeal
198. 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 which the person is seeking

Dated 3 December 2014

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Judge P R Boardman
(Chairman)