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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HN/LIS/2014/0073
Property	:	11 Admiral's Walk, West Cliff Road, Bournemouth BH2 5HH
Applicant	:	Mr K Dixon and Mr D Bell Mrs R Shelton (joined party)
Representative	:	Mr K Dixon
Respondent	:	Admirals Walk 2000 Limited
Representative	:	Mrs Lacey-Payne of Napier Management Services Limited
Type of Application	:	Service charges
Tribunal Member(s)	:	Judge Tildesley OBE Mr D Banfield FRICS Mr J Mills
Date and Venue of Hearing	:	2 July 2015 at Poole Tribunals Centre
Date of Decision	:	25 August 2015

DECISION

Decisions of the Tribunal

1. The Tribunal determines the costs expended on 24 hours porterage for years 2010 to 2014 were reasonably incurred and that the services of the porters were carried out to a reasonable standard. The Tribunal further determines that the budgeted charge for porters' wages of £98,000 for 2015 and 2016 was reasonable.

2. The Tribunal determines that the sums expended on professional fees in the years 2010 to 2014 (inclusive) were reasonably incurred and the services provided were to a reasonable standard.

3. The Tribunal determines the Applicants have not established their assertion that the Respondent was responsible for increased maintenance costs arising from its alleged failure to spend budgeted resources.

4. This Tribunal endorses the decision of the previous Tribunal that the Respondent was not permitted to charge a notional rent of £7,200 for the staff flat through the service charge for the year ended 24 March 2010.

5. The Tribunal determines that the insurance charge for the year ended 24 March 2012 was reasonably incurred.

6. The Tribunal determines that the Respondent was entitled under the terms of the lease to demand a contribution of £91,368 towards the costs of the repairs to the roof and catwalk by means of a special levy.

7. The Tribunal does not make an order under Section 20C of the Landlord and Tenant Act 1985.

The Application

8. The Applicants sought a determination in respect of service charges for the years ended 24 March 2010, 2011, 2012, 2103, and 2014 and the estimated service charge for the years ending 24 March 2015 and 2016.

9. The Applicant also requested an order for the limitation of the landlord's costs in the proceedings under Section 20C of the Landlord and Tenant Act 1985.

10. The parties attended a mediation session on 22 January 2015 which was not successful.

11. A case management hearing took place on 16 April 2015 by means of a conference call. The participants on the conference call were Mr Kevin Dixon for the Applicants and Mrs Aileen Lacey-Payne and Mrs Kim Head of Napier Management Services for the Respondent. Mr George Murphy, Mr Allan Hudson and Mr Tim Watts directors of the

Respondent were also present. The Tribunal issued directions to progress the application. The hearing was fixed for the 2 July 2015.

12. Mrs Rosemary Shelton was added as an applicant to the proceedings. Mrs Shelton was the secretary of the Residents Association for Admirals Walk.

13. The Tribunal heard the application on 2 July 2015. Mr Dixon and Mrs Shelton presented the case on behalf of the Applicants. Mrs Lacey-Payne represented the Respondent. Mrs Head and Mr Hudson were also in attendance on behalf of the Respondent. A number of leaseholders were present at the hearing. Some of whom were allowed to speak at the hearing.

14. The Respondent prepared an agreed bundle of documents. References to the bundle are in [ ].

15. Judge Tildesley and Mr Banfield inspected the property on 25 June 2015 which was in connection with a related application brought by the Respondent for a determination of the reasonable costs for proposed major works to the balconies to the flats. The Tribunal released its decision in respect of that matter on 22 July 2015 under reference number CHI/00HN/LSC/2015/0024. The Tribunal determined the costs of £549,000 plus VAT and of £242,954 plus VAT for the replacement of balcony rails in stainless steel and the re-waterproofing of balcony slabs respectively were reasonable and payable in advance.

The Issues

16. The disputed issues were set out in the Application form:

- The costs of the porters for the years ended 24 March 2010 to 2016 (inclusive).
- Professional fees for the years ended 24 March 2010 to 2014 (inclusive).
- End of year surplus for years ended 24 March 2010 to 2013 (inclusive).
- Rent of staff flat for year ended 24 March 2010.
- Insurance for the year ended 24 March 2012.
- The authority under the lease to raise a special levy for the costs of repair to the roof and catwalk in the sum of £98,510 for the year ended 24 March 2013.
- Whether an order should be made under section 20C of the 1985 Act.

The Property

17. The property was built around 1963 and constructed of pre-cast concrete frames with concrete floors, landings and external stairways under a flat bitumen roof. The building was divided into three linked blocks known as "West", "Centre" and "South return". The building contained 121 flats of various dimensions divided over 13 floors with basement car parking and storage areas. Additional car parking was provided at the front and sides of the site. The property was set in its own grounds in a prominent position on Bournemouth's West Cliff with the flats on the higher floors having panoramic views of Poole Bay and beyond.

18. There were no internal staircases in the property. Access was gained to the upper floors by four resident's lifts and three service lifts. There was internal access and egress between the blocks only on floors 2, 5, 8 and 11. The property has three external fire escapes which can be accessed by "push-bar to open" fire exit doors. At the time of the inspection repairs were being done to the external staircase on the north-east flank of the building.

19. The property has 24 hour porterage with the Head Porter living on site. All visitors and contractors reported to the porter's office which was located in the lobby of the main-entrance. The porters have access to CCTV which covered main reception and "South return" entrance lobby. The porters control the movement in and out of the "South return". The property did not have an entry-phone system.

The Lease

20. On 31 July 2002 a group of participating leaseholders purchased the freehold reversion from the then freeholder, Flagship Estates Limited. As part of the enfranchisement process, the leaseholders also purchased one of the vacant flats in the building, which was to be used for the Head Porter's living accommodation. The participating leaseholders numbered 112 which left eight non-participants on original leases. The participating leaseholders having by surrender and re-grant extended their own leases for a 999 year term.

21. There were, therefore, two forms of leases in existence at the property. The principal difference between them was under the old lease, the service charge was collected in arrears.

22. The lease for Flat 11 which was the subject of this application was of the new form dated 5 August 2004 and made between Admirals Walk 2000 Limited of the one part and Margaret Mary Knowles of the other part for a term of 999 years starting on 1 September 2002.

23. Under clause 3 of the lease the tenant agrees with the landlord to pay the service charge in accordance with the Third schedule on the dates stated there.

24. The Third schedule states as follows as far as is relevant to this application:

> 1. "Service costs means the Landlord spends in carrying out all the obligations imposed by and in exercising all the rights contained in this lease (other than the covenant for quiet enjoyment) and not reimbursed in any other way including the cost of borrowing money for that purpose.
>
> Tenant's service charge proportion means 1 per cent
>
> "estimated service costs" means the sum which the Landlord or its authorised agent reasonably estimates and certifies in writing to be the sums to be expended and liabilities to be incurred by the Landlord .....during the twelve months following the 25th day of March in each year ("the maintenance year") of and incidental to the management maintenance administration and all other expenses of the Landlord and of the maintenance and insurance of the building.....
>
> "special levy" means the cost of performing the Landlord's obligations imposed by this lease and not included in the estimated service costs.
>
> 2. Not applicable
>
> 3. On each quarter day the Tenant to pay the Landlord a quarterly payment on account of the Tenant's service charge proportion of the estimated service costs.
>
> 4. If requested to pay the Landlord the Tenant's service charge proportion of a special levy within twenty one days after being given such a request".

25. The Fourth schedule sets out the services to be provided by the landlord. Paragraph 1 covers the landlord's repairing obligations. Paragraphs 4 and 5 concern repairing, heating, lighting and cleaning of the common parts.

26. Paragraph 9 to the Fourth schedule provides as follows :

> "Improving the building, the common parts and the grounds or any services supplied thereto and providing such additional services for the benefit of the Tenant and the occupiers of the other flats in the building as the landlord shall from time to time think fit and generally in managing and maintaining the building as a block of first class residential flats".

27. Clause 4.4(i) to the lease enables the landlord in providing the services in the Fourth schedule to engage the services of whatever porters,

employees, agents, contractors, consultants and advisers the landlord considers necessary for the proper maintenance of the building as a block of first class residential flats and may provide any employee with suitable residential accommodation in the building.

28. Under clause 4.2 of the lease the landlord agrees with the tenant to insure the building subject to the conditions set out in clause 4.2(b).

The Issues

The costs of the porters' wages for the years ended 24 March 2010 to 2016

29. The amounts in dispute were £108,318 (2010), £106,279 (2011), £110,881 (2012), £113,893 (2013), £104,670 (2014), £98,000 estimated (2015) and £98,000 estimated (2016). Mr Dixon and Mr Bell contribute one per cent of the service charge allocated to expenditure on the porters.

30. Under clause 4.4(i) the Respondent is entitled to employ porters in order to discharge the services provided under the Fourth schedule to the lease, and to recover the employment and accommodation costs through the service charge by virtue of the Third schedule.

31. Mr Dixon argued the residents had not received a quality service from the porters, and that the amount charged for porterage was excessive. Mr Dixon stated the porters were not appropriately managed, and that his partner, Mr Bell, had been subjected to alleged homophobic abuse from at least one of the porters. Mr Dixon suggested the uniformed presence of the porters portrayed an image of a security guard which was not suitable for a property that was held out as a first class residential building.

32. Mr Dixon went through the job description for a porter [171-172] giving examples of where he said the porters were not carrying out their duties to the required standard. Mr Dixon understood that the Head Porter had only be called out of normal hours on five occasions in the last four years, which in his view brought into question the need for a porter to live on site.

33. Mr Dixon said the Respondent had failed to carry out its stated intention to reduce the costs of the porters. Mr Dixon believed the monies expended on the porters could be better spent on the building, particularly in light of the recent cash calls for major works.

34. Mr Dixon questioned the assumption that the building required 24 hour porterage, which he believed to be anachronistic for a modern building. Mr Dixon proposed instead the installation of an entry phone system which would do away with the need for a 24 hour service. Under this arrangement Mr Dixon suggested that two persons should be

employed as porters during the day together with the appointment of a Building Manager who could also carry out low level repair jobs to the building. Finally Mr Dixon stated that the cleaning duties carried out by the current porters could be let out on a contract to a private cleaning company.

35. Mrs Shelton echoed Mr Dixon' comments about the need for a janitor around the building. Mrs Shelton believed the porters spent too much time in the office keeping an eye on the CCTV rather than responding to the needs of the residents. Mrs Shelton considered parts of the building were filthy, particularly the entrances to the garages.

36. Mrs Lacey-Payne reminded the persons present the issue at stake was people's jobs and that their rights under their contracts of employment should be respected. Many of the porters were on the legal minimum hourly rate. After no annual wage rises for a number of years the Respondent had given the porters this year a three per cent increase in salary.

37. Mrs Lacey-Payne acknowledged there had been difficulties between the porters and Messrs Dixon and Bell. Mrs Lacey-Payne added that she held a different perspective from that of Mr Dixon in relation to the nature of the dispute with the porters. Mrs Lacey-Payne pointed out that she had complied with the request of Messrs Dixon and Bell by instructing the porters to have no dealings with them.

38. Mrs Lacey-Payne asserted the Respondents had kept the costs of the porters under active review. Mrs Lacey-Payne said that most of the suggestions made by leaseholders to reduce the costs were not practicable. Mrs Lacey-Payne argued that 24 hour porterage was necessary to meet the particular design and requirements of the building.

39. Mrs Lacey-Payne said the duties of the porters included security of the building, controlling access to it, maintaining the fire system, covering the desk 24 hours a day, cleaning the common areas, and emptying the bins.

40. In October 2009 Messrs Dixon and Bell conducted a survey of leaseholder's views on the services provided by the porters. Messrs Dixon and Bell received 44 completed signed questionnaires. The results of that survey were that 45 per cent of the respondents said that the porter service was very important compared with the 6 per cent who said that it was unimportant. 73 per cent considered the costs of the service important or very important. 54 per cent of the respondents were very satisfied or satisfied with the service from the porters compared with 35 per cent who were unsatisfied or very unsatisfied.

41. In August 2013 as part of a wider consultation exercise Mrs Lacey-Payne on behalf of the Respondent sought the leaseholder's views on the services provided by the porters. The Respondent was particularly

interested in which aspects of the porter's current duties were important to the residents. The Tribunal understands there was only one negative response towards the porters in the 44 completed questionnaires received from the leaseholders.

42. The consultation exercise also involved the invitation of local firms to tender for the cleaning of the common areas of the property and emptying the bins. The amounts of the three tenders received from local firms were £34,364; £37,332; and £63,648 [177-191].

43. The Respondent adduced an e-mail from Mr Woodford, Health, Safety and Fire Consultant, dated 22 August 2013 [201] which addressed the impact of losing 24 hour porterage on fire safety. Mr Woodford stated the building had an addressable fire alarm system which was there to detect a fire in the early stages and would otherwise go unnoticed if there was not 24 hour porterage. According to Mr Woodford, the fire alarm provided a compensatory feature for the various inadequacies in the building including the horizontal and vertical compartmentalisation of the building. Mr Woodford said that in order for the current fire procedures for the building to be effective 24 hour porterage was necessary to oversee the fire panel and to identify early residents who require assistance in evacuating building. Mr Woodford concluded that if the porters were removed from the site there would be inadequate fire safety procedures at the building.

44. Dr Cooper[1] who attended the hearing produced a letter from Andrew Fox, Head of Fire Safety of Dorset Fire and Rescue Service (DFRS) dated 29 April 2015 which said

> "It is not for DFRS to make a decision on these long term arrangement (night porters and fire regulations) but it appears that these porters are part of the fire strategy and most certainly the fire risk assessment for the building with fire alarms being monitored in the porter's office. If a decision is made to remove control measures such as this then additional controls may need to be put in place in compensation".

45. There was clear evidence in the bundle supporting the Respondent's contention that it had kept under review the sums expended on the porters. In March 2009 when Dr Cooper was on the management board, the Respondent made proposals to alter the arrangements for the 24 hour porterage which would have reduced the costs from £123,000 to just over £90,000. Although these proposals were not adopted, the costs of the porterage were contained at £108,000 and £106,000 for the next two years. In December 2010 Ms V Wright, the acting Chairman, in her report to the annual meeting expressed the view that the Respondent had now reached the optimum level of

[1] The Tribunal permitted Dr Cooper to speak at the hearing. The parties did not object. Dr Cooper had represented the leaseholders at the hearing held the previous week on the major works to the balconies.

porters, and that no further studies on staffing levels should be carried out.

46. Contrary to the indication given by Ms Wright, the present board carried out another review of the porters in 2013 which resulted in the redundancy of one porter and a reduction in hours for another porter. These changes left a complement of three porters including the Head Porter covering the hours of 0800-1600 Monday to Friday, one porter for each shift of 1600-2400 and 0000-0800 Monday to Friday, and one porter for each of the eight hour shifts on Saturdays and Sundays.

47. In addition the Respondent engaged the services of an independent HR consultant to conduct the redundancy consultation process for the porters, and to draw up contracts of employment, and an employee handbook which included details of the employment and benefits, a code of conduct and a suite of policies and procedures including disciplinary and grievance. The services of the HR consultant have been retained to handle any ongoing employment issues. All complaints made against porters are reported directly to the Board. The Tribunal understands the application of modern employment practices have resulted in reductions in overtime and holiday cover costs for the porters.

48. The charge for 24 hour porterage for the year ending March 2015 was said to be £97,800, almost £7,000 less than the previous year's charge. The costs of the HR consultant in 2015 were approximately £1,000.

49. The decision for the Tribunal is whether the costs expended on 24 hours porterage for years 2010 to 2015 were reasonably incurred and whether the services of the porters were carried out to a reasonable standard. The decision in respect of 2016 is whether the proposed charge (£98,000) was of an amount no greater than was reasonable.

50. The Tribunal starts with the Applicants' proposition that 24 hour porterage was not required and that some of the monies spent on the porters could have been applied towards the mounting maintenance costs of the building.

51. The Tribunal finds that 24 hour porterage was a necessary and essential part of the building's infrastructure. The Tribunal formed the view the building's design of three high blocks rising to 13 floors with external fire escapes, no internal staircase and no door entry system meant that it could not function as a safe and secure residential property without the presence of porters 24 hours every day.

52. The Tribunal observes that 24 hour porterage has been a permanent feature at the building since its construction which gives added support to the finding that the original design of the building envisaged having 24 hour porterage in place.

53. The Applicants adduced no evidence challenging the statement of Mr Woodford about the deleterious effect on fire safety if the porters' presence was diminished. Similarly the Applicants presented no plausible proposals for the installation of a door entry system. The Applicants' suggestion of a building manager, two day porters, and a door entry system was not costed and did not address the safety and security issued posed by the design of the building.

54. The Tribunal considers the two surveys of leaseholder's views conducted by Messrs Bell and Dixon in October 2009 and more recently in October 2013 by the current managing agents as the most reliable evidence of the standard of service provided by the porters. Those surveys showed the majority of leaseholders valued the services of the porters, and thought they did a good job. Mr Dixon in his evidence relied on individual dealings with the porters which clearly were upsetting to him and his partner, Mr Bell. Whatever the merits or otherwise of those incidents, the Tribunal is satisfied that taking the evidence as whole the services provided by the porters was of a reasonable standard. The Tribunal also considers the recent changes to the porter's conditions of employment, and the publication of the employee handbook will help in providing a transparent and consistent level of service from the porters.

55. The Tribunal finds the Respondent had kept the expenditure on the porters under control and had recently found savings by reducing the number of porters and by regularising their employment conditions. The Respondent had examined other possibilities of reducing the costs including inviting tenders for cleaning the common-ways and emptying the bins. The Tribunal is satisfied on the evidence that a cleaning tender with an outside contractor was likely to add to the costs rather than reduce them. The Tribunal considers the scope for further efficiency savings in the porters' budget was severely limited, and that the current roster appeared to be the minimum to maintain 24 hour porterage and the cleaning of the building.

56. The Tribunal concludes that 24 hour porterage was essential to keep the property safe and secure and that the porters provided a reasonable standard of service. The Applicants had proposed no plausible alternative arrangement to take the place of 24 hour porterage. The Respondent had been diligent in keeping the costs of 24 hour porterage under control, and had made appropriate savings. The Tribunal is satisfied that the costs were reasonable.

57. The Tribunal determines the costs expended on 24 hours porterage for years 2010 to 2015 were reasonably incurred and that the services of the porters were carried out to a reasonable standard. The Tribunal further determines that the proposed charge of £98,000 for 2016 was reasonable and equated with the actual expenditure on 24 hour porterage for 2015.

Professional fees for the years ended 24 March 2010 to 2014 (inclusive).

58. The costs in dispute were £17,382 (2010), £11,409 (2011), £13,368 (2012), £28,300 (2013) and £12,498 (2014).

59. Clause 4.4(i) of the lease enables the landlord in providing the services in the Fourth schedule to engage the services of agents, contractors, consultants and advisers the landlord considers necessary for the proper maintenance of the building as a block of first class residential flats.

60. Napier took over the management of the property in March 2013. The costs on professional fees in the years 2010 to 2013 were incurred on the watch of Foxes, the previous managing agent. The costs for 2010-2013 were spent on fees for a range of building consultancy work which in the vast majority of cases was undertaken by Building Consultancy Bureau (BCB).

61. The Respondent produced detailed analysis of the expenditure of professional fees in the years 2010-2013 which identified each expenditure item by date, brief description, cost and recipient. The notes from the accountant for the year 2012 said that the fees were incurred on numerous building inspections and site visits, meetings for cladding work, water ingress and organising tender procedures for work to be done.

62. The expenditure of £12,498 on professional fees for 2014 comprised £2,161 HR consultant, £775 payroll, £7,860 surveys, £521 legal, £216 accounts and £965 Napier [202].

63. The Applicants' challenges to the expenditure on the fees for BCB were that the arrangements between Foxes and BCB were loose, and the work was of questionable value. The Applicants made no substantive observations on the 2014 expenditure.

64. The Applicants did not dispute the fact that the expenditure had been incurred and was authorised by the terms of the lease. The Applicants adduced no evidence to suggest that the fees charged for specific jobs were excessive.

65. The Tribunal formed the view there was no substance to the Applicants' challenge to the professional fees incurred in the years 2010-2014. Essentially the Applicants' case was more of fishing expedition rather than a serious objection to the charges incurred.

66. The Tribunal is satisfied that the sums expended on professional fees in the years 2010 to 2014 (inclusive) were reasonably incurred and the services provided were to a reasonable standard.

End of year surplus for years ended 24 March 2010 to 2013 (inclusive).

67. The end of year surplus before charging was £104,553 (2010), £102,186 (2011), £175,191 (2012) and £144,885 (2013).

68. The actual surplus or deficit for each year after contribution to reserve fund and deficit brought forward was (£42,334) (2010), £16,319 (2011), £72,130 (2012), and £98,510 (2013)

69. The Respondent refunded the accumulated service charge as at 24 March 2012 to all lessees on 14 December 2012. The surplus of £98,510 for 2013 was also credited to the lessees' accounts but then recovered back through a special levy as a contribution towards the costs of the repairs to the cat-walk and roof.

70. The Applicants argued the Respondent's failure to spend budgeted resources on the maintenance of the building had been to the detriment of all leaseholders which had resulted in increased costs as represented by the special levies in 2013 and 2014.

71. The Tribunal is not persuaded by the Applicants' proposition. The reality was that there was no effective surplus until the 2012 accounts. The Respondent was obliged to return the 2012 surplus as there was no express provision in the lease allowing the Respondent to retain unspent monies not allocated to reserves. The Applicants also failed to bring evidence quantifying the alleged increased costs of maintenance they said was due to the Respondent's failure to spend budgeted resources.

72. The Tribunal determines the Applicants have not established their assertion that the Respondent was responsible for increased maintenance costs arising from its alleged failure to spend budgeted resources.

Rent of staff flat for year ended 24 March 2010.

73. In the year ending 24 March 2010 the Respondent charged £7,200 to the service charge account for the notional rent of the flat let to the Head Porter.

74. On 24 November 2010 a previous Tribunal held in *Mr and Mrs Howley and others v Admirals Walk 2000 Ltd* (Tribunal ref. LON/00HN/LSC/2009/0608 at paragraph 47:

> "..... although the lease allows for the cost of a porter including the accommodation, there is nothing that permits the landlord to charge a notional rent through the service charge".

75. The Respondent accepted the decision of the previous Tribunal and this Tribunal understands the Respondent has returned the sum charged as notional rent in the 2010 accounts to the leaseholders.

76. This Tribunal endorses the decision of the previous Tribunal that the Respondent was not permitted to charge a notional rent of £7,200 for the staff flat through the service charge for the year ended 24 March 2010.

77. In 2011 the Respondent set up a wholly owned subsidiary, Admirals Walk Porters Flat Limited, for the purpose of acquiring the leasehold interest in the porter's flat. The subsidiary charged the Respondent rent of £7,200 for use of the flat in the year ended 24 March 2013. This arrangement was not caught by the previous Tribunal's decision because it was not a notional rent. The Tribunal understands that the Respondent has not continued this arrangement after 2013 because of the costs of running two companies, and that the leasehold for the flat has been returned to the parent company (the Respondent). Despite the somewhat artificial nature of the arrangement the Tribunal sees no grounds under the terms of the lease for the sum to be disallowed.

Insurance for the year ended 24 March 2012.

78. The Applicants stated that the insurance charged in the 2012 accounts of £99,691 was almost double the charge in the 2011 accounts of £50,621 and in the 2013 accounts of £56,215. The Applicants argued that on the face of it the insurance charge for 2012 was unreasonable.

79. Mrs Lacey-Payne pointed out that the 2012 charge was incurred when Foxes managed the property. Mrs Lacey-Payne stated the charge of £99,691 included the 25 per cent commission charged by Foxes. Mrs Lacey-Payne pointed out the Respondent had challenged the amount of commission and received a refund of £10,000 from Foxes which reduced the sum charged for insurance to £89,745.95. The Respondent had repaid the £10,000 to the service charge account

80. According to Mrs Lacey-Payne, the reason for the increased premium in 2012 was because of the Respondent's claims history which apparently had produced a loss ratio in excess of 125 per cent for the previous five years. Mrs Lacey-Payne said that when Napier took over the management of the property the Respondent undertook a revaluation of the property which resulted in a significantly lower premium for 2013.

81. The Tribunal also identified at the hearing that the 2012 charge covered a longer period than the 12 months up to 24 March 2012.

82. The Applicants did not challenge the evidence given by the Respondent on the insurance charge.

83. The Tribunal is satisfied that the Respondent has supplied a plausible explanation for the higher insurance charge for 2012. In those circumstances the Tribunal determines that the insurance charge for the year ended 24 March 2012 was reasonably incurred.

The Authority under the lease to raise a special levy for the repair costs to the roof and catwalk in the sum of £98,510 for the year ended 24 March 2014.

84. The Applicants' challenge was restricted to whether the Respondent had the authority under the lease to demand a special levy as a contribution towards the costs of the repairs to the roof and catwalk. The Applicants accepted that the works were necessary and they were carried out to a reasonable standard.

85. The question of the Respondent's authority to demand sums by way of special levy was considered by the Tribunal which heard the Respondent's application in connection with the reasonableness of the charges for the proposed works to the balconies on 24 June 2015. The Tribunal determined at paragraphs 65 and 66 (CHI/00HN/LSC/2015/0024):

> "We then turn to the use of the special levy in respect of the 2002 leases. Mrs Lacey-Payne refers to it as bad management but necessary. Whilst we accept that planned expenditure should be included within the service charge as *estimated service costs* and payable quarterly we also accept that this causes cash flow problems in that it is only at the end of the following year that the sum for estimated costs will be received.
>
> Mr Dixon suggests that it is implicit that the levy only relates to expenditure already incurred and we accept that the requirement to pay any demands within twenty-one days may suggest such an interpretation. The Third Schedule definition of *special levy* is simply a cost *not included in the estimated service costs* and the actual wording is not conditional. As such we are reluctant to read into the lease words that do not appear and therefore determine that to demand the costs to be incurred by way of special levy is within the terms of the lease and as such is permitted".

86. This Tribunal adopts the above construction of a special levy within the meaning of the lease as *"a cost not included in the estimated service charge".*

87. The circumstances surrounding the demand for a special levy for the costs of repair to the roof and catwalk arose from a comprehensive review of the works required to the building following the appointment of Napier as the managing agent.

88. On 3 June 2013 Napier wrote to all leaseholders outlining the necessary works to the property which included, amongst other matters, replacement/repair to the main roof and resurfacing of cat walk

surfaces [131-133]. The letter was accompanied by a Notice of Intention to carry out the works in accordance with the statutory consultation procedures. On 2 September 2013 the Respondent issued all leaseholders with a Statement of Estimates in relation to the Proposed Works to the roof and catwalk [137]. The Respondent chose the contractor with the lowest tender which came in at £283,698 including VAT and Napier's section 20 fee [140].

89. The Respondent funded these works by means of a special levy in the sum of £91,368 and a transfer from reserves in the sum of £152,950. The Tribunal understands that the special levy comprised the surplus in the service charge account for the previous year ended 24 March 2013.

90. The Tribunal finds that it was reasonable for the Respondent not to have anticipated the inclusion of expenditure for the roof and the catwalk in the service charge for the 12 months commencing 25 March 2013 because of the change in the managing agent which happened some three weeks before the start of the new financial year. In the Tribunal's view, it was prudent for the Respondent to allow time to the new managing agent to identify the priorities for the maintenance works which it did in the letter to leaseholders dated 3 June 2013.

91. The Tribunal is satisfied from the contents of the letter dated 3 June 2013 that it was necessary to carry out the works to the roof and the cat-walk, and that as the costs of those works were not included in the anticipated service charge for the year ending 25 March 2014 it was permissible for the Respondent to demand a contribution towards the costs by means of a special levy.

92. The Tribunal, therefore, determines that the Respondent was entitled under the terms of the lease to demand a contribution of £91,368 towards the costs of the repairs to the roof and catwalk by means of a special levy.

Whether an order should be made under section 20C of the 1985 Act?

93. The Tribunal is satisfied that clause 4.4 (iv) of the lease gives authority to the Respondent for recovering the costs incurred in connection with the Tribunal proceedings.

94. Clause 4.4 states that

> "To provide the services listed in the Fourth schedule for all the occupiers in the build and in doing so
>
> (1v) the Landlord may take such action actions and proceedings as it considers necessary in connection with the proper performance of its obligations under this lease and in procuring the proper performance by tenants of other parts of the building of provisions in their

respective leases including without prejudice to the generality of the foregoing, actions and proceedings whether in courts, tribunals or otherwise against tenants of other parts of the building even where the Landlord cannot recover the costs from those tenants".

95. Section 20C is concerned with whether the landlord is entitled to recover its costs in connection with the Tribunal proceedings through the service charge. If the landlord is so entitled, the sum claimed for costs is subject to any challenge under section 19 of the 1985 Act on the grounds of reasonableness.

96. The criterion for deciding whether an order under section 20C should be made is whether it is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all the parties as well as the outcome of the proceedings. Under Section 20C the Tribunal is given a power to deprive a landlord of a property right. If the landlord has abused its rights or used them oppressively section 20C is a salutary power, which may be used with justice and equity.

97. In this case the Tribunal is satisfied that the Respondent has not abused its authority under the lease or used its authority oppressively to recover the service charges. In addition the Applicants have not been successful with their application, and the Tribunal has found in favour of the Respondents on all matters under dispute except for the 2010 charge for notional rent. Finally the Respondent is wholly owned in equity by most of the lessees at the property. Thus if an order was made under section 20C the Respondent's costs in connection with the proceedings would in any event have to borne by those lessees.

98. For the reasons given above the Tribunal declines to make an order under section 20C of the 1985 Act.

99. Although the Tribunal did not find in favour of the Applicants' case, the Tribunal acknowledges the Applicants' genuine concerns about the management of the property and the future direction of the Board, which were shared by others living at the Admirals Walk. The Tribunal, on the other hand, recognises the difficult job of the Board and the managing agent in maintaining the property. The Tribunal on the whole is satisfied that the Board was getting to grips with the challenges posed by the property and, in turn, taking decisive action to bring the property up to the required standard.

100. The Tribunal, however, encourages the Board to be mindful of its roots of a company founded by the leaseholders. In this regard the Tribunal was heartened by Mrs Lacey-Payne's undertaking to assist Mrs Shelton with her endeavour to contact leaseholders with a view to inviting them to become members of the Residents Association. The Tribunal considers there are benefits to the Respondent if they deal with a recognised tenant's association.

RIGHTS OF APPEAL

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

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

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

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

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

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

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

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

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