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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
EASTERN REGIONAL OFFICE

Case Reference	:	**CAM/26UG/LSC/2013/0076**
Property	:	**5 & 6 The Clocktower, Goldring Way, Napsbury Park, London Colney, St Albans, Herts AL2 1GF**
Applicant	:	**Peter Anthony Celiz (No 5)** **Mark Novitt (No 6)** **In Person**
Respondent	:	**(1) Countrywide Residential Lettings Limited** **Represented by Ms Daniella Gilbert of Counsel** **Instructed by Mrs Sophie Wisdom** **Leasehold Solicitor with First Respondent** **(2) Crest Nicholson (Eastern) Limited** **Represented by Mr Simon Gwynn of Hurford Salvi Carr, recently appointed managing agent**
Date of Application	:	**26th May 2013**
Type of Application	:	**Section 27A Landlord & Tenant Act 1985** **Determination of reasonableness and payability of service charges**
Tribunal	:	**Tribunal Judge G M Jones** **Mr D S Brown FRICS MCIArb** **Ms C St Clair MBE BA**
Date and venue of Hearing	:	**19th November 2013 at Eastern Regional Office**

DECISION

ORDER

UPON HEARING the Applicants in Person, Counsel for the First Respondent and the Second Respondent through Mr Gwynn of Hurford Salvi Carr Managing Agent

IT IS DECLARED THAT: -

1. The cleaning costs for The Clocktower for the accounting years ending 31st May 2010 to 2012 shall be apportioned as to 75% to Internal Block Costs and as to 25% to External Block Costs in the service charge accounts of the Applicants and as hereinafter set out were reasonably incurred and due contribution in accordance with the proportions allocated by the First Respondent in its original statement of account is payable by each of the Applicants. No finding is made as regards the balances of accounts.

Accounting year	Internal £	External £	Total £
2009-10	438.61	120.82	559.43
2010-11	558.62	186.21	744.83
2011-12	567.10	189.03	756.13

2. The Management Fees as claimed by the First Respondent for the accounting years ending 31st May 2011 and 2012 were reasonably incurred by the First Respondent and are payable by the Applicants as set out below.

Accounting year	Flat 5 £	Flat 6 £
2010-11	142.87	100.31
2011-12	148.11	103.38

3. The First Respondent was entitled in respect of accounting years ending 31st May 2010 to 31st May 2012 to apply pursuant to clause 7.14 of the Applicants' respective leases a nil contribution to freehold properties across the Estate as regards items identified as Leasehold Estate Costs in the service charge accounts.

4. BY CONSENT for 2011-12 the electricity charge for the TV and Satellite TV Aerials in the service charge accounts for The Clocktower shall be £40.00.

5. The Tribunal makes no order either as to party and party costs or under section 20C of the Landlord & Tenant Act 1985.

Tribunal Judge G M Jones
Chairman
5th December 2013

REASONS

0. BACKGROUND

The Property

0.1 The properties in question are two flats in The Clocktower, which was formerly the administration block of a Victorian hospital. The whole hospital site was given planning consent for residential development and in about 2000 Phase 1 of the re-development, the first of six phases, was begun. Leases in Phase 1 run from 2002 onwards. The development has been completed for some time now and includes the conversion of hospital buildings for residential use and the construction of blocks of flats and freehold houses in the extensive grounds of the former hospital. Leaving aside the social housing element of the development, which comprises Phase 2 and which is separately managed by a housing association, there are now 404 private residential units. The private estate is subject to an overall management scheme and is under common management.

0.2 The Clocktower building, dating from circa 1895-1900, is in Phase 4. It lies in its own modest grounds surrounded by iron railings fitted with remote control security gates. It has been converted into four town houses, each with its own separate entrance, and four apartments sharing the original entrance hall and portico. The apartments were all sold and first occupied in the first few months of 2006, by which time a number of other blocks on the Estate were already fully occupied. The flats open directly onto the entrance hall and upper flats have their own internal staircases. The Clocktower, like some other parts of the Estate, has private communal gardens within the security gates. Outside the security fences are extensive landscaped grounds and private roadways to the maintenance of which all leasehold and freehold owners on the Estate contribute through service charges.

The Leases

0.3 All the dwellings in The Clocktower are leasehold. The sample lease is for Apartment 5 and is dated 30 January 2006. It is in a form similar to the leases dealt with in the previous cases hereinafter referred to. The term is 999 years from 31 May 2002 at a rent of £300 per annum (subject to review every 15 years in line with the open market value of all the dwellings in the Block). Estate management is provided by a designated Manager, namely, the First Respondent, employing the services of Countrywide Estate Management, trading as Labyrinth Properties.

0.4 As one might expect, each apartment block has common parts and communal lighting. Schedule 6 of the lease divides service charge costs into 'A Estate costs'; 'B Apartment costs'; and 'C Phase costs'. Phase Costs include the cost of street lighting and the repair and maintenance of entrance gates and railings. Where, as at The Clocktower, there are town houses attached to apartment blocks, the leases provide that 'Apartment costs' (or "Block costs") are divided into internal and external costs. Internal costs are allocated between apartments using the internal common parts, external costs (e.g. bin store cleaning) between all dwellings in the block. There is no express provision setting out the criteria by which Block costs are divided into internal and external block costs, though there are strong indications in the Second and Sixth Schedules, which deal with internal and external block costs in separate

sub-paragraphs.

However, it is common ground that external lighting is now an Estate Cost, while costs associated with the communal TV aerial (used by all dwellings in The Clocktower) are External Block costs.

0.5 The accounting year adopted by the Respondents ends on 31st May. Each unit contributes 1/404 (0.25%) to Estate costs, save as regards costs labelled leasehold costs (not a description used in the leases), which are divided between the 125 leasehold units. Phase 1 contains 102 units, each of which contribute equally (0.98%) of Phase 1 costs. For Phase 4 the figures are 162 units (99 leasehold) and 0.62%. (In Phases 3, 5 and 6, the apportionment is made according to the floor areas of the units.)

0.6 Unfortunately, the service charge proportions under 'B' and 'C' have, by mistake, been reversed. However, common sense prevailed (the error being very obvious) and service charge demands have been calculated according to the intended proportions. Under clause 7.14 of the lease, the Manager (acting reasonably) has power to vary the service charge allocations if it is 'necessary or equitable to do so'. The manner in which this power has been employed to correct and simplify the service charge allocations has been questioned. For example, it may be convenient to amalgamate some block costs into Phase costs; but is it "necessary or equitable" so to do? It might add significantly to management costs were it necessary to keep separate records for each block in Phase 1; but it is clearly reasonably practicable.

0.7 There are other unfortunate errors in the leases. Under the provisions of the Ninth Schedule the landlord is to insure 'the Block' and under clause 2.2 of the Eighth Schedule the leaseholder is to pay the 'Insurance Contribution' mentioned in the Preamble. In clause 1 'the Block' is defined as 'the Building in which the Demised Premises are situate'. The Insurance Contribution for Apartment 5 is 1.56% of the cost to the Lessor of insuring the Block. This proportion is the same as originally assigned in relation to internal apartment costs, which are also defined in the Sixth Schedule by reference to 'the Block'. The current proportion is 1.78%

0.8 It is clear that the figure of 1.56% relates to a larger entity than The Clocktower. It appears to be an apportionment between all leasehold houses and apartments in Phase 4. The managers have approached this issue in a commonsense fashion (by treating insurance as an external block cost), which seems logical and reasonable and does not appear to be challenged by the Applicants. There was some initial confusion in the service charge allocation between internal and external apartment costs; but this now appears to have been mostly (if not entirely) resolved.

0.9 The division of Estate-wide costs (principally street lighting and grounds maintenance) into 'Phase Costs' and 'Estate Costs' was a convenient arrangement during the development period, as it facilitated the allocation of service charges during the phased handover of the Estate to Countrywide. But it undoubtedly involves considerable management time to separate out the costs. Countrywide have suggested that, now that the development is complete and all Phases have been handed over to them, they should employ the power under clause 7.14 to amalgamate Estate and Phase Costs, a course of action which appears to be generally

supported by those leaseholders who have expressed views.

0.10 However, there has been no formal consultation on this issue. The Manager is under a duty when exercising the clause 7.14 power to act reasonably. The Tribunal indicated in a previous case that it was doubtful whether Countrywide could be seen to be acting reasonably were they to make an important change in service charge allocations without due consultation. It is not clear whether there would be any significant reallocation of costs because Estate Costs are allocated equally between all units and Phase Costs equally between all units in each Phase. Some Phases may be more expensive than others. It does not appear that any analysis of this issue has been made (or if made, it has not been published). However, street lighting costs have (not unreasonably) been reallocated to Estate Costs.

0.11 We are told and we accept that the lease of Apartment 6 is in identical terms to the lease for Apartment 5 apart from the service charge proportions and the date of the lease, which is in April 2006. Mr Novitt told us he was the last purchaser in the block to complete his purchase. It appears that the Clocktower was handed over by the developer, Crest Nicholson (also the freeholder) to the Manager at about that time.

1. THE DISPUTE

1.1 There have been three previous service charge disputes in relation to Napsbury Park. The LVT, comprising the same members as in the present case, has decided a number of issues in relation to 34 apartments in other blocks at Napsbury Park, mostly in Phase 1 of the development, under RPTS case reference CAM/26UG/LSC/2008/0068. The Decision of the LVT in that case was published on 6th May 2010; there was also a supplementary Consent Order dated 30th June 2010. Some of the issues decided in that case affect the whole of Phases 1 and 4 of the Estate. However, although the Applicants have contended that some special circumstances affect their apartments, they have accepted in principle the consequences of that previous Decision. The Respondents have likewise accepted the principles established by that Decision and do not seek to reopen those issues.

1.2 The LVT, again comprising the same members, also decided a number of issues in relation to The Clocktower under case reference CAM/26UG/LSC/2010/ 0069, the Decision, erroneously bearing the reference CAM/00KF/2010/0133, being published on 19 April 2011. There was then a further application under case reference CAM/26UG/LSC/2011/0075, which, however, raised new issues in relation to electricity charges from 2007 onwards upon which the Tribunal, after hearing argument, decided to adjudicate. That Decision was published on 9th December 2011.

1.3 In the autumn of 2012 the Napsbury Park Residents' Association voted on the question whether Countrywide should be removed from its role as designated Manager. There was a clear majority in support of Countrywide's removal. Clause 7.10 of the lease provides for a simple majority of lessees and transferees to require the Manager to transfer its rights and obligations to a Nominee. However, this provision was not invoked. Instead, under paragraph 2 of Schedule 9 the Landlord undertook the Manager's obligations and appointed Hurford Salvi Carr as managing agent with effect from 1st December 2012. The handover process was completed by

31st December 2012, since when Hurford Salvi Carr have managed the development.

2. THE ISSUES

2.1 The Application is intended to resolve certain issues between the Applicants and Countrywide in the hope of establishing principles to be applied across the Estate. In addition, the Applicants raise issues about the on-going apportionment of service charges.

2.2 The Applicant's heads of claim are adequately summarised in the document headed "Applicants' Gist of Arguments", which is essentially a Scott Schedule. The column headed "Respondent's Case" is, however, the Applicants' summary of the Respondents' case and not necessarily an accurate reflection of the points the Respondents seek to make. Accordingly, in this Decision, care has been taken to reflect the Respondents' actual case as presented at the hearing. Each of the five issues will be dealt with below; there is no need to list them here.

3. THE HEARING AND THE EVIDENCE

Cleaning Costs

3.1 The first issue related to the total cost of and allocation of cleaning costs for year ending 31st May 2010. A summary of the charges is at page 530 of Hearing Bundle 2. The total charge for the Clocktower was £890.97, of which £73.16 was a one-off invoice for carpet cleaning. Of the balance, 90% was allocated to internal block costs and 10% to external block costs (bin store cleaning). The first complaint is that the allocation should have been 75% to internal block costs and 25% to external block costs, in accordance with the Tribunal's finding in a previous case. The First Respondent is willing, in order to settle the matter, to concede a 75:25 split.

3.2 Services were provided on a monthly basis by EPS Contract Services Ltd until August 2009 and thereafter (following criticism of the performance of EPS) by Allegri Cleaning Co Ltd. Bundle Services Ltd provided the carpet cleaning on a one-off basis. Invoices allocated to the Clocktower total £724.22. The EPS invoice for June 2009 is missing; but records show a payment of £109.25, which the Applicants accept as correct. The First Respondent's calculation included a further invoice of £57.50 from EPS; but this must be deducted as there is admittedly no evidence to prove that it was a cleaning cost for the Clocktower. This leaves an agreed total of £833.47 as the actual cleaning costs for the Clocktower for 2009-10.

3.3 In addition, the First Respondent accepts that EPS was, on the findings of the Tribunal in a previous case, overpaid. It is common ground that the Allegri monthly charge should be taken as the yardstick for cleaning for the whole year. The First Respondent has applied the apportionment used by Allegri (who quoted on a block by block basis), giving a figure of £40.74 per month to be substituted for the EPS figure of £109.25 for the first four months of the period. This reduces the total to £559.43. Deducting the one-off carpet clean, taking 75% and adding back the carpet clean, we reach an agreed figure of £438.61 for internal block cleaning, leaving £120.82 for external block cleaning. However, while accepting this method of calculation (and agreeing the figures to be arithmetically correct), the Applicants do not accept Allegri's apportionment between blocks.

3.4 Page 381-2 in Bundle 1 shows the apportionment of Estate, Phase and Block Costs across the whole of Phase 4. Internal block costs for the Clocktower (based on square footage of the residential units) represent 4.75% of Phase 4 costs. Using that percentage of Allegri's total allocation to the Phase 4 blocks would give a figure of just over £318 for the Clocktower, of which 75% is £238.60 plus the cost of carpet cleaning. The Respondents, on the other hand, say that Allegri's actual apportionment, based on estimated cleaning times, is fairer. Block costs should not be apportioned according to the square footage of the apartments but according to the scale of the task in each block.

3.5 This apportionment issue spills over into years ending 31st May 2011 and 31st May 2012 because the Allegri apportionment was used by the First Respondent for apportionment in those years. Bundles took over the cleaning in October 2010. Unfortunately, the Bundles quotation of £1150.00 + VAT per week (page 258) for the cleaning of all common parts on the Estate was not broken down block by block.

3.6 After much debate (and negotiation during lunchtime) the parties' positions for 2010-11 and 2011-12 were crystallised. The Applicants suggest that the 20009-10 figure should be increased by 5% per annum (an approximation used by the Tribunal in a previous case to work backwards). This would give for internal block costs 2010-11 £460.71 and for 2011-12 £483.61. The First Respondent proposes to use actual costs (using the Allegri apportionment), split 75:25. This would give for 2010-11 £558.62 and for 2011-12 £567.10. The First Respondent points out that, although Bundles are more expensive, they do a better job. Nevertheless, the First Respondent would be willing to adopt the Applicants' figures, for the Applicants only, by way of compromise. The Applicants accept that Bundles are doing a better job. They, it appears, insist that any agreed figures should be applied to all apartments in the Clocktower, to which the First Respondents cannot agree, not least because they no longer manage the Estate. Thus the Tribunal must decide.

Management Fees

3.7 The amount and apportionment of management fees for 2010-11 and 2011-12 are in dispute. The lease does not deal with the apportionment of management fees between lease schedules. Pages 251-2 of the bundle explains what changes the First Respondent has made to the apportionment of management fees between Estate, Phase and Block costs and why. Prior to 2010-11, the apportionment was 50:40:40. The manager in charge, Martin Tucker, considered that this did not reflect the balance of work associated with the different schedules. The apportionment is particularly important on this estate because freehold house owners were paying only Estate and Phase charges, while leaseholders paid all three elements. For 2010-11 the Estate and Phase charges were amalgamated. The Estate charge (paid by all householders) was set at £71.30+VAT per unit and the Block charge (paid only by leaseholders) also at £71.30+VAT. This is shown on page 295. It was repeated for 2011-12, though there were small differences as a result of accruals brought forward from 2009-10 and changes in VAT rates. Invoices are, for some reason, issued under the name Granville & Company, another trading name of Countrywide. For the 2012-13 budget, charges were increased in an attempt to reflect the actual balance of costs to the managing agent, based on a costs comparison with other sites managed

by Labyrinth. The total also increased from £45,267.76 to £59,867, a 32% increase.

3.8 Mr Bronson (Property Manager) explains the increase in this way: -

> "There was a very high standard of management at the site. The additional work required to carry out the management functions due to the historical problems at the site was not reflected in the management fee. The fee was kept at a low level to allow the site to settle down following the original LVT. This was not a realistic level of fee for the management of the site ..."

Sadly, however, it does not appear that Labyrinth was able to regain the trust of the residents. The 32% hike in management fees may well have contributed to the majority decision to dispense with Countrywide's services.

3.9 The decision of the First Respondent to re-apportion service charges was based on the assumption that the contributions of freeholders are fixed. Miss Gilbert directed our attention to a typical transfer document at page 173. However, on closer examination, it appears from page 190 that the transfer in question (Plot 1, The Arboretum) contains the same provision at paragraph 5 of the Fifth Schedule as clause 7.14 of the lease at page 24 i.e. a power for the Manager (acting reasonably) to adjust the apportionment if at any time it should become necessary or equitable so to do. We were told that not all transfers contain this provision. The Arboretum is in Phase 1, developed by Crest Nicholson. As Phases 3, 5 and 6 comprise entirely freehold houses, some developed by David Wilson Homes (now part of Barratt Group), it is entirely possible that the transfers are different. The Applicants appear to accept this.

3.10 However, the Applicants say that the effect of apportioning far more of the management costs to Block costs is that management costs are being loaded onto leaseholders to the benefit of freeholders. It appears that there is some tension in the Residents' Association (run mainly by freeholders) between the two groups. The Applicants argue that the effect of the original Tribunal decision was to oblige the First Respondent to apportion more costs to Estate and Phase (now amalgamated) and away from Block costs. The apportionment of management fees has been adjusted in the opposite direction, which cannot be right. The Applicants are aware that bringing Casson Court (previously omitted) into the schedules has benefited everyone else; but that is a relatively minor effect compared with the other changes.

3.11 In addition, the Applicants argue that some costs are wrongly located in the lease schedules. Schedule 6 Part A (Estate Costs) includes at paragraph 5 maintenance etc of refuse storage facilities and at paragraph 6 maintenance etc of external common parts. These are obviously Apartment Costs and ought therefore to be included in Part B. Miss Gilbert, however, responds that Part A includes two types of charges; general costs and leasehold costs. Thus the First Respondent was justified in accounting separately for Part A paragraphs 5 and 6, charged to leaseholders only. The consequence of this arrangement is that leaseholders of all blocks pay for the maintenance of each leasehold block. Clearly, it would be unfair to expect freeholders (who must pay for the maintenance etc of their own individual houses) to contribute to these expenses. It must also be borne in mind that the proportions payable by freeholders cannot (in most cases) be changed at all (so that, for example,

one could not set the freeholder proportions of certain Part A expenses at nil).

3.12 On behalf of the First Respondent Ms Gilbert submits, the power of the Manager in clause 7.14 to vary the service charge apportionments does not extend to the transfer of expenses from one schedule to another. She argues that there is a deliberate and logical distinction made between apartment blocks generally in Part A paragraph 6 and "the Block" in Part B. The maintenance of external aspects of the apartment blocks generally benefits all leaseholders on the Estate by preserving the general ambience of the Estate as a smart residential area, thereby enhancing property values. Thus it is appropriate and equitable to create a separate head of charge "Leasehold Estate costs" (effectively by adjusting the leaseholder proportions of such costs to 100% and collecting nothing from the freeholders). The wording of clause 7.14 permits only adjustment of proportions within Part A or Part B. It is doubtful whether the Tribunal could transfer costs between Parts A and B under section 38 of the Landlord & Tenant Act 1987.

3.13 Ms Gilbert explained that, if one applies the original Estate charge proportions across the Estate, the total collected amounts to 0.32 x 404 = 129.28%. Logically, one might think the solution to this problem would be to reduce rates across the board to 0.25%. But, as there is no power to adjust the percentages for the majority of freeholders, the First Respondent decided to reduce the contributions of leaseholders only which, in the circumstances, does not appear to be an unreasonable decision. In consequence, leaseholders now pay only 0.134% of Estate expenses.

3.14 By reason of inflation, the appointment of a more expensive cleaning contractor (clearly mostly a Block cost) and the increase in management fees, overall costs have increased. At the same time, Estate and Phase costs have been amalgamated and service charge costs apportioned more towards Block costs. The effect of these three changes, taken together, is to create a false impression of a huge loading of service charge costs onto leaseholders to the benefit of freeholders. In fact, the reapportionment of Estate costs benefits leaseholders at the expense of freeholders, making it essential to examine closely the actual breakdown of management time between Estate services and Block services. Overall, she submits, the adjustments are fair and reasonable.

3.15 The Applicants make one further point. They argue that the manager has no power to amalgamate Estate and Phase costs. Phases have different characters which should be respected. Although it may be convenient to amalgamate Estate and Phase costs now that the development is complete, the lease does not appear to contemplate such a change. One might add that Ms Gilbert's logic applies to the removal of costs from Part C to Part A just as much as it does to removal of costs from Part A to Part B. Clearly, the burden of such costs is likely to be redistributed by any such change. Why is that "necessary or equitable", even if within the scope of clause 7.14? In an earlier decision the Tribunal questioned whether any such change could be made, at any rate without an order of the Tribunal under section 38, and suggested that, in any event, it would not be reasonable to make such a change without full consultation. The process described in the letter of 12th August 2009 (pages 164-6, a letter that explains the proposed changes and describes consultation with the Residents' Association and with residents of Phase 1 involved in the first

Tribunal case) was not sufficient.

Invented Leasehold Estate Schedule

3.16 The arguments on this issue overlap with those relating to the apportionment of management fees and have been set out above. The issue for the Tribunal appears to be whether the scheme operated by the First Respondent (and which it appears the Second Respondent through Hurford Salvi Carr intends to adopt for the future), which appears to be a variation of the proportions set out in the lease, is necessary or equitable. If it is necessary or equitable, the apportionment of charges must surely be reasonable. The Tribunal must also bear in mind its decision in CAM/26UG/LSC/2010/0069 at paragraph 4 of the Order of 19th April 2011 that: -

> "For the avoidance of doubt it is declared that the Respondent was not entitled to create a new category of leasehold Estate costs and ... portico repair costs are to be divided between all ... properties included in the Estate Management Scheme."

Phase Schedules Curtailment

3.17 This issue has also been touched upon above. The Applicants argue that by 2009-10 almost all Phase 4 costs had been transferred to Estate; but substantial management charges remained under Schedule 6 Part C, which is illogical. 2008-9 and 2009-10 Phase 4 management charges should be reallocated to Estate. The same should apply to accountancy fees for 2009-11. In addition to the points discussed above, the Applicants also say that the Phase 4 Schedule 6 Part C is being kept alive to allocate costs associated with Phase 4 security gates and railings as shown on pages 82 and 128 of the bundle. Presumably the same applies to Phase 1, parts of which also have security gates and enclosed garden areas surrounded by railings. But Phases 3, 5 and 6 Phase costs are now included in Estate costs and paid for by everyone. This, they submit, is patently unfair. However, it is not the understanding of the Tribunal that there are any gated grounds in Phase 3, 5 and 6, which comprise freehold houses.

TV and Satellite TV Aerials Electricity Allowance

3.18 In a previous Decision, the Tribunal ruled that External Block electricity costs, i.e. the cost of powering communal TV aerials for the period 31st May 2009 to 31 May 2011, should be assessed at 2.5% of the total electricity costs for the common parts of the Clocktower. The actual figure for 2008-9 was £26.56. For 2011-12, it is agreed that the figure of £40 should be applied and for future years the same percentage i.e 2.5% of total metered electricity costs for the Clocktower.

4. THE LAW

Service and Administrative Charges

4.1 Under section 18 of the Landlord & Tenant Act 1985 (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, where they are incurred on the provision 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. Where a service charge is payable before the relevant costs are incurred, no greater

amount than is reasonable is so payable.

4.2 Under section 27A the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for those costs and, if so, the amount which would be payable.

4.3 In deciding whether costs were reasonably incurred the Tribunal should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind RICS Codes. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may in any event be restricted where the works fell below a reasonable standard.

4.4 Under section 158 and Schedule 11 of the Commonhold & Leasehold Reform Act 2002 variable administration charges are payable by a tenant only to the extent that the amount of the charge is reasonable. An administration charge is an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly –

(a) For or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) For or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) In respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) In connection with a breach (or alleged breach) of a covenant or condition in his lease.

4.5 An application may be made to the Tribunal to determine whether an administration charge is payable and, if so, how much, by whom and to whom, when and in what manner it is payable. The Tribunal may vary any unreasonable administration charge specified in a lease or any unreasonable formula in the lease in accordance with which an administration charge is calculated.

4.6 An important distinction between service charges and administration charges is that the former are payable by tenants generally while the latter are payable by a particular tenant in relation to dealings between that tenant and the landlord or managing agent.

Costs generally

4.7 The Tribunal has no general power to award inter-party costs, though a general power now exists under Rule 13(1) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 to make costs orders in cases where costs are wasted or a party has acted unreasonably. In general, if the terms of the lease so permit, the landlord or designated manager is able to recover legal and other costs (e.g. the fees of expert witnesses) associated with an application to the Tribunal from the tenants through the service charge provisions i.e. he is entitled to recover a contribution to

such costs not only from the defaulting tenant but from all tenants.

4.8 However, under section 20C of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord or manager from adding to the service charge any costs of the application. The Lands Tribunal in the case Tenants of ***Langford Court –v- Doren Ltd*** in 2001 said that the Tribunal should use section 20C to avoid injustice. It ought not to be used in a manner oppressive to the landlord or manager. Clearly the manner in which this discretionary power is (or is not) exercised will depend upon the facts of the case. The relevant factors in this case are discussed in section 5 of this Decision.

4.9 In addition, under Rule 13(2) of the 2013 Rules the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees. This power is likely to be exercised in cases where the applicant is substantially successful, unless he has been guilty of unreasonable conduct in connection with the application, e.g. where he has unreasonably rejected a proposal for mediation or a fair and proper offer of compromise.

5. DISCUSSION AND CONCLUSIONS

5.1 There are four issues for the Tribunal to decide. There is very little dispute as to the relevant facts, most of which are set out in documents. The Tribunal has in this Decision adopted the course of setting out the evidence only where it is necessary to do so in order to show how disputes of fact have been resolved. For the most part, however, the disputes are not of fact but of principle.

Cleaning Costs

5.2 The issue of cleaning costs was raised in the last of the earlier Applications but the apportionment for 2009-10 was not decided because the figures were not available. The apportionment of regular internal and external block cleaning costs 75:25 is agreed. It is agreed that the carpet cleaning cost was an internal block cost. It appears that the apportionment in the lease was based on floor areas across the Phase. The First Respondent has, however, departed from the lease terms by substituting for the proportion of Apartment Costs set out in the lease (1.78% of Phase 4 costs for Flat 5) an estimate of the actual costs for each block and then apportioning that estimate between apartments in the block according to their respective floor areas. The original method of apportionment was not unreasonable at a time when the actual costs were unknown. However, the Manager (or Landlord if there is no designated Manager) (acting reasonably) is entitled to vary the apportionment under clause 7.14 if it is necessary or equitable to do so.

5.3 In the judgment of the Tribunal it is equitable to apportion cleaning costs on the basis of the actual costs for each block. The shape and character of the blocks varies widely, as does the number of apartments in each block, as the documents in the bundle show (see floor plans beginning at page 393). In this respect, the Tribunal considers that the First Respondent acted reasonably in adjusting the proportions and in using the Allegri apportionment to do so, there being no other obvious basis on which to apportion. Bundles should be asked to provide a breakdown of their quotation block by block, since the services of Allegri were dispensed with as being unsatisfactory. It is noted that Bundles appear to have estimated the cost of cleaning bin stores at 10% of total cleaning costs. Whether this would hold true on a block by

block basis remains to be seen.

5.4 Meanwhile, for 2009-10 the Tribunal assesses the internal cleaning costs for the Clocktower at £438.61 and the external cleaning costs at £120.82. For 2010-11 and 20011-12 the Tribunal accepts the figures advanced by the Respondent for internal block costs (representing 75% of total block cleaning costs), namely £558.62 for 2010-11 and £567.10 for 2011-12. These are significantly higher than for 2009-10; but then Bundles is more expensive than Allegri, whose services were sub-standard.

Management Fees

5.5 The arguments in relation to management fees are complex and the Tribunal has some sympathy with the Applicants insofar as the changes made by Labyrinth were far from transparent. Moreover, since Labyrinth is part of the Manager (the First Respondent) management fees are not negotiated at arms' length. However, the task of the Tribunal is to decide whether the overall management fees are reasonable and whether they have been apportioned reasonably and in accordance with the lease terms. This is a complex estate to manage and the Tribunal accepts that at £45,267.76 (an average of about £112 per unit) the management fees for 2010-11 and 2011-12 were modest. At an estimated £59,867 for 2012-13 (an average of £148 per unit), they were still reasonable. Looked at another way, £71.30 (including VAT @ 20%) per freehold unit and £142.60 (including VAT) per leasehold unit is, in the judgment of the Tribunal, a reasonable fee for managing this Estate.

5.6 The Tribunal accepts that the majority of the freehold transfers do not include any provision entitling the Manager to vary the service charge contributions. In those circumstances, it is reasonable to collect the specified contributions to Estate costs from the freeholders. It would be unreasonable to collect more than 100% (or as near as rounding permits) of the costs overall. Thus it is equitable, indeed necessary, to reduce the percentage contributions of leaseholders, an arrangement from which the leaseholders have derived a significant benefit. On the other hand, the Tribunal accepts that the leasehold elements of the Estate are likely to be substantially more time-consuming to manage than the freehold elements. In this respect the evidence of the First Respondent accords with the knowledge and experience of the Tribunal.

5.7 On the evidence, it is not clear to the Tribunal what is the effect of amalgamating Estate and Phase costs because there is insufficient evidence to demonstrate what was the effect of that change. However, on the evidence the outcome does not appear to be unreasonable. While there is no power under clause 7.14 to amalgamate those costs, it does appear possible for the Manager (acting reasonably) to vary the Phase cost apportionments so as to coincide with the Estate cost apportionment, thus obviating the necessity of accounting separately for the two. Moreover, in the judgment of the Tribunal, the power in clause 7.14 permits the Manager (acting reasonably) to set different apportionments for General Estate costs and Leasehold Estate costs. Of course, this can be done only if it is necessary or equitable so to do.

5.8 The Tribunal accepts Ms Gilbert's argument that the wording of clause 7.14 does not permit the transfer of particular categories of services between the Parts of Schedule 6. The Tribunal also accepts that there is a clear distinction in the Schedule between costs relating the apartment blocks as a whole in Part A and costs relating to "the Block" in Part B. It would be contrary to the scheme of the lease to transfer costs between Parts of Schedule 6 and something the Tribunal would probably be

unwilling to do (if, indeed it is permissible at all) under section 38 of the Act of 1987. Ms Gilbert is, of course, on dangerous ground in arguing that the external maintenance of leasehold blocks benefits all residents. Why should this not apply to freeholders just as much as leaseholders? The answer may be that there are substantial differences between Phases 1 and 4 (wholly or almost wholly leasehold town houses and apartments) and 3, 5 and 6 (wholly freehold houses). However, this is not an issue the Tribunal needs to resolve.

5.9 In the judgment of the Tribunal it would be inequitable, in circumstances where freeholders are responsible for the maintenance and repair of their own properties, to require freeholders to contribute also to the maintenance and repair of the leasehold blocks. Presumably, the cost of maintenance and repair of the security gates and railings continues to be separately accounted for in order to achieve a fair and equitable distribution of those costs. This also appears to the Tribunal to be perfectly reasonable. There has been criticism of the First Respondent for not undertaking more extensive consultation. However, in all the circumstances of the case, including the outcome of previous Tribunal decisions, the Tribunal does not consider that criticism to be justified on this occasion. There is no statutory requirement to consult and no specified form of consultation. To consult the Residents' Association and those leaseholders taking an active interest in the first Tribunal case was not an unreasonable approach.

5.10 In the light of the above findings, the Tribunal rejects the argument that the First Respondent's management fees should be reduced by reason of poor performance. After a bad start, the First Respondent has, in the judgment of the Tribunal, made a serious and largely successful effort to put its house in order. The Tribunal accepts that there has been some confusion in communications with the residents; but the issues are very complex and the decisions taken by the First Respondent through Labyrinth in relation to the disputed issues appear to have been reasoned and measured. It is to be hoped that the new managing agent will take on board the need for transparency and good and effective communications with the Residents' Association and with freeholders and leaseholders generally.

Invented Leasehold Estate Schedule

5.11 As has been said, the First Respondent did not create a new category of expenditure not contemplated by the lease terms. It was simply a question of applying different apportionments to this category of expenditure. While the Manager may not vary the freeholder proportions, it can vary the leaseholder proportions and then remit part of the freehold contributions, provided it acts reasonably and the outcome is necessary or equitable.

5.12 The Tribunal does not consider that this conclusion is inconsistent with its decision in CAM/26UG/LSC/2010/0069. There the Tribunal was dealing with £700, a residual cost in connection with portico repairs. In that Application the First Respondent was unable to justify what appeared to be an arbitrary decision to reallocate costs and to do so without due consultation. The Tribunal now has additional evidence, which has persuaded the Tribunal that the First Respondent acted reasonably; the adjustment was not arbitrary at all, but considered and equitable; and that there was consultation with the Residents' Association. The Tribunal also has the benefit of full legal analysis of the lease terms, which cast fresh

light on the extent of the Manager's powers under clause 7.14.

Phase Schedules Curtailment

5.13 This issue has already been dealt with. The concern expressed by the Applicants must be considered as part of the overall picture. As has already been made clear, the Tribunal considers that the First Respondent acted reasonably and within the lease powers and that the adjustment, taken as part of the whole package, is equitable. Accordingly, the criticisms made by the Applicants are rejected. That concludes the Tribunal's decision on the substantive issues.

Costs

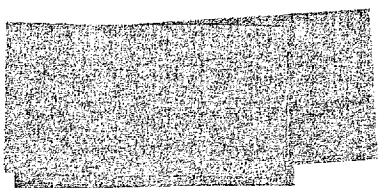
5.14 This Tribunal takes the view that it has a wide discretion to exercise its powers under section 20C in order to avoid injustice to tenants. In many cases, it would be unjust if a successful tenant applicant were obliged to contribute to the legal costs of the unsuccessful landlord or, irrespective of the outcome, if the tenant were obliged to contribute to costs incurred unnecessarily or wastefully. In many cases, it would be equally unjust were non-party tenants obliged to bear any part of the landlord's costs.

5.15 However, in some cases, the landlord's (or manager's) conduct of his defence may be a reasonable exercise of management powers even if he loses. The landlord may have made an offer the tenant ought to have accepted. In such cases, it might be reasonable for the tenants generally to bear those costs. In other cases, for example where the non-party tenants supported the unsuccessful landlord, it might be reasonable for the non-party tenants to contribute to the landlord's costs. A wide variety of circumstances may occur and the section permits the Tribunal to make appropriate orders on the facts of each case.

5.16 Overall, the Tribunal concludes that it would not be just and equitable in the circumstances of the case to order that the First Respondent should be disentitled from treating its costs of and arising out of the application as relevant costs to be taken into account in determining any service charge relating to the property. It is, however, not at all clear that there is any lawful means whereby the First Respondent can recover any of its costs through the service charge provisions. From the date when it ceased to be designated Manager, the First Respondent appears to have been in the same position as an Applicant before the Tribunal, i.e. liable for its own costs.

5.17 The attendance of Mr Gwynn on behalf of the Second Respondent was clearly reasonable, valuable and proportionate and the Second Respondent ought to be permitted to recover its reasonable costs through the service charge provisions.

Tribunal Judge G M Jones
Chairman
5th December 2013



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