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FIRST - TIER TRIBUNAL

PROPERTY CHAMBER
(RESIDENTLAL PROPERTY)

Case Reference	:	CHI/40UD/LIS/2013/0009.
Property	:	12 and 16 Beaumont House, Sherborne Road, Yeovil, Somerset, BA21 4HU.
1st Applicant	:	Mr. Michael Taylor.
Representative	:	Mr. Howard of Coles Miller, Solicitors.
2nd Applicant	:	Miss Mary Warner
Representative	:	In person
Respondent	:	Beaumont House (Management) Limited.
Representative	:	Mr. R Clarke MRICS, an associate of Greenslade Taylor Hunt, managing agents.
Type of Application	:	Determination of reasonableness of service charges, S27A and S20C of the Landlord and Tenant Act 1985 (as amended).
Tribunal Members	:	Judge J G Orme (Chairman) Mr. J McAllister FRICS (Member) Mr. S Fitton (Member).
Date and Venue of Hearing	:	22 January 2014. Yeovil Magistrates Court.
Date of Decision	:	10 February 2014.

Decision

For the reasons set out below, the Tribunal:

1. **Orders that Mr. C J Lockyer be removed as a Respondent to the application.**

2. **Determines that the amounts payable by the 1st Applicant, Mr. Michael Taylor, to the Respondent, Beaumont House (Management) Limited by way of service charge in respect of 16 Beaumont House, Sherborne Road, Yeovil for the years ended 31 May 2007 up to and including the year ended 31 May 2012 are:**

   For the year ended 31 May 2007 - £855.19;
   For the year ended 31 May 2008 - £502.63;
   For the year ended 31 May 2009 - £858.78;
   For the year ended 31 May 2010 - £381.52;
   For the year ended 31 May 2011 - £796.56;
   For the year ended 31 May 2012 - £753.44;

3. **Determines that the amounts payable by the 2nd Applicant, Miss Mary Warner, to the Respondent, Beaumont House (Management) Limited by way of service charge in respect of 12 Beaumont House, Sherborne Road, Yeovil for the years ended 31 May 2007 up to and including the year ended 31 May 2012 are:**

   For the year ended 31 May 2007 - £855.19;
   For the year ended 31 May 2008 - £502.63;
   For the year ended 31 May 2009 - £858.78;
   For the year ended 31 May 2010 - £381.52;
   For the year ended 31 May 2011 - £796.56;
   For the year ended 31 May 2012 - £753.44;

4. **Orders pursuant to Section 20C of the Landlord and Tenant Act 1985 (as amended), that all of the costs incurred by the Respondent in connection with these 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 Applicants.**

Reasons

Background

1. Beaumont House, Sherborne Road, Yeovil BA21 4HU ("the Property") is a development of 27 purpose built flats with associated garages, parking spaces and gardens which was constructed in the early 1980's. The freehold of the Property is vested in Demarc (Homes) Limited. Beaumont House (Management) Limited ("the Company") is the leasehold owner of the whole of the Property and is responsible for the management of the common parts. The flats in the development are let to leaseholders on long leases. The individual leaseholders are members and shareholders of the Company.

2. Mr. Michael Taylor is the leasehold owner of Flat 16. Miss Mary Warner is the leasehold owner of Flat 12.

3. By an application dated 24 January 2013, Mr. Taylor, by his solicitors, Coles Miller, applied to the Tribunal to determine the amount of service charges payable by him in the 6 service charge years commencing with the year ending 2007 up to and including the year ending 2012. In his application he alleged that the Company had not provided audited service charge accounts in accordance with the terms of his lease but relied on the Company's statutory accounts. He said that until the Company provided proper service charge accounts, he was not able to finally identify those items which he disputed. In the application he identified some items in the statutory accounts which he disputed. The application included an application for an order to be made pursuant to section 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act") and for reimbursement of fees pursuant to regulation 9 of the Leasehold Valuation Tribunals (Fees) (England) Regulations 2003.

4. The Tribunal issued preliminary directions on 28 January 2013. Miss Mary Warner applied to be joined as an applicant to the application and she was joined as an applicant by an order of the Tribunal made on 20 February 2013. By letter dated 25 March 2013, Mr. C J Lockyer applied to be joined as a respondent to the application.

5. Coles Miller asked the Tribunal to hold a case management conference. On 3 April 2013 the Tribunal held a case management conference. All parties were present or represented at that conference. The Company accepted that the Company's statutory accounts did not comply with the requirements of the lease for audited service charge accounts to be prepared. The applicants did not take issue with the accounts being prepared to 31 May in each year rather than 25 March as stipulated by the lease. The Tribunal:
   a. Joined Mr. Lockyer as a respondent to the application;
   b. Directed the Company to prepare and serve on the Applicants by 9 August 2103 revised service charge accounts certified by an accountant in accordance with the lease showing the service charges claimed under the terms of the lease for the years ended 31 May 2007 up to and including the year ended 31 May 2012.

6. A further case management conference was held on 15 October 2013 at which all parties were present or represented. By that time, the Company had produced service charge accounts but they were not certified. The Applicants agreed that the accounts need not be audited as required by the lease but did require them to be certified. The Tribunal made directions:
   a. By 6 November the Company was to serve certified service charge accounts;
   b. By 27 November each of the Applicants was to serve a statement setting out which items in the accounts remained in dispute and why;

c. By 18 December the Company was to serve a statement setting out why it considered the disputed items to be recoverable as service charges.
d. Providing for the application to be listed for hearing.

7. By letter dated 16 December 2013, Coles Miller applied for permission to adduce expert evidence from a chartered accountant as to the requirement of the lease for the service charge accounts to be audited. On 23 December 2013 the Tribunal issued further directions giving the parties permission to adduce expert evidence from a chartered accountant limited to expressing an opinion as to what steps are required to be taken to comply with the requirement in the lease for the accounts to be audited, what regulations, advice or guidance exists in relation to such requirements and the likely costs of that work.

8. By letter dated 20 January 2014, Mr. Lockyer applied to be removed as a respondent to the application.

9. Both Applicants and the Company have prepared statements of case in accordance with the directions. A bundle of relevant documents was prepared for use by the Tribunal at the hearing. The application was listed for hearing on 22 January 2014.

The Law.

10. The statutory provisions primarily relevant to applications of this nature are to be found in sections 18, 19, 20, 20C and 27A of the Act.

11. Section 18 of the Act provides:

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.

12. Section 19 of the Act provides:

1) Relevant costs shall be taken into account in determining the amount of the service charge payable for a period
a) only to the extent that they are reasonably incurred, and

b) 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.

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.

13. Section 20 of the Act imposes on a landlord a requirement to consult with tenants in certain circumstances. It provides:

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.

The limit imposed by subsections (6) and (7) is £250 per tenant. The consultation requirements are set out in the *Service Charges (Consultation Requirements) (England) Regulations 2003 SI 2003/1987.*

14. Section 27A provides:

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.

Subsections 3 to 7 are not relevant in this application.

15. Section 20C provides:

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, ... or the First-tier Tribunal ... 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) ....

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.

16. Regulation 9 of the *Leasehold Valuation Tribunals (Fees) (England) Regulations 2003* has been revoked and replaced by paragraph 13 of the *Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013/1169*. Paragraph 13(2) provides *"The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor."*

The Lease

17. The Tribunal had before it a copy of the underlease relating to Flat 16 ("the Lease"). It is dated 18 February 1983 and was made between the Company as lessor and Marjorie Gwendoline Thompson as lessee. The term of the Lease is now vested in Mr. Taylor and has been extended by exercise of the rights given by Chapter II of Part I of the *Leasehold Reform, Housing and Urban Development Act 1983 (as amended)*. Mr. Taylor now holds the lease by virtue of a Deed of Variation made on 5 March 2012 between Demarc (Homes) Limited and Mr. Taylor for a term of 189 years (less 10 days) from 25 March 1981 at a peppercorn rent. The Deed of Variation provides that the terms of the Lease otherwise remain in full force and effect. The Company is Mr. Taylor's immediate landlord.

18. The parties agreed that the terms of the underlease by which Miss Warner holds Flat 12 are in the same terms as the Lease.

19. The 1st schedule to the Lease defines *"the Property"* as the whole of the development *"together with the buildings erected thereon comprising 27 flats and 27 garages and known as Beaumont house Yeovil aforesaid as the same piece of land is shown on the plan annexed hereto and thereon edged red."*

20. The 2nd schedule to the Lease defines *"the reserved property"* as *"the gardens drives parking areas paths and forecourts forming part of the property and the halls staircases landings and other parts of the buildings forming part of the Property which are used in common by the owners or occupiers of any two or more of the flats and secondly all those the main structural parts of the buildings forming part of the Property including the roofs foundations and external parts thereof (but not the glass of the windows of the Flats nor the interior faces of such of the external walls as bound the flats) and all cisterns tanks sewers drains pipes wires ducts and conduits not used solely for the purpose of one flat and the joists or beams."*

21. The 3rd schedule to the Lease defines *"the Premises"* as the *"flat forming part of the Property ... except and reserving from the demise the main structural parts of the building including the roof*

foundations and external parts thereof and joists and beams but not the glass of the windows of the said Flat ...".

22. By clause 2 of the Lease the lessee covenants with the lessor to observe the obligations in the 6th schedule to the Lease. By clause 3 of the Lease the lessor covenants with the lessee to observe the obligations set out in the 7th schedule to the Lease.

23. The 6th schedule to the Lease contains the following paragraphs which are relevant:

8. *The Lessee shall clean the windows of the Premises as often as may be necessary.*
19. *The Lessee shall comply with and observe any reasonable regulations ... any costs charges or expenses incurred by the Lessor in preparing or supplying copies of such regulations or in doing works for the improvement of the Property providing services or employing gardeners porters or other employees shall be deemed to have been properly incurred by the Lessor in pursuance of its obligations under the Seventh Schedule hereto notwithstanding the absence of any specific covenant by the Lessor to incur the same and the Lessee shall keep the Lessor indemnified from and against his due proportion thereof under Clause 21 of this Schedule accordingly.*
21. *The Lessee shall keep the Lessor indemnified from and against one-twenty-seventh part of*

(a) all costs charges and expenses (other than rent) incurred by the Lessor in carrying out its obligations under the Seventh Schedule hereto
(b) the fees or other remuneration of the Managing Agents hereinafter referred to and
(c) the yearly sum to be provided as a sinking fund mentioned in Clause 9 of the Seventh Schedule hereto.

22. *The Lessor shall be entitled to apply to the Lessee for and to receive from the Lessee quarterly advances on account of the Lessee's obligations under the last preceding clause.*
23. *The Lessee shall within 21 days after the service by the Lessor on the Lessee of a notice in writing stating the proportionate amount (certified in accordance with Clause 11 of the Seventh Schedule hereto) due from the Lessee to the Lessor pursuant to Clause 21 of this Schedule for the period to which the notice relates pay to the Lessor or be entitled to receive from the Lessor the balance by which the said proportionate amount respectively exceeds or falls short of the total sum paid by the Lessee to the Lessor pursuant to the last preceding clause during the said period.*
24. *The Lessor shall be entitled to employ any reputable firm of Estate Agents to manage the Property upon such terms as the Lessor shall think fit.*

24. The 7th schedule to the Lease imposes obligations on the Lessor to insure the Property, to maintain the reserved property, to keep the common parts clean and adequately lighted and to keep the gardens in

a neat and tidy condition. It also contains the following paragraphs which are relevant:

9. *The Lessor shall set aside a yearly sum to be determined from time to time by the Agents of the Lessor to provide a Sinking Fund for (a) the periodic replacement of the electrical installations the television and VHF radio aerial system (if any) the fire extinguishers and similar items in efficient working order and (b) the future repairs or redecorations of the structure of the Property and all parts thereof not comprised in any of the Leases of Flats granted by the Lessor ...*
10. *The Lessor shall keep proper books of account of all costs charges and expenses incurred by it in carrying out its obligations under this Schedule and an account shall be taken on the Twenty-fifth day of March in every year during the continuance of this demise and at the termination of this demise of the amount of the said costs charges and expenses incurred since the date of commencement of the term hereby demised or of the last preceding account as the case may be.*
11. *The account taken in pursuance of the last preceding clause shall be prepared and audited by a competent chartered or incorporated accountant nominated by the Lessor who shall certify the total amount of the said costs charges and expenses (including the audit fee of the said account) for the period to which the account relates and the proportionate amount due from the Lessee to the Lessor pursuant to Clause 21 of the Sixth Schedule.*
12. *The Lessor shall within four months of the date to which the account provided for in Clause 11 of this Schedule is taken serve on the Lessee a notice in writing stating the said total and proportionate amounts certified in accordance with the last preceding clause.*

The Inspection.

25. The Tribunal inspected the Property on 22 January 2014. Mr. Taylor and Miss Warner were present in person together with Mr. Howard of Coles Miller. Mr. and Mrs. Pugh and Mr. and Mrs. Bram, who were directors of the Company and who are leaseholders of other flats in the Property, were present together with Mr. Clarke, the Company's managing agent.

26. The buildings containing the flats consist of 2 separate blocks each with 3 floors. The block nearest to the entrance contains 12 flats with 2 communal entrances, each communal entrance giving access to 6 flats, 2 on each floor. The other block contains 15 flats with 3 communal entrances, 2 of which give access to 6 flats each and the remaining entrance giving access to 3 flats, one on each floor. Elsewhere in the grounds of the Property there are 4 single storey blocks consisting of lock up garages, one being allocated to each flat. The areas in front of and around the garages are surfaced with tarmacadam and are marked out to provide further parking spaces. The areas surrounding the main blocks are laid to lawn with hard surface paths leading to the

communal entrances and with cultivated areas containing shrubs and other plants directly adjacent to the buildings.

27. The Tribunal inspected one of the communal entrances. Entrance was gained through a glazed door controlled by an electronic entry-phone system. There was a rear entrance through a glazed door leading to the communal parts. There were 2 windows in the communal entrances, one on each of the first and second floors. The Tribunal was told that the arrangement in the other communal entrances was the same except that in the entrance giving access to only 3 flats, there was no rear door.

28. The Tribunal inspected the entry-phone system for one of the communal entrances. The main control panel was located by the access door. The Tribunal was told that each flat had a handset within the flat which allowed remote control of the door. The Tribunal inspected the handset in flat 5. It was a simple form of telephone handset immediately inside the door of the flat. It was connected to the main control panel by a wire running through the communal entrance hall and into the flat.

29. Externally, the Tribunal inspected the garden areas and was shown where a leylandii tree had been removed and how the Company had arranged for beds to be made for shrubs and other plants with mowing strips between them and the grassed areas. The Tribunal was shown a rear boundary wall which the Company consider to be in poor condition and in need of work in the near future. The Tribunal was shown 2 trees adjacent to Sherborne Road which are subject of tree preservation orders.

30. The Tribunal was able to see from ground level where work had been carried out to the roofs of the main buildings to remove the lower layers of tiles, to replace the lower strip of roofing felt, repair gutters and fascias and replace the tiles.

31. The Tribunal was shown where the lead flashings on the garage blocks had been replaced with Ubiflex non-lead waterproof flashings. Mr. Taylor suggested that the flashing over garage 14 was lead rather than Ubiflex but the Tribunal was unable to make a close enough inspection to determine the type of material.

The Hearing and the issues.

32. The hearing took place in court No.1 at Yeovil Magistrates Court on 22 January 2014. Mr. Taylor was represented by Mr. Howard. Miss Warner appeared in person. Mr. Clarke represented the Company. Mr. Lockyer did not attend.

33. The Tribunal considered Mr. Lockyer's application to be removed as a respondent to the application. No other party objected. As Mr. Lockyer had taken no active part in the application, the Tribunal ordered that he be removed as a respondent to the application.

34. The bundle of documents placed before the Tribunal contained 3 sets of accounts. The first were the Company's statutory accounts for the years ended 31 May 2007 up to the year ended 31 May 2012. The second was a set of service charge accounts for the same periods. They had been prepared using the information available from the statutory accounts and extracted those items shown in the statutory accounts which were claimed to be recoverable under the service charge. They contained certificates signed by Read & Co, chartered accountants. The third was a set of management charge accounts for the same periods. The sums set out in those accounts represented those sums in the statutory accounts which the Company now accepted were not recoverable from the Applicants as service charges although a proportion might be recoverable from the Applicants in their capacity as members and shareholders of the Company.

35. It was agreed that the Tribunal only had jurisdiction to consider those items claimed as service charges and not those items which might be payable as a member or shareholder of the Company. The Tribunal was only concerned with the service charge accounts. It was also agreed that the Tribunal had no jurisdiction to consider whether sums paid by the Applicants on account of their liabilities to the Company were to be appropriated towards payment of service charges or towards payment of sums which they might be liable to pay as members of the Company.

36. The Applicants did not take issue with the format of the service charge accounts. They had already agreed to waive the requirement for the accounts to be audited. In the circumstances, the Tribunal was not required to consider what steps might need to be taken by the Company to comply with the requirement in the Lease for the service charge accounts to be audited. That issue may be relevant in future years but it was not relevant to the accounts before the Tribunal.

37. The following issues were raised by Mr. Taylor in respect of the service charge accounts:
    a. Accountancy fees: He alleged that the fees shown in the accounts were the fees charged by the accountants for preparing the statutory accounts and not the service charge accounts and were not recoverable.
    b. Bank charges: He alleged that these were not recoverable as service charges.
    c. Window cleaning: He alleged that the Company was seeking to recover the cost of cleaning all windows in the development when it was only obliged to clean the windows in the communal areas.
    d. Entry-phone: He alleged that a sum of £42 paid by the Company to repair the entry-phone for Flat 19 should be charged to the leaseholder of Flat 19 and not to the service charge.
    e. Garage roof repairs: He alleged that the cost of repairs to the garage block containing garages 22, 21, 25, 19, 17 and 23 should

have been recovered from insurers and not charged to the service charge.

f. Main roof repairs: He alleged that the actual cost of roof repairs so exceeded the estimate given as to invalidate the section 20 consultation procedure and that the recoverable cost was limited to £250 per leaseholder.

g. Sinking fund: He alleged that the amounts claimed for the sinking fund in the years ended 31 May 2010, 2011 and 2012 were unreasonable as the Company had failed to provide any forecast of expenditure.

h. Costs and fees: Mr. Taylor asked for an order to be made under Section 20C of the Act and for reimbursement of the fees paid by him in connection with the application.

38. Miss Warner had filed a statement of case raising 3 issues. At the hearing she confirmed that although she complained of incompetence by the managing agents, she was not challenging the level of their fees claimed in the service charge. She raised the same issue as Mr. Taylor in relation to window cleaning although she accepted that the system used by the Company to employ one firm to clean all windows on the development and to recover the cost through the service charge was the only practical solution. The new issue which she raised was that the improvements carried out to the garden by the Company were unnecessary and that the costs were excessive.

The Evidence and the Submissions.

39. Mr. Howard had produced a statement of case and skeleton argument on behalf of Mr. Taylor. Miss Warner had produced a statement of case. Mr. Pugh had produced a statement on behalf of the Company responding to the issues raised by the Applicants. All statements were included in the bundle of documents which contained all the relevant documents.

40. The evidence and submissions in relation to each issue will be set out separately.

Accountancy fees.

41. Mr. Howard submitted that the Company had merely apportioned the accountancy fees shown in the statutory accounts between the service charge accounts and the management charge accounts. The fees had been incurred in preparation of the statutory accounts. He said that any fees incurred by the Company in preparation of the service charge accounts were costs incurred in connection with these proceedings and would be subject to any order made by the Tribunal under section 20C.

42. The Company produced no evidence to show that the sums claimed in the service charge accounts represented fees charged for preparation of those accounts. Mr. Clarke accepted that the amounts shown in the statutory accounts had been apportioned between the service charge accounts and the management charge accounts. He justified this action

by saying that most of the work done to prepare the statutory accounts had been used to prepare the service charge accounts.

Bank charges.

43. The Company accepted that these were not recoverable as service charges and should be removed from the service charge accounts.

Window cleaning.

44. It was common ground that the costs included in the service charge accounts were the costs for cleaning all external windows at the Property including the flats and the communal parts. Mr. Howard submitted that the leaseholders were responsible for cleaning the windows in the flats, both internal and external. He accepted that the cost of cleaning the windows in the communal areas was properly recoverable under the service charge. Mr. Taylor had calculated that the communal windows comprised less than 5% of the total area of glass in the buildings and he said that only 5% of the costs should be allowed.

45. The Company accepted that cleaning of flat windows was the responsibility of leaseholders and should not form part of the service charge. A single contract to clean all windows had been arranged as a practical and cheap solution which benefited all leaseholders. The Company did not accept Mr. Taylor's proposal that a proper charge was 5% of the total costs. He had ignored the advantage of having a bulk discount. The Company produced a quotation dated 10 December 2013 for cleaning the internal and external windows in the communal parts at £85 plus VAT on each visit. The Company said that it cleaned the windows 6 times each year. Mr. Clarke thought that this was a reasonable price and would have been surprised if costs had increased much since 2007. Mr. Howard said that the quotation had not been market tested and there was no evidence of historical cost. The Applicants had not obtained any evidence of their own.

Entry-phone

46. Mr. Taylor disputed a charge of £42 made on 20 April 2011 for a callout to Flat 19 to rectify a failed buzzer in the handset. Mr. Howard submitted that as the handset was within the demise of the flat it was a fixture and fitting for which the leaseholder was responsible. He accepted that the entry-phone system was one system but he submitted that any fault in that part of the system within a flat was the responsibility of the leaseholder.

47. The Company submitted that the entry-phone system is one system which was installed by the Company at the request of the leaseholders and constituted a fixture and fitting in the communal parts for which the Company was responsible, including those parts of the system within flats. Mr. Clarke said that when a fault with the system was reported, it would not be possible to know where the fault was located until an engineer had called to rectify the problem.

Repairs to garage roof.

48. In 2008, some of the lead flashings on the roofs of the garage blocks had been stolen. This followed an earlier theft of lead from one of the garage blocks. The Company had arranged for the lead to be replaced and had made an insurance claim. However, the sum of £1,346.15 paid on 5 June 2008 in respect of repairs to the roof over garages numbered 22, 21, 25, 19, 17 and 23 had been included in the service charge accounts. Mr. Taylor said that this should have been recovered from the insurers and not charged to the service charge accounts. There was no direct evidence from Mr. Taylor as to whether or not the lead had been stolen. He relied on the wording in the contractor's estimate "*Remove the remaining lead flashing*" as evidence of the fact that some of the lead had been stolen. Mr. Howard accepted that if the Tribunal found that the lead had not been stolen from that block, then the cost was properly recoverable through the service charge.

49. The Company's case was that the lead over that garage block had not been stolen. Mrs. Pugh gave evidence for the Company that lead had been stolen from the block containing garages 1 to 9. It had been replaced in lead. It had been stolen again together with the lead from the block containing garages 10, 11, 12, 16 and 18. The Company had taken the decision to replace all the lead flashings with a non-lead substitute including the lead over garages 22, 21, 15, 19, 17 and 23. She said that no lead had been stolen from that block. Whilst the cost of work on the other blocks had been recovered from the insurers, it was not possible to claim the cost of work on block 22 to 23 as no lead had been stolen.

Repairs to main roofs.

50. In 2010 the Company was aware that some work was required to the main roofs of the buildings. The layer of roofing felt nearest to the gutters needed replacing and some work was required to repair gutters, fascias and windows. On 16 July 2010, the Company served on the leaseholders notice of intention to carry out works under Section 20 of the Act. The notice described the works to be carried out as "*Scaffold front and rear of blocks comprising flats 7 to 12, 14 to 19, 20 to 25 and 26 to 28. Remove tiles, check felt and batten renew where necessary and replace tiles. Replace fascia and any damaged guttering. Stain all wooden parts including windows where applicable.*" The Company had obtained an estimate for carrying out the works from S & S Builders dated 25 April 2010 in the total sum of £15,850. The estimate was based on a need to remove 3 courses of tiles. There was no contingency in the estimate for additional work. A further estimate was obtained from Shaun Nash (Bruton) Ltd dated 11 August 2010 in the total sum of £27,034.40. That estimate was also based on the need to remove 3 courses of tiles. The second notice under section 20 was served on the leaseholders and was dated 1 September 2010. The Company instructed S & S Builders to carry out the work. During the course of the work it transpired that it was necessary to remove from 4 to 6 courses of tiles resulting in extra cost. No further consultation was

carried out. The total amount paid to S & S Builders for the work was £20,250, some £4,400 more than the estimate.

51. Mr. Howard did not dispute that the work was required and he did not allege that the work had been carried out to an unreasonable standard. He did not allege that the section 20 consultation procedure had been carried out incorrectly. He accepted that the sum of £15,850 was properly chargeable to the service charge account. He submitted that the excess of £4,400 was not recoverable as service charges as the section 20 consultation requirements were neither complied with nor dispensed with. Mr. Howard agreed that the consultation regulations refer to estimates and not fixed price quotations but he said that estimates must be reasonably accurate otherwise the integrity of the section 20 consultation procedure is destroyed. He thought that a 10% margin of error was acceptable but not 27% as here. He criticised the estimate because it did not sufficiently itemise the work to be carried out and did not include a contingency sum. He did not consider that the additional work was separate qualifying work so as to be entitled to its own limit of £250 per leaseholder. He said that it was part of the same qualifying works and the excess should not be allowed.

52. The Company's evidence was that all members of the Company were informed of the extent of the works at the Company's AGM in November 2010 and no concerns were raised. It says that the additional cost was unavoidable and reasonably incurred. The cost of stopping work mid-way, the risk of further damage to the roof and the risk to the security of the Property made a further consultation impracticable. Mr. Clarke submitted that it would have been impossible for the builder to accurately estimate precisely what work was required without erecting scaffolding and stripping off the tiles. He did not consider the excess over the estimated cost to be outrageous for roofing works. The Company was asked whether it wished to apply for dispensation retrospectively and declined to do so.

Sinking fund.

53. The Company's statutory accounts show that it retained a healthy balance of shareholders' funds throughout the period from 2007 to 2012. There is no mention in those accounts to a sinking fund as such although there is reference to reserves. There is no mention of a sinking fund in the service charge accounts for the years ended 31 May 2007 to 2009. In the service charge accounts for the year ended 31 May 2010 appears the entry "*Transfer to Sinking Fund £1,280.*" There is a similar entry in the service charge accounts for the year ended 31 May 2011. In the service charge accounts for the year ended 31 May 2012 appears the entry "*Transfer to Sinking Fund £2,700.*"

54. Mr. Howard accepted that the Company was entitled to maintain a sinking fund but he said that the Company had failed to provide any forecast of future expenditure which necessitated a sinking fund and that there was no evidence that the amount demanded was reasonable.

The Company had failed to comply with paragraphs 9.2 and 9.3 of the Service Charge Residential Management Code, 2nd Edition.

55. The Company accepted that no forecast of future expenditure had been provided but considered the amount demanded to be reasonable. Mr. Clarke said that the figure for the sinking fund had appeared on the service charge budgets sent to all leaseholders but those budgets were not in evidence before the Tribunal.

Gardening.

56. Miss Warner said that the gardens surrounding the flats were originally laid to lawn with a bare earth strip running along the wall that abutted the land that is now the country park. She used to tend the gardens but when Mr. and Mrs. Pugh became board members, they took on responsibility for the gardens. They owned a gardening company and proposed extensive improvements to the gardens. Miss Warner accepted that the Lease allows for improvements to the gardens but she considered the costs to be excessive. She argued that the work was not necessary. She had no evidence as to whether the cost incurred was reasonable. She said that there was a conflict of interest in the company owned by Mr. and Mrs. Pugh carrying out work for the Company.

57. Mrs. Pugh gave evidence on behalf of the Company in relation to gardening. She said that the work had been discussed at an AGM of the Company and agreed at that meeting. It had been agreed to plant the borders between bay windows and to put mowing strips along the edge of the lawns. A person had been employed to mow the grass. In addition, a gardener had been employed to weed the beds, mulch them and carry out pruning. She produced photographs showing the before and after views. She produced copy invoices for work done from November 2006 to May 2012 (pages 192 to 214 of the bundle). In addition there had been work done to remove a Leylandii tree, a whitebeam and a pine, to pollard a beech tree and to inspect and carry out work on the 2 trees adjoining Sherborne Road which are subject to TPOs. She said that she and her husband had made no secret of the fact that they ran a gardening business which carried out some of the work at the Property.

Section 20C and reimbursement of fees.

58. Mr. Howard applied for an order to be made under section 20C of the Act and for reimbursement of fees. He did not consider that there was a provision in the Lease for recovery of legal fees but he applied for an order out of abundance of caution. In addition, he said that any costs incurred by the Company in preparation of the service charge accounts were incurred pursuant to the Tribunal's directions and would be covered by an order under section 20C. He said that the Company had failed to comply with the terms of the Lease by preparing service charge accounts. As a result, Mr. Taylor had no finality as to the amounts payable for service charges. The Company had refused to prepare accounts when requested. In the circumstances, it was necessary for

Mr. Taylor to make this application. Mr. Taylor was seeking reimbursement of £390 fees paid to the Tribunal.

59. Mr. Clarke accepted that legal costs were not recoverable under the terms of the Lease. In the circumstances he did not oppose the making of an order under section 20C. He opposed the application for reimbursement of fees on the basis that the Company had bent over backwards to try to resolve the issue without the need for a hearing but the Applicants had refused to meet with the Company.

Conclusions.

60. The background to this case is not unusual. The management company is a company of which the leaseholders of the flats are required to be members and shareholders. As so often happens, the members meet at annual general meetings and decide what work needs to be carried out. The company then tries to fulfill its obligations to all leaseholders at least cost and with minimum formality.

61. Such a situation can exist until such time as someone objects. In this case, Mr. Taylor and Miss Warner have objected. They have their own reasons for doing so and it is not for this Tribunal to consider the merits of those reasons. Mr. Taylor and Miss Warner want the Company to comply with the terms of the Lease and they are entitled to ask it to do so. When the Company refused to do so, they were entitled to ask this Tribunal to determine their liability to pay service charges.

62. This Tribunal has no jurisdiction to determine what amounts Mr. Taylor and Miss Warner may be liable to pay to the Company in their capacity as members of the Company. The Tribunal only has jurisdiction to determine what amounts they may be liable to pay to the Company by way of service charges. In making that determination, the Tribunal must have regard to the terms of the Lease. The Tribunal is well aware that it may be the case that any sums which are not recoverable from Mr. Taylor and Miss Warner as service charges may be recoverable from them in their capacity as members of the Company but that is of no concern to the Tribunal.

63. **Accountancy fees**: The Lease requires the Company to prepare service charge accounts and to have them audited. The reasonable costs incurred in complying with that obligation would be recoverable as part of the service charge. However, the Company did not prepare any service charge accounts complying with the terms of the Lease until after the application had been made. Mr. Clarke accepted that the fees incurred by the Company were the fees incurred for preparation of the statutory accounts and not for preparation of the service charge accounts. Those costs were incurred by the Company in order to comply with its obligations under the Companies Acts. Those costs are not recoverable under the terms of the Lease as part of the service charge. They will be deleted.

64. **Window cleaning**: It was accepted by all parties that only the costs of cleaning the communal windows are recoverable as part of the service charge. It may have been a sensible practical solution to engage one contractor to clean all the external windows at the Property but the cost of cleaning the windows of the flats is not recoverable as part of the service charge. The Tribunal does not accept Mr. Taylor's suggestion for apportioning the costs. It does not take into account the economies of scale available by asking one contractor to clean all the windows. The Tribunal does not accept that a window cleaner would be prepared to clean the communal windows for just £50 per year either in 2007 or now. The only and best evidence available to the Tribunal as to what a window cleaner would charge is the estimate produced by the Company as to the cost in 2013. That cost is £85 plus VAT per visit. The Tribunal will apply that cost throughout the period from 2007 to 2012. The Tribunal accepts the evidence of the Company that the windows are cleaned 6 times each year and considers that to be reasonable. The Tribunal will allow £612 for cleaning of communal windows in each year under consideration. The Tribunal appreciates that that is a substantial proportion of the total window cleaning costs but that reflects the need for a separate contract under which the contractor must travel to site, set up his equipment and clean just the communal windows.

65. **Entry-phone**: The Tribunal finds as a fact that the entry-phone system is a complete system consisting of the main control panel and the individual handsets in each flat. That system belongs to the Company even though part is installed within individual flats. When interpreting the Lease, the Tribunal must take account of the commercial purpose of the agreement. If the Company were to be responsible for the main control panel but the individual leaseholders were to be responsible for faults in the handsets, there would be difficulties for the managing agents, for the contractors and for the leaseholders. It would be an impractical system. The Tribunal considers that the system is a fixture and fitting which falls to be maintained by the Company. The amount challenged by Mr. Taylor was properly claimed as part of the service charge and will not be deleted.

66. **Repairs to garage roof**: The Tribunal accepts Mrs. Pugh's evidence that no lead was stolen from the block consisting of garages 22, 21, 25, 19, 17, and 23. Mr. Taylor was unable to give any direct evidence on the point. Mrs. Pugh said that there was no crime number. The wording of the contractor's quotation is not determinative. Mr. Howard accepted that the cost was a proper charge to the service charge if that finding was made. The cost was properly claimed as part of the service charge.

67. **Repairs to the main roof**: There is no dispute that the repairs constituted qualifying works within the meaning of section 20. What section 20 provides is that where there are qualifying works, *"the relevant contributions of tenants are limited ... unless the consultation requirements have been either complied with in relation to the works*

..." Mr. Taylor accepts that the consultation requirements were complied with in relation to those works which were originally envisaged. Those works were described in the notice of intention to carry out works as including *"remove tiles, check felt and batten renew where necessary and replace tiles"*. That is the work that was carried out on behalf of the Company. Although the estimates were based on removing 3 courses of tiles, the cost was increased by the need to remove more courses. The consultation requirements stipulate only estimates not fixed price quotations. Estimates are, by their nature, just that. It might have been preferable for the estimates to include a contingency in case further courses of tiles had to be removed on closer inspection. However, the lack of such a contingency does not invalidate the estimate. The Tribunal accepts Mr. Clarke's submission that it is difficult to provide an accurate estimate of the cost of roofing works when it is not possible to carry out a detailed inspection before providing the estimate. The Tribunal finds as a fact that there was an unforeseen extension of the extent of the work required which only became apparent once the work had been started. The Tribunal does not consider that the amount by which the cost exceeded the estimate was so great as to be unacceptable. The work which was carried out was the work referred to in the notice of intention to carry out work. Mr. Taylor does not allege that the consultation procedure was defective. Section 20 does not say that if the cost exceeds the estimate, the excess is not recoverable. It says that if the consultation requirements are not complied with, the limit applies. Here the consultation requirements were complied with. Therefore, it follows that the Company is able to recover the full cost through the service charge.

68. **Sinking fund**: The Lease allows the Company to operate a sinking fund. However, any contributions to such a fund must meet the requirement of reasonableness set out in section 19. The Applicants were given no information by the Company on which they could assess the reasonableness of the contributions requested. There is no evidence before the Tribunal that such contributions were reasonable. The Tribunal concludes that the contributions to the sinking fund are not reasonable and they are disallowed.

69. **Gardening**: The Tribunal is satisfied that paragraph 19 of the 6th schedule to the Lease allows for improvements and that would include improvements to the garden. The Tribunal accepts the evidence of Mrs. Pugh as to what work was carried out. That evidence was verified by the Tribunal's own inspection. Having inspected the invoices produced by Mrs. Pugh, the Tribunal is satisfied that the cost of that work was reasonable. There was no evidence from Miss Warner as to what the work might otherwise have cost. Miss Warner did not allege that the work had been carried out unsatisfactorily. She did not want it to be done at all. The Tribunal noted that the gardens are maintained in a neat and tidy condition. The cost of gardening is allowed in full.

70. **Year to 31 May 2007**: The total expenditure claimed was £23,805. From that must be deducted £369 (£981 - £612) for excess window cleaning, £338 accountancy charges and £8 bank charges leaving £23,090 allowable expenditure. 1/27th part is £855.19.

71. **Year to 31 May 2008**: The total expenditure claimed was £14,472. From that must be deducted £551 (£1,163 - £612) for excess window cleaning, £338 accountancy charges and £12 bank charges leaving £13,571 allowable expenditure. 1/27th part is £502.63.

72. **Year to 31 May 2009**: The total expenditure claimed was £24,075. From that must be deducted £535 (£1,147 - £612) for excess window cleaning, £341 accountancy charges and £12 bank charges leaving £23,187 allowable expenditure. 1/27th part is £858.78.

73. **Year to 31 May 2010**: The total expenditure claimed was £12,354. From that must be deducted £415 (£1,027 - £612) for excess window cleaning, £358 accountancy charges and £1,280 for the sinking fund leaving £10,301 allowable expenditure. 1/27th part is £381.52.

74. **Year to 31 May 2011**: The total expenditure claimed was £23,547. From that must be deducted £366 (£978 - £612) for excess window cleaning, £384 accountancy charges, £10 bank charges and £1,280 for the sinking fund leaving £21,507 allowable expenditure. 1/27th part is £796.56.

75. **Year to 31 May 2012**: The total expenditure claimed was £23,829. From that must be deducted £378 (£990 - £612) for excess window cleaning, £408 accountancy charges and £2,700 for the sinking fund leaving £20,343 allowable expenditure. 1/27th part is £753.44.

76. **Section 20C**: All parties agreed that there is no provision in the Lease entitling the Company to recover its legal costs through the service charge. Mr. Taylor is entitled to ask the Company to comply with the terms of the Lease. The Company failed to provide proper service charge accounts in accordance with the terms of the Lease. Mr. Taylor was obliged to make this application in order to obtain those accounts. He has now received them and he has successfully challenged some of the items in the accounts. The Company did not oppose the making of an order under section 20C. The Tribunal considers that it is just and equitable to make an order under section 20C and will do so. The Tribunal appreciates that it may make no difference in the long run because the costs incurred by the Company in dealing with the application (which will include the costs of preparing the service charge accounts) will have to be borne by the Company which ultimately means that they will have to be borne by its members and shareholders if it is to remain solvent.

77. **Fees**: Although the same reasons apply in part to the application for reimbursement of fees, the Tribunal is mindful of the Company's submissions that the Applicants have failed to meet them to discuss

their objections to the service charge accounts. They are 2 out of 27 leaseholders at the Property. The other 25 leaseholders appear to have accepted the accounts provided by the Company. The directors of the Company have been running the Company for the benefit of the leaseholders in an attempt to minimise the cost to the leaseholders. Whilst that may not have been in strict accordance with the terms of the Lease, the Tribunal does not consider that it is appropriate to make an order for Mr. Taylor's fees to be reimbursed. It was his decision to make the application and he should bear the cost involved.

Right of Appeal

78. Any party to this application who is dissatisfied with the Tribunal's decision may appeal to the Upper Tribunal (Lands Chamber) under section 176B of the Commonhold and Leasehold Reform Act 2002 or section 11 of the Tribunals, Courts and Enforcement Act 2007.

79. A person wishing to appeal this decision must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with this application. 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. 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. 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.

80. The parties are directed to Regulation 52 of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013 SI 2013/1169. Any application to the Upper Tribunal must be made in accordance with the Tribunal Procedure (Upper Tribunal)(Lands Chamber) Rules 2010 SI 2010/2600.

J G Orme
Judge of the First-tier Tribunal
Dated 10 February 2014