



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

**Case Reference** : **CHI/00HB/LAM/2013/0014**

**Property** : **Baltic Wharf, Bristol BS1 6XF**

**Applicant** : **Arthur Christopher Cawthorne**

**Representative** : **In Person**

**Respondent** : **Baltic Wharf Management Company**

**Representative** : **Mr Roland Callaby, Solicitor  
Harris and Harris Solicitors**

**Type of Application** : **Appointment of Manager  
Section 24 Landlord and Tenant Act  
1987**

**Section 27A Landlord and Tenant Act  
1987**

**Tribunal Members** : **Judge D Archer (Chairman)  
Mr M Ayres (Chartered Surveyor)  
Ms J Playfair (Lay Member)**

**Date and Venue of Hearing** : **14-15 May 2015  
Vintry House  
Wine Street, Bristol**

**Date of Decision** : **27 October 2015**

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**DECISION**

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**1. For the reasons set out below, the Tribunal makes a determination that it is not just and convenient to make an order to appoint a manager under Section 24 of the Landlord and Tenant Act 1987. There are no other grounds to make such an order at present.**

**2. For the reasons set out below, the Tribunal makes a determination that the following service charges are payable as service charges by the applicant to the respondent in respect of the costs incurred by the respondent between 2012-2014. For 2012-2013; £717.11 is payable in respect of 16 Weare Court and £716.32 is payable in respect of 17 Napier Court. For 2013-2014; £654 is payable in respect of 16 Weare Court and £719 is payable in respect of 17 Napier Court.**

**3. For the reasons set out below, the Tribunal makes an order under Section 20C of the Landlord and Tenant Act 1985 that all of the costs incurred by the respondent in the current 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 freeholders and leasehold owners at Baltic Wharf.**

## REASONS

### **Background**

1. The applicant is the leasehold owner of two flats; 16 Weare Court, Baltic Wharf and 17 Napier Court, Baltic Wharf (“the flats”). The flats are let out to tenants. Baltic Wharf is a development of 242 residential dwellings of which 36 are freehold houses and 206 are leasehold flats. The dwellings are grouped into seven courts known as Hope, John Cabot, Meredith, Napier, Portland, Westbrook and Weare Courts. Baltic Wharf is a harbour-side development constructed in the mid-1980s by a joint venture between Bristol and West Housing Association Limited and Nationwide Housing Trust Limited on land owned by Bristol City Council. The developers established a management company, the respondent. The respondent is a company limited by guarantee without share capital. The respondent’s membership is made up of the leasehold and freehold owners of the Baltic Wharf dwellings. The freehold of the development was transferred to the respondent in 1988.

2. The respondent understands that the service charge percentages in respect of each dwelling were set by the developers and were based upon the floor area of the dwellings weighted to reflect any common parts amenities exclusively used by the dwelling (landings, stairwells and the like). The historic service charge percentages for the flats were 0.41278% for 16 Weare Court and 0.45380% for 17 Napier Court. The respondent concedes that was contrary to the terms of the leases. The respondent changed the financial year end from 30

September to 31 March on 31 March 2006. Mr Roger Bryan was appointed as a manager on 1 April 2006. The respondent acquired the leasehold of 26 Meredith Court, Baltic Wharf in 1994. That flat is used as offices for the respondent.

3. There is a history of disputed service charges in respect of the applicant's flats. On 28 November 2013 a claim letter was sent to the applicant claiming service charge arrears of £1,438 in respect of 17 Napier Court and £2,283.03 in respect of 16 Weare Court; in respect of the financial years 2012-2013 and 2013-2014. That claim appears to have been based upon the historic service charge percentages for the flats. On 14 January 2014 County Court proceedings were issued in claim A13Y7758 for recovery of arrears. The applicant attended the respondent's offices on 20 January 2014 and advised that the claim would be defended. The claim was then discontinued on 12 February 2014.
4. The applicant then commenced his own County Court proceedings on 18 February 2014 in claim A2QZ4814 for a total of £3000. He claimed damages for malicious prosecution, an apportionment of the value of 26 Meredith Court on the basis that it had been purchased without authority and was therefore held on trust for the members or an apportionment of the mortgage paid and an apportionment of overpayments, unreasonable payments and unauthorised payments listed in the applicant's letter of 8 October 2006 plus the same claims of expenditure made in subsequent years after 2006.
5. The respondent counterclaimed for a declaration under section 38(1) of the County Courts Act 1984 that the service charge payable in respect of the flats was £2888.57; that sum being the outstanding service charge arrears for 2012-2013 and 2013-2014 calculated correctly in accordance with clauses 7 and 8 of the leases. On 6 June 2014, the County Court ordered that the leasehold matters in the claim and counterclaim should be transferred to the Property Chamber of the First-tier Tribunal and the residue of the claim should be stayed until 1 January 2015. The applicant was required to report to the court on or before 1 January 2015 asking for the stay to be lifted and if the stay was not lifted by 1 January 2015 it would be dismissed with no order for costs. The stay has not been lifted.
6. The applicant served a preliminary notice to appoint a manager under section 22 of the Landlord and Tenant Act 1987 on 22 February 2014 and the respondent replied on 12 March 2014. The applicant then made an application to the Tribunal for the appointment of a manager under section 24 of the Landlord and Tenant Act 1987. The proposed manager was Mr Nathan Hockenhull of Crown Leasehold Management and the main ground for the application was the respondent's referral on 20 January 2014 to their letter of 6 September 2006 wherein they admitted that they had acted in breach of the lease and that the service charges had not been calculated correctly. The

respondent had refused to address queries regarding high increases to charges. The maintenance charges were unreasonable with high percentage increases and charges of depreciation which do not relate to actual expenditure; for example, insurance, cleaning costs, lighting and heating and gardening. The respondent was in breach of the Code of Practice approved under section 87 of the Leasehold Housing and Urban Development Act 1993.

7. Thus, there are two extant matters before the Tribunal, namely the reasonableness of the service charges for the flats for the period 2012-2014 and the application for appointment of a manager. The respondent has recalculated the service charges for the flats which resulted in an increase of £142.57 and since 1 April 2014 the service charges for all of the properties on the estate have been calculated in accordance with the leases.

### The Directions

8. The Tribunal has issued directions on five occasions; 6 August 2014, 8 October 2014, 26 November 2014, 10 December 2014 and 13 February 2015.
9. On 6 August 2014, the Tribunal directed that the application should send to the respondent by 28 August 2014;
- 1) any amplification of the applicant's case for the appointment of a manager,
  - 2) any witness statements,
  - 3) any supporting documentation,
  - 4) a plan of the premises,
  - 5) **a written statement of the residential management experience of the proposed manager, together with the management plan and proposed remuneration and details of any professional indemnity insurance,**
  - 6) confirmation that the manager would accept appointment and confirmation that the manager would comply with the current edition of the Codes of Practice issued by the Royal Institute of Chartered Surveyors ("the RICS Codes").
  - 7) Further, the manager was directed to confirm in writing that he understood the duties and obligations of a manager appointed by the Tribunal.
  - 8) The applicant was further required to send a schedule of disputed service charge items to the respondent by 5 September 2014. The applicant failed to comply with the directions at all until 9 October 2014 when the applicant served an amplification of the case for appointment of a manager.
10. On 8 October 2014 the Tribunal issued an order requiring the applicant to comply with paragraph 5 (applicant's case) and paragraph 17 (schedule of disputed service charge items) of the 6 August 2014 directions by 29 October 2014 or the Tribunal might strike

out the applicant's case under both heads. On 29 October 2014 the respondent served a response to the applicant's amplification of case for the appointment of a manager.

11. On 29 November 2014 the Tribunal issued a further strike out order requiring the applicant to comply with paragraphs 12-14 (preparation of documents) of the 6 August 2014 directions by 8 December 2014. Also, the respondent was required to inform the Tribunal by 8 December 2014 whether it wished the service charge issues to proceed notwithstanding the applicant's failure to comply with the directions. On 2 December 2014 the respondent's solicitors confirmed that the respondent did wish to seek a determination that the service charges were in accordance with the lease.
12. On 8 December 2014 the applicant served his witness statement. On 10 December 2014 the Tribunal issued directions for a case management conference and mediation was offered to the parties. The applicant failed to attend the mediation appointment on 9 February 2015.
13. On 13 February 2015 the Tribunal issued further directions for the final hearing. The proposed manager should be referred to the requirements set out in paragraph 5 of the 6 August 2014 directions and at the outset of the hearing the Tribunal should determine whether the applicant should be entitled to rely on his witness statement of 30 November 2014 received by the Tribunal on 8 December 2014. Previous directions relating to preparation of bundles were set aside and the respondent was to prepare an indexed and paginated bundle of all relevant documents for both matters. Thus, the respondent has prepared the main bundles for the final hearing.

## **The Law**

14. Section 24 of the Landlord and Tenant Act 1987 gives the Tribunal power to appoint a manager to carry out management functions in relation to the property where the landlord is in breach of an obligation owed to the tenant, where unreasonable service charges have been made or are likely to be made, where the landlord has failed to comply with any relevant provision of the relevant RICS Codes of Practice, where unreasonable variable administration charges have been made or are likely to be made, where the company managing the property no longer wishes to manage it or where other justifying circumstances exist. All of the grounds are subject to the qualification that it is just and convenient to make the order in all of the circumstances of the case.
15. Section 27A of the Landlord and Tenant Act 1985 provides that an application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to the person by whom it is payable, the person to whom it is payable, the amount which is payable, the date at or by it is payable and

the manner in which it is payable. That is the basis of our jurisdiction in the service charge aspect of this case. The following statutory provisions are of assistance in our consideration of the relevant provisions of the lease.

16. Paragraph 16A of Part III of Schedule 6 of the Act states that the lease may require the tenant to bear a reasonable part of the costs incurred by the landlord in discharging or insuring against the obligations imposed by the covenants implied by virtue of paragraph 14(2) of the same Part of the Act. Those covenants include at paragraph 14(2)(c) a requirement for the landlord to ensure, so far as practicable, that services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are to be maintained at a reasonable level and to keep in repair any installation connected with the provision of those services.
17. Section 19 of the Landlord and Tenant Act 1985 states that relevant costs (costs incurred by or on behalf of the landlord in connection with the matters for which the service charge is payable) shall be taken into account for a period 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.
18. Section 20C of the Landlord and Tenant Act 1985 permits a tenant to make an application for an order that all or any of the costs incurred by the landlord in connection with proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the tenant or any other person. The Tribunal may make such order on the application as it considers just and equitable in the circumstances. The applicant has made an application for a section 20C order in these proceedings.

### **The Lease**

19. The Tribunal had before it a copy of the leases for the flats at pages 672-716 of the bundle. Clauses 7 and 8 of the leases require the service charges to be calculated by reference to the seven Baltic Wharf cost centres as individual costs centres.
20. The detailed provisions of the lease in relation to the obligations of the respondent appear at clauses 7 and 8 and the obligation to pay service charges appears at clause 6.

### **Inspection**

21. The Tribunal inspected Baltic Wharf internally and externally on 14 May 2015. The estate was generally in

good repair with evidence of continuing maintenance. Some of the external timber frames over parking spaces had plastic covers and some did not. The window frames are a mixture of timber and aluminium. At 17 Napier Court, we saw a wooden windowsill that was split and had been subject to a temporary repair.

22. 26 Meredith Court comprises two rooms, one of which houses a 10 seat conference table. The original kitchen from the flat has been retained. There was a telephone number for the manager on the external door. We were told that there was no charge for using the conference room and that the offices were used for various meetings including with the police beat manager.

### **The Hearing**

23. The hearing took place at Appeals Service, Vintry House, Wine Street, Bristol, BS1 2BP. The hearing proceeded on the basis of oral evidence from Mr Roger Bryan, the applicant, Mr Nathan Hockenhull of Crown Leasehold Management ("CLM") and Mrs Irene Shantry. We accepted Mr Callaby's submission that the witness statements were relevant to both matters in dispute. The witnesses who gave evidence twice (first day in relation to service charges and second day in relation to appointment of a manager) were Mr Bryan, Ms Chantry and the applicant. All of the page number references that appear in this decision relate to the main bundle prepared by the respondent.
24. At the outset of the hearing, we considered whether the applicant's witness statement of 30 November 2014 was admissible in evidence. Mr Callaby submitted that the applicant had failed to comply with directions, there was still no schedule of disputed service charge items and the witness statement covers a host of issues. There is reference to 6 exhibits and the Tribunal had not given permission to rely on any of those matters. It would be disproportionate to require the respondent to incur further legal expenses to respond to the points. The witness statement was really an analysis of the documents served on the applicant. It would be wrong to permit the applicant to rely on the witness statement given the history of failing to comply with orders. Mr Callaby had sent an e-mail on 1 September 2014 that explained what needed to be done (page 1003) and it must have been obvious that orders had been made.
25. The applicant submitted that his mail goes to an address where he does not reside by error of the Royal Mail; he lives over the road. He has sent medical evidence to the Tribunal in relation to heart problems. He could not remember receiving the original Tribunal directions. He responded on 8 December 2014 because Mr Callaby told him that he was in breach of directions. He was up against a professional solicitor and it was difficult to run his case.

26. We find that the witness statement ought to be admitted because the issues raised go to weight rather than admissibility. The Tribunal has wide powers under paragraph 6 of the 2013 Tribunal Procedure (Property Chamber) Rules to admit evidence and we indicated that we would distinguish evidence of facts from opinion and analysis.

## **The Evidence**

27. The evidence submitted by the parties included the following;

- 1) A three volume bundle of documents prepared by the respondent comprising 1061 pages split into 8 sections; namely the application to appoint a manager and associated documents, the court referred determination of service charges, the Tribunal directions, the applicant's witness statement of 30 November 2014 filed on 8 December 2014, the property and governance documents, the financial and service charge documents, correspondence between Harris and Harris for the respondent and the applicant and other documents.
- 2) An e-mail dated 12 December 2014 from the applicant to Mr Callaby and the Tribunal.
- 3) An e-mail dated 22 December 2014 from Mr Callaby to the applicant attaching a copy of the mediation form and suggesting that the applicant's cheque for £2000 be presented on the basis that the presentation was without prejudice.
- 4) A letter dated 27 September 2006 from William Price and Co. (Chartered Accountants) to the respondent.
- 5) A witness statement dated 15 May 2015 from James Cawthorne, the son of the applicant.

## **The Submissions**

28. Mr Callaby submitted that the only breach of the lease is in relation to computation of the service charges. That takes the application for appointment of a manager over the section 24 threshold but the issue is materiality and the just and convenient test. The background history is important – the system of calculating service charges was inherited from the developer and worked well. Mr Bryan brought the matter to the attention of the directors and they took advice from Mr Dodge, the accountant. No case has been made out that the service charges are unreasonable. There has been a full and proper explanation for the 2006 account and expenditure in the detailed



response. The question was raised in the applicant's letter of 6 October 2006 but the respondent has no record of receiving that letter. The applicant did not press for a reply until he was sued for unpaid service charges. His points were later cut and pasted from the 2006 letter and repeated in later court documents. The applicant has misunderstood how the figures were calculated on a 6 month/12 month basis.

29. Mr Callaby further submitted that there is a full and detailed rebuttal of the allegations relating to breach of the RICS Codes at pages 305-349. The applicant could only refer to £15,000 retained on trust against window replacements. There are no other circumstances that could make appointment of a manager just and convenient. The applicant has made unreasonable demands in his section 22 notice and he is acting in isolation without attempting to engage other leaseholders (he was reminded of the annual general meeting process). Mr Hockenhill was totally ill prepared for the hearing despite being aware of his nomination since last year and has disregarded the Tribunal's directions about the information required. He had no clear understanding of remuneration proposals, no idea of a management plan and his acceptance of the role would be conditional of not using any employee under TUPE. The appointment would not have the support of the directors and the application should be dismissed.
30. In relation to the section 27A determination, Mr Callaby submitted that the respondent had explained in detail how the 2012-2014 service charges had been calculated. The applicant had not established that the calculation was wrong. The requirements in relation to certification and presentation were met although Mr Callaby accepted that presentation of the accounts was not entirely clear. Mr Bryan had indicated in evidence that he would work with the accountants to improve matters. The lease clauses 6, 7 and 8 are all met. The service charges for 2005-2006 were paid at the relevant time. There are arrears from the intervening years but they are not the subject of Tribunal determination today.
31. The applicant submitted that the respondent had to comply with the leases and it was wrong to take advice from an accountant on a legal issue. It is just an excuse to say carry on because that was how the developers did it. There are still irregularities with the accounts and Mr Bryan acknowledged that the accounts are unclear. It is not clear that the six month accounting period was mixed in with 12 month accounting periods. Budgeted nominal accounts are not the same as actual amounts. The just and convenient point is shown by the maintenance of the timber windows at 17 Napier Court, there was mould on the windows inside and there was no evidence that had anything to do with condensation. The manager is not undertaking maintenance and not being open with the lessees. The respondent did nothing from 2006 until the legal action in 2012 when they suddenly decided to calculate service charges in accordance with the lease.

32. The applicant further submitted that Mr Hockenhull's style of management is very popular on other developments; in particular his direct approach to problems. That is the essence of a good manager. The service is sadly lacking in Baltic Wharf. Mr Hockenhull is snookered by the employment contract with Mr Bryan but there is no professional contract and no democratic right to elect who the residents want as a manager. Mr Hockenhull did not put in the documents that he should have submitted but he should be judged by his competent actions. The applicant conceded that there was no excuse because this was an important hearing and witnesses should not be disrespectful to the Tribunal. The system of service charges is far too complicated – the problems would be over if the flats had the same service charges. There are huge costs from the accountants and a pragmatic approach would be better. There has to be certainty of terms and matters have got out of proportion. 26 Meredith Court is not a benefit and it should be liquidated; the development would be managed in a pragmatic way by Mr Hockenhull. New windows would be very positive.

33. In relation to the section 27A determination, the applicant submitted that his only weapon at the time was to stop paying service charges. He knew that they could not win if they took him to court. There was no way to move forwards in January 2014. Baltic Wharf would work better with new management. However, if the respondent has made an effort then the applicant would not wish to argue about shillings and pence. He did not wish to dispute the service charges for 2012-2013 and 2013-2014.

### **Oral Evidence**

34. We heard evidence from a total of four witnesses as set out above. We found all of the witnesses to be generally credible and seeking to assist the Tribunal. That does not mean that they were necessarily able to adequately address issues arising from the evidence.

35. Mr Bryan was the first witness. In his witness statement of 29 October 2014 (pages 289-296) he states that he was appointed on 1 April 2006 and his current salary is £19,981.44 gross per year. He works part time for 20 hours per week. He attends the office at Baltic Wharf from 9am to 1pm each weekday and maintains a dedicated mobile phone for emergencies. He is also a partner in an unconnected business, Bristol Leasehold Management. When he was first appointed by the respondent he reviewed the leases and saw that the service charges were not being calculated in accordance with clauses 7 and 8 of the leases which required the contributions to be calculated on a cost centre basis. He drew that issue to the attention of the directors but they took advice and decided to continue with the system of service charge calculations inherited from the developers. The service charge year runs from 1 April to 31 March and the service charge invoices are

sent out in May, payable by two six month instalments. The buildings are currently insured for £27,306,678. Each court contains a mixture of buildings. The applicant had arrears of £3702.03 in December 2013 and proceedings were issued because the applicant has not responded to reminders.

36. Mr Bryan accepted in his witness statement that he refused to give the applicant a copy of a letter dated 6 September 2006. The decision to withdraw the proceedings was taken because it was hoped that the matter could be resolved through discussion. However, the first subsequent meeting was on 17 June 2014. We find it somewhat curious that Mr Bryan refused to supply a copy of a document that was in his possession to the applicant, even if it had been supplied before. There was a photocopier in the office and refusing to supply documents is unlikely to promote a harmonious relationship between the respondent and the leaseholders.

37. In oral evidence in relation to service charges, Mr Bryan identified various documents relating to the outstanding service charges. He confirmed in cross examination that the service charges had been incorrectly calculated since the mid-1980s. The service charges were calculated on the basis of square footage, probably from the developer's records of the size of the properties. The directors decided not to change the calculation method in 2006 because the costs were out of proportion to the benefits. They knew that there would be additional costs because the lease calls for an audit of each court. We find that the approach of the respondent company was unacceptable – the leases are clear and there have been many years of service charge demands that are not in accordance with the lease. We note that the respondent has sought legal advice on other issues (including Counsel's advice as to whether provision of new windows would fall within maintenance or amount to betterment) and it is somewhat bizarre that legal advice was not sought on the issue of apportionment of service charges after Mr Bryan raised the issue in clear terms.

38. The letter dated 6 September 2006 (pages 38-39) states that the directors authorised the purchase of an accounting package that would enable the respondent to monitor expenditure on a court by court basis and that the respondent expected to be able to budget and invoice in accordance with the leases with effect from the start of the next accounting year. We have also seen a letter dated 27 September 2006 from Mr Dodge of William Price and Co. (not included in the bundle) stating that the likely cost of producing financial statements for each court, with the appropriate auditor's report, would be between £500 and £700 plus VAT. We find that there is nothing in the advice from Mr Dodge that could justify departing from the indication given by Mr Bryan in his letter of 6 September 2006 or failing to correct the position between 2006 and 2014. We also find that communication with the applicant in relation to this issue was poor.

39. Mr Bryan further stated that he proposed budgets and the accountants prepared the accounts. There was

no decision not to reconcile the accounts with the nominal accounts but it has not happened. We find that is a further indication of a degree of lack of financial control. When asked why the County Court proceedings were withdrawn, Mr Bryan stated that it was because the respondent accepted that the charges were not calculated on the correct basis. We find that to be a somewhat different reason from that given in his witness statement (paragraph 36 above).

40. The next witness was Ms Irene Shantry who adopted her witness statement of 29 October 2014 (pages 278-288). She states that the appointment of an external manager would not be just or convenient. An external managing agent could not improve on the great care and attention that Mr Bryan devotes to Baltic Wharf. No other leaseholder or freeholder has requested the appointment of a managing agent. Mr Bryan attends the office each weekday morning to deal with the day to day occurrences normally undertaken by a caretaker as well as the general administration of the development including the company secretarial work. The Baltic Wharf common grounds are well maintained and cared for. The appointment of an external manager would add an unnecessary layer of expense to the management of the estate. Mr Bryan's employment would transfer to an external managing agent, if one were appointed, under TUPE. Any external managing agent would therefore need to re-charge Mr Bryan's salary to the respondent in addition to their own management fees. Even if it were possible to dismiss Mr Bryan the respondent would need to retain 26 Meredith Court to accommodate a caretaker to carry out the caretaker duties that Mr Bryan currently performs.

41. In oral evidence, Ms Shantry confirmed that when the directors became aware in 2005 or 2006 that the service charges were being calculated incorrectly they instructed Mr Bryan to buy some software. The plan was for Mr Bryan to use the software but the directors were then given advice that the cost would be very high. Ms Shantry conceded that it was not fair that some people were paying more and some were paying less than required to do under their leases. By 2014 the advice to the directors had changed and they took the advice. They had the applicant's intervention and legal advice from a solicitor. We find that the real driver for the change in calculating service charges was the litigation between the respondent and the applicant. In order to succeed in the litigation, the respondent had to start calculating service charges in accordance with the relevant provisions in the leases and to backdate that calculation to 2012 in respect of the applicant's flats.

42. The applicant was the next witness to give evidence in relation to service charges. He relied upon his witness statement of 30 November 2014 (pages 466 to 652). We have not found it necessary to extensively analyse that document because of the grounds for our decisions as set out below. We are satisfied that there is significant merit in the applicant's critique of the respondent's accounts. In oral evidence, the applicant agreed that he spent about an hour at Bristol County Court discussing the case but he wanted to agree a step by step

calculation of the management charges. He did not accept that he had been given the accounts information four times but refused to accept it. He could not understand the accounts. He said that a computer programmer would struggle to write a programme with it. For example, at page 88 it is impossible to calculate maintenance for each flat. Why not give that little bit of extra data?

43. We next considered the witness statement of Mr James Cawthorne (the appellant's son) which was produced on 15 May 2015. Mr Cawthorne is a technical and product expert who works for Currys. He saw the laptop and printer at 26 Meredith Court during the site visit on 14 May 2015 and identified the printer as a Ricoh printer with a purchase price of £413.94 and the laptop had a purchase price of approximately £250. The purpose of the witness statement was to illustrate that the respondent is incurring excessive expenditure on those items. We place limited weight on this evidence because the lease cost of computer equipment frequently appears excessive in relation to the purchase price of that equipment. There was no direct evidence before us to prove that the lease costs were unreasonable.

44. We then heard evidence from Mr Hockenhull in relation to appointment of a manager. He relied upon the material that appears at pages 1015 to 1025. Mr Hockenhull states in his e-mail of 10 October 2014 that he has been in the industry for 10 years and has managed very similar sites. In terms of remuneration he would need to have copies of the leases and to be given more details regarding the scope of the development. He would need to know the total number of dwellings as CLM charge per unit per annum. As a guide, CLM charges £120 per unit plus VAT per annum. Within that fee CLM acts as company secretary and provides an emergency 24 hour number for issues of a communal nature. Mr Hockenhull also provided various case studies; to demonstrate that CLM provides a very communicative and inclusive service rather than an all-encompassing approach. CLM would gladly accept the appointment subject to being able to manage the development and **not to have any individual forced on us.**

45. In oral evidence, Mr Hockenhull confirmed that he had read the leases and understood that the service charges were to run the management company and the lease tells the company how to apportion costs for each court. There is nothing in the lease to say that there must be separate accounts for each court. There is a need to show separate expenditure for each court but that is not difficult. The total cost per year for CLM would be around £29,000 including VAT. Producing accounts would be outsourced. CLM would not need 26 Meredith Court as an office but it could be retained if it is of value to the community. Alternatively, it could be a source of income or could be sold. CLM seek to reduce future costs wherever possible, for example upgrading wooden windows to UPVC. With any major site, things can be overlooked. Mr Hockenhull had not seen the windowsill at 17 Napier Court. The photograph did not look like a particularly good

repair. CLM are based in Westbury-on-Trim on a 9-5 basis with 24 hour cover for urgent matters. Things can usually be resolved over the phone and a site manager can be sent out very quickly. After taking on a large site CLM does not take on any more business for six months.

46. Under sustained cross-examination, Mr Hockenhull confirmed that he had not seen the directors and had not produced a written statement. He had previously been appointed as a manager by the Tribunal on one occasion about 18 months ago. He accepted that he should have produced a written statement by 28 August 2014. However, a management plan was not required because he could only act on instructions from the client. He had not submitted a written statement of proposed remuneration but the figure given today per unit was not a guide figure. He did not know the total number of units. He had not brought his professional indemnity insurance. When challenged that he had turned up to the Tribunal without any of the required information Mr Hockenhull replied that he did not necessarily agree that he had provided **none** of the information. We disagree – it is clear that Mr Hockenhull has not complied with the directions set out in bold at paragraph 9 above although some information has been submitted.
47. Mr Hockenhull confirmed that the £29,000 is purely for the role carried out by CLM and contractors could do minor jobs. The fee estimate did not include a caretaker and there would be no onsite presence. TUPE would apply to Mr Bryan and the fee estimate did not include his salary. He did not know about Mr Bryan when he wrote the e-mail of 10 October 2014. He made an assumption because it is very unusual for a management company to employ a manager directly. CLM would honour any legal obligations. However, the fee would have to be reconsidered. Mr Hockenhull denied that his position was wholly inadequate. He accepted that he had been made aware of the Tribunal directions by e-mail on 7 October 2014. He had never worked on a site where the directors did not want him to be there. Residents like managers to be on the patch.
48. We find that Mr Hockenhull's evidence was well meaning but somewhat vague. The absence of any of the documents required by the Tribunal makes it impossible to assess whether Mr Hockenhull could adequately perform the manager role at Baltic Wharf. In particular, there is no plan for 26 Meredith Court or the future role of Mr Bryan. The combined cost of CLM and Mr Bryan would be far in excess of the current cost for the manager role.
49. The applicant then gave evidence in relation to the appointment of a manager. He confirmed that he had become aware that he was comparing 6 and 12 month accounting periods in relation to apparent increases in expenditure only within the last year. We find that issue was not transparent from the accounts and it is important to communicate changes to the accounting year to all members. He denied that he had waited 8 years before resurrecting the service charge allocation issue in response to the County Court litigation.

It was a lot of work to put together a letter and he decided to see what happened after 2006. We find that response was not unreasonable given that Mr Bryan had undertaken to change the method of calculating service charges from 2007.

50. The applicant contended that 26 Meredith Court was costing £10,000 per year and there was no benefit to members. He denied that his demands were unreasonable. He had not raised matters at the AGM because the TUPE issue had appeared. CLM and Mr Bryan would be a two headed monster costing £50,000 per year. We note that the applicant was unenthusiastic about the prospect of Mr Bryan and Mr Hockenhull working together but all parties agreed that Mr Bryan's employment would continue in any event. That is plainly relevant to the "just and convenient" test.

51. Mr Bryan then gave evidence in relation to appointment of a manager. 26 Meredith Court cost around £1800-£1900 in 2013-2014. Window replacement was by subscription on a voluntary basis – it was betterment and not maintenance. The total cost of window replacement would have been £1.5 million. The windows survey cost £6000. Mr Bryan stated that the total cost of his salary and 26 Meredith Court was £24,000 per year. He did not understand why the cost of management fees for the year ending 31 March 2013 was recorded as £27,031 (page 636). He did not know why the cost of £1204 for the telephone was so high. He then said that the job is about being out on the job rather than getting bogged down looking at documents. We find that the accounts are not always easy to understand and Mr Bryan was equally unclear on some issues. Transparent accounts are crucial in order to maintain the confidence of the members.

### **Post-hearing issue**

52. On 17 May 2015, the applicant e-mailed the Tribunal and stated that he had serious concerns about his ability to answer the last few questions on the last day of the hearing (paragraph 33 above refers). He was suffering from vertigo and tinnitus which makes him dizzy, affects his short term memory and causes him to lose his cognitive ability. He lacked mental capacity at that moment of time. At the start of the hearing he had explained that his window of ability to work was 3-4 hours per day. The documents upon which he cross-examined Mr Bryan make it clear that it is impossible for anyone to say if the service charges for 2012-2014 accord with the lease. It was unclear whether the budgeted figures or actual figures were accurate. The applicant's concession that the service charges accorded with the lease was totally irrational and was stated without consideration of the evidence just given by Mr Bryan.

53. We note that the applicant has not submitted any medical evidence to suggest that he lacked mental capacity during the hearing. We find that the applicant was able to understand questions when giving evidence, engaged in detailed and lengthy cross-examination of the respondent's witnesses and made coherent

submissions. There was nothing to suggest any loss of capacity at the end of the hearing.

54. We therefore find that there is no basis for us to disregard the concession made by the applicant in his closing submissions that he did not wish to dispute the service charges for 2012-2013 and 2013-2014. In any event, our decision in relation to those service charges is primarily based upon consideration of the documentary evidence.

## **Conclusions**

55. The Tribunal finds that the respondent's role has not been carried out to a satisfactory standard. That is admitted by the respondent company in relation to the calculation of service charges and is otherwise evident from the extensive financial documents that we have considered. We find that the admitted breaches of the leases provide jurisdiction under Section 24 of the Landlord and Tenant Act 1987 for the Tribunal to appoint a manager subject to the requirement that it is just and convenient to make the order in all of the circumstances. Disputes have tended to be addressed in a manner that is unlikely to create a harmonious environment between the leaseholders and the respondent. The early resort to County Court action in 2014 (paragraph 16 above) is a good example of a somewhat confrontational approach by the respondent. However, we also recognise the strength of the points made by Ms Shantry in relation to the value of the role carried out by Mr Bryan, the absence of any support from other leaseholders for the application, the TUPE issue and the value of 26 Meredith Court to the respondent company and the residents of Baltic Wharf. We also recognise that Mr Bryan is now determined to work with the accountants to improve the accounts. That is a positive step.
56. There is an extensive history of correspondence, litigation and meetings between the parties. We have not found it necessary to fully recount this history or to make findings about all of the historic issues or to seek to apportion liability for the issues that have arisen within Baltic Wharf. We are satisfied for the reasons set out above that there might have been good reasons to make an order under Section 24 of the Landlord and Tenant Act 1987 if Mr Hockenhull had complied with Tribunal directions and thus been properly prepared for the hearing. However, that is not the case. We find that Mr Callaby's submissions in relation to the evidence given by Mr Hockenhull are ultimately well founded. We regard the failure to comply with the directions of 6 August 2014 (paragraph 9 above) as fatal to the application to appoint Mr Hockenhull as a manager at Baltic Wharf; particularly in light of the lack of planning in relation to Mr Bryan and 26 Meredith Court. The applicant recognised the seriousness of the deficiencies in the application arising from Mr Hockenhull's failure to comply with directions and his limited preparation for the hearing. We



find that it is not just and convenient to appoint Mr Hockenull as a manager.

57. The applicant has never submitted a schedule of disputed service charge items as he was directed to do on 6 August 2014. The service charges have now been calculated in accordance with the lease. The applicant did not dispute the service charges for 2012-2013 and 2013-2014 in his closing submissions (paragraph 33 above). We have carefully considered the documentary evidence and are satisfied that the service charges are correct for those years. In those circumstances we find that the service charges are payable as claimed by the respondent. There is no basis in the leases or the evidence for us to find otherwise. However, we note that the parties appear to have agreed (page 999 refers) that the £2000 cheque is sufficient to settle the arrears up to 31 March 2015. Nothing appears to have changed since then, particularly in light of Mr Callaby's concession that the presentation of the accounts was not always clear. Further litigation on this matter is unlikely to be in the best interests of either party.

58. We have carefully considered the application made under Section 20C of the Landlord and Tenant Act 1985. We find that there have been significant issues with the management of Baltic Wharf, not least the failure to calculate service charges in accordance with the leases for many years. We have been told that software was purchased in 2006 but nothing happened and no letter of explanation was written to the members. That is an extraordinary example of poor communication given the facts known by the directors of the respondent company. We also find that the way in which the accounts are presented is very poor. Even Mr Bryan was struggling to understand figures that were directly relevant to his role. Our findings above make it clear that the applicant has effectively compelled the respondent company to behave in a more rational manner since 2014.

59. Taking all of those issues into account as well as our other findings of fact set out above, we find that it is just and equitable to make an order under Section 20C of the Landlord and Tenant Act 1985.

## **Appeals**

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

61. 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.

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

**Judge D Archer (Chairman)**  
**Dated: 27 October 2015**