

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE  
SOUTHERN RENT ASSESSMENT PANEL  
LEASEHOLD VALUATION TRIBUNAL**



**Section 27A Landlord and Tenant Act 1985 (as amended)  
Application for a determination of liability to pay service charges**

**DECISION AND REASONS**

**Case Number:** CHI/19UH/LSC/2009/0060

**Property:** 72 Kingsway, Lyme Regis, Dorset, DT7 3DY

**Applicants:** Mrs B W Derrick and Mrs P Dashfield

**Respondent:** Magna Housing Association

**Date of Application:** 2 April 2009

**Date of Hearing:** 22 July 2009

**Tribunal Members:** Mr T E Dickinson BSc FRICS (Chair)  
Mr M J Greenleaves  
Mrs J E S Herrington

**Date of Decision:** 24 July 2009

**SUMMARY OF DECISION**

1. The Tribunal decided that the sinking fund charge of £431.75 is reasonable. In relation to the proposed re-roofing works, which have not yet commenced, the Association is still intending to carry out the works at a capital cost per Leaseholder of £4,223.30. For the reasons set out below, the Tribunal do not consider that this charge would be reasonably incurred during the financial year commencing 1 April 2009.

**INSPECTION**

2. Prior to the Hearing the Tribunal, accompanied by it's clerk, inspected the exterior of the block known as "71 – 74 Kingsway" and additionally inspected the interiors of Flats No's 71 and 74, together with the roof spaces above those first floor flats. The Applicant was represented by Mr T Lewis and also at the inspection was Mr I Vicary MRICS of Wessex

Surveyors LLP, Expert Witness for the Applicant. The Respondents also attended in the persons of Mr M Taylor and Mr R Townley.

3. The property, a two storey block of residential flats, was constructed in the late 1940's or the early 1950's, and the property is sited in an exposed elevated location facing in a south westerly direction onto the street. The building is of cavity brickwork construction with pitched and hipped roofs covered with Marley concrete tiles.
4. The Tribunal were able to gain access to the interior of 71 Kingsway and in the roof space, accessed from the landing area, noted the following:
  - a. A cracked tile to the rear pitch with evidence of damp staining to the battens and rafters adjacent;
  - b. Damp staining to the timbers adjacent to the chimney stack at the south eastern end of the roof void;
  - c. Torn underfelted beneath the front and rear pitches and also the side hip;
  - d. No evident staining to the bases of common rafters where a limited inspection was possible;
  - e. No evidence of rot to the timbers making up the roof structure.
5. In the bathroom, black spot moulding was noted to the ceiling/wall head junction, although no water staining was evident to the ceiling surface. No extractor fan had been fitted in the bathroom.
6. In the living room the main ceiling surfaces and chimney breast appeared dry, although a meter reading taken by Mr Vicary indicated surface dampness to the ceiling in the front bay.
7. The Tribunal were able to gain access to the interior of 74 Kingsway, another first floor flat, and were unable to find any signs of damp staining to the ceilings in this flat. In the roof space the following items were noted:

- a. Damp staining to a common rafter beneath the chimney stack to the rear north eastern pitch and old damp staining to a common rafter beneath the chimney stack to the south west pitch;
  - b. Torn feltwork to all areas;
  - c. Daylight showing through in several areas where the feltwork had been torn.
8. An inspection of the exterior of the property revealed heavy moss, lichen and weed growth to all pitches of the roof, with the weed growth notably showing to the lower parts of the roof pitches.

## **BACKGROUND**

9. Directions were issued on 15 May 2009 following a Pre-Trial Review held on 14 May 2009 at the Royal Lion Hotel, Lyme Regis. At the Pre-Trial Review it was accepted by the Applicant that the service charge and sinking fund contributions for the year 2007/2008 were not being challenged. Mr T Lewis, Power of Attorney for the Applicant, also confirmed that he was not querying the administration charges levied at a rate of 15%.

The Directions confirmed that the Application would be dealt with on the standard track and set out a timetable of dates to be complied with.

## **THE LAW**

10. The Tribunal's jurisdiction is contained in section 27A of the Act. Section 27A is set out below.

### **S27A Landlord and Tenant Act 1985**

#### **Liability to pay service charges: jurisdiction**

*(1) 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—*

- (a) the person by whom it is payable,*
- (b) the person to whom it is payable,*
- (c) the amount which is payable,*

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

*(e) the manner in which it is payable.*

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

*(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—*

*(a) the person by whom it would be payable,*

*(b) the person to whom it would be payable,*

*(c) the amount which would be payable,*

*(d) the date at or by which it would be payable, and*

*(e) the manner in which it would be payable.*

*(4) No application under subsection (1) or (3) may be made in respect of a matter which—*

*(a) has been agreed or admitted by the tenant,*

*(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,*

*(c) has been the subject of determination by a court, or*

*(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*

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

*(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—*

*(a) in a particular manner, or*

*(b) on particular evidence,*

*of any question which may be the subject of an application under subsection (1) or (3).*

*(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.*

11. The Tribunal had been provided with a copy of the Lease dated 12 December 1988 relating to 72 Kingsway and the tenant has covenanted under Section 21 as follows:

"To pay the Landlord annually the Tenants expenses without any deduction subject to and upon the following terms and provisions:-

- a. the Landlord's expenses shall be the expenses calculated in accordance with the Sixth Schedule hereto
- b. the Tenants expenses shall be that proportion of the Landlord's expensed apportioned as being attributable to the demised premises
- c. the amount of the Tenant's expenses shall be ascertained and certified by a certificate (hereinafter called "the certificate") signed by the Landlord's Treasurer acting as an expert and not as an arbitrator annually and so soon after the end of the Landlord's financial year as may be practicable and shall relate to such year in manner hereinafter mentioned
- d. the expression "the Landlord's financial year" shall mean the period from the First day of April in each year to the Thirty-first day of March of the next year or such other annual period as the Landlord in its discretion from time to time determine as being that in which the accounts of the Landlord either generally or relating to the demised premises shall be made up
- e. the Tenants expenses shall be paid to the Landlord as follows:-
  - (i) an annual service charge of £144 or such other sum as the Landlord's Treasurer shall in any year certify to be appropriate payable quarterly in advance on account of the Tenants expenses the first proportionate payment to be made on the First day of April First day of July First day of October and the First day of January in each year of at such other intervals and dates as the Landlord's Treasurer may from time to time specify
  - (ii) if requested to do so by the tenant the Certificate of the Tenants expenses shall as soon as practicably after the financial year to which the certificate relates be served on the Tenant by way of an account due credit being given therein for the annual service charge paid in respect of that financial year and the Tenant shall

pay to the Landlord within twenty-eight days of service of such account the Tenants expenses as contained therein PROVIDED ALWAYS that if in any financial year the amount of the annual service charge shall exceed the Tenants expenses then the unexpended surplus shall be applied towards the cost of the Tenants expenses in future years."

12. The Landlord has covenanted with the Tenant as follows:
  - (a) So long as the Tenant shall pay the said rent and observe and perform the covenants on the Tenant's part herein contained to permit the Tenant to hold the demised premises and occupy the same without any interruption by the Landlord or any person or persons lawfully claiming under the Landlord
  - (b) Subject to payment being made by the Tenant in manner provided by Clause 2(21) hereof and the Sixth Schedule hereto to perform the obligations specified in Part I of the Seventh Schedule hereto.

#### THE SIXTH SCHEDULE – LANDLORD'S EXPENSES

"The Landlord's expenses shall be the aggregate of:

1. The actual cost certified by the Landlord's Treasurer of the repairs and of providing the services specified in the Seventh Schedule hereto (including all professional fees incurred in connection therewith)
2. Such sum (if any) as (after making allowance for any reserves in hand) may be estimated by the said Treasurer (who shall act as an expert and not as an arbitrator) to be required to provide a reserve to meet part of all of the future costs of such repairs and services as the Treasurer anticipates will or may arise thereafter during the next following five years of the term hereby granted and
3. The fees and costs incurred in the general management of the Landlord's property and the building including the costs of any managing agents employed by the Landlord and also the cost incurred in respect of the Treasurer's Certificate and of accounts kept and audits made for the purpose thereof.

## THE SEVENTH SCHEDULE – PART II

Repairing maintaining and decorating the demised premises and the building but excluding any matters covered by the Tenants covenants contained in Clause 2 of the Lease and of providing services of any kind whatsoever for the reasonable comfort security safety and convenience of the Tenant or the tenants owners or occupiers of other flats of the building including the provision of any equipment fixtures or apparatus in connection therewith.

### HEARING

13. The Chairman welcomed the parties and introduced the Members of the Tribunal. The following persons were in attendance at the Hearing:

Mr T Lewis	(Son and Power of Attorney) for the Applicant Mrs B W Derrick
Mr I Vicary	Expert Witness for the Applicant
Mr M Taylor	
Mr R Townley	Both from the Magna Housing Association

14. Mr Lewis had raised as a preliminary issue the question of late delivery of papers. He had been away on Holiday from 6<sup>th</sup> to 20<sup>th</sup> July 2009 and the Respondents Bundle had arrived during his absence. Mr Lewis was asked in what respects he had been taken by surprise in relation to the contents of the Bundle and stated that nothing had taken him by surprise. Mr Lewis was asked by the Chairman if he felt he was prejudiced because he had only had a short period of time to consider the contents of the Bundle. Mr Lewis confirmed that he had read through the Bundle once and had picked up a couple of points. He did state that he had read through all the papers. The Respondent accepted that its entry was out of time. Mr Lewis then produced his own bundles which he stated contained some new information. The majority of the documentation had been prepared by 12<sup>th</sup> June 2009, although Section A and part of Section B had only been prepared the previous evening. Section A dealt with substantive issues and Mr Lewis stated that the Respondent had seen everything in Sections B and C, apart from the first two pages of Section B.

15. The Tribunal decided that there should be a short adjournment of about 20 minutes to give the Respondent's representatives time to read through Section A (3 pages) and 2 pages of Section B. Section A related to failure to provide full contract conditions, failure to provide adequate preventative maintenance and failure to confirm that the re-roofing was necessary. After the short adjournment the Chairman asked Mr Taylor for the Respondent if anything in the new documentation had taken him by surprise. He replied by saying that nothing had particularly taken him by surprise.

16. The Chairman subsequently stated that the Tribunal were disappointed that the Directions had not been complied with, but having given the matter due consideration, there was nothing to suggest that either the Applicant or the Respondent had been prejudiced.

17. Mr Lewis for the Applicant presented his case and was able to confirm with written documentation that Mrs Dashfield of 73 Kingsway wished Mr Lewis to represent her and her interests at the Tribunal.

Mr Lewis raised as a preliminary matter his belief that re-roofing was not necessary and wished the Tribunal to consider that point and the costs to be incurred, together with the sinking fund charge for the 2009/2010 year.

18. With Magna's agreement Mr Lewis had engaged professional RICS independent surveyors, Wessex Surveyors, who stated that the work to the roofs proposed by Magna was not necessary as no damp was penetrating. It was admitted that the underfelt had perished but felt was only installed as a secondary barrier to prevent wind driven rain. An independent survey was sent to Magna on 29 October 2008 and it took until 15 April 2009 for the Magna Project Manager, Mr Townley, to write to Wessex Surveyors expressing concerns about the survey. This was 5½ months after the report was sent to Magna.

19. Mr Vicary, at the Hearing, confirmed that following the inspection of the roof earlier, the condition was not worse than found at the time of



the original survey in October 2008. When testing the timbers a moisture content level of 16% – 18% was found in localised areas, but the roof timbers, which appeared to be dry, were also found to have a 16% – 18% moisture content on the meter. Mr Vicary went on to explain that at a moisture content level of less than 20%, timber rot would not set in.

20. Mr Vicary stated that the underfelting was in a poor state and had been so for a long period of time. There was however no evidence of damp staining to the ceilings. When questioned on the dampness to the bay window of No. 71, Mr Vicary stated that a moisture content reading in excess of 20% had been taken in that area but in his opinion there was an ongoing damp issue due to blocked guttering etc. Mr Vicary further confirmed that in the second roof void at 74 Kingsway, the readings were in the range of 17 – 18%, even on the timbers that appeared to be damp. The feltwork in that roof void was more torn than in the roof void above No. 71.
21. With regard to the exterior, Mr Vicary advised that the weed growth was indeed an unusual nature of vegetation and suspected that the roofs had not been scraped off for a long period of time. Mr Vicary reaffirmed that with maintenance there should be at least ten years life left in the concrete tiles. With regard to the underfelting, the material had been in position for 50 years and did not believe that there would have been any degradation over the first 20 years, but the feltwork had been degrading probably over the last 30 years. If not replaced now the felt would get worse. The breakdown had been occurring over a long period of years but the roof tiles had not been affected.
22. When questioned on the design life of the Marley tiles, Mr Vicary confirmed that the tiles were already beyond their recognised design life, although in his opinion the tiles themselves would last a further 10 years.
23. When questioned on the matter of repairs versus re-roofing, Mr Vicary stated that he had not precisely costed the alternative of repairs but

safe access would be needed which would entail scaffolding. It would be possible to rebed the ridge and hip tiles, replace broken tiles, clean off moss growth and strip off the lowest courses, insert manmade materials and rebed, together with any necessary repairs to the fascias. Mr Vicary stated that he could not be precise but thought the cost of repairs could be between £2,000 - £4,000 for the block, plus the scaffolding. Mr Vicary further stated that the costs of repair and maintenance would be significantly less than the cost of re-roofing. To re-roof would cost about £17,000 now, but repair costs could be £3,000 - £5,000.

24. Mr Vicary stated that it was a question of economics. There was, in his opinion, still life in the tiles and suggested that Magna could continue to use up the useful life and carry out repair and maintenance works. Mr Vicary had surveyed many properties with this type of Marley tile and many coverings were, in his experience, in place where the design life had been exceeded. He lived in a 1950's bungalow himself with similar roof tiles where the tiled covering had exceeded its design life.
25. Mr Vicary was also of the view that moss growth should be scraped away annually plus cleaning out gutters. Moss growth left in place could help to lift tiles, but when questioned on this point Mr Vicary stated that he couldn't say for certain that the tiles had been lifting in this particular case.
26. Mr Vicary stated the need to consider economics and in his opinion one doesn't necessary strip off the roof covering because the underfelt is torn.
27. When questioned by the Respondent on the risk of future water ingress, Mr Vicary replied by stating this was because of lack of maintenance and repair and not the condition of the roof tiles. In his opinion repair and maintenance would ensure weather tightness. Mr Vicary also confirmed that repair and maintenance works wouldn't extend the life of the actual concrete tiles.

28. When specifically questioned on the likely remaining useful life of the concrete tiles, Mr Vicary estimated 10 years as a covering and one should therefore be budgeting for renewing the roof from 10 years time. With regard to maintenance, one would need to allow £2,000 for scaffolding, and say £3,000 for works, making a total of £5,000, equating to approximately £1,250 per flat. Mr Vicary was not certain about whether or not the annual sinking fund covered the costs of the works. His main role was to comment on the present condition, the coverings and the extent of damp penetration in the roof spaces. There being no further questions for the Applicant's Expert, Mr Vicary left the room at approximately 12.30pm.
29. Mr Lewis continued to present the Applicant's case and stated that he was not aware that the sinking fund included the roof. In a letter to Mrs Derrick however dated 1 September 2008, Carla McQueen, Leasehold Co-ordinator for Magna, informed her that she had already contributed £470.54 which had been held in a sinking fund and that this would be deducted from the actual costs of the re-roofing works costed at £4,223.30.
30. Mr Lewis complained about the incredible increase in the service charge contribution from £100 per annum to nearly £450 per annum and also the capital cost of the roof. If the roofing felt was torn, why had the roof not been re-covered 10 years ago?
31. Mr Lewis queried the extract from the Stock Condition Report, apparently prepared by Messrs. Savills and a single page had been reproduced at Section 2.2 of the Respondent's Bundle. Mr Lewis asked what expert evidence would be provided to refute the evidence proffered by his own expert. Mr Lewis contended that the items outlined on the spreadsheet were too general and that the sinking fund had been based on matters that were not relevant. Mr Lewis additionally queried why similar aged roofs in the nearby Anning Road had not been re-covered.

32. Mr Lewis complained that Magna had failed to provide as promised in correspondence logged repair sheets despite numerous requests. Magna had provided a spreadsheet from Savills showing that works had to be done. This was without the benefit of a roof space inspection.
33. Having completed the Applicant's Statement of Case, a lunch break was taken at 1pm.
34. On the afternoon of the Hearing the Respondent was given the opportunity to present its case. Mr Taylor referred to the right to charge as per the Sixth Schedule on Page 19 of the Lease. Mr Taylor admitted that the Lease refers to costs over five years and that a 30-year rolling programme had been set up to avoid peaks and troughs. The mechanism was illustrated at Tab 2.2 of the Respondents Bundle, which was in fact a single page extract from the Savills Report of 2004. As a result of the programme prepared, the new sinking fund contribution had risen from £100 per annum to £35.98 per calendar month. The Respondent's submission was that the current sinking fund contribution is fair and reasonable to take into account the costs likely to be incurred over the next five years.
35. Mr Taylor explained that the figures in Tab 2.2 in the Schedule come from "Savills" and were essentially guidance figures. They related to a Schedule of Rates in 2004 and may be slightly out of date.
36. When questioned on the start date Mr Taylor did not know why the programme had not started earlier. He assumed that it had taken a considerable amount of time to prepare. Savills had identified and provided a cost breakdown for each element and the figures indicated works required over a period of time.
37. When questioned by the Tribunal, Mr Townley stated that he was not familiar with the Savills report. It would have been helpful to have seen their report but it was confirmed that the report was not available. The report essentially formed a Housing Stock Survey and related to a total of 6,000 units.

38. When questioned on the increase in service charges from £100 to £437 per annum, Mr Taylor stated that some prefer to pay as the years progress, but others prefer to pay as costs arise.
39. When questioned further on the Savills survey, Mr Townley thought that the Housing Stock Condition Survey was completed by way of external inspection only. Magna would then survey 10% – 20% of the stock to provide a validation on stock condition. Magna's own validation included inspections of roof spaces. Further validation had been provided by Redland as referred to at the end of Tab 3.1 of the Respondents Statement. When questioned on the availability of surveys, Mr Townley admitted that he did not have the Savills Survey or the Validation Surveys in the papers. He confirmed that the Savills Stock Condition Survey was likely to have been a drive-by inspection.
40. When questioned by Mr Lewis on the re-tiling of roofs, Mr Townley responded by saying that one could not replace every 1950's roof in a 12 month period. The Annings Road properties had been included in the 5-year programme. Mr Townley was firmly of the view that re-roofing was necessary and referred to the Redland specification.
41. When questioned on the cost of repairs as an alternative, Mr Townley conceded that £4,000 was not far off and tended to agree with Mr Vicary's figure. Mr Townley didn't disagree with the repair costs generally, but did not consider that a repair would last for 10 years. The Association was in the business of planned maintenance and not emergency repairs. He referred to the age and condition of the covering, the exposed location and the need for re-covering. Mr Townley confirmed that Magna had signed up to Decent Homes Standards. It was not their business to wait for roofs to leak. They needed to factor in long term solutions as emergency repairs costed more. In Mr Townley's opinion it might cost closer to £20,000 to have the roof re-covered as an emergency repair.

42. When questioned on the current condition of the roof spaces, Mr Townley confirmed that there was no visible evidence of rotted timber, although from his examination of neighbouring blocks, rot was discovered at eaves level after the roofs had been stripped. In his opinion moisture tends to track up the roof. He could not however be certain that rot had set in at this particular block as the timbers were not visible.
43. When questioned about the Call Out Reports Mr Townley confirmed that eight call outs had been received from Mrs Samspon and Mrs Derrick and that the Repair & Maintenance Section had logged these calls. Mr Townley had not identified any other works that were currently required, but repairs for example on chimneys would be carried out as and when the block was re-roofed. Mr Townley further confirmed that he was not aware of any structural works required to this block in the next financial year.
44. When questioned on the Stock Condition Survey Mr Townley stated that Savills were unhappy with the condition in 2004 and admitted that the building would probably have deteriorated since the Savills Survey five years ago. Repairs would cost more now than they would have done five years ago. Mr Townley further stated that if there has been historical neglect, this has not resulted in additional expense.
45. In a brief closing statement, Mr Lewis complained that he had still not been provided with a full set of contract conditions with regard to the proposed re-roofing. His main argument was that in the past there had been a lack of proactive management. Moss and weed growth had accumulated and the problem of the seagulls had not been properly addressed. Preventative measures could have been taken. There had been little or no maintenance to the building since Magna took over the management. The moss and weed growth has caused water to overflow and had assisted in the deterioration of the building.

46. In summary, Mr Taylor for the Respondent stated that the Association cannot accept that a sensible approach to maintaining its stock involves a system where they wait for leaks and damage to the flats before undertaking re-roofing works. The Association were not responsible for the need to replace the covering due to lack of maintenance.
47. With regard to the separate Application under 20C of the Landlord and Tenant Act 1985, Mr Taylor confirmed that the Landlord would not be seeking to recover costs incurred in connection with the proceedings before the LVT as part of the service charge.

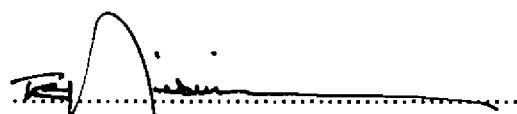
## **DECISION**

48. The Tribunal finds that the Respondents have not produced satisfactory Independent Expert Evidence, or indeed a Statement of Case from the Technical Director Mr Townley. The Tribunal have not been provided with a copy of the Savills Housing Stock Survey but only a one-page extract in a spreadsheet reproduced at Section 2.2 of the Respondent's Bundle.
49. The Tribunal have not been provided with any written evidence in the form of Validation Reports from Magna Housing and no Independent Experts Report has been produced to refute what Mr Vicary has said.
50. The Respondent had provided a Roof Specification prepared by Julie Pullen, Technical Adviser for Redland Technical Solutions. The evidence produced however is a specification only and does not provide expert opinion on the condition of the existing roof tiles.
51. In the absence of Independent Expert Opinion the Respondent's case rests on assumptions only. Indeed, the only evidence of expert's advice to Magna (not dated) lies in the one-page spreadsheet reproduced from the Savills Report where it is shown that the programmed renewal of the pitched roofs (concrete tiles) would be in years 26 – 30. In that particular spreadsheet the re-roofing of the property is actually shown as the last priority (although it was stated by Mr Taylor for the Respondent at the Hearing that that Schedule

made the assumption that re-roofing work had already been undertaken).

52. It is perfectly plain to the Tribunal that there has been little or no maintenance to the exterior of the roof coverings for years and the Tribunal also accepts Mr Vicary's contention that the underfelted in the roof voids has been degrading over a long period of years, perhaps 30 years.
53. In the absence of Independent Expert Evidence for the Respondent this Tribunal prefers the Expert Evidence proffered by Mr Vicary, Independent Expert for the Applicant. The Tribunal prefer therefore to accept Mr Vicary's evidence that the concrete tiles to the roof covering do not require replacement for a period of 10 years.
54. The Leasehold Co-ordinator for Magna has stated in a letter dated 1 September 2008 that the sums already contributed and held in a sinking fund will be deducted from the actual cost of works and it is assumed that this would also apply to repair and maintenance works, as the Association has indicated that such costs are inextricably linked to the sinking fund.
55. Finally, with regard to the current level of service charges, the Tribunal considers that the Respondent had amply justified the increases in the evidence that has been produced and therefore concludes that these charges are not unreasonable.

Signed



T E Dickinson BSc FRICS IRRV  
(Chairman)

A Member of the Leasehold Valuation Tribunal appointed by the  
Lord Chancellor

Dated 28 July 2009