

8458

HM COURTS AND TRIBUNALS SERVICE
LEASEHOLD VALUATION TRIBUNAL

Case No. CHI/19UJ/LIS/2012/0013

DECISION AND REASONS

Application : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended (“the 1985 Act”)

Applicant/Leaseholder : Mrs B Patterson

Respondent/Landlord : Roseleb Limited

Respondent/Manager : OM Property Management Limited

Block 5: Block 5 Corscombe Close, Weymouth, Dorset, DT4 0UQ

Blocks 3, 4, 5, 6, 7 : Blocks 3, 4, 5, 6, and 7 Corscombe Close, Weymouth, Dorset, DT4 0UQ

Premises : Flat 20 in Block 5

Date of Initial Directions : 2 February 2012

Date of amended directions : 22 March 2012

Date of Directions Hearing : 20 April 2012

Dates of Substantive Hearing : 14 August 2012, 3 October 2012, and 19 November 2012

Venue : Court 3, Weymouth Magistrates Court, The Law Courts, Westwey Road, Weymouth, DT4 8BS (14 August 2012 and 3 October 2012) and (19 November 2012) Best Western Hotel Rembrandt, 12-18 Dorchester Road, Weymouth, DT4 7JU

Appearances for Applicant/Leaseholder : Mrs Patterson, and (morning only on 14 August 2012 and 19 November 2012) Mr S Patterson

Appearances for Respondent/Landlord: none

Appearances for Respondent/Manager : Mr E Andresen and Mr P Atkinson

Members of the Tribunal : Mr P R Boardman MA LLB (Chairman) and Miss R B E Bray BSc (Hons) MRICS

Date of Tribunal's Reasons : 26 August 2012 (already sent to the parties) and 18 December 2012

Introduction

1. This decision is supplemental to, and is intended to be read with, the Tribunal's decision and reasons dated 26 August 2012, following the first hearing day on 14 August 2012
2. The Applicant/Leaseholder's claim is for :
 - a. a determination whether the service charge "Part B Proportion (1.82)% Block Costs" referred to in the particulars to her lease of the Premises dated 30 September 2004 relates to Block 5 only, or to Blocks 3, 4, 5, 6, and 7
 - b. a determination whether the Respondent/Manager was entitled, under clause 7.14 of her lease, to change the "Part B Proportion (1.82)% Block Costs" to 7.002%
 - c. a determination about the payability of certain service charge items
 - d. whether, and, if so, to what extent, the costs incurred by the Respondent/Manager in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholder
3. The Tribunal dealt with the first two issues at the hearing on 14 August 2012 and adjourned the hearing of the remaining issues until 3 October 2012 and 19 November 2012 respectively
4. The Respondent/Landlord has taken no part in these proceedings

Documents

5. The documents before the Tribunal are those contained in
 - a. four lever arch files prepared by the Respondent/Manager, and delivered to the Tribunal at 16.30 on Friday 10 August 2012, and labelled Core Bundle 1, Core Bundle 2, Accounts Bundle 1, and Accounts Bundle 2, respectively
 - b. a further lever arch file prepared by the Respondent/Manager and delivered to the Tribunal by letter dated 17 October 2012 and containing the Respondent/Manager's Supplemental Bundle
 - c. the Applicant/Leaseholder's Supplemental Bundle
6. Reference in these reasons to CB1 page 1 (etc), CB2 page 1 (etc), AB1 page 1 (etc), AB2 page 1 (etc), RSB page 1 (etc), and ASB page 1 (etc) are references to page numbers in those respective bundles

The lease of the Premises (CB1 pages 35 to 63)

7. The material parts of the lease dated 30 September 2004, so far as concerns the issues dealt with at the hearings on 3 October and 19 November 2012, are as follows :

Particulars

The Manager

The Demised Premises

Part A Proportion

Part B Proportion

Part E Proportion

Peveler OM Limited

The Fourth Floor Dwelling known as Plot Number 49.....

(0.74)% (Estate Costs)

(1.82)% (Block Costs)

(0.74)% (Buildings Insurance Costs)

Clause 1

Definitions

- "the Lessee's Proportion"* means the proportion of the Maintenance Expenses payable by the Lessee in accordance with the provisions of the Seventh Schedule
- "the Maintenance Expenses"* means the moneys actually expended or reserved for periodical expenditure by or on behalf of the Manager or the Lessor at all times during the Term in carrying out the obligations specified in the Sixth Schedule
- "the Service Installations"* means sewers drains channels pipes watercourses gutters mains wires cables conduits aerials tanks booster pumps apparatus for the supply of water electricity gas (if any) or telephone or television signals or for the disposal of foul or surface water

Sixth Schedule

The Maintenance Expenses

Part "A"

(Estate Costs)

- 1. Keeping the Communal Areas in a neat and tidy condition.....*
- 2. Keeping the Accessways and Parking Spaces in good repair and clean and tidy.....*
- 3. Repairing maintaining inspecting and as necessary reinstating or renewing the Service Installations forming part of the external common parts of the Estate*

Part "B"

(Block Costs)

- 1. Inspecting.....cleaning.....and keeping the internal common parts of the Block comprised in the Maintained Property and every part thereof in good and substantial repair and condition*
- 2. Inspecting.....cleaning.....redecorating.....and keeping the external parts of the Block comprised in the Maintained Property and every part thereof in good and substantial repair and condition*
- 5. Repairing maintaining inspecting and as necessary reinstating or renewing the Service Installations forming part or parts of the internal common parts of the Block*

Part "E"

(Costs applicable to any or all of the previous parts of this Schedule)

12. *The reasonable and proper fees of the Manager from time to time as to its general management of the estate*

15. *All other reasonable and proper expenses (if any) incurred by the Manager :*

15.3 *as to any legal or other costs reasonably and properly incurred by the Manager and otherwise not recovered in taking or defending proceedings (including any arbitration) arising out of any lease of any of the Dwellings or any claim by or against any lessee or any tenant agent or visitor thereof or by any third party against the Manager as owner lessee or occupier of any part of the Estate*

Seventh Schedule

The Lessee's Proportion of Maintenance Expenses

1. *The Lessee's Proportion means :*

1.1 *The Part A Proportion of the amount attributable to the costs in connection with the matters mentioned in Part "A" of the Sixth Schedule and of whatever of the matters referred to in Part "E" of the said Schedule are expenses properly incurred by the Manager which are relative to the matters mentioned in Part "A" of the said Schedule*

1.2 *The Part B Proportion of the amount attributable to the costs in connection with the matters mentioned in Part "B" of the Sixth Schedule and of whatever of the matters referred to in Part "E" of the said Schedule are expenses properly incurred by the Manager which are relative to the matters mentioned in Part "B" of the said Schedule*

The hearing on 3 October 2012

Preliminary matter

8. Mrs Patterson said that she wished to challenge the Respondent/Manager's measurements of the Premises contained in the document entitled "Leaseholder Contributions to Block Costs" (at CB2 pages 415 to 417). She had recently submitted to the Tribunal further documents in that respect
9. Mr Andresen submitted that the document had been prepared by the developer, not the Respondent/Manager, and had been sent to the Respondent/Manager in about 2002 when the Respondent/Manager was being invited to tender
10. However, the Tribunal indicated that :
 - a. this matter had already been the subject of evidence and submissions on the first hearing day on 14 August 2012, and the Tribunal had already published its decision that the Block Costs proportion of 1.82% referred to in the lease had been calculated on the basis of the measurements in the document entitled "Leaseholder Contributions to Block Costs" (at CB2 pages 415 to 417)
 - b. accordingly, the measurements set out in that document were effectively incorporated into the lease, and, as such, and because there was no suggestion before the Tribunal that any of the circumstances set out in Part IV of the Landlord and Tenant Act 1987 applied to this case, neither the measurements nor the Block Costs proportion of 1.82% referred to in the lease could be varied by the Tribunal

Water and pressure pumps

11. *Water*

12. **The Applicant/Leaseholder's case**

13. Mrs Patterson referred to the invoices from Wessex Water (at CB1 pages 97 to 112) and said that she was not challenging any of the invoices as such, but that her case was that she was paying too much for water because the pumps had not been maintained properly

14. **Respondent/Manager's case**

15. Mr Andresen submitted that the consumption costs were metered, and that the water consumption was normal, as was shown by Mr Atkinson's analysis (at CB2 pages 434 to 435).

16. **Further submissions by the Applicant/Leaseholder**

17. Mrs Patterson said that she suspected that the problem was with the pumps, and would accordingly make further comments under that heading

18. *Pumps*

19. **The Applicant/Leaseholder's case**

20. Mrs Patterson referred to the invoices from PIMS (at CB1 pages 113 to 124). She said that there had been problems since 2006 with pumps in different blocks being repaired or replaced. The Respondent/Manager had not separated the bills amongst Blocks 3 to 7 so Mrs Patterson was unable to challenge each separately. Block 5 had high water bills and high repair charges. PIMS could not find out what was wrong. Mr Pearce came to live in Block 5. He was an expert on pumps. He inspected the pumps in Block 5 with PIMS in about December 2010. He spotted a crack in the pipework, and a leak (CB1 page 117). Pressure switches were faulty and the system had to be reset in December 2010 and February 2011 (CB1 pages 119 and 116). A pump in Block 5 was replaced on 23 December 2010 (CB1 page 118). Mrs Patterson was challenging the invoices on the following bases :

- a. there was no evidence whether the invoices applied to Block 5, because they were all addressed to Blocks 3 to 7
- b. they were all too high, in that :
 - PIMS's office was in Farnborough, and the invoice at CB1 page 118 showed a mileage of 210 miles, and the work should have been carried out by a nearer contractor
 - the work was carried out during holiday periods, which had potentially increased the costs
- c. the work had been done badly :
 - if the pumps had been maintained properly, replacement would not have been necessary
 - the repair work carried out prior to replacement had been unnecessary : the replacement should have been carried out earlier, in accordance with letters which Mrs Patterson had

written to Mr Atkinson in about 2010 or 2011, but the necessity for replacement had only been recognised on Mr Pearce's inspection

- the replacement work had been carried out badly, in that the pumps had broken down again after replacement

21. **Respondent/Manager's case**

22. Mr Andresen submitted that the problems had been with the pipes and the apparatus within the flats, and not with the booster pumps themselves. Problems within the flats included grit, debris, leaks, loss of hot water, and hot water coming out of cold water taps. Mrs Patterson had experienced those problems herself. She had instructed Haydons to deal with her own flat's problems. Haydons found the problems to be in the pipework and the valves fitted to Mrs Patterson's flat's boiler. An insurance claim resulted in £26,000 worth of work being carried out to individual flats, none of which was related to the booster pumps, and none of which was charged to the lessees through the service charge. Mr Atkinson had carried out an analysis (at CB2 page 458) of pump costs from 1 July 2007 to 30 June 2011, including replacements costs, servicing and repairs, which showed that Mrs Patterson had contributed to the cost of only one pump replacement, namely for Block 5, and that there had been no high value repairs which could be considered unreasonable
23. In relation to the choice of contractor, the Respondent/Manager used large national contractors for technical services unless there were local contractors with the appropriate skills who were accredited and backed by insurance, and who could provide the required level of service, including out-of-hours call-out. PIMS was a national company which the Respondent/Manager knew well, and which provided a good level of service. The invoice dated 7 December 2012 (at CB1 page 117) showed attendance by PIMS at 23.30 on 4 December 2010, and at 18.45 on 6 December 2010, which would have resulted from a complaint by a resident to the Respondent/Manager. The Respondent/Manager could not have left those residents in that state overnight and had called out PIMS accordingly. It was not unreasonable for a 24-hour service to charge mileage costs, and the mileage costs were not unreasonable. The Respondent/Manager had now (in 2012) changed contractor to HM&V Water Management, who were in Gosport in Hampshire, and therefore only a little closer than PIMS, but Mrs Patterson had not objected to their appointment
24. In relation to the quality of work, the problem was not with the booster pumps themselves. There was no evidence of maintenance being of unreasonable standard, or being badly done, or being carried out uneconomically, or being unnecessary. There was no evidence of repetitious or excessive repairs which might have been indicative of systemic failure of the booster pumps. One replacement over a period of 4 to 5 years was not unreasonable
25. In relation to the length of time before the problem was spotted, the previous problems had not been with the booster pumps. The Respondent/Manager was aware of Mr Pearce's comments, but was not aware of any qualifications he might have or whether he was a pump expert. However, he had certainly been helpful in meeting contractors. The Respondent/Manager did not routinely meet a trusted contractor on site, but trusted the contractor to carry out the work and send a bill to the Respondent/Manager. It was regrettable that keys had not been available when the contractor had called at 23.30 on 4 December 2010 (invoice dated 7 December 2010 at CB1 page 117), but that was not evidence of a failure to supervise the contractor. It had therefore been reasonable to force

entry when a key was not available out of hours, and there was no evidence that the cost of breaking in, or of making good afterwards, had formed a significant part of the invoice

26. HM&V Water Management had stated in their letter dated 3 July 2012 (at CB2 page 528) that they had found no fault with the installation of the pumps, with no sign of sludge, sand, grit or any debris within the tanks or pumps, but that the problems had been with the hot and cold pipework within the flats
27. Each of the invoices at CB1 pages 113 to 124 had been for reasonable sums, and for justifiable work, and the costs had been properly apportioned to the appropriate Blocks. For example, the invoice at CB1 page 114 had been apportioned to Block 4, not Block 5, as appeared from the apportionment schedule (at AB2 page 672)
28. In answer to questions from the Tribunal, Mr Andresen submitted that the reference in some of the invoices (eg at CB1 pages 113, 121, and 123) to pumps was because PIMS had been called out to investigate problems identified by the resident concerned as being pump problems. It had not been known that the problems were not in fact with the pumps, but were problems internal to the flats, until PIMS had attended the site and investigated. Haydons had installed the plant and the individual heating systems. The Respondent/Manager had tried to get Haydons to deal with the problems, but they had refused by letter dated 30 August 2006 (at CB2 page 464). There had been nothing wrong with the booster pumps. The problems had been internal problems within the flats themselves, which had ultimately been dealt with through an insurance claim, and not through the service charge
29. **Further submissions by the Applicant/Leaseholder**
30. Mrs Patterson said that Mr Pearce had sadly died, and so was unable to comment. However, he knew about pumps. The Respondent/Manager had sacked PIMS in 2011 because of the problems with the pumps. The Respondent/Manager had then brought in HM&V Water Management to sort out the pump problems. The lessees had not employed them; they had their own plumbers. There had been no supervision of the work on the pump problems. PIMS had been used continually. The fact that PIMS might be a large company did not mean that it was a good contractor, or that it had done the work well. Some of PIMS's staff had been unfamiliar with the types of pump at the Blocks. The pumps had been new in 2004, and should have had a life of 25 years. Haydons had installed them. Mrs Patterson had used Haydons ever since. The pumps were not too old, but had not been maintained properly. The PIMS invoice dated 23 December 2010 (at CB1 page 118) stated that their contact was Mike Day. He had been the cleaner, but had been sacked, so there would have been no-one to provide a key. It was nonsense to suggest that there was nothing wrong with the pumps. When Block 5 had obtained its right to manage the lessees had examined the pipes and had found that the Premises had no internal gauge or valves, but that they were in a cupboard on the landing. The same was true for the flat next door and the flats below. The Respondent/Manager should have known that. Up to 2009 to 2010 Mrs Patterson had been contributing to the cost of all the Blocks

Electricity

31. **The Applicant/Leaseholder's case**

32. Mrs Patterson said that she had produced the invoices in dispute (at CB1 pages 127 to 150). There had been a huge charge of £3933 for Block 5 in 2010, but a much smaller charge of £179 in 2011. The Respondent/Manager had not explained the costings. MAKS Consultants had charged 25% of the savings they had negotiated

33. **Respondent/Manager's case**

34. Mr Andresen submitted that the £179 had been based on actual readings, and had led to substantial credits on previous bills which had been based on estimates, and had resulted in Mrs Patterson's contribution to electricity charges for the 2 years in question being broadly in line with previous years, as shown in the comparison table in Mr Atkinson's statement (at CB2 page 437). Mr Andresen gave an assurance that Mrs Patterson would be given credit for sums paid to MAKS for consultation in 2007 and 2008, as confirmed in paragraph 21 of his statement (at CB2 page 388)

35. **Further submissions by the Applicant/Leaseholder**

36. Mrs Patterson accepted Mr Andresen's explanation and assurances, and said that electricity costs were no longer in issue before the Tribunal

Lifts

37. **The Applicant/Leaseholder case**

38. Mrs Patterson said that this matter was no longer in issue before the Tribunal

Aerials

39. **The Applicant/Leaseholder's case**

40. Mrs Patterson said that she had been charged £350, as shown in manuscript on a sheet entitled "Peveler OM" (at CB1 page 162) but had received no consultation notices under section 20 of the 1985 Act

41. **Respondent/Manager's case**

42. Mr Andresen said that 2 quotations had been obtained, one for £729.14 and one for £1635.60, for Blocks 3 to 7. Unfortunately, an error had been made, and both figures had been included in the service charge. Mr Andresen apologised for this error. He had given instructions for the higher cost to be credited to the service charge, which would provide Mrs Patterson with a credit of £29.77 (1.82% of £1635.60). However, the total of the 2 quotations did not exceed the section 20 consultation limit of £250 a flat, in that Mrs Patterson had been charged £43.79 (1.82% of the total of the 2 figures). Mrs Patterson had not been charged £350 in respect of aerials

43. **Further submissions by the Applicant/Leaseholder**

44. Mrs Patterson accepted Mr Andresen's explanation and assurances, and said that aerial costs were no longer in issue before the Tribunal

Cleaning

45. **The Applicant/Leaseholder's case**

46. Mrs Patterson referred to the invoices (at CB1 pages 181 to 194) and said that the work carried out by Formation Management Limited was too expensive, and had been done badly

47. **Respondent/Manager's case**

48. Mr Andresen said that Formation Management Limited took over the cleaning contract, following re-tendering, during the accounting year 2007 to 2008. The previous cleaner, Mike Day Cleaning Services tendered (at CB2 pages 529 to 544) £10128 for the cleaning of Blocks 3 to 7 in January 2007, including (at CB2 pages 537 to 538) £2016 for Block 5, with no VAT as he was not registered at that point. In the next re-tendering process in September 2010, Formation Management Limited tendered (at CB2 pages 476 to 483) £2115 (£1800 plus VAT) a block, including (at CB2 page 480 to 481) Block 5, which amounted to an increase of just over 4% in 3 years

49. In the accounting year 2006 to 2007 the cleaning costs (charged by Mike Day Cleaning Services alone) were £11403 (at AB1 page 180), of which Mrs Patterson's contribution (at 1.82%) was £207.53. In the accounting year 2007 to 2008 the cleaning costs (charged by a combination of Mike Day Cleaning Services and Formation Management Limited) were £10220.88 (at AB1 page 265), of which Mrs Patterson's contribution (at 1.82%) was £186.02. In the accounting year 2008 to 2009 the cleaning costs (charged by Formation Management Limited alone) were £9719.50 (at AB2 page 420), of which Mrs Patterson's contribution (at 1.82%) was £176.89. This showed that the cleaning costs by the two contractors were broadly similar, and indeed showed a downward trend in costs over those 3 years. Mrs Patterson had not produced any comparable figures in support of her claim that the cleaning costs of Formation Management Limited were too expensive. The change of contractor had followed a tendering process where prices had been tested in the market, and had resulted in a small saving. Mr Atkinson's statement pointed out (at CB2 page 440) that during the accounting year 2010 to 2011 Formation Management Limited charged £2294.87 including VAT for 26 cleans through the year. That equated to £88.26 including VAT for each visit to clean a 5-storey building. The costs were not unreasonable

50. In relation to the standard of work, the property manager's site inspection reports (at CB2 pages 489 to 527) showed, for example (at CB2 page 506) a rating of "5" for cleaning Block 5 ("very good"), which contrasted with a rating (at CB2 page 512) of "2" for the lifts in Block 8 ("poor"). The contrast showed that the property manager was exercising judgment in her scoring, and not merely giving everything a high score

51. Formation Management Limited were carrying out the cleaning to a good standard and at a reasonable cost

52. **Further submissions by the Applicant/Leaseholder**

53. Mrs Patterson said that she disagreed with the “5” rating. It had never been “5”. Elsewhere in the papers (at CB2 page 500) the rating for Block 5 was only “2” for decoration and only “OK” for cleaning. They were not paying for “OK” cleaning. They were paying for good cleaning, which was what Mike Day Cleaning Services had provided. The inspection reports showed (at CB2 page 503) that there had been a bad stain on the carpet outside flat 19. It had occurred during Formation Management Limited’s cleaning contract, and had not been there while Mike Day Cleaning Services had been cleaning the Blocks. Other examples of poor cleaning were the stairs and landings. She had pointed them out to the property manager, Sarah Wareham
54. In answer to a question from the Tribunal, Mrs Patterson said that she had no written corroborative evidence of poor cleaning or of her complaints to Sarah Wareham. Mr Patterson said that Mrs Patterson had given clear verbal evidence that the cleaning was not satisfactory, and asked whether the Tribunal was going to ignore that evidence. The Tribunal indicated that the Tribunal would take into account verbal evidence, but would give more weight to contemporary written evidence
55. Mrs Patterson said that the cleaning was unsatisfactory. The costs might seem reasonable in themselves, but they were not reasonable when considered in the context of the small amount of time spent by the cleaners, and the poor quality of work done. They merely “whisked” a Hoover round, and did not comply with the Respondent/Manager’s tendering specification (at CB2 pages 529 to 544). They vacuumed, but did not clean. They did not touch walls or doors. They had never cleaned the stair treads with cleaning fluids as specified. Formation Management Limited’s staff were contracted, not regulars. 18 months to 2 years ago a different man came and tried to do the stairs. Then the other men came back and did not do so. In the lift was a gap which was full of dust and dirt and was never cleaned. The lessees asked them to clean it, but they refused. Following the obtaining of the right to manage Block 5, the lessees had engaged a cleaner who was now attending to all cleaning properly, and was cleaning the bins, which Formation Management Limited had never done
56. In answer to a question from the Tribunal, Mrs Patterson said that she could not recall how much the current cleaners were charging, but that it was less than Formation Management Limited had charged. The new cleaners were local. Mrs Patterson had calculated that Formation Management Limited was charging £70 an hour, ie £35 an hour for each of the 2 cleaners, for the time they actually spent. Mrs Patterson said that a reasonable sum for the work they did, namely just vacuuming, would have been £25 an hour for each man
57. **Further submissions by the Respondent/Manager**
58. Mr Andresen said that the rating of “OK” (at CB2 page 500) was under a previous, less sophisticated rating system, where there was only “yes” or “no” under the heading of “OK”. The cleaning of Block 5 had been rated as “yes”, which meant that the cleaning had been rated as “OK”
59. Mike Day Cleaning Services’s tender in 2007 (at CB2 pages 537 to 538) for cleaning Block 5 was for £2016 (with no VAT), which represented £77.54 a fortnight, plus (at CB2 page 538) £300 for shampooing carpets. Formation Management Limited’s tender in 2010 (at CB2 pages 480 to 481) for cleaning Block 5 was for £2115 (including VAT), which represented £81.35 a fortnight, plus (at CB2 page 481) £475 for shampooing carpets. Those figures were higher than Mike Day Cleaning Services’s figures, but were over 3 years later

60. The test was whether the costs were reasonable, and whether the standard of work was reasonable, not whether the work was of a “Rolls Royce” standard
61. Mr Atkinson’s statement set out (at CB2 page 440) the most recent cleaning costs for the accounting year 2010 to 2011, namely £2294.87 (including VAT), which equated to £88.26 a visit, for cleaning a 5-storey building with stairs, lifts and landings. Mrs Patterson had provided no comparison figures. The work had been done at a reasonable cost and to a reasonable standard. Mrs Patterson might think that the lessees were entitled to a higher standard, but the inspection reports showed that the standard was reasonable. The appearance of a building was generally the source of most complaints by residents, but there had been little complaint about the appearance of the Blocks. There had been regular inspections, and reports had been produced :
- a. 23 January 2008 (at CB2 pages 489 to 493) : the only comment in relation to Block 5 (at CB2 page 491) was that there was no cleaner’s card
 - b. 26 February 2009 (at CB2 pages 494 to 497) : there was no comment in relation to Block 5 other than (at CB2 page 495) “cleaned 20/2/09”
 - c. 5 August 2010 (at CB2 pages 498 to 505) : there was a comment in relation to Block 5 (at CB2 page 500) “cleaning OK yes”
 - d. 24 February 2011 (at CB2 pages 506 to 517) : there was a comment in relation to Block 5 (at CB2 page 510) cleaning rating “5”
 - e. 8 December 2011 (at CB2 pages 518 to 527) : there was no inspection report in relation to Block 5
62. These were only sample inspection reports. On average, inspections took place monthly. Mr Atkinson was the Respondent/Manager’s regional manager. Mr Atkinson said that he had inspected the Blocks, and in his opinion the general standard of cleaning was very good
63. **Further submissions by the Applicant/Leaseholder**
64. Mrs Patterson said that she had never seen either Mr Atkinson or Sarah Wareham at the Blocks. Mr Atkinson did not live there, but Mrs Patterson did, and saw Block 5 every day. If Mr Atkinson had visited, he would not have inspected the dust in the gap in the lift, and he probably would not have inspected the stairs. Block 5 did not have the wide hallways that other blocks had, which resulted in many marks. Cleaners should keep the Block clean, but it was shabby
65. In answer to a question from Mr Patterson, Mr Atkinson said that he had received perhaps 10 to 20 letters from Mrs Patterson. He had met her in 2006

External redecorations

66. **The Applicant/Leaseholder’s case**
67. Mrs Patterson said that the Respondent/Manager had given notice on 18 March 2008 (at CB1 page 195) of the intention to carry out external redecoration to Blocks 1 to 8. External redecoration to Block 5 was not done under this scheme, because of the acquisition of the right to manage, but Block 5 had shared in the cost from Block 5’s reserve funds, and the costs had been too high

68. **Respondent/Manager's case**

69. Mr Andresen said that the individual accounts for each Block (at CB1 page 249 to 257) showed that Block 5, which, confusingly, was referred to as "Schedule 2G" (at CB1 page 254) had not been charged any costs for external redecorations, whereas the other Blocks' accounts, except Block 6, each showed an item for external redecoration expenditure. The trial balance for the accounting year 2010 to 2011 (at AB2 page 767) showed external redecoration costs allocated to other Blocks, but not to Block 5

70. There had been no money taken out of Block 5's reserves for external redecorations to other Blocks, either. The individual accounts for the accounting year 2010 to 2011 for each Block (at CB1 page 249 to 257) showed that the contribution from reserve for Block 5 - "Schedule 2G" - (at CB1 page 254) was only £2799.46, whereas the contributions from reserve for the other Blocks were £17731.35 (at CB1 page 250), £35919.37 (at CB1 page 251), £14363.93 (at CB1 page 252), £28009.58 (at CB1 page 253), and £17588.59 (at CB1 page 255)

71. The reserve fund schedule (at CB2 page 468) showed that the £2799.46 for Block 5 did not include any external redecoration costs, but was calculated as follows :

Pumps	1042.35
Major structural repairs	1374.54
Interest received	<u>382.57</u>
	2799.46

72. The reserve fund schedule (at CB2 page 468) also showed that the contributions from reserve for each of the other Blocks *did* include a figure for redecoration

73. The reserve fund schedule (at CB2 page 468) showed a reserve fund figure of £41954.48 carried forward for Block 5, which would be accounted for when handing over to the right to manage company

74. **Further submissions by the Applicant/Leaseholder**

75. Mrs Patterson said that she accepted Mr Andresen's explanation, and that the costs of external redecorations were no longer in issue before the Tribunal. Mrs Patterson also said that the question of "reserves" (at CB1 pages 89 and 90) was no longer in issue either

The hearing on 19 November 2012

76. The Tribunal referred to the supplemental bundles submitted by the Respondent/Manager and the Applicant/Leaseholder respectively. Both parties confirmed that they had no objection to the admission of these documents in evidence before the Tribunal. The Tribunal admitted the documents in evidence on the basis, which both parties agreed, that the documents related only to the outstanding issues, namely management fees and the application by the Applicant/Leaseholder for an order under section 20C of the 1985 Act. The Tribunal indicated that the only documents which the Tribunal would be considering were those documents specifically referred to the Tribunal

by the parties during the hearing, and that the Tribunal would not be trawling through the bundles to try to discover any other documents which might be relevant to the issues

Management fees

77. Mrs Patterson said that the management fees should be charged equally to each leaseholder and not, as had been done, on the basis of the differing service charge proportions. The management fees were calculated on the basis of what the Respondent/Manager described as a "fixed fee". There was no transparency in what the fixed fee covered, as it presumably covered charges for various other organisations such as insurance brokers and contractors
78. Mr Andresen said that the lease allowed the management fees to be included in the service charge by virtue of the sixth schedule part E paragraph 12 (CB1 page 49). For this purpose the management fees were included in the service charge in two sections, namely estate costs (referred to in the service charge accounts as Schedule 1 costs), and Block costs (referred to in the accounts as Schedule 2A costs when Blocks 3 to 7 were charged together, and as Schedule 2G costs when Block 5 was subsequently charged separately). The management fees for estate costs were charged equally amongst all the leaseholders, whereas the management fees for Block costs were charged amongst the leaseholders in their Block proportions. The service charge accounts showed that the management fees each year were calculated by attributing a fixed fee to each unit, multiplying that fixed fee by the number of units, and then applying the appropriate proportion (i.e. the equal Estates cost proportion, or the Block costs proportion, according to whether the management fee concerned related to Estates costs or Block costs) to arrive at the proportion of the management fee payable by each leaseholder. By way of example, the estimated service charge for the year ending 30 June 2012 showed Schedule 1 Estate management fees based on a fixed fee of £106 plus VAT per unit, with each leaseholder paying 0.74%, i.e. £128 .01 including VAT (AB2 page 774) and Schedule 2G Block 5 management fees based on a fixed fee of £95 plus VAT per unit, namely £2166, with Mrs Patterson paying 7.002%, namely £126.38 plus VAT, i.e. £151.66 (AB2 page 777). Her total estimated management fee for that year was therefore £106 plus VAT plus £126.38 plus VAT, i.e. £232.38 plus VAT
79. Mrs Patterson said that she was challenging management fees for the service charge years ending 2005 to 2011 inclusive
80. Her case in relation to each year's management fees, in respect of which Mr Andresen identified the page numbers and figures in each case, was as follows :

2004 to 2005 (AB1 page 5)
Schedule 1 management fee £7050
Schedule 2A management fee £2937.50

2005 to 2006 (AB1 page 83)
Schedule 1 management fee £13,167.52
Schedule 2A management fee £6184.38

2006 to 2007 (AB1 page 180)
Schedule 1 management fee £13,583

Schedule 2A management fee is £6433.13

81. Mrs Patterson, having discussed the matter with Mr Patterson during a 10 minute adjournment of the hearing allowed by the Tribunal for that purpose, said that she was not challenging the figures, as such, of any of the management fees for the years ending 2005 to 2007 inclusive, but was only challenging proportion of those figures charged to her, which she said should be charged equally, and not in the Block proportions

2007 to 2008 (AB1 page 264 and 265)

Schedule 1 management fee £14,262.15

Schedule 2A management fee £6754.78

82. Mrs Patterson said that she was not challenging the Schedule 2A figure as such, but was challenging the Schedule 1 figure, which was too high and had increased too much over the previous year's figure. The leaseholders were paying for a large organisation to manage the Blocks, whereas they wanted local managers whose fees should be a bare minimum. The figures should reduce each year, not increase. In answer to questions from the Tribunal, Mrs Patterson said that she did not have an alternative figure to put to the Tribunal as being a reasonable figure. She agreed that the increase over the previous year had been £670 or so. She said that the figure should have stayed the same as no more work had been involved

2008 to 2009 (AB2 page 420)

Schedule 1 management fee £14,992.58

Schedule 2A management fee £6024.42

83. Mrs Patterson said that she was not challenging the Schedule 2A figure as such, but was challenging the Schedule 1 figure, for the same reasons as before

2009 to 2010 (AB2 page 601 and 604)

Schedule 1 management fee £15,770.48

Schedule 2G management fee £1971.31

84. Mrs Patterson said that she was challenging the Schedule 1 figure not only for the same reasons as before but also because the management had not been done well. Landscaping had been done badly. The problems were with the pine trees and border. The landscaping contractor had not been supervised properly. There was a problem with drainage in the car parks. Trees had gone behind Block 3

85. Mrs Patterson said that she was challenging the Schedule 2G figure on the basis that the figure of £1971.31 for the 19 flats in Block 5 equated to a figure of £7573 for the 73 flats in the five blocks in respect of which the previous year's management fee under Schedule 2A had been £6024.42. The figure of £1971.31 was therefore too high and had increased by too much over the previous year

2010 to 2011 (AB2 pages 654 and 659)

Schedule 1 management fee £16,594.12

Schedule 2G management fee £2074.62

86. Mrs Patterson said that she was challenging the Schedule 1 figure on the basis that it was too high and had increased too much for the same reasons as before but also on the basis that management had not been carried out well, for the same reasons as previously and also because the arrangement for the paintings of railings had not been carried out well
87. Mrs Patterson said that she was challenging the Schedule 2G figure on the basis that it was too high and too much of an increase over previous years for the same reasons as before
88. In relation to the proportion of the management fee which Mrs Patterson should pay, Mrs Patterson said that all management fees, whether relating to the estate or to the Block, should be apportioned equally to all the leaseholders, and none of it should be apportioned on the basis of the Block proportions. When the Tribunal put it to her that the lease, at paragraphs 1.1 and 1.2 of the seventh schedule (AB1 page 50) provided that management fees relating to the Block be payable in the Block proportions, Mrs Patterson said that the lease was not clear
89. In relation to the quality of the management, Mrs Patterson said that the leaseholders did not know what agreements had been made between the Respondent/Manager and the contractors. Mrs Patterson had asked them the information but had been ignored. The contracts would have given the leaseholders an idea about who was in charge of the people working at the Blocks and whether any administration charges were paid by contractors to the Respondent/Manager. She said that, for example, the decorator working on Blocks 1 to 4 had added an administration charge of 10% of the costings. Mrs Patterson did not know who received that administration charge, but assumed that it went to the Respondent/Manager and wondered whether the same thing had happened on all the contracts. It was not clear whether the Respondent/Manager was in charge, or whether the contractors were in charge. There was little evidence that the Respondent/Manager looked after the contracts
90. Mrs Patterson referred to documents in her supplemental bundle, all of which she said were examples of bad management by the Respondent/Manager. There had been a problem with landscaping outside the entrance to Block 5. She had summarised the position prior to a meeting with Mr Atkinson on 3 May 2006 and then had summarised the meeting (ASB pages 25 to 27). She had written various letters about the trees (ASB pages 28 to 49). The fire alarm had gone off in the middle of the night (ASB page 67). The leaseholders had had no idea what to do. They had not been able to get anyone to come. They had had to call the fire brigade themselves. Eventually the Respondent/Manager had put up a notice. Gutters at the back had overflowed and damaged balustrades, walls and paintwork (ASB pages 69 and 69a). Correspondence with the Respondent/Landlord on 27 November 2011 and accounts from them in 2012 had produced more information than the Respondent/Manager had ever produced (ASB pages 80 to 84). She complained about the cleaners and asked for their identity but Peverel had told her that they could do as they liked. They had been concerned about lighting costs in 2006, but nothing had been done about bulbs until 2010. Everything took too long. The Respondent/Manager was a large company and passed everything on from one department to another (eg CB1 page 86). Until 2008, cleaning had been carried out by Mr Day. He was then dismissed and a company called Formation took over. The cleaning done by Formation was done badly. Nobody supervised them from the Respondent/Manager (CB1 page 88). The Schedule 5 insurance costs were very questionable. The Respondent/Manager used brokers called Tysers, who were working on behalf of Kingsborough, who were associated with the Respondent/Manager. Mrs Patterson thought that their charges must

include a charge to the brokers as well as a charge to the insurers, Zurich. The cost included terrorism insurance, which should not be charged because terrorism was covered under each leaseholder's house insurance and in any event the government had a fund to deal with terrorism. The Respondent/Manager should have been looking into ways of reducing the insurance premiums. There was no transparency about which costs related to which Blocks

91. Mr Andresen said that insurance had not been a cost heading in dispute, and accordingly there was no evidence available for the Tribunal in that respect. The management fee was a fee for the Respondent/Manager to manage the estate and the Blocks. It covered the overheads of the Respondent/Manager. There were no buried or suspicious items as alleged. The leaseholders were not being charged fees by any other companies for carrying out management duties. Management fees were split between management of the estate and management of the Blocks in accordance with the lease
92. In relation to the amounts charged, the increase in Schedule 1 management fees from 2006 to 2007 had been £415.48, namely 3.15%. The increase from 2007 to 2008 was £679.15, namely 5%. The increase from 2008 to 2009 was £730.43, namely 5.12%. The increase from 2009 to 2010 was £777.90, namely 5.18%. The increase from 2010 to 2011 was £823.64, namely 5.22%. These were all reasonable increases. It was reasonable that there should be annual increases because the costs of salaries, wages, and contractors increased each year. In relation to Schedule 2A management fees the increase from 2007 to 2008 was £321.65, namely 5%. The reason for the apparent large jump from 2009 to 2010 was partly because of a difference in the VAT rate and partly because Block 6 had acquired the right to manage in 2009 so that the figure of £6024.42 management fee for that year would have reflected the fact that management for part of the year had been for 73 flats whereas management for the remainder of the year would have been for only 61 flats
93. In relation to the allegations of poor management, the documents produced by Mrs Patterson in her supplemental bundle contradicted her submissions that Mr Atkinson had refused to meet her. Mr Atkinson had set out in his statement the management tasks by the Respondent/Manager, with examples of how support teams and customer service teams worked (CB2 pages 441 to 443). The sample site inspection reports dated August 2010, February 2011, and 8 December 2011 (CB2 pages 498 and subsequently) showed the ratings systems and were examples of supervision, management, and control, in contradiction to Mrs Patterson's submissions. Any landscaping concerns would have been noted and the manager would have met the contractor to discuss those concerns. Mr Atkinson had inspected and in his view the landscaping was good. There had been no drop in landscaping standards between 2010 and 2011. In relation to pine trees, Zoe Poulton responded to Mrs Paterson's complaints about the maintenance of the pine trees on 14 February 2007 (RSB page 9), and pointed out that contractors had attended and taken out dead wood and pruned. The correspondence showed that the issue was what was to be done with the pine trees and whether they should be felled. This was an issue which indicated a dispute between the Respondent/Manager and the leaseholders about how these services should be performed and about whether the Respondent/Manager's proposed action was too drastic. It was not an example of bad management. So far as the drainage in the car park was concerned, water was running from the raised bank onto the car park. The developer, Bellway, sent a structural engineer to do the work, and the leaseholders were notified. Bellway said that the work had been completed, but some leaseholders were not satisfied. A major project would be required in this respect at a cost to the service charge. This was not an example of bad management by the Respondent/Manager. There

were no additional or hidden fees paid to the Respondent/Manager by any of the contractors. The Respondent/Manager did charge an additional management fee for overseeing the Formation redecoration contract instead of employing an independent specialist supervisor at an additional cost. The Respondent/Manager was entitled to make such a charge because it was not part of the standard management fee. There were no other commissions or payments by contractors to the Respondent/Manager. All invoices had been sent to Mrs Patterson each year and had been copied for the Tribunal. Insurance had only just been raised by Mrs Patterson without prior notice and accordingly could not be dealt with in detail. However, insurance was the responsibility of the Respondent/Landlord, not the Respondent/Manager. The Respondent/Landlord insured through its own agents and instructed brokers to place the insurance risk. The insurance premium would probably include commission, but none of that commission went to the Respondent/Manager. Kingsborough was a sister company of the Respondent/Manager. It was the specialist insurance arm of the Peverel Group. However in this case, all Kingsborough did was to keep records of insurance policies and premiums paid. The leaseholders had not been charged any fee for Kingsborough to do so. In relation to Mrs Patterson's complaint about lack of communication between the parties, the Respondent/Manager's bundle contained 29 letters from Mrs Patterson and 29 letters from the Respondent/Manager. Those letters were not necessarily replies to each other, but did indicate that the parties did communicate. Mrs Patterson corresponded more than most leaseholders. She had been given more information and documents than most leaseholders. Mr Andresen referred to specific letters in the Respondent/Manager's bundle by way of example including pages 5 to 6, 7 to 8, 26, 31, 41, 43, 44, 121 (responding to the letter at page 69 of Mrs Patterson's bundle) and 126 (a response by Mr Atkinson to the letter from Mrs Patterson at page 86 in her bundle)

94. Mr Andresen said that there was no reason to reduce the management fee. The management fee had been earned and was reasonable. There has been a considerable amount of correspondence from Mrs Patterson but the Respondent/Manager had dealt with it appropriately
95. In answer to questions from the Tribunal, Mr Atkinson said that the Respondent/Manager's management fees for different developments depended on the size of the development and the nature of the development. For example the fees were less for an estate of houses, and would differ according to whether there was a residents' association or a right to manage company. The starting level for a normal "run of the mill" block would be £200 plus VAT. The reference (AB2 page 664) to a supplier contributing to the Respondent/Manager's costs was a standard note which did not apply to the Blocks. It applied, in order to comply with paragraph 2.6 of the RICS code, where the Respondent/Manager received commissions on insurance from Kingsborough. It was true that some letters from Mrs Patterson had not been replied to immediately, but the Respondent/Manager's supplemental bundle showed, for example, that Mrs Patterson had written letters on 7 January 2007, 8 March 2007, 9 March 2007, and 15 March 2007 (three letters), which had raised many issues which required coordination of responses from different departments which had resulted in a letter of response dated 18 April 2007. Although the time taken to respond was not perfect, the significant volume of correspondence from Mrs Patterson meant that it was not unnatural for the response time to slip a bit, but a response had been forthcoming
96. Mrs Patterson said that the problems with the landscaping and pines had shown that the Respondent/Manager had not been on top of the management and the comments by Mr Andresen and Mr Atkinson indicated that they did not know the estate. In relation to the drainage, the water came from a wall constructed by Bellway. Bellway had not informed the Respondent/Manager what

was happening, and the Respondent/Manager had not informed the leaseholders. It was in a dreadful state. For a long time there had been no management. It subsequently transpired that Zoe Poulton had been away for six months and no one else from the Respondent/Manager had been dealing with correspondence in the meantime. The leaseholders had acquired the right to manage because of the Respondent/Manager's failures, for example in relation to the landscaping

Section 20C of the 1985 Act

97. Mrs Patterson said that she had had to make this application because of the difficulties caused by the Respondent/Manager. She had held off making the application until they had acquired the right to manage. The Respondent/Manager should not inflict on the leaseholders the costs of dealing with these proceedings, which had been caused by their poor management
98. The Tribunal invited Mr Andresen to include in his submissions comments on :
- a. whether the lease allowed the Respondent/Manager to include costs of the current proceedings before the Tribunal in the future service charge
 - b. if so, whether the Respondent/Manager's ability to do so was affected by the acquisition of the right to manage by the leaseholders
 - c. whether the Tribunal's decision should be affected by the fact, as the Tribunal had found, that the notification of the new Block costs proportion had not been effected well
 - d. whether the Tribunal's decision should be affected by the fact, as the Tribunal found, that many of the documents had been presented confusingly (for example the reference to Schedule 2G costs rather than to Block 5 costs, and the reference to "fixed fee" in relation to the management fees) and in some cases in a very small font
 - e. whether the Tribunal's decision should be affected by the fact, as Mr Andresen had conceded, that there had been an overcharging in respect of aerials
 - f. whether the Tribunal's decision should be affected by any findings which the Tribunal might make in relation to delays in the Respondent/Manager responding to communications from Mrs Patterson
99. Mr Andresen submitted that paragraph 15.3 of Part E of the Sixth Schedule of the lease (CB1 page 50) allowed costs in proceedings, which by its nature included proceedings before Tribunal, to be included in the service charge. The Respondent/Manager continued to manage the communal estate and was able to charge the costs of these proceedings through the estate service charge which was not affected by the leaseholders' acquisition of the right to manage the Block. These proceedings did not just relate to the Block. The third day of the hearing had related to the management fee, the bulk of which was in relation to estate management. In addition, the Respondent/Manager had no other means of recovery in relation to these costs. This had been an application by one leaseholder in respect of which the Tribunal had spent three full days and a pre-trial review. 75% of the time been spent identifying precisely what Mrs Patterson was disputing and how she disputed it. It would be inequitable for the Respondent/Manager to bear the costs solely because of the acquisition of the right to manage when the Respondent/Manager was in principle entitled to recover all its costs. Paragraph 15.3 of the lease applied to any dwelling and any leaseholder on the estate
100. A huge amount time had been taken in the hearing to draw out any form of case from Mrs Patterson. This had followed a large amount of papers being sent by the Respondent/Manager to Mrs Patterson at her request, and one would have expected fully developed arguments, even from a

layperson. The proceedings had been lengthened accordingly, and more costs had been incurred than should have been necessary for the issues involved. The first hearing day had concerned the variation in the service charge proportion. The Tribunal had found for the Respondent/Manager. The criticism about the manner in which the Respondent/Manager had approached the notification of the change was accepted. However, that did not affect the merits of bringing the matter to the Tribunal since notification had been made and it had been explained in correspondence what the new percentage was. Mrs Patterson had sought to challenge the new proportion only on the basis the notification had not been sent, not because she did not understand what the variation meant. She could have taken advice, as she had been given all the information

101. In relation to the merits of the cost headings challenged, the question of water charges had been dealt with in Mr Atkinson's statement and it had been quite clear before the hearing that the Respondent/Manager had demonstrated that there had been no abnormal consumption patterns. In relation to pump costs, this issue had taken a large amount of time on the second day at the hearing. However it had been clear from the papers that only one pump had been replaced in Block 5 and that the other problems were not with the pumps. The majority of invoices relied on by Mrs Patterson had no relevance to the problems. In relation to electricity Mrs Patterson had withdrawn this issue following the concession that the MAKS consultancy fees would be credited. In relation to the aerial Mrs Patterson had initially raised the question whether consultation should have taken place under section 20 of the 1985 Act but had agreed at the hearing that this did not apply. The concession about overcharging had been conceded by Mr Atkinson in his statement in advance and did not require any argument on the day. In relation to cleaning, Mrs Patterson had made many criticisms but had provided no photographs and no alternative quotations. Mr Atkinson had provided direct inspection evidence and the site inspection reports. Mrs Patterson had said that she considered that a reasonable cost was £35-£70 an hour for the work required but there was insufficient evidence of any failing in the standard of cleaning or that the cost was excessive. In relation to the reserve fund, Mr Atkinson had provided a statement of the reserve fund breakdown showing the fact that Block 5 reserve fund had not been used to fund the decoration of other Blocks. It was accepted that it had taken some time to establish the arithmetic showing the amount in the reserve funds before and after the acquisition of the right to manage. However a third party was involved and the right to manage company had received a full account showing the amount of the reserve fund for Block 5 and the right to manage company was satisfied with the accounting. Mrs Patterson had never asked for an explanation before these proceedings. When asked, Mr Atkinson provided it, and the issue had been dropped. In relation to management fees, the third day of the hearing demonstrated the worst elements of this application in the time taken to elucidate Mrs Patterson's case. She had taken 3.5 hours, mostly to clarify what her case was. By contrast, Mr Andresen had taken no more than one hour to put the Respondent/Manager's case, and it had transpired that there was very little of substance to Mrs Patterson's case. It was accepted that there was potential for confusion by referring to a "fixed fee" in relation to management fees. However, the accounts made clear what the Block costs were in respect of which each leaseholder paid a proportion. Mrs Patterson's argument showed that she clearly understood the basis on which the charge was being made, and that she was really arguing that the percentage should be different, because she knew that it was originally 1.82% and was now 7.002%. It was accepted that some documents had small text which was difficult to read. Mr Andresen apologised. The accounts attempted to portray a large amount of information. The Respondent/Manager had sent out 136 copies of each account for the Blocks and, with that volume of documents, there had to be some degree of proportionality about the standard of reproduction. There was indeed a potential for

illegibility when they were then reproduced for these proceedings, but it was not necessarily unreasonable to send documents with small text. It was not a general management issue. It was accepted that the reference to Schedule 2G might cause some difficulty, but if any leaseholder were concerned about this then it was only necessary to refer to the notes on each set of accounts to find out what each Schedule referred to. It was accepted that it might have been better to put a note next to the schedule itself, but, while this was not perfect, it was reasonable, and was not a factor which would make it just and equitable to make the Respondent/Manager pay all the costs of these proceedings. In relation to responsiveness, focused enquiries could be replied to in a focused way. However many letters in relation to many issues sent over a two-week period might well result in it being reasonable to take time to respond. The bundles showed a multiplicity of correspondence throughout the period, and that adequate responses had been sent, albeit in some cases after delay. In any event, by the time Mrs Patterson had launched these proceedings, Mrs Patterson had had the responses, so that historic delays should not affect question whether the costs of these proceedings should be included in a future service charge. She had had the information and the means of considering all the issues. It would not be just and equitable to make an order under section 20C

102. Mrs Patterson said that she disagreed. She had had the bills, but knew nothing about the work which had been carried out or how the bills related to the work. Generally the bills stated that they related to Blocks 3 to 7 without any indication which Block the work related to. She did receive some advice but for a long time received no reply. The site reports about the condition of the estate and the Block were not satisfactory. There was very little information in the reports. The landscaping work had been abominable. She had written to find out what was going on. No information had been given about what was happening. The small text on some of the documents sent had been far too small and was impossible to read. Mrs Patterson had poor eyesight. She had found out a great deal from coming to the Tribunal which she should not be billed for. The reference to a "fixed fee" had not been clear. The provisions in the lease were not clear and many clauses were difficult to understand and appeared to be solely for the benefit of the Respondent/Manager. The Respondent/Manager might have had a heavy workload but so had the leaseholders. The condition of the estate had deteriorated but the management fees had increased. The water in the car park had not just been a small amount. The leaseholders had had to take on Bellway and Zurich themselves with no help from the Respondent/Manager. The leaseholders had not been informed that the Respondent/Manager had intended to fell the trees. When the tree company came, the Respondent/Manager did not attend. It was impossible for the leaseholders to provide alternative cleaning quotes. The Respondent/Manager demanded insurance and regulations which local people could not comply with. Mrs Patterson had seen a plumber once and the landscape man once. Mr Atkinson had told her that she could not speak to the landscape man. The leaseholders had not been able to complain to the cleaners. They had had to apply for the right to manage. She had never seen Mr Atkinson on the estate since the meeting in 2006 and it had taken her two years to get him to that meeting. They had not been notified sufficiently about the percentage change in the service charge proportions. She had not been able to get hold of Zoe Poulton about the gutters. The cost of repairs should have been covered by Zürich but Zürich would not pay her pipework costs. The Respondent/Manager had no sense of responsibility. The leaseholders did not exist. Zoe Poulton had visited but had had no power to do anything. They would not even cut the ivy. They were ignorant about anything to do with landscaping. They slashed the hedges and cut the grass. There were gaps in the borders. Nothing grew. It was almost impossible to understand the provisions in the lease about the way in which the management fees were apportioned to the estate matters and Block matters. She had been to a lawyer who could not

work it out. None of the Respondent/Manager's previous letters had referred her to the provisions of the lease. Instead they had told her that if she did not like it she should go to the Tribunal. The Respondent/Manager did not communicate with Bellway on the leaseholders' behalf. They were working for themselves not the leaseholders. She had received a great quantity of paperwork. It had come in a mass. She had not been able to sort it out. She had been overcome by the paperwork

The Tribunal's decision

103. In reaching its decision, the Tribunal has taken account of all the evidence and submissions presented by the parties in respect of each issue, and all the documents referred to by the parties

Water and pressure pumps

104. *Water*

105. The Tribunal finds that Mrs Patterson had acknowledged that water charges as such are not in issue before the Tribunal, and that the issue in this respect is an issue concerning the pumps

106. *Pumps*

107. The Tribunal finds that :

- a. the maintenance of pumps is a specialised matter, and accordingly it was reasonable for the Respondent/Manager to instruct a specialist company to maintain the pumps at the Blocks, and to deal with callouts, even if the specialist company involved was based at a distance from the Blocks
- b. the invoices attached to Mrs Patterson's statement of case (at CB1 pages 113 to 124) included two invoices (at CB1 pages 115 to 118) relating to the replacement of a pump in Block 5 on 23 December 2010, and an invoice (at CB1 page 124) for the replacement of two pumps in Block 3 on 23 October 2009; however, the narratives of the other invoices were :
 - water failure on 10 May 2011; problem found to be with resident's pulsecoil internally, not with the booster set and not a communal water problem (at CB1 page 113)
 - water leaking from connection between pressure vessel and discharge pipe work on 24 February 2011 (at CB1 page 114)
 - pump 3 off and pumps 1 and 2 tripped on 4 February 2011; reset both pumps and water pressure resumed; pump 3 seemed to have faulty NRV 1" causing backflow and loss of pressure, so left pump 3 off; check properties had water all okay; checked system; left pumps on automatic (at CB1 page 116)
 - forced entry on 4 December 2010 on authorisation by duty manager; reset the system and now working; there were leaks and P3 was isolated; would also need to get door and frame repaired; arrived on site 6 December 2010; owner of flat 11 gave assurance he had water and had no problems during the day; nothing reported from various other properties on site; all pumps working okay (at CB1 page 117)
 - attended site on 6 December 2010; system tripped out; reset and worked over one cycle only; checked over the system and found two faulty pressure switches and one faulty pump; removed one pressure switch; reworked system to work on one pressure switch; unit left operating at 30% full capacity with water to all flats (at CB1 page 119)

- annual service maintenance charge and water testing 28 July 2010 (at CB1 page 120)
 - attended site on 26 February 2009 on a callout; found all three pumps working fine; left station working on auto control (at CB1 page 121)
 - six monthly service maintenance charge on 30 June 2009 (at CB1 page 122)
 - attended site on 23 July 2009 to find no fault with boosters in Block 3; spoke to resident who said that her washing machine was on and her guest was having a shower; informed by office that the fault was with flat 8; no one home; on leaving site, station on auto (at CB1 page 123)
- c. the Tribunal finds that any costs resulting from the forced entry on 4 December 2010 (at CB1 page 117) were not reasonably incurred, and finds that any such costs resulted from the failure to ensure that an out of hours means of access, such as a key, was available; any such costs resulting from the forced entry are accordingly not payable by way of service charge; the Tribunal does not have the details of those costs, but if the costs have been included in a service charge they should be credited to the leaseholders from whom that service charge has been demanded
- d. although the Tribunal has taken account of all Mrs Patterson's evidence and submissions, the Tribunal is not satisfied that the invoices otherwise disclose unnecessary visits, or unnecessary work carried out, or a poor standard of work, or that the costs, including the mileage costs, were unreasonable, and the Tribunal finds that the costs referred to in the invoices at CB1 pages 113 to 124 were reasonably incurred, and are payable by way of service charge, except to the extent, if any, that any of the invoices include any costs resulting from the forced entry on 4 December 2010

Electricity

108. The Tribunal finds that Mrs Patterson accepted Mr Andresen's explanation and assurances at the hearing, and acknowledged that electricity costs were no longer in issue before the Tribunal

Lifts

109. The Tribunal finds that Mrs Patterson acknowledged that this matter was no longer in issue before the Tribunal

Aerials

110. The Tribunal finds that Mrs Patterson accepted Mr Andresen's explanation and assurances that a credit would be given for the overcharging, and that Mrs Patterson acknowledged that aerial costs were no longer in issue before the Tribunal

Cleaning

111. The Tribunal has taken account of all Mrs Patterson's evidence and submissions and of all the documents to which she has referred the Tribunal in this respect
112. However, the Tribunal finds that :

- a. the costs in the invoices referred to by Mrs Patterson (at CB1 pages 181 to 194) are, drawing on the Tribunal's collective knowledge and expertise in this respect, reasonable in themselves, and consistent with the rates of charging by Mike Day
- b. in relation to the standard of work, Mrs Patterson has not submitted any contemporaneous photographs or any contemporaneous documents to corroborate her evidence that the standard of cleaning was poor
- c. there are before the Tribunal, on the other hand :
 - samples of site inspection reports indicating that the standard of cleaning was reasonable (with some site inspection reports indicating that standards in respect of other matters than cleaning were not reasonable, which the Tribunal finds to be an indication that the site inspection reports were reasonably objective, and not merely self-serving)
 - Mr Atkinson's evidence that when he had inspected the standard of cleaning had been good
- d. Having considered all the circumstances in the round, the Tribunal is persuaded by the evidence of Mr Atkinson and the submissions of Mr Andresen, and finds, on balance, that the standard of cleaning was, if not perfect, of a reasonable standard, that the costs were reasonably incurred, and that they were payable by way of service charge

External redecorations

113. The Tribunal finds that Mrs Patterson accepted Mr Andresen's explanations, and that the costs of external redecorations and the question of "reserves" was no longer in issue before the Tribunal

Management fees

114. Again, the Tribunal has taken account of all Mrs Patterson's evidence and submissions and of all the documents to which she has referred the Tribunal in this respect
115. However, the Tribunal finds that :
- a. in relation to the service charge proportions in which the management fees are payable, the proportions are governed by the provisions of the lease, namely paragraph 1 of the Seventh Schedule, paragraph 15.3 of Part E of the Sixth Schedule, Parts "A" and "B" of the Sixth Schedule, and the service charge percentages set out in the Particulars, as now amended as already found by the Tribunal
 - b. the service charge proportions in which the management fees in issue are payable by Mrs Patterson are therefore 0.74% in respect of those management fees which relate to estate costs, and, in respect of those management fees which relate to Block costs, 1.82% (in respect of those management fees payable before the change in Block costs service charge proportions), and 7.002% (in respect of those management fees payable after the change)
 - c. in relation to the amount of the management fees the Tribunal finds that :
 - Mrs Patterson acknowledged at the hearing that there was no issue before the Tribunal in relation to management fees up to and including the service charge for the year 2006 to 2007
 - the management fees for subsequent years were, drawing on the Tribunal's collective knowledge and expertise in this respect, reasonable figures, both when viewed by themselves and when viewed in relation to the increases compared with previous years' management fees

- d. in relation to the standard of management, the Tribunal has taken account of all the factors referred to by Mrs Patterson in this respect, including the following :
- the fact, as the Tribunal has found, that the notification of the new Block costs proportion was not effected well
 - the failure, as the Tribunal has now found, to provide a means of out of hours access for the pump contractors
 - the charge for MAKS consultants, which the Respondent/Manager has now agreed to credit
 - the overcharge for the aerial, which the Respondent/Manager has now agreed to credit
 - Mrs Patterson's complaints about :
 - the quality of the landscaping work
 - the difficulties of obtaining timely answers from, and meetings with, the Respondent/Manager
 - the trees
 - the fire alarm
 - the gutters
 - the cleaning
 - the lighting
 - the supervision of contractors
 - the insurance, including commission and terrorism cover
 - the water from the bank at the rear
 - the notification of the change in the Block costs proportion
 - the lack of clarity in the accounts and documents, both in font size and use of jargon
- e. the fact that the leaseholders have now acquired the right to manage Block 5
- f. however, the Tribunal is persuaded by the evidence of Mr Atkinson and the submissions of Mr Andresen, and finds, on balance, and drawing on the Tribunal's collective knowledge and expertise in this respect, that during the periods in issue the management was, if not perfect, of a reasonable standard
- g. having taken all the circumstances into account, the management fees were reasonably incurred, and were payable by way of service charge

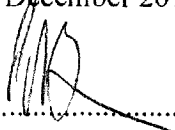
Section 20C of the 1985 Act

116. In relation to the question whether the lease allows the Respondent/Manager to include costs of the current proceedings before the Tribunal in a future service charge, the Tribunal is persuaded by the submissions of Mr Andresen, and finds that, in principle, paragraph 15.3 of Part E of the Sixth Schedule of the lease allows the Respondent/Manager to do so
117. In relation to the question whether the Respondent/Manager's ability to do so is affected by the acquisition of the right to manage Block 5 by the leaseholders, the Tribunal finds that :
- a. by virtue of paragraph 1.1 of the Seventh Schedule to the lease, the Respondent/Manager can include in an estate service charge such of the matters referred to in Part "E" of the Sixth Schedule as relate to estate costs
 - b. the Respondent/Manager can therefore, in principle, include, by virtue of paragraph 15.3 of Part E of the Sixth Schedule of the lease and paragraph 1.1 of the Seventh Schedule to the lease such of its costs in these proceedings as relate to estate costs

- c. by virtue of paragraph 1.2 of the Seventh Schedule to the lease, the Respondent/Manager can include in a service charge relating to Block 5 such of the matters referred to in Part "E" of the Sixth Schedule as relate to Block 5 costs
- d. the Respondent/Manager was therefore, in principle, before the acquisition by the leaseholders of the right to manage Block 5, able to include, by virtue of paragraph 15.3 of Part E of the Sixth Schedule of the lease and paragraph 1.2 of the Seventh Schedule to the lease such of its costs in proceedings such as these as related to Block 5 costs
- e. however, by virtue of the acquisition by the leaseholders of the right to manage Block 5, the Respondent/Manager is no longer able to charge the leaseholders of Block 5 costs, including costs of these proceedings, relating to Block 5 by way of service charge
- f. the only costs of these proceedings which the Respondent/Manager is able to include in a future service charge are therefore such of its costs in these proceedings as relate to estate costs

118. The Tribunal accordingly makes an order that the costs incurred by the Respondent/Manager in relation to the issues about Block 5 costs in these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholder
119. In relation to the merits of the application for an order under section 20C in relation to such of the Respondent/Manager's costs in these proceedings as relate to estate costs, the Tribunal has taken into account all the factors referred to by Mrs Patterson in this respect and, in particular, in respect of the standard of management, as already mentioned in these reasons
120. However, the Tribunal finds that in relation to those issues before the Tribunal as related to estate costs, the Tribunal has effectively found in favour of the Respondent/Manager, and, having considered all the circumstances of this case in the round, the Tribunal declines to make an order under section 20C in relation to such of the costs incurred by the Respondent/Manager in these proceedings as relate to estate costs

Dated 18 December 2012



.....
P R Boardman
(Chairman)

A Member of the Tribunal
appointed by the Lord Chancellor