



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(LEASEHOLD VALUATION TRIBUNAL)**

Case Reference : **MAN/OOEB/LSC/2013/0072. 0052, 0058,
0057, 0076**

Property : **Apartments within 11, 12 and 13 The Cliff,
Hartlepool TS25 1AP**

Applicant : **Various leaseholders of 11, 12 and 13 The Cliff,
Hartlepool TS25 1AP (see attached annex)**

**Respondent
Represented by** : **Home Group Limited
Mr Philip Barber, Counsel**

Type of Application : **Landlord And Tenant Act 1985 – Section 27a(1)**

Tribunal Members : **Mr W.L. Brown LL.B
Mr I D Jefferson MRICS
Mrs K Usher**

Date of Decision : **28 May 2014**

DECISION

DECISION

The amounts determined by the Tribunal as reasonable for the service charge year ended 31st March 2013 are as set out for each Applicant by reference to their respective Apartment in the attached Schedule.

The Tribunal makes no order under Section 20C.

REASONS

INTRODUCTION

1. By Applications dated 8th April 2013 the Applicants who are leasehold owners of apartments in the development known as 11, 12 and 13 The Cliff Hartlepool TS25 1AP (the "Development") the Tribunal was requested to make a determination under Section 27A of the Landlord & Tenant Act 1985 as to the reasonableness of service charges for the Properties for the service charge year ended 31st March 2013.
2. The Applicants and their respective apartments are listed in the attached annex.
3. The Properties are sea-facing and comprise three terrace buildings each of 3 storeys of varying types of construction and detail but each with its own communal entrance hall, staircase, individual flats on generally three floors. Externally there is a pedestrian path leading to the front door, generally lawned gardens to the front, and a communal car park to the rear.
4. The Tribunal carried out on 1 October 2013 an external and internal inspection of the common areas of the Properties and the interior of Flats C and G 13 The Cliff. Present were representatives of the Respondent and a number of the Applicants.
6. A Hearing took place at Hartlepool Magistrates Court on 1, 2 and 3 October 2013. The parties provided statements of their case and bundles of documents. In accordance with a subsequent direction of the Tribunal the Respondent provided to the Tribunal and the Applicants a revised statement of expenditure for the matters before the Tribunal for the service charges for year 2013 based upon a revised pricing document produced by its agent RNJ regarding the final cost of works to the Development, the Respondent's management fee and VAT.

The Leases

7. Copies of various leases concerning the Apartments in the Properties were before the Tribunal. For the purposes of the Tribunal they are in similar form, for a term of 99 years from 1st September 1983 at a peppercorn ground rent.
8. In each lease "the Block" is defined as comprising of 18 flats known as 11, 12 and 13 The Cliff and "the Building" is defined as number [X] The Cliff – being one of 11, 12 or 13. Clause 1 (b) defines: "The Common Parts" means the entrance landings staircases and other parts (if any) of the Building and any areas appurtenant to it

which are intended to be or are capable of being enjoyed or used by the Leaseholder in common with the occupiers of the other flats in the Building.’ ”

9. The Leaseholder covenants with the Landlord in clause 3 of the lease to pay the Service Charge in accordance with Clause 7, without deduction, yearly in advance on the first day of April. Clause 7 breaks payment down to “the Block provision” relating to the costs associated with repairing and maintaining the Block and “the Building Provision” relating to those costs associated with repairing and maintaining the Building.
10. Under Clause 5 the landlord covenants to “repair maintain decorate and renew”, the communal parts and the boundary walls fences and gates as marked on the plan attached to the lease and in addition the roof, foundations and main structure of the Building.
11. The lease provides terms for the service charge to be apportioned as to the costs of works relevant to the Block, the Building (and the Lift in Number 13, although the lift is now de-commissioned and not the subject of expenditure). The service charge is the aggregate of the charges for each element.
12. There is no dispute between the parties as to the apportionment of expenditure in this matter or the allocation of expenditure according to the lease.

The Issues

13. The issue for determination by the Tribunal was the reasonableness and payability of service charges claimed by the Respondent in respect of the Development for the service charge year ending 31 March 2013.
14. As presented to the Tribunal, the service charge in question comprised only the cost of major works in relation to repair and maintenance of the structure and exterior areas of the Building (the “Works”) in the service charge for year ended 31 March 2013 at a total cost estimated at £268,210.80. Subsequent to the hearing and in accordance with the Tribunal’s directions the Respondent produced a revised set of costings for the Works, allowing the Tribunal to make a determination on the reasonableness and payability of the charges based upon actual figures of expenditure following completion of “snagging” items and after a reconciliation. The Respondent helpfully produced by reference to the RNJ Revised Pricing Document the sums it claimed were recoverable from the Applicants, including VAT on an apartment by apartment basis.
15. In making its determination the Tribunal had to have regard as to whether “historic neglect” – explained below – was capable of being a reason for finding a service charge expense was unreasonably incurred or unreasonable in amount.
16. The Applicants included in the applications a representation that there had been a failure to comply with the consultation requirements as set out in Service Charges (Consultation Requirements) (England) Regulations 2003 (the “Regulations”). The Regulations state that the maximum sum recoverable for major works is £250 where there has been a failure to comply. The Respondent reserved the right to

apply under section 20ZA of the 1985 Act for dispensation. However, at the hearing the Applicants confirmed that this aspect of the applications was not being pursued and compliance with the Regulations was not in dispute.

The Law

17. The relevant law is to be found in the Act.
18. Section 18 of the Act states

‘Meaning of “service charge” and “relevant costs”

- (1) *In the following provisions of this Act “service charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent –*
 - a. *which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord’s costs of management, and*
 - b. *the whole or part of which varies or may vary according to the relevant costs.*
- (2) *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord.....in connection with the matters for which the service charge is payable.*
- (3) *For this purpose –*
 - a. *“costs” includes overheads, and*
 - b. *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.’*

19. Section 19 of the Act states

‘Limitation of service charges: reasonableness

- (1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –*
 - a. *only to the extent that they are reasonably incurred, and*
 - b. *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard:*

and the amount payable should be limited accordingly.
- (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustments shall be made by repayment, reduction or subsequent charges or otherwise.’*

20. Section 27A of the Act states

'Liability to pay service charges: jurisdiction

(1) An application may be made to the 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 the Tribunal for a determination whether, if costs were incurred for service, 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.'*

The Applicants' case

21. Written statements of case were presented by Mr & Mrs Wilson, Mr Horner, Mr McKinley, Mr Fairley, Ms Page, Mr & Mrs Thompson, Mr & Mrs Dixon and Mr & Mrs Coulson, the latter being nominated at the hearing as the lead Applicants for oral representations, although the Tribunal heard evidence from the following:

Mr Wilson;

Mr Fairley;

Mr Horner;

Mr Ward;

Mr Youngson (on behalf of his mother, Mrs Youngson).

22. Also present at the hearing were Mrs Wilson and Mrs Horner.

23. Mr & Mrs Coulson gave oral evidence and Mrs Coulson provided the principal verbal summing up for the Applicants.

24. The Applicants' main points made collectively were that the Respondent, itself and and its predecessors, had failed to manage the Development and historic neglect had built up over a substantial number of years resulting in a disproportionately large service charge demand for 2013. Their argument was that the landlord from time to time had failed to comply with its covenants under the lease to repair and

collect a service charge in past years and as a result the costs were both unreasonably high and unreasonably incurred.

25. The actual final cost of the Works was not known at the time of the applications or the hearing, at which questions and representations concerned the RNJ Revised Pricing General Summary of October 2013. It was accepted that the final costs would vary a little from the main document.
26. Over a twenty year period, for the most part requests and reports had been ignored and when leaseholders had attempted to follow up with the Leasehold Group of the Respondent the inquiries were consistently met with unreturned phone calls, excuses and at times, the Applicants alleged, even lies.
27. The failure to respond and act to resolve the issues the residents had reported was the principal cause of the deterioration of the Development. The result was a very expensive scheme of works that needed to be completed.
28. The Applicants acknowledged that the Respondent had committed to better service in the future and already major changes had been noted in responses from the Leasehold Group. When issues are reported they are dealt with and the lines of communication are open for the first time. They were encouraged to see these changes taking shape, however simply committing to better service in the future was not sufficient to rectify the damage done from neglect that had persisted for decades. Their position was that the Respondent should make a substantial financial contribution toward the cost of the Works to put right the damage its negligence had caused.
29. By a letter dated 28th March 2012 the Respondent had clearly expected to bear some of the cost of the "Works", stating "A meeting was held with our senior leadership team to review the proposal to take forward the external works and costs. At this meeting it was decided the matter should be jointly referred to a Leasehold Valuation Tribunal (LVT) to decide how the costs should be apportioned between Home Group and Leaseholders.....Home Group will put together a case for the LVT and will also pay all application costs. Until a decision is reached regarding any apportionments, the external works will be put on hold." The Respondent was still referring to "...our LVT application..." in a letter dated 12th July 2012, but by 6th August 2012 it was referring to legal advice such that ".....we are no longer applying to the Leasehold Valuation Tribunal....." The Applicants could not understand this change of heart.
30. The neglect included a failure to establish a sinking fund to help cover the cost of major works.
31. Water ingress at Flat 13C had been particularly bad over at least 16 years and had damaged Flat 13A. The leaks had arisen from the disrepair of the window surrounds, for which the Respondent was responsible.
32. There was a difficulty in that they had no direct evidence to provide on how the cost of the Works had been increased due to the sustained neglect. While they wanted an outcome whereby the Respondent would bear all the cost of the Works, at the hearing they confirmed that they took a realistic position but would not commit to

suggesting what may be a fair reduction in the service charge so that it would become reasonable in amount.

33. Comments were made about specific elements of the Works, questioning if the cost was appropriate, but without stating a comparable price. They challenged items in the initial schedule of works that they said were not attributable to wear and tear, but were improvements, for which they should not pay.
34. The Applicants were further disadvantaged because they were facing a liability over 5 years – if they accepted the Respondent's terms for spreading out the charge – being a disincentive to a prospective purchaser.
35. Post-hearing the Tribunal's attention was drawn to exchanges of correspondence between Mr Wilson and the Respondent concerning two charges for items of work – removal of weed growth to paved area and masonry paint to concrete copings – which had not been included as part of the Section 20 consultation. The Respondent's reply was that these items followed as necessities from the specified works and were required to finish off the job.

The Respondent's case

36. The Respondent presented a witness statement from Christine Jeffers, its Customer Services Manager (Leasehold), who also gave oral evidence, in addition to Mr Nesti, a Chartered Surveyor, of RNJ Partnership, which undertook project management of the Works for the Respondent, Mr David Addison, Property Contracts Supervisor was present at the hearing and was able to provide to certain technical information concerning the Works.
37. The Respondent is a registered provider of social housing, an Exempt Charity within the meaning of the Charities Act 1993 incorporated as a Charity under the Industrial and Provident Societies Act 1965.
38. Useful background information was provided by Christine Jeffers, who had been appointed in January 2011. Her uncontested evidence, was that she had found that a number of leaseholders were raising concerns to her regarding maintenance, highlighting that the Blocks were in need of repair. Several leaseholders were also suffering from recurring water ingress problems.
39. The Development was originally purchased by North Housing Association Ltd and the individual flats were sold as long leases in the 1980s. Over many years, no cyclical maintenance was carried out in relation to the block. Instead the Landlord responded to repairs in a reactive manner, carrying out minor repairs addressing concerns of the leaseholders. Various reports had been commissioned, but none a detailed survey. However, in 1994 Sanderson Townend & Gilbert had produced for the landlord a survey report identifying major items of repair required to one particular apartment. A sinking fund had never been instigated and no reserve fund had built up (despite there being provision in the the lease to do so). Prior to 2010 reactive repairs were not recorded in a readily available format but since that date they have been computerised. From 2011 numerous maintenance repairs were ordered over a 6 month period to repair guttering, fascia boards, Dormer windows

and the roof. It was evident that there were more extensive maintenance issues to resolve and that a full survey was needed.

40. In June 2011 Mrs Jeffers instructed a building surveying company Billingham George and Partners (BGP), a contractor approved by the Respondent, to carry out a cost appraisal survey of the building and report back. This report was paid for by the Respondent and prepared in July based on assessing the building from ground level only. The report highlighted that there were extensive works required and in order to progress the matter a more detailed survey and specification would be needed.
41. At the beginning of 2012 with a view to establishing the full extent of the works necessary on the block RNJ Partnership, a Respondent nominated contractor, was instructed to carry out a detailed condition survey on the Blocks. They initially produced 4 reports setting out the basic need for works on the Development. This was followed in March 2012 by a full and detailed schedule of works. The cost of the survey and schedule has not been recharged to the leaseholders. RNJ produced a schedule of works in March 2012 and formed the basis of a Section 20 consultation process.
42. Leaseholders requested that the Respondent consider making a contribution towards the works due to historic neglect. This was proposed to the Respondent's senior leadership team in March 2012 and a decision was made to apply to the Tribunal jointly with the leaseholders due to both parties being unable to agree regarding "payability".
43. There is now a divergence of opinion as to what was agreed between the parties. Ms Jeffers was able to say, however, that further discussions were held internally by the Respondent regarding this decision to apply jointly to the Tribunal and it was decided that the Respondent would follow the section 20 process and should leaseholders still disagree with the works and costs then they were to submit their applications independently.
44. In May 2012 the Respondent obtained full Fire risk Assessments for the Blocks. All works were completed as highlighted at the expense of the Respondent. Works included radio controlled smoke detection in communal areas as well as leaseholders' flats (where access was permitted), smoke seals to all flat doors, communal doors upgraded, external rear doors replaced, internal door locking system changed to a key less system (thumbscrew). The costs of these works was approximately £30,000. No statutory consultation was undertaken in respect of the upgrade of fire detection works.
45. The section 20 process for the other major works commenced on 3rd August 2012 and the final stage was issued on 28th December 2012. A full tendering exercise was completed and 5 quotations were obtained. MJ Phoenix & Sons were awarded the contract as they were the cheapest and came highly recommended from previous contracts completed on behalf of the Respondent. A JCT contract with preliminaries across the Buildings was entered into for cost saving reasons.
46. A pre-site meeting was arranged with the contractors, RNJ and leaseholders on 14th February 2013. The purpose of the meeting was to give leaseholders a further

opportunity to have any questions answered and obtain a fuller understanding of the works involved. The Respondent considered that leaseholders had been engaged at every stage and close liaison was managed by the Customer Service Partner Matthew Shaw who attended the Development at least once a month. He had implemented a daily log recording sheet which was available to leaseholders to raise concerns which was monitored on a weekly basis.

47. The Respondent was alert to and sympathetic to the Applicants' concerns about the level of payment to be demanded of them and so they had discussed payment options and was open to agree repayment plans. The Respondent has a major works policy which allows leaseholders to repay the cost of major works over a 5 year period interest free. These repayment options are only available if the leaseholder lives in the property and it is their only or main home. However in this instance the policy had been extended to those that sub-let.
48. The Development is in a conservation area of Seaton Carew therefore the Respondent and RNJ have been working with Hartlepool Borough Council to obtain available grant funding in the sum of £15,000. The grant funding came with restrictions to the major works, therefore the Respondent and RNJ have worked within the guidelines balancing value for money and sustainability.
49. The Respondent accepted that the Works had involved some disturbance to the leaseholders but had been minimised and the Works were absolutely necessary.
50. The Respondent accepted that there has been an element of historic neglect at the Development. The bulk of the Works had to be carried out off scaffolding. However its position was that the cost of putting up scaffolding on a regular basis and carrying out works on a regular basis cumulatively will increase those costs over time. The cost of scaffolding would have been cumulative and a significant cost saving has been made by virtue of the placing of scaffolding around the block for 12 to 14 weeks.
51. The value of the pound may have reduced by the cost of inflation over time but this is irrelevant to the Applicants' submission that the cost of the Works are higher than they would have been had they been carried out in a piecemeal fashion over the years.
52. There cannot be no recoverable charge for the Works. The effect of the Applicants' position, if accepted, is that the Tribunal would have to assess the cost of the Works had the Lessor carried them out in a regular and timely fashion.
53. The Respondent's case is that all of the Works were carried out under a detailed specification provided to leaseholders. There had been some comments in relation to aspects of the work which could constitute an improvement, such as electric gates to the car park, which were removed following consultation with the leaseholders.
54. In the RNJ report and in oral evidence from Mr Nesti there was identified certain works that the Respondent would regard as arising from repairs, but which the Applicants viewed as improvements. The Respondent's position was that those

“improvements” were prudent and arose from the need to remedy or replace components at the end of their life cycle.

55. In questioning by the Tribunal Mr Nesti accepted that regarding Number 12 the numerous coats of impermeable paint that had been applied and left on the sandstone had trapped moisture, for example, to the front porch. In consequence further deterioration of the sandstone had occurred. He confirmed that a reasonable surveyor since mid-1980s would have recommended that the layers of paint be removed to allow the sandstone to breathe. The failure to do so until 2013 exacerbated damage and the cost of remedial work.
56. The Respondent accepted that a need for works had built up in relation to the Development but disputed that this has had any effect on the ultimate cost of undertaking the necessary repairs. Carrying out appropriate works in a timely but piecemeal fashion over the years would not have decreased the overall charge to that which now was being demanded for the Works. The Respondent further accepted that a sinking fund had not been built up in relation to the apartments but disputed that this has caused any significant detriment to the leaseholders.
57. Recent purchasers of apartments in Blocks are in no worse a position to those who have been owners for many years. Upon purchase of their flat, a recent purchaser should have obtained a condition survey and must have been aware that no sinking fund had been collected. They should have purchased their flat with full knowledge of the condition of the Development and the requirement for works should not come as a surprise.
58. The Respondent accepts that some of the works are not necessarily attributable to “wear and tear” but would point out that the location of the Development, on the sea front, will give rise to rapid and continual deterioration as a result of continual exposure to salt water and wind.
59. The issue for the Tribunal would appear to be the following remaining questions:
 - a. Has the landlord neglected to carry out those works over many years, such that it amounts to “historic neglect?”
 - b. Has any such historic neglect caused or contributed to damage to the fabric of the block which has required repair?
 - c. Has the cost to the leaseholders in terms of the service charge increased as a result of that failure in comparison to what it otherwise would have been?
 - d. If so, by what amount has the service charge increased?
 - e. Do some of the works comprise improvements as opposed to repairs under the terms of the leases?
 - f. Should the landlord be prevented from recovering its costs of the proceedings from the service charge? (This point ceased to be relevant following the Respondent’s concession referred to at Paragraph X).

Case law and legal argument

60. The Respondent stated that the question of when to carry out repairs under a repairing covenant is a matter of judgment for the landlord or its management company. Although repairs might not be carried out as soon as they arise, it did not mean that the cost of those repairs, cumulatively, is any more than they would have been had they been carried out in a regular piecemeal fashion.
61. Counsel for the Respondent referred the Tribunal to Craighead and 26 other leaseholders v Homes for Islington Limited and London Borough of Islington LON/00AU/LSC/2006/0269, a decision of the London LVT. In that case estate renovations resulted in service charges for leaseholders in the region of £30,000 to £40,000.
62. The Tribunal in that case said, "On the evidence available to the Tribunal, it has not been established and cannot be assumed that any of the Applicants has, in fact, suffered any loss because of 'historic neglect' of concrete repairs. The claimed loss is that the cost of the works was higher in 2005 than it would otherwise have been. This was accepted as inevitable by Mr Easton although quantifying the increase would have been problematic. However, as he emphasised and as the Tribunal accepts, any such increase would have been far out-weighted by the cumulative costs which would have been incurred in timely localised repairs. These costs would have been payable by way of service charges by the persons who were lessees at the time and who, had they seen fit, could have brought claims against the Respondents for breach of repairing covenants at that time.
63. Accordingly, in the light of the above consideration of the submissions and evidence on behalf of the parties, the Tribunal rejects the argument that damages for historic neglect should be set off against the Applicants' liabilities to pay service charges."
64. Counsel for the Respondent submitted that it is unfortunate that despite the significant service charge liability, the cost is probably no more now than it would have been over the intervening years.
65. For the Applicants, Mr & Mrs Coulson submitted that the case was dissimilar to the present facts, as it concerned one element of failure to repair, whereas the present matter involved the entire Development and numerous acts of neglect; there was no similar cyclical maintenance programme as the Respondent in Craighead had in place; their case concerned the increase of the overall scope, scale and cost of the work involved not simply one particular cost.
66. Mr & Mrs Coulson submitted that the Development was unique in being on the seafront, compounding the Respondent's systematic neglect.
67. Counsel for the Respondent questioned whether the Tribunal had any jurisdiction to entertain an application which would ordinarily represent a set-off and referred to a decision of the Lands Tribunal in the Continental Property Ventures Inc v White [2006] 1 EGLR 85. In that case it was accepted that a Landlord's failure to repair a leaking pipe was a breach which the Tribunal could consider as relevant to the question of payability under section 27A of the 1985 Act, but was not one which

would affect the reasonableness of the charge under section 19 of the Act. (However, the service charge was reduced in that case to take account of the fact that they would have been covered under a guarantee by the damp proof company.)

68. The Tribunal concluded that this was a case quite dissimilar on its facts to the subject matter, as it related to repairs covered by guarantee and there was nowhere near the delay as occasioned in the subject case. The Tribunal however noted in that case report that the Lands Tribunal referred to Wandsworth London Borough v Griffin (2002) 2 E.G. 105. Mr Norman Rose FRICS had accepted a submission which supports the Tribunal's construction. He said at p.110 G: "Mr Cunningham also suggests that the appellants' maintenance policy in the past increased the cost of overhauling the windows. If the windows had been regularly repaired and redecorated, he implies, the result of the (life cycle costing) might have been different. In my judgement, to the extent that costs are incurred as a result of past neglect on the part of the lessor, they are not 'reasonably incurred' for the purposes of section 19 (1)(a)."
69. Similarly the judgement also referred to Loria v Hammer (1989) 2 E.G.L.R. 249. Mr John Lindsay Q.C. (as he then was) sitting as a deputy judge of the Chancery Division stated on p.258: "A stitch in time, he reminds me, can save nine; the landlord can, as it were, recover the cost of the timely one stitch but, if he fails to make that one stitch, he cannot later pass on the cost of the nine which would have become necessary simply because the one was not made or was not made in good time."
70. Counsel for the Respondent was invited to comment upon the above cases at the hearing but declined to make any substantive comments.

The Tribunal's Findings and Decision on the Section 27A Application

71. The Tribunal first ascertained whether the sums which form the basis of the relevant service charges are properly provided for in the leases. The Tribunal noted the lease obligations and established that the lease contains at clause 3 a right in principle for the Respondent to recover from the Applicants for the Works. There is no dispute between the parties as to the method of apportionment of charges, whether as to between the Block or the Building provisions or as to the percentages payable per apartment. The Tribunal noted that grant funding of £5,000 per Block had been sourced and now was factored into the Respondent's figures.
72. Having assessed in detail the parties' representations about the particulars of the Works the Tribunal found that there were no elements that did not fall within the Respondent's repair and maintenance obligations. It had regard to representations by the Applicants that works had been undertaken which could be deemed to be improvements. It found that there were instances where the Works comprised elements that exceed the Respondent's repair and maintenance obligation (see Paragraph 78).
73. While the Respondent accepted there had been a historic failure of good management its case was that the delay in undertaking necessary works had not increased the overall cost to the Applicants, recoverable as service charge. However,

its own expert, Mr Nesti in questioning undermined in some respects that position (see Paragraph 55).

74. The Tribunal finds that there has been a failure over at least 30 years on the part of the landlord of the Development to manage it properly. The effect is that it has failed to fulfil its covenants under the lease to repair and to collect a service charge that would create a sinking fund towards the cost of major works. The Respondent now is bearing the consequence of that failure.
75. The Tribunal does not find that the Works overall are unreasonably incurred, save where there are elements of improvement (see Paragraph 78) but it finds that the failure of adequate management is historic neglect and that the facts in this case demonstrate that the service charge in 2013 is unreasonably high.
76. It is understood by the Tribunal from caselaw on the issue of historic neglect that it is inappropriate for it to make a determination of damages arising from historic neglect and make an award in favour of the Applicants. Similarly it would be incorrect to find a notional sum attributable to such damages and perform a set-off against service charges otherwise recoverable. However, the Tribunal believes that it is entirely consistent with its power to determine if charges have been reasonably incurred for the purposes of section 19(1)(a) for it to decide that as a result of a failure by a landlord to carry out repairs in a timely fashion the cost to make good that omission subsequently arising may be excessive and therefore unreasonable.
77. The Tribunal had to determine whether the cost of the Works had been increased to those which leaseholders would have faced if repair and maintenance had been carried out in a timely fashion. There was no direct evidence of this, but clear representations from the Applicants that such should be found. The Tribunal was satisfied that there had been increased degeneration to the Buildings, for example:
 - Number 11 – had the chimneys and baffles been repaired 20 years ago the cost now to repair would be significantly less;
 - Number 12 - early removal of impermeable paint and repainting in the correct type of paint would have limited the cost overall compared to the specific cost now incurred;
 - Number 13 – damage known to the landlord in 1994 was ignored. There was a repair cost now which the Tribunal was satisfied significantly exceeded that which would have been incurred in or shortly after 1994 and ongoing.
78. The RNJ reports that led to the Works are technical in nature and despite the section 20 consultation exercise the lay-person would not necessarily know if the quality of materials and extent of work were appropriate. The Respondent had by and large taken account of the Applicants' representations on the Works where they identified that the specification was greater than might be deemed reasonable – for example, regarding the type of repair to the rear car park. It was apparent from the evidence of Mr Nesti that the specific cost of improvements (albeit for the long-term benefit of the Development) had been determined by the Respondent and its contractor, not through informed consultation with the Applicants (for example, the use of cheaper softwood instead of UPVC that the Respondent had chosen). In

addition, the Respondent has chosen in certain instances not to have a like-for-like repair, but also to improve (albeit with good intent, but with a disproportionate financial consequence for the Applicants) – for example, the inclusion of new gutters to each dormer windows. The Tribunal finds that such a decision has increased the cost by an unreasonable amount.

79. The Tribunal found Mr Nesti a credible witness. He had honestly identified in evidence certain elements of the Works that arose from historic neglect. While he had not conceded that additional costs had now arisen in consequence, he felt unable to confirm whether this would be the effect in all instances. The Tribunal noted within the Applicants' bundles of documents colour photographs of Number 13 showing dramatic and extreme cracking above the lintel supporting the two-storey front window, only dealt with in 2013 within the Works. The Tribunal finds that this damage had been identified in the limited survey report produced in 1994. Such neglect allowed a considerable amount of water ingress over at least 20 years causing further deterioration to the fabric of the Building, particularly to the timber lintel and it concluded that the written statement of Mr & Mrs Thompson about the detriment caused to their apartment and the suffering caused to them by the landlord's inordinate delay in repairing caused consequential loss, resulting in far higher remedial cost that would have been the case if repairs had been carried out in a timely fashion. This information lead the Tribunal to be satisfied that it could conclude that the overall neglect must have caused additional costs.
80. While the Tribunal finds that the majority of the Works would have been required in any event over a period of at least two decades, the Tribunal found that additional cost was incurred on a "net" basis, reconciling the likely cost on a comparative basis. The Respondent had initially considered it would have to bear a proportion of the cost. It was unclear why it had changed its view. Taking account of the extent of the landlord neglect and the length of time over which it had occurred the Tribunal was satisfied that the charges were greater than ought reasonably to have been incurred if works had been carried out on a timely basis. Had the Development been surveyed properly and regularly – not less than every five years and necessary repairs undertaken – the landlord would have gone a long way towards fulfilling its covenants and additional items of disrepair could have been avoided.
81. The difficulty for the Tribunal is that having determined that there has been an increase in costs it was without any clear representations as to the amount of any reduction which would create reasonableness in the service charge. Mr & Mrs Coulson in their written representations to the Respondent stated it, "...should pay for the majority of cost of these works." It is clear that on 28th March 2012, as confirmed by its correspondence, the Respondent was anticipating contributing itself to the charges. The Tribunal in considering the age and type of premises, their coastal location and evidence submitted and using its own expertise determined that the cost of the additional consequential work attributable to the neglect of the landlord over a very significant number of years, coupled with the additional cost of improvements going beyond mere repair equate to 30% of the overall contract sums, plus VAT and fees. Therefore the amount of the total recoverable for service charge year 3013 is 70% of the final certified sum, apportioned in accordance with each lease.

82. The Tribunal's determination of the amount of the reasonable service charge for the year to 31 March 2013 at issue is set out in the attached Schedule which shall form part of this Decision.
83. Regarding the post-hearing points of Mr Wilson, the Tribunal finds that the items involved were consequent upon the Works and in any event of minor significance and therefore the costs of them are reasonably incurred and have been taken into account within the Tribunal's determination.
84. For completeness the Tribunal determines the questions put by the Respondent (Paragraph X) as follows:
- a. Yes
 - b. Yes
 - c. Yes
 - d. 30%
 - e. Yes
 - f. No Order under Section 20C, as a result of the matters mentioned in Paragraph 83.

As to costs

85. The Applicants made an application under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant for a future year or years.
86. The Applicants have been successful in part in their applications. The Respondent having initially resisted the making of an order under Section 20C at the hearing confirmed that it would not seek to recover its costs of these proceedings through the service charge now or in the future. Having recorded that statement within the proceedings the Tribunal has determined not to make an Order under Section 20C.
87. Both parties conceded at the hearing that they did not seek an order for costs of the proceedings against the other and therefore the Tribunal makes no order.

Schedule

Property Address - The Cliff	Grand Totals £	Total charge including fees less 30% - sums payable £
11A	9,396.07	6,577.25
11B	11,738.77	8,217.14
11C	9,664.72	6,765.30
11D	8,533.57	5,973.50
11E	8,135.99	5,695.19
12A	13,479.44	9,435.60
12B	11,600.62	8,120.43
12C	11,745.66	8,221.96
12D	11,369.90	7,958.93
12E	11,063.30	7,744.31
12F	11,139.18	7,797.43
13A	11,516.12	8,061.28
13B	12,144.02	8,500.81
13C	12,234.88	8,564.42
13D	11,902.51	8,331.76
13E	11,307.92	7,915.54
13F	11,276.21	7,893.35
13G	11,168.46	7,817.92

Each grand total figure includes all costs, project management fees, management fees and VAT and are also reduced to reflect the grant monies received and assessed for each apartment on the Block apportionment basis

Annex

The Applicants and their respective apartments are:

- Applicant (1) : Mr P Wilson (Flat B, 11 The Cliff)
- Applicant (2) : Mr & Mrs McKinley (Flat A, 12 The Cliff)
- Applicant (3) : Mr P Horner (Flat B, 12 The Cliff)
- Applicant (4) : Mr & Mrs Dixon (Flat A, 13, The Cliff)
- Applicant (5) : Mrs M Walker Young (Flat B, 13 The Cliff)
- Applicant (6) : Mr & Mrs Thompson (Flat C, 13 The Cliff)
- Applicant (7) : Mrs M Youngson (Flat D, 13 The Cliff)
- Applicant (8) : Mrs J Ash (Flat E, 13 The Cliff)
- Applicant (9) : Mr J Ward (Flat F, 13 The Cliff)
- Applicant (10) : Mr & Mrs Coulson (Flat G, 13 The Cliff)
- Applicant (11) : Mrs D Page (Flat F, 12 The Cliff)
- Applicant (12) : Mr GG Fairley (Flat A, 11 The Cliff)