



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

Case Reference	:	CHI/19UH/LSC/2022/0016 and CHI/19UH/LSC/2022/0021.
Property	:	16 Fernhill Heights, Fernhill, Charmouth, Bridport, Dorset, DT6 6AU.
Applicant	:	Ms Ulla Baagoe, Mr John Mansfield and the additional applicants listed in the Annex 1 to this decision.
Representative	:	Ms Ulla Baagoe and Mr John Mansfield.
Respondent Representative	:	Galliard Homes Limited. Ms Harriet Holmes (Counsel).
Type of Application	:	Liability to pay service charges and limitation of Landlord's costs . Sections 27A and 20C of the Landlord and Tenant Act 1985 (the Act) and Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (CLARA).
Tribunal Members	:	Judge C A Rai (Chairman). Mr Simon Hodges FRICS.
Date type and venue of Hearing	:	21 October 2022. CVP Video Hearing (virtual).
Date of Decision	:	14 November 2022

DECISION

First Application – Accounting issues

1. The Tribunal's jurisdiction is limited to making a determination under sections 27A and 19 of the Act.
2. It determines that under the terms of its leases, the Applicant is liable to pay the interim service charge demanded by the Respondent for the service charge years ending between 2016 and 2021 and for the current service charge year (2022) on 1 January and 1 July in each year, whether or not the Respondent has complied with its obligation in the leases to provide a balancing certificate.

3. The Tribunal has no jurisdiction to prescribe remedial action, in the terms sought by the Applicant, by ordering the Respondent to audit the service charge accounts and/or issue corrected accounts.

Second Application - section 20 consultations

4. The Tribunal finds that the cost of the repair works to the Water Treatment Plant are recoverable from the Applicant.
5. It is satisfied that an appropriate consultation took place broadly in accordance with section 20 of the Act. Although the way in which the costs were invoiced may have led the Applicants to question if the estimated costs were exceeded the Tribunal accepts that these costs are recoverable.
6. If the Tribunal is wrong in relation to its identification of those costs it would have offered the Respondent an opportunity to make an application for dispensation from the consultation requirements for additional costs, not subject to prior consultation, which it would have been minded to grant.
7. The Tribunal finds that costs, which the Applicant has described as costs incurred for the aborted works to repair or replace the sewage treatment plant, were for professional fees. Section 20 consultation is not required in respect of such fees. The alleged failure of the Respondent to consult the Applicant before incurring those fees does not affect the Applicant's liability to pay them.
8. The Tribunal reserves its judgement in relation to two applications made by the Applicant under section 20C of the Act and paragraph 5A of Schedule 11 of CLARA relating to both applications, pending receipt of further brief written submissions from both parties.
9. The reasons for the Tribunal's decisions are set out below.

Background

10. Ms Baagoe, secretary of the recognised Residents' Association of the Fernhill leaseholders, made two separate applications to the Tribunal. The first application, dated 10 February 2022, was in respect of what was termed "incorrect accounting" during the service charge years ending between 2016 and 2021 and possibly, in relation to the current service charge year 2022 (the Accounts' Application). The second application, dated 22 February 2022, was in respect of Qualifying Works and the Section 20 consultations relating to proposed works to the private water treatment plant and the private sewage treatment plant. That application referred to expenditure during the service charge years ending 2019 to 2021 and possible further expenditure in the current service charge year (the Section 20 Applications). Both applications were made in respect of the Applicant's leasehold properties at Fernhill Heights.

11. Fernhill Heights is described as comprising an estate consisting of 51 leasehold properties of varying sizes, the Fernhill Heights Hotel and Fernhill Heights House. The latter two properties are freehold properties, formerly part of the estate owned by the Respondent, but now in separate ownership. All the properties are served by a private sewage treatment plant. The leasehold properties and Fernhill Heights House have a private water supply and are served by a private water treatment plant. The Respondent is the original landlord.
12. Following receipt of both applications Mr Dallas Banfield, Regional Surveyor, issued Directions dated 30 March 2022 for a telephone case management hearing, eventually held on 4 May 2022 before Judge J. Dobson, and attended by both parties. Ms Baagoe applied successfully for John Mansfield to be joined as a named Applicant and Ms Holmes attended on behalf of the Respondent.
13. Since the Respondent was unable during the case management hearing to decide if the applications could be determined without an oral Hearing, Judge J. Dobson extended the time limit for the parties to apply for an oral Hearing until after the service of both parties' statements of case. He also directed the disclosure and the procedure for both a "paper" determination and a Hearing. Ms Baagoe agreed to prepare the Hearing bundle.
14. Judge Dobson directed that both applications be consolidated and determined together and also set time limits for leaseholders who wished to be joined as parties to provide written confirmation to the Tribunal. Time limits were set for the submission of statements of case and responses which were later extended.
15. Subsequently Ms Baagoe provided the Tribunal with a list of the additional leaseholders who wished to participate in both applications with representation from the Applicant, which also included evidence of their consent to be joined as the Applicant.
16. The Respondent's solicitor, Eileen Hitchman of IBB Law LLP, emailed the Tribunal with a letter dated 7 September 2022 copied to the Applicant, which said that "the Respondent considers that the Tribunal and the Parties would benefit if the Applicants were directed to prepare a clear and concise list (in numerical order) of the legal and factual issues which (they contend) remain in dispute. She said that without such a list, the Tribunal may well have difficulty in "getting a handle" on these proceedings leading to overuse of the Tribunal's resources and unnecessary costs being incurred. If the Applicants prepare such a list the Respondent would be in a better position to advise the Tribunal as to whether a trial with live evidence is necessary. For the present, the Respondent's default position must be that the Applicant's claims are not suitable for a determination on paper" [76].

17. The Tribunal treated the letter as a request for an oral Hearing and confirmed, by letter dated 16 September 2022, that upon receipt of the Hearing bundle (due by 30 September 2022) it would review it and fix a Hearing date. The Hearing was subsequently set down to be heard on 21 October 2022.
18. Prior to the Hearing the Tribunal received the following:
 - a. The Hearing bundle (425 pages)
 - b. The Applicant's skeleton (19 pages)[AS]
 - c. Mr Stocks' witness statement and annexes (41 pages) [DS]
 - d. Accompanying invoices (10 pages) [I]
19. Following the Hearing (but on the same day) as agreed during the Hearing, the Respondent sent the Tribunal Office copy entries and the official plan for Title Number DT184316 (the Fernhill Holiday Complex Fernhill Charmouth Bridport).
20. On 25 October 2022, three working days after the Hearing, the Applicant sent a written response to Mr Stocks' witness statement (10 pages) plus annexes (44 pages).
21. Numerical references in square brackets refer to the **pdf** pages in the Hearing bundle (the electronic page numbering being inconsistent). References to documents in other bundles are separately explained.
22. It is conventional to refer to the numbered paragraphs in the body of a lease as clauses or those in statute as "sections" and to the numbered clauses of schedules as "paragraphs". This decision follows that convention, notwithstanding that the cross references to paragraphs in the schedules to the lease do not (and refer to clauses).

The Hearing

23. The Hearing was held remotely using the Cloud Video Platform (CVP). Ms Baagoe and Mr Mansfield spoke for the Applicant. Ms Holmes represented the Respondent. Mr Stocks gave evidence for the Respondent limited to the content of his witness statement and also his attendance at the hearing (between 10 am and 2 pm). Ms Hitchman attended with Ms Doyle for the Respondent and other leaseholders were also present "virtually".
24. Prior to the commencement of the formal Hearing the Tribunal confirmed to both parties which additional documents had been received after receipt of the Hearing Bundle.
25. The first document was a skeleton argument filed on behalf of the Applicant. Although Ms Holmes said that she had not seen the document, the Applicant confirmed that it had been sent to the Respondent's solicitor (which was later accepted).

26. The second document was the witness statement of Mr Stocks of Crown Property Management (CPM), the current managing agent, sent to the Applicant and the Tribunal on the day before the Hearing. Despite the timing of the submission of this document not complying with the Tribunal's directions, the Tribunal indicated to both parties that it was minded to admit the document because the content was factual and some of the exhibits were useful in the context of the applications.
27. The third document, sent by the Respondent, to the Applicant and the Tribunal, on the morning of the Hearing, was a bundle of invoices relating to some works included in the service charges and to the works relating to the section 20 consultations. Given that the content of all the additional documents was factual, the Tribunal indicated it was minded to admit them. Miss Baagoe said the Applicant did not object.
28. Ms Holmes said that the Applicant's claims had been difficult for the Respondent to follow, which why she had not filed a skeleton argument. The Tribunal advised Ms Holmes that it disagreed. It said that the Applicant's skeleton argument, despite not being as described, summarised both applications clearly. The Tribunal suggested that the accounts' claim was simple. The Applicant claimed that during the service charge years ending between 2016 and 2021, accounts had been prepared on behalf of the Respondent which had not complied with the format recommended by the RICS Service Charge Residential Management Code. The section 20 claims related, in both cases to the relevant service charges exceeding the amount estimated in the consultations. The Applicant agreed with the Tribunal's summaries of both applications.

Applicants Submissions

Accounting issues

29. Miss Baagoe submitted that the format of the service charge accounts during the disputed years had made it difficult for the leaseholders to understand the difference between the amount of the annual expenditure and the moneys collected from them (and other parties) on account of those service charges. The accounts did not show the difference between the service charges spent and the service charges collected. Furthermore, the Applicant also raised specific questions about the use of funds collected as reserves. No certificates were supplied to Leaseholders in any of those years indicating if the "on account" charges were insufficient to defray actual expenditure or in excess of the service charges incurred.
30. The Applicant also complained that the budget line descriptions in the accounts do not match up with the way in which expenses are categorised under those headings when compared with the descriptions on the service charge demands albeit those are for payments on account as opposed to actual expenses already incurred.
31. The lease provides for an annual certificate to be prepared by the Respondent showing the difference between the service charges

collected “on account” in advance of the expenditure and the actual expenditure recorded in the end of year accounts. Miss Baagoe said that certificate was never supplied and the Applicants had therefore questioned whether the Respondent is entitled to demand on account service charge payments when it has consistently failed to comply with its accounting obligations.

32. Miss Baagoe does not accept the accuracy of the statement in the Respondent’s Response that appropriate certification compliant with the provisions of the lease had been provided by the Respondent for each of the disputed service charge years.
33. Miss Baagoe also asked questioned why there is no explanation of the reserve fund contributions in the accounts.

Section 20 consultations

34. The grounds of the application are that the Respondent has:-
 - a. demanded service charges during the specified years (2019 – 2021), and
 - b. may demand service charges during 2022 in respect of costs and expenses relating to works proposed by two separate section 20 consultations.
35. The first consultation related to repair works to the private water treatment plant. The second consultation related to works to the private sewage treatment plant.
36. The works relating to the water treatment plant have been completed. The works to the sewage treatment plant were not carried out.
37. The estimated cost of the repair to the water treatment plant works are referred to in the notice of estimates (stage 2) as £14,994 inc. Vat [356] and [DS A27]. The precis of the charges associated with the Plant Treatment and Maintenance in Mr Stocks statement [DS A32] referred to a single payment of £8,352 and two payments of £4,176 to Reef Water Solutions Ltd (Reef) made between 13 May 2020 and 10 July 2020 – a total of £16,704.
38. The Applicant has suggested the service charge accounts record expenditure of £31,491, which it believes related to the works to the water treatment plant and is twice the amount of the expenditure of £15,828 estimated (by Reef the preferred contractor) and referred to in the Notice of Estimates [356 and DSA27]. The Applicant’s figure of £31,491 was extracted from the 2020 accounts after deducting £4,656 which it assumed was the cost of the regular water treatment plant service contract.
39. The Applicant said that the cost of the works to the private water system exceeded the “accepted estimate” in the stage 2 consultation notice which listed the estimates received from those contractors who had tendered for the works.

40. Despite the fact that the sewage treatment works did not proceed the professional fees relating to the consultation process has been included in the service charges paid by the Applicant, notwithstanding there was no prior consultation or disclosure as to the amount of those fees.
41. The Applicant asked the Tribunal to determine whether:-
- a. It is liable to pay the additional costs shown in the accounts which it believes were attributable to the repair works carried out to the water treatment plant, in excess of the amount estimated, following the section 20 consultation which preceded those works
 - b. It is liable to pay the expenditure incurred on professional fees, which it suggests amount to £86,552.77 between 2019 – 2022, and as a supplementary question if those costs if recoverable, should be paid from reserves.
 - c. Written notice should have been served on the freehold owners of Fernhill Hotel and Fernhill House and who will pay the shortfall if those properties do not pay.
 - d. How the sums received by the Respondent in respect of cash call of £1,275 per Fernhill leaseholder should be referred to in the accounts and if those funds are or were ringfenced (however the credit of those funds is also acknowledged)
 - e. If a final report should have been produced by the Respondent following the completion of the repairs to the water treatment works.
42. The Applicant said that the second section 20 consultation was commenced in 2020 following technical problems to the Klargestor which it submits have existed since 2019. CPM made a cash call on 3 April 2020 demanding £1,275 from all the Fernhill leaseholders (a collective amount of £65,000) which referred to a planned start date for works of October 2020 [357]. A section 20 consultation notice was issued on 6 November 2020 but in respect of estimated costs of around £350,000 [364 – 365]. The proposed works were described as drainage remedial works comprising alterations and improvement to the existing surface and foul drainage system and requisition of a new connection to the public sewer. Although the notice was accompanied by a letter from CPM, it was from Jarman Ward (Chartered Building Surveyors).
43. A further letter from Jarman Ward, dated 3 February 2021, was sent to the Applicant which confirmed that a competitive tender exercise had been completed and that submissions were received from three contractors (one after the closing date). Reference was made to liaison with CPM, drainage engineering consultants and geotechnical advisors regarding tender clarifications, leaseholder queries and the identification of the next steps in delivering the drainage works. It was stated that a summary of estimates which would be sent as part of the stage 2 consultation and that a tender analysis report would be issued and include details of alternative drainage options (before 28 February 2021) [366]. Jarman Ward identified two options in that report, sent out later in February 2021.

44. Option 1, which was the requisition of a new connection to the public sewer network, involved the decommissioning of the existing plant and the diversion of the combined private sewer into a newly constructed sewer joining Wessex Water's public sewer [369]. It was confirmed that two tenders were received within the deadline and interest expressed from a third contractor outside the tender process.
45. Option 2, which was the diversion of surface water drains and replacement of the existing sewage treatment plant involved the removal and replacement of that plant. It was recorded that, as with the current drainage arrangement, regular maintenance and desludging will be required.
46. The cost of the option 1 works was estimated at £58,082 and the cost of the option 2 works was estimated at between £331,666 and £376,307. Professional fees were broadly estimated between £54,000 and £58,000 [376 – 378].
47. A subsequent letter dated 9 July 2021 sent by Jarman Ward to the leaseholders, confirmed that Wessex Water required further reports and that a preferred geotechnical consultant had been instructed to carry out the testing.
48. On 20 August 2021, Mr Stocks sent an email to Sam at CPM (presumably the person with day to day responsibility for keeping the leaseholders informed) attached to which was an undated email from Tom (presumably Jarman Ward?) which stated that since the report from SW Geotechnicals we have had two meetings with Jubb and it has been agreed that further investigations are required to ascertain the route and final discharge of the surface water. If further investigations prove that there is no connection between the pond and highway drain Wessex Water would then be willing to discuss the possibility of connecting into the foul sewer [423].
49. Later, Wessex Water refused to agree to a connection into the public foul sewer. The documents in the bundle do not disclose when CPM, or the parties, became aware of that refusal but it is referred to in the Respondent's statement of case [113].
50. The Applicant's skeleton argument refers to the project being halted by the Respondent in September 2021. It also refers to the Applicant's calculation, based on extracted information from the 2019, 2020 and 2021 accounts and the estimated service charge demand for 2022, that costs of £52,251 had been invoiced and a further charge of £34,202.66 is estimated [AS 16].
51. Various reasons for the proposed works not proceeding were suggested to the Tribunal by Mr Mansfield. Whilst his explanation was not agreed by the parties, both accepted that the primary reason for the abandonment of the proposed works to the sewage treatment plant was because Wessex Water had refused consent for a connection to the public sewer. Mr Mansfield claimed the information had been disclosed during

a subsequent virtual meeting, attended by the Fernhill leaseholders, that the difficulties of obtaining consent from Wessex Water would have been known when the scheme was specified and that it should have been identified much earlier that the scheme as proposed would not be approved. The tender process should have been halted.

52. The Applicant suggested that it had asked for a copy of the CPM management contract two or three years ago. Miss Baagoe said that the copy disclosed by CPM at the time did not identify the estate to which the contract related. It had also omitted appendix 1 [DS A14]. She suggested that the contract attached to Mr Stocks' statement was different from the copy previously disclosed to the Applicant.
53. The Applications asked for orders for dispensation from the legal fees incurred by the Respondent being relevant costs under section 20C and reducing or extinguishing the Applicant's liability to pay a particular administration charge in respect of litigation costs for both applications (Paragraph 5A of Schedule 11 to CLARA). The Applicant did not expand upon its reasons for either application during the Hearing.

Respondent's submissions

54. Ms Holmes prefaced her submissions by explaining that the Respondent had not found the Applicant's statement of case, or its response to the Respondent's statement, helpful in enabling it to identify the issues which remained in dispute between the parties. She referred to a letter dated 7 September 2022 sent by IBB Law to the Tribunal [76]. She suggested that letter had identified that the Respondent wanted the Tribunal to make further directions which was why the Respondent had stated that the Applications could not be determined on paper.
55. Mr Stocks explained that service charge accounts are initially prepared "in house" by CPM to trial balance and then sent to Darnells (the Accountant appointed by CPM). He said that Darnells had prepared all the service charge accounts disclosed.
56. When explaining how the annual service charge demands are prepared Mr Stocks said that all the accounting is based on the lease provisions and the landlord's obligations to provide specified services. He confirmed that he prepared the service charge budget before the end of a service charge year, without any reference to the previous year's accounts. He said that he relied solely on the information contained in CPM's in house software which records all expenditure in the preceding year. Following receipt of the accounts he is able to "fine tune" the budget and if necessary, adjust the amount of the second service charge demand.
57. Mr Stocks said that annual meetings are held with the Residents' Association towards the end of each year before the budget for the next service charge year is finalised.
58. When asked to explain why the service charge demands do not refer to the same sectors as identified in the service charge accounts, he said "he

could see how it would be better”. He said he believed that Darnells had inherited the template for the accounts from the previous managing agent. He said that Ms Baagoe had been invited to meet with Darnells so she could and identify different “sector” headings which might provide the Applicant with the clarity it sought.

59. Mr Stocks said it would make no difference to the accounts if costs incurred under one sector were mistakenly allocated under a different heading in the accounts and he repeated the same explanation when it was identified that the service charge demands referred to a different calculation of costs for example for Insurance – 1/51 and for accountancy 1.47% [Page 133] .
60. Mr Stocks was unable to explain why annual balancing statements have not been produced. He suggested that this would be for the accountants to produce. Mr Stocks said that certification of the accounts goes to all leaseholders “as a package” with the accounts.
61. In response to a suggestion by Ms Holmes that the accounts would record actual income and expenditure Mr Stocks said that by the time he receives the accounts he has already calculated the next years’ service charge estimate and demanded payment. When asked how he knows if there is a deficit or a credit, he referred to the notes to the accounts for the year ended 31 December 2020 and said it is all itemised [180].
62. Mr Stocks explained that when calculating if he has demanded enough on account of the service charges, he does not refer to the preceding years accounts. The accounts take 3 or 4 months to prepare after the year end. Mr Stocks said that his budgeting is based on the previous years’ expenditure as categorised by the CPM software.
63. Initially Mr Stocks said he did not know what “balancing charge” is due. Later despite helpful questioning from Ms Holmes Mr Stocks was unable to identify copies of any demands for a balancing charge in the bundle. He asked if these were necessary. He says the budget represents the full income and expenditure. He stated, “we have not sent out a balancing charge demand”.
64. Eventually, Mr Stocks volunteered that the balancing charge is the difference between the service charge expenditure and the income. He referred to the accounts which he said would indicate if there is a deficit or a credit. When asked how the subsequent service charge demands would be affected by this, he was unable to answer. When asked if there ever was “anything to credit” Mr Stocks said “ I really don’t know. I don’t recall any balancing charges”. He said his property manager handles the service charge demands. His accounts team deal with the billing. When asked how the accounts were reconciled Mr Stocks was unable to explain.
65. Ms Holmes referred Mr Stocks to a credit note in the bundle [347] suggesting it was evidence of a balancing charge. It is dated 26 August 2022 for £360.98 and addressed to Miss Baagoe. [346].

66. Later Mr Stocks admitted that there was no balancing charge and that the credit note had been prepared and sent by CPM because Darnells had requested it. He said that Darnells tell him if there is a surplus or a deficit. (Mr Stocks' email of the same date, which appears to have accompanied the demand, refers to this credit being an adjustment to the June 2022 service charge demand and the refund of the £1,275 billed in May 2020).
67. In response to a request from Ms Holmes to clarify certain issues Mr Stocks said he sent the leaseholders a single attachment following the preparation of the accounts and he referred the Tribunal to pages 174 – 186 of the Bundle. He said that Darnells will refer to the service charge provisions in the lease which influences the sector categories under which costs are listed. He was unable to answer if and when the certificate of annual expenditure was produced, why it was produced and what was required under the lease.
68. In response to a question from Ms Holmes as to why the certificate included in the 2020 accounts package and referring to Fernhill House [185] was sent to the leaseholders Mr Stocks said he did not know. He then said they were members of the company. Later (possibly as a result of being prompted by an unknown third party to do so) he corrected his response suggesting it was in the interests of transparency.
69. Mr Mansfield asked Mr Stocks about the expenditure listed on page 5 of his statement which includes an invoice for legionella testing. He eventually accepted that it had been put under the wrong heading and that it did not relate to the Jarman Ward Drainage Report and Project Management (the second s20 consultation).
70. Mr Stocks witness statement included a copy of the CPM management contract which Ms Holmes stated is dated 1 March 2014 [DS A1]. The date on the page at [DS A9] is blank and the contract has not been signed by either party.
71. Mr Stocks said the Respondent had not signed or returned the contract but CPM will have emailed the contract and have explained that it will treat the contracts as having been accepted if it is not signed and returned within a specified period. He also said that subsequent changes in terms were sent to the Respondent on later occasions after 2014, and also treated as effective despite not having been signed by the Respondent. He said he had written to Peter Black of Galliard Homes Limited confirming this but admitted that a copy of that letter was neither attached to his statement nor included in the bundle.
72. Mr Stocks said that compliance by managing agents with the Royal Institution of Chartered Surveyors Service Charge Residential Management Code (3rd Edition) (the Code) is best practice and that a managing agent must comply with the Code. CPM is an affiliated member of the RICS. He said that CPM subscribes to the Code and said he always adheres to it and attends courses about it. All CPM services are compliant.

73. When questioned about the service charge reserves Mr Stock said that until this year when an actual reserve account was opened there had been a “virtual” reserve account. The service charge reserve account now contains £117,000.
74. The Tribunal sought clarification as to why the Residents’ Fund in the 2018 and 2019 accounts was significantly lower than in the 2020 accounts. Mr Stocks was unable to offer an explanation.
75. When specifically referred to note 6 to the accounts for the year ended 31 December 2021 , Mr Stocks was unable to say why the amount of the reserve fund is the same for 2019 and 2020 [181].
76. Ms Holmes told the Tribunal that she has seen supporting evidence, which enabled her to clarify that annual certification was provided. She referred the Tribunal to the Accounts for 2020 and 2021, copies of which are contained in the bundle[182 -186, 196]. She referred to page 202 of the bundle which she described as a certificate of the expenditure for the y/e 31.12.2021 (£82,415). She challenged the Tribunal’s observation that the certification was inconsistent, or that it was not signed or dated, as not being relevant in terms of “the compliance dictated by the leases”.
77. Ms Holmes suggested that Mr Stocks would not know what she was referring to and that additional certificates were provided to the leaseholders and the information contained in pages 202 – 205 (for 2021) had been supplied to leaseholders every year.
78. When asked for an explanation as to why the Respondent had not included these certificates in the bundle, Ms Holmes said that it had not expected the application to be set down to be heard so swiftly, the directions had been received during the summer holidays and a bereavement affecting personnel within her instructing solicitors’ had contributed to the various omissions and delays, including the late submission of Mr Stocks’ witness statement and the copy invoices.
79. Mr Stocks was invited to explain the difference between the Reef and its invoice and suggested that the “final” invoice included charges for regular maintenance costs for which Reef is separately retained.
80. Mr Stocks, although referring to Reef being contracted to carry out regular work to the water treatment plant, did not specify the ambit of those regular and recurring works or inspections other than referring to testing and disinfecting and sampling. There is no copy of an annual contract with Reef in the bundle and the Tribunal is unaware whether this has ever been disclosed by the Respondent.
81. The evidence suggested that the required works were undertaken because regular sampling of the supply demonstrate that the water quality was unsafe. This sampling was conducted by Dorset Council who served the Contamination Notice. Although it is not disputed that works were undertaken by Reef and completed and paid for the Applicant has

stated that they have not been provided with a Stage 3 Completion Report.

82. The Applicant suggested that the entire cost of the works had been recharged to the leaseholders with no contribution being recovered from Fernhill House or Fernhill Hotel which Mr Stocks confirmed.
83. Ms Holmes made submissions to Tribunal regarding the Respondent's interpretation of the Lease. She said the tenant covenants to pay an estimated amount by two annual payments. She referred to various provisions separating out the costs as outgoings in the Third Schedule, (Paragraph 2(b)) and expenses and repairs (Paragraph 10(a)).
84. She also referred to Estate Costs and that the Tenants would make the estimated initial payment and that those monies would be held on trust. The sums demanded could include both estimated actual expenditure and anticipated expenditure. She accepted that the lease provides for an annual adjustment to the sums due, once the sums demanded were reconciled with the actual expenditure at the end of each service charge year. She said that the lease does not make the demand for the next years payment dependent on that reconciliation. She failed to acknowledge that the Applicant had neither suggested, nor indeed had the Respondent submitted, that the sums demanded annually on account of the service charges have not been paid by the Applicant.
85. Following her submissions Ms Holmes considered the relief sought by the Applicant and suggested that it was outside the Tribunal's jurisdiction.
86. The Tribunal confirmed during the Hearing its jurisdiction is limited to that set out in sections 19 and 27A of the Act. It has no jurisdiction to order the Respondent to audit or amend the accounts. It reminded the parties that the previous Tribunal decision has resulted in the Respondent (eventually) returning the legal costs incorrectly included as service charges between 2016 – 2020. Mr Stocks' statement has itemised further legal charges which were incorrectly deducted and should be recredited. It is therefore assumed, that the 2022 accounts will reflect any adjustments for the preceding years and explain the resultant credit to the reserve funds by reference to the incorrect debits for legal expenses in the preceding years.
87. Ms Holmes said that a representative from the Respondent was attending the Hearing and the Respondent is committed to improving the management of Fernhill Heights going forwards. That is reflected in the fact that IBB Law and were instructed (and had instructed her) to deal with the application instead of CPM.

The Law

88. The Tribunal's jurisdiction under the application is contained in sections 27A and 19 and 20 of the Act. The Service Charge Consultation Requirements) (England) Regulations 2003 [SI 1987] are also relevant since these set out the procedure which must be followed with regard to

section 20 consultation in respect of qualifying works. Extracts of the relevant legislation are set out in **Annex 2**.

89. Both parties have referred to the Royal Institution of Chartered Surveyors Service Charge Residential Management Code (3rd Edition) (the Code) approved by the Secretary of State under Section 87 of the Leasehold Development and Urban Reform Act 1993. Subsection 7 of that Act provides that whilst the failure on the part of a person to comply with any provision of an approved code of practice, shall not render him liable to any proceedings, the code is admissible in evidence and a tribunal can take account of that code.
90. The Tribunal has jurisdiction to consider the reasonableness of service charges and whether costs have been reasonably incurred.

The Lease

91. The Respondent has confirmed in its statement of case that the 51 leases of the leasehold properties within Fernhill Heights are granted in materially similar terms. A specimen lease of 16 Fernhill Heights has been produced [32] and all references to sections or paragraphs are to that lease. The parties confirmed and agreed during the Hearing that the service charges provisions are the same, notwithstanding that it has been suggested and accepted that some of the other leases grant rights over additional land.
92. The lease is tripartite made between Landlord, the Fernhill Management Company and the Tenant. The Respondent is the original landlord. It is therefore assumed that the leases would have been prepared by the Respondent's legal representative on the Respondent's instruction.
93. Fernhill Management Company was responsible for the Management of Fernhill Heights until October 2006 when the Respondent exercised its power, contained in the lease, to take back the management responsibilities from the company. Thereafter it has employed managing agents to act on its behalf. CPM was appointed in 2014.
94. The lease contains two plans, the first of which shows the unit the subject of each lease.
95. Various terms are defined in the lease. **The Estate** means "the estate to be known as Fernhill Holiday Complex registered under title number DT 184316". Following the Hearing the Respondents sent the Tribunal an official copy of the title on 11 April 2022 with the official plan, which shows that some land has been removed from the title and registered separately under title number DT290360 and DT296862. It is understood that the first title is the Fernhill Hotel and the latter title is Fernhill House.
96. The **Common Parts** mean "such part of the Estate as are not comprised or intended in due course to be comprised in any lease granted or to be granted by the Landlord".

97. The Tennis Court is defined by reference to colouring on plan 2 as is the Swimming Pool Area, the Crazy Golf Area, the Sun Terrace and the Parking Area but the colouring is not clear on plan 2 in the bundle. Furthermore, there is evidence in the bundle suggesting that the Tennis Court was not constructed but that does not affect this decision.
98. The Tenant covenants with the landlord (and separately with the Company) to perform and observe the obligations in the Third Schedule to the lease and with the landlord and the other lessees to perform and observe the stipulations in the Fourth Schedule. Since the landlord has taken back the management obligations only the landlord can benefit from the tenant's covenants. The tenant's liability in respect of the performance of those obligations and covenants is to the Respondent.
99. Applying the same premise, it is the Respondent who is now solely liable for the performance and observation of the Landlord and Company's covenants in the Fifth and Sixth Schedules to the Lease.
100. It is appropriate to refer to a few other specific provisions before reviewing the relevant service charge provisions pertinent to the dispute between the parties.
101. Clause 8(a) is an acknowledgement by the parties that notwithstanding anything else contained in or implied by the lease the Landlord is entitled to employ and retain the services of "any employee agent consultant service company contractor engineer or other advisers of whatever nature [the Landlord] may require and expenses incurred by [the Landlord] in connection therewith shall be deemed to be an expense.....in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Third Schedule" [39].
102. Clause 8(e) provides that "Unless otherwise specifically provided nothing shall inhibit or in any way restrict or prevent the [Landlord] providing or installing any system or service not in existence at the date hereof for the purposes of good estate management of the Estate and the maintenance of the Units and for the avoidance of doubt and the sake of clarity the costs charges and expenses incurred by the [Landlord] in connection therewith shall be deemed to be an expense incurred by the [Landlord] in respect of which the Tenant shall be liable to make an appropriate contribution under the provisions set out in the Third Schedule hereto".
103. Clause 8(f) states that "Nothing herein contained or implied shall in any way prevent or restrict the [Landlord] from removing changing adding to or otherwise altering any system or service in existence at the date hereof for the purposes of good estate management of the Estate and/or the maintenance of the Units and for the avoidance of doubt and the sake of clarity the costs charges and expenses incurred by the [Landlord] in connection therewith shall be deemed to be an expense incurred by the [Landlord] respect of which the Tenant shall be liable to make an

appropriate contribution under the provisions set out in the Third Schedule hereto”.

104. In paragraph 2 (b) of the Third Schedule the Tenant covenants “To pay forthwith on demand a fair and reasonable proportion (to be determined conclusively by the Landlord acting reasonably) of any outgoings charged in connection with the Demised Premises and or the Unit jointly with other parts of the Estate (such sum to be deemed to be additional rent and recoverable as such)”.
105. Paragraph 10(a) is a tenant covenant “To pay to and keep [the Landlord] indemnified against a due and fair proportion of all reasonable costs charges and expenses which the [the Landlord] shall incur in complying with the obligations set out in the Sixth Schedule hereto or in doing any works or things to the Estate or for the maintenance and/or improvement of the Estate and/or any other costs charges or expenses which [the Landlord] designates from time to time”
106. Paragraph 10(b) states “Notwithstanding anything herein contained that parties agree that ifthe Landlord shall consider that any part or parts of the costs charges and expenses which the [Landlord] shall incur as aforesaid shall be the subject of contributions from persons other than the lessees for the time being of the Block and or/the Estate then the [Landlord] shall be entitled but not obliged to reduce the amount of the costs charges and expenses in question to which the Tenant is obliged to contribute by such sums as the [Landlord] shall in its absolute discretion consider reasonable rather than allocating the total amount of those costs charges and expenses and in this connection the Tenant acknowledges that the discretion conferred upon the [Landlord] under the provisions of this clause is an absolute discretion which shall be exercisable by the [Landlord] in such manner and upon such terms and at such times as the [Landlord] shall consider appropriate.”
107. Paragraph 11(a) provides that the Tenant is “to pay to, the [Landlord] on the first day of January and of July in each year such sum as the [Landlord] shall estimate to be half of the amount prospectively payable by the Tenant under clause 10 of this Schedule (such sum to be taken into account and credited against the amount eventually determined to be so payable) the first payment [to be an apportioned part of the First Service Charge Payment until such time as the said expenses shall be calculated or estimated each of the said half-yearly contributions shall be in the amount of a the First Service Charge Payment (which was a defined sum).”
108. It was noted that sums received on account of service charge proportions shall be deemed to be held by the Landlord as bare trustee (Paragraph 11(a)(i) and that the expression “all costs and expenses which the [Landlord] shall incur (or words having a similar effect or meaning) shall include not only those costs and charges and expenses which the [Landlord] shall have actually incurred or made but also a reasonable amount on account of those items of a recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred

or made whether prior to the commencement of the Term or otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the [Landlord] may in its absolute discretion allocate to the year in question as being fair and reasonable in all the circumstances”.

109. Paragraph 11(b) provides that “if in order to comply with any of the obligations of the [Landlord] contained in the Fifth Schedule hereto or if to carry out any other works or things for the improvement of the Estate the Landlord must spend money in excess of those sums the Landlord shall have collected from the Tenant and other tenants of the Estate towards the costs of carrying out such obligations or works or things then the Tenant shall pay on demand such sums as shall represent a proportionate part (calculated in the manner aforesaid) of the money that will be required to be expended over and above the sums already received by the Landlord and such further amount shall be taken into account in calculating the amount of the service charge proportions pursuant of the provisions of whichever of sub clauses (a) and (b) of this clause is appropriate”.
110. Paragraph 12 provides that “Within twenty-one days after receipt of a copy of the certification provided for in the Fifth schedule hereto to pay to the Landlord the net amount (if any) appearing by such notice to be due to the Landlord from the Tenant”.
111. The Fifth Schedule contains the Company’s covenants (which the Respondent as landlord is now obliged to perform). Paragraph 4 requires the landlord “To keep or cause to be kept proper books of account of all costs charges and expenses incurred by the [Landlord] in carrying out its obligations under this schedule or in otherwise managing and administering the Estate and in each year during the term to prepare a certificate of (a) the total amount of such costs charges and expenses for the period to which the certificate relates and (b) the proportionate amount due from the Tenant to the [Landlord] under the provisions set out in the Third Schedule hereto after taking into account payments made in advance under the provisions set out in the same Schedule and to send a copy of the same to the Tenant”.
112. Paragraph 7 requires the Landlord “To provide such facilities for the benefit of the Estate as the [Landlord] may from time to time determine (acting reasonably)”.

Reasons for the Decision
Mr Stocks’ evidence

113. It was apparent to the Tribunal, and must have been apparent to the other parties, that:
 - a. Mr Stocks was being prompted by a third party throughout the Hearing, and
 - b. his responses to most of the questions were reliant on the undisclosed party, and

- c. he had difficulty either following, or understanding, some of the questions including those put to him by Ms Holmes. He consistently blamed Darnells when it was suggested that items or invoices were not categorised correctly by reference to the headings in the accounts.
114. Mr Stocks suggested that Darnells, (the accountants by instructed by CPM) used a template inherited from the previous accountant. Mr Stocks said that once service charges had been spent it made no difference in which category the expenditure was listed. He said it does not affect the accounts.
115. Whilst the Tribunal accepts that the categorisation of the items under the expenditure categories will not change the total service charge expenditure it does not accept that the format of the accounts depends on the use of an “inherited template”. The Applicant included evidence of the accounts which were produced for the 2010 service charge year in its post hearing submission [Page 46]. That template does not match the Darnells’ accounts.
116. The Tribunal has concluded that on receipt of the accounts from Darnells Mr Stocks simply circulates them to the leaseholders. The only evidence it has seen of “a package of information” accompanied the 2020 and 2021 accounts. The 2020 accounts contained a certificate of costs charges expenditure [183] but no comparison with expenditure against income on that page. The income figure is shown on page 168 in the main body of the accounts and the transfer from residents is shown in the income and expenditure account (£107,412)[177]. The Residents Fund note 4 [180] shows the amount left at year end as £4,882. The Tribunal does not understand where the sum of £30,818 shown at note 5 as comprising the reserve fund is held [181].
117. The balance sheet for the 2021 accounts shows the Residents Fund(s) (sic) as comprising the total of the £4,882 and £30,818 (referred to in the preceding paragraph) and a negative balance for the Residents Funds in 2021 of £1,377 which when deducted from the Reserve Funds leaves a balance of £29,439 [193].
118. The statement of service charges income and expenditure for 2021 [199] shows an operating surplus (deficit) of £6,259 (and refers to a surplus of £15,610 in the preceding year (2020)[199]. The credit balance carried forward for both those years (taking into account the Reserve Funds) is £28,439 (2021) and £36,598 (2021). The following page [200] shows Service Charge Expenditure for 2021 totalling £82,414 categorised by reference to budget headings which seem to replicate the headings within the sector costs (rather than the sector costs).
119. Another page headed Fernhill Heights Certificate of cost charges and expenditure for the year ended 31 December 2021, refers to the sector costs (replicated in the accounts) which total of £82,415) [202]
120. Finally, a page headed Repairs and maintenance shows a breakdown of the invoices which total £6,986.80 [205]. That is a different figure from

the total shown in the accounts, under Sector 1 Estate Costs [191] as Repairs and Maintenance of £5,967 replicated on the page headed Service Charge Expenditure [200] referred to in paragraph 118 above.

First Application The Accounting Issues

121. The Applicant has asked the Tribunal whether:-
 - a. Tenants are liable to pay the interim service charges demanded (based on and estimated budget) during the disputed years when no balancing certificates have been provided with any of the accounts for those years.
 - b. The landlord has complied with its obligations in the lease with regard to the accounts because the annual accounts were not supported by appropriate signatures and did not comply with the lease or the statutory provisions; the Applicants expected that the accounts would state each tenant's share of the expenditure incurred and the difference between the amount collected on account and the actual expenditure and comply with the recommended accounting procedures.
 - c. It can order the Landlord to provide corrected service charge accounts "annual balancing Certificates" for the 2016 – 2021 service charge years.

122. The Applicant has also asked for:-
 - a. Information and with a service charge apportionment schedule showing the contributions towards the service charges due from Fernhill Hotel and Fernhill House (both of which are freehold properties).
 - b. A detailed statement of the arrears due from the owners of those properties between 2016 – 2021.
 - c. The Respondent's debt recovery plan and or who assumes the shortfall in the service charges both in the past and in the future.
 - d. The Respondent's proposal and time plan for restoring the shared amenities reserve fund for the entire estate and the reserve fund for the leaseholders

123. The Tribunal's jurisdiction is contained in sections 27A and 19 of the Act. It is able to determine whether the service charges incurred during the disputed years are reasonable and reasonably incurred.

124. It heard submissions from both parties regarding the production of annual service charge accounts.

125. The only copies of accounts in the bundle appear to have been provided by the Applicant although Ms Holmes implied that the Respondent's might have provided the 2021 accounts. Ms Holmes told the Tribunal that she had seen additional information such as certification for accounts relating to other years between 2016 – 2021 and that annual balancing charge certificates had been produced with the accounts which were sent to the Applicants every year.

126. Ms Holmes is neither a witness nor Respondent. The Tribunal cannot rely on evidence from her. It found her explanation why the Respondent omitted relevant information in the bundle unhelpful.
127. Questions addressed to Mr Stocks during the Hearing suggested to the Tribunal that, despite his responsibility for the management of Fernhill Estate, he had little knowledge and understanding, of the lease provisions regarding the production of an annual balancing certificate, or the purpose it was intended to achieve. He told the Tribunal that he has never demanded a balancing amount from the tenants or provided a credit note. Although Ms Holmes suggested that a credit note in respect of a payment on account of the proposed works to the Sewage Treatment Plant [347] was evidence that he had, the Tribunal does not accept that. The email dated 26 August 2022 from Mr Stocks which accompanied that credit note explained it was a reimbursement of the cash call for the sewage treatment plant works [346].
128. Ms Holmes suggested that her instructing solicitors email dated 7 September 2022 interpreted by the Tribunal as a request for a Hearing was also a request for direction requiring the Applicant to clarify the issues. The Tribunal does not accept this. The Respondent had received a statement of the Tribunal's rules and procedures following the issue of the Applications. A professional representative will know how to make an application for directions. Furthermore, the Respondent has consistently failed to address the Applicant's oft repeated concerns about the accounts until the Applications were submitted.
129. Ms Holmes suggested that the Respondent's lawyers had not dealt with its submissions in full because of illness, family bereavement holiday commitments and the unexpected swiftness of the listing of the Hearing. She said this was why Mr Stocks' statement was not supplied until the day before the Hearing and copies of the service charge invoices were sent on the day of the Hearing. She also said that the person who was dealing with the matter for the Respondent has left the company. She said the Respondent remains committed to managing Fernhill Heights effectively but that would not mean obtaining the Respondent's approval to every item of expenditure.
130. The Applicant's submissions demonstrate that it has regularly during every service charge year, in response to every service charge demand, sought clarification as to the preceding years accounts, the budgets provided and the calculation of the amounts demanded. The clarification sought from CPM was never provided.
131. In the absence of clear any meaningful response from the Respondent to the Applicant's questions, the Tribunal and doing the best it can has extracted this information from the accounts has concluded the following.
132. The 2021 "accounts package" included a certificate of costs charges and expenditure for that year [183] £108,443 against which the Applicant

has handwritten a comment “Daybook £104,564 however income is the problem as it could not be exactly the same”.

133. The 2020 Accounts show a credit of £30,816 in the Resident and Reserve Fund [181]. Note 4 to the accounts [180] show a negative opening balance of £10,728 and Residents contributions of £123,023 which resulted in a transfer to income and expenditure of £107,412 (the total of the two figures). That amount, combined with the laundry income of £1,030, is the income of £108,432 [177]. That is the figure which balances against the expenditure referred to in the preceding paragraph.
134. The Tribunal believes that the income figure shown on each year’s accounts is the combined amount of:
 - a. the service charges collected plus
 - b. the laundry income and any other income received
 - c. and an amount drawn from the accumulated service charges in the accountto produce a figure which balances (equates to) with the actual expenditure.
135. Although the 2020 and 2021 accounts contain certificates of expenditure, only the 2021 accounts contain a statement of income and expenditure which shows an operating surplus (deficit) [199]. The 2018, 2019 and 2020 accounts are not signed. The total expenditure lines in the 2016, 2017, 2018, 2019, 2020 and 2021 accounts are blank. However, there is a separate statement of income and expenditure with the 2021 accounts [199].
136. The Tribunal has produced an income and expenditure reconciliation by extracting information from the copies of the accounts in the bundle which is attached to this decision as **Appendix 3**.
137. The Tribunal is unable to understand how the Reserve Fund, which according to Mr Stocks’ evidence was until recently a “virtual fund”, is represented in the Accounts. This conclusion is significant because paragraph 44 of the Respondent’s response states “As for the allegation that the reserve fund should have been used to discharge these costs, there were insufficient funds in the reserve fund to do so” [112].
138. Mr Stocks confirmed that the current reserve fund is held in a separate account containing the monies paid into it by the Respondent (Galliard) in compliance with the earlier Tribunal Decision.
139. In response to the questions framed by the Applicant and set out in paragraphs 121 and 122 above the Tribunal determines that:-
 - a. The provisions of the Lease and in particular paragraph 11(a) of Schedule enable the landlord to collect a payment on account from the tenants in January and July of each year. The landlord’s right to collect this payment is not conditional on it complying with any provision in the lease regarding the production of accounts and or a balancing statement.

- b. No satisfactory evidence has been supplied by the Respondent which enables the Tribunal to conclude that it has supplied balancing statements in any of the disputed years, save and except that an attempt to demonstrate the difference between expenditure and income has been produced with the 2021 accounts [199].
- c. The Tribunal has no jurisdiction to order the Respondent to provide corrected accounts but assumes that the adjustment to the current year's accounts arising from the credit made to the reserve fund will be documented in the 2022 accounts.
- d. The Tribunal has no jurisdiction to deal with any of the three remedies which the Applicant sought in relation to the service charge contributions made by or due from the freehold properties known as the Fernhill Hotel and Fernhill House either now or during the disputed years.

Second Application

The section 20 consultation on the water treatment plant works

- 140. The second application related to two section 20 consultations for works carried out to the water treatment plant and proposed works, not undertaken, to the sewage treatment plant.
- 141. The Applicant alleges that it has been charged for what it has termed "un-consulted works" the costs of which exceeded the estimated cost of the works to the water treatment plant (the first consultation).
- 142. The Applicant's claim is that. prior to the second consultation, a cash call was demanded from the leaseholders which was later recredited (insofar as payments had actually been made). The Applicant has questioned the costs (described as upstream costs) incurred by the Respondent and recharged to the Applicant relating to the investigation of the problems, identifying a solution and inviting tenders and identifying contractors, following which for reasons which the Applicant has questioned the proposal was abandoned leaving the Applicant to defray expenditure totalling an estimated £86,552.97 [AS 16]. No works have been carried out so the Applicant is still paying for additional regular servicing costs to enable the current plant to function.
- 143. The Applicant seeks to establish:-
 - a. Its liability to pay for the expenditure on surveys and project management,
 - b. Whether those costs should have been paid out of the accumulated reserve fund,
 - c. Whether the freehold owners should have contributed to those costs or if not sought clarity as to who would be required to pay their share,
 - d. Whether the Respondent was entitled to demand the sums demanded by the "cash call" collected prior to the consultation and how the sums collected should have been held and shown in the service charge accounts,
 - e. If the Tribunal can order disclosure of the final report on the Qualifying Works to explain subparagraphs (a) – (d).

144. Section 20(1) of the Act provides that where it applies to any qualifying works, the relevant contributions of the tenants are limited unless the consultation requirements have been complied, or dispensed, with. Section 20(3) of the Act states that this section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount. Section 6 of the Service Charge (Consultation Requirements) (England) Regulations 2003 [SI 1987] (the Regulations) provides that for the purpose of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.
145. It is agreed that the cost of the proposed works to the water treatment plant would result in each tenant being required to make a contribution of more than £250 in 2020.
146. The Applicant referred to the annual sampling of the private water supply on 12 March 2020 which resulted in the service of a Water Contamination Notice by Dorset Council (the Contamination Notice) which it alleges was not lifted until 14 months later on 5 May 2021 [90].
147. Both parties agreed that urgent action was necessary and that the Contamination Notice was served during a period of lockdown in the Covid-19 pandemic.
148. Mr Stocks suggested that because of the urgency CPM had tried to progress the works before starting the consultation process. CPM served a consultation notice (stage 1) on the leaseholders by on or about 23 April 2020. The notice described the works as “replacement of the cold water storage tank liner” stated that the CPM will only be involved on overseeing the works superficially and recommended that a building surveyor is employed to project manage the works. Therefore, the Tribunal has concluded that the Applicant would, or should, have been aware that other costs would be incurred [355].
149. Following receipt of estimates CPM served the notice and statement of estimates (stage 2) (2 July 2020) listing four quotations which included that of Reef which was (£14,994 inc. VAT) the lowest.
150. The Applicant has submitted that the costs of the works exceeded the estimated amount referred to in the second notice. However, the Reef quotation, dated 20 April 2020, was for £13,920 (ex VAT) (£16,704 inc. VAT) [DS Statement A29]. The date of the Reef quotation precedes the date of the Notice, but in his oral evidence Mr Stocks stated that the works were urgent because the quality of the drinking water was unacceptable. In his evidence, Mr Stocks explained and implied that Reef would have been on site regularly undertaking maintenance, as well as carrying out the repair works.

151. The Tribunal has concluded that the figure on the notice and statement of estimates [stage 2] may have been incorrect [356]. A clearer copy of this notice was supplied in the DS Statement [A27] in which the figure shown is £14,994]. A copy of the Reef quotation dated 20 April 2020 is with the section 20 notice in the bundle [352 – 354] which was for £13,920 (ex VAT) which totals £16,704. The last two items listed are on the quotation are recommissioning and disinfection and sampling (to demonstrate water quality).
152. The Tribunal has concluded that the Applicant would have been aware of the amount Reef had quoted. The invoice which Mr Stocks suggested was for the works, which was not disputed by the Applicant, refers to a quoted price of £13,920 of which £10,440 has been invoiced and shows a balance of £4,176 (inc. VAT) (£14,616), less than the estimate referred to in paragraph 151 above.
153. The Applicant has complained that it was not notified about the completion of the works. There is no requirement in the Regulations for the landlord to do this. Part 2 of Schedule 4 to the Regulations applies in respect of consultation requirements for qualifying works for which public notice is not required. The landlord is required to give notice of his intention to carry out qualifying works describe the works and invite tenants to propose the name of a person from whom the landlord should try to obtain an estimate.
154. There is no suggestion that the Respondent failed to do this or that he failed to supply details of the estimates. A copy of the estimate from Reef (the chosen contractor) is in the bundle and also attached to Mr Stocks' statement.
155. The Applicant totalled the amounts listed in the 2020 annual accounts which related to the water treatment and submitted that £31,491 was spent in relation to water treatment, which was an overspend of £16,497, (in excess of the estimate shown in the section 20 consultation). This calculation is set out in paragraph 76 of the Applicant's Statement of case [91]. The Applicant has assumed that the annual contract with Reef for regular maintenance incurs costs of £4,656.00 per annum. No copy of that contract was produced by the Respondent and that amount was not commented on by the Respondent.
156. Information in Mr Stocks' statement indicates that project management fees totalling £6,660 were paid to Jarman Ward and that four payments of £1,396.80 were paid to Reef [DS Statement A33] suggesting that the annual contract cost during 2020 was £5,584 not £4,656.00.
157. Additional costs of £2,772 for underground disinfectant and £1,434.00 for a dosing pump replacement pump (05/11) on 09.11.2020 are listed too. [DS Statement Page A32]. Under the heading "water sampling and treatment" an amount of £1,434 (an identical amount) refers to the replacement of failed CLO2 dosing pump (20/11) on 30.11.2020. The pump appears to have lasted two weeks which is at least questionable. The Tribunal believes that the Respondent should re-examine the costs

and explain to the Applicant why a second dosing pump was installed and if it was charged for twice.

158. An invoice (£360) for supply and installation a booster pump set, on 26.07.2020 is also listed under the “sampling” heading [DS A33].
159. In the absence of any consistency in relation to the way in which invoices are collated by CPM it is virtually impossible for the Tribunal to calculate the amount of the annual costs relating to the maintenance of the water treatment plant. It is also impossible to work out clearly which costs are recurring costs, which costs are for materials and which costs relate to sampling. Where chemicals are supplied the costs are mingled with inspection costs and the costs or replacement parts appear under almost every heading within the schedules in Mr Stocks statement.
160. The Tribunal believes that, doing the best it can with the information supplied, the actual costs associated with relining of the WTP were £23,364, of which £6,660 was Jarman Ward’s costs for supervision. These were not “works” within the definition in section 20 and are therefore not subject to consultation. Nevertheless, potentially an overspend of £1,710 has been identified which Mr Stocks was unable to explain or clarify.
161. Mr Stocks suggested that Reef charged for other regular works which it undertook within the same invoice.
162. Reef apparently invoiced two sums of £1,434 for replacing a failed dosing pump. If there are two pumps this should have been clarified but the listed payments refer to dates of 05/11 and 20/11 in 2020 with the invoices both being issued in November of that year.
163. In summary, the Tribunal accepts that the Respondent has complied with the section 20 procedure in relation to the water treatment plant. It does not believe that the cost of the works exceeded the Reef estimate, but if it is mistaken it would have, as Ms Holmes suggested, offered the Respondent an opportunity to seek dispensation from further consultation in relation to any overspend in accordance with the guidance given by the Lands Tribunal in **Warrior Quay v Joachim [2008] 1WLUK 71**.
164. The Tribunal has noticed that the evidence reveals that the professional fees associated with this project were substantial and the Applicant has questioned why there was no consultation with regard to these costs. The Respondent has replied by stating, correctly, that professional fees are not within the definition of works.
165. Section 20 (see Appendix 2) refers specifically to qualifying works or qualifying long term agreements. The Jarman Ward supervision fees are not “works” within the definition contained in the Act. The application of section 20 to professional fees was considered in **Marionette v Visible Information Packaged Systems Limited 2002 EWHC 2546 Ch** in which case Judge Nicholas Warren QC stated that “works

are in my judgement restricted to physical works involved in the repair or maintenance and the costs of those works is the charge made by the contractor carrying out those works for doing so. This is also very much the flavour given by subsection 20(4)(c) requiring a description of the works to be carried out to be given in the notice which has to be served on the tenants; that provision seems to me to inapposite to cover professional services provided by an independent person as part of the works which need to be described” [paragraph 95] (The provisions to which Judge Nicholas Warren referred are still relevant but are now contained in Paragraph 1 of the Regulations).

166. Judge Warren went on to consider the position of a separate fee charged to the landlord for the design and or supervision of the execution of a project and whilst he accepted that the fees are certainly incurred in relation to works, he concluded that in his judgement the service for which such fees are paid are not part of the works themselves.
167. Judge Warren commented that tenants will recognise that the repairs of any significant scope will be likely to require supervision and that relevant costs, to be recoverable are subject to the “reasonableness” provisions of section 19 but are not subject to any need for prior notice under section 20 [paragraph 98].
168. To eliminate the need for further applications it would be helpful if the Respondent provided clear written clarification of the actual service charge expenditure under the correct headings so expenditure is properly categorised but the Tribunal has no jurisdiction under which it can order it to do so.
169. The Tribunal has no jurisdiction to deal with anything other than the payability and reasonableness of the service charges for the relevant years so makes a determination that only the amount invoiced and recovered by Reef plus the £6,660 (Jarman Ward fees) are recoverable with regard to the section 20 consultation and expenditure together with any reasonable fees charged by CPM.
170. The Respondent may be able to explain and justify the other costs but if the Applicant remains unsatisfied with the explanation it might consider making an application to the Tribunal under section 27A regarding the reasonableness of charges it is still disputing.
171. Whilst the Tribunal might have considered the reasonableness of the other charges paid to Reef the Applicants have put forward no argument as to why it considers that these charges are, or may be unreasonable, and the Respondents have had no opportunity to dispute or comment.
172. The Tribunal believes that the Respondent might have avoided having to respond to consider many of the questions raised by the Applicant had it provided more transparent and ordered information in accordance with the requests made since 2016.

173. In response to the Applicant's specific questions the Tribunal determines that the Applicant is liable to pay for surveys and project management of the section 20 works. Those fees are not subject to consultation but must be reasonable, within the parameters of section 19 of the Act, to be recoverable.
174. In response to the question about whether the costs should have been paid out of the accumulated reserve fund the Respondent's statement of case states that there were insufficient funds for it to do so [112]. That statement is interesting, if the accounts provided are accurate, since according to the 2020 accounts the reserve fund contained £30,816. The Tribunal's analysis (Appendix3) suggests otherwise and the Respondent's statement would appear to question the accuracy of its own service charge accounts.
175. The Tribunal has no jurisdiction to determine what contributions could or should have been made by the freehold owners.
176. The provisions in the lease enable the Respondent to demand "not only those costs and charges and expenses which the [Landlord] shall have actually incurred or made but also a reasonable including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the [Landlord] may in its absolute discretion allocate to the year in question as being fair and reasonable in all the circumstances" paragraph 11(1)(c) of the Third Schedule to the lease.
177. The Tribunal has no jurisdiction to order the disclosure of any final report with regard to the qualifying works. However, if such a report is or has been prepared the cost of its production will be charged to the tenants. There is no obligation in the Regulations for a landlord to produce such a report.

Second Application - the section 20 consultation the sewage treatment plant works.

178. The Applicant has raised identical questions in relation to this consultation but the critical difference is that the proposed works were not undertaken. Whilst reasons were mooted during the Hearing the Tribunal has not received any compelling evidence of the reason, nor is it relevant to its decision.
179. The Applicant is liable to pay for the expenditure on surveys and project management subject to the provisions of section 19 of the Act. The Tribunal has not received any submission regarding the breakdown of the fees included in the service charges.
180. The reserve fund was apparently, until recently, inadequate to defray these costs although, as was disclosed an actual (as opposed to a virtual) reserve fund has now been set up which contains adequate funds.
181. The Tribunal has no jurisdiction to determine what contributions could or should have been made by the freehold owners.

182. The Tribunal has already responded to the Applicant's question regarding the cash call, which has now been, as stated earlier, recredited to those leaseholders who had paid it.

Applications made by the Applicant under section 20C of the Act and paragraph 5A of Schedule 11 of CLARA.

183. Although the Applicant has "ticked the boxes" on both the applications requesting that the Tribunal make orders limiting the ability of the Respondent to recover its costs in connection with these proceedings, it has not submitted any reasons in support of these applications. Should it wish to do so it must submit a brief statement to the Tribunal and the Respondent at the same time and within 28 days of receipt of this decision. The Respondent may reply to these submissions within 21 days of receipt of them. It must send its response to the Applicant and copy it to the Tribunal at the same time. The Tribunal will determine any application received within 28 days of receipt of the Respondent's reply.

Judge C A Rai

Chairman

Annex 1

List of additional Applicants

1	Gary and Valery Atherton	1
2	Nicholas and Melanie Cadwell	3
3	Stephanie Nimmon and Calum Walker	6
4	Dale Briggs-Harrison	7
5	Simon Brook	8
6	Marion Branthwaite	10
7	Antony Jacobs	11
8	Julia Beck	12
9	Joanne Woolgar	17
10	Joanne Gillett	18
11	Mike Broughton	20
12	Rhoda and Terry Elwick	21
13	Malcolm and Carole Elwell	22
14	Julian and Deborah Lawrence	23
15	Brian and Barbara Mitchard	31
16	Philip Read Pauline Read John Read and Saran Resch	33
17	Beverley and Peter Traves	37
18	Rhoda and Terry Elwick	38
19	Ken and Margaret Brown	39
20	Sean Larcombe	40
21	Linda and Brian Eyre	42
22	Nigel Smith and Oscar Ignatius	46
23	Anthony and Holly Wadsworth-Hill	53

Annex 2

27A Liability to pay service charges: jurisdiction

- (1) An application may be made to [the appropriate tribunal] for a determination whether a service charge is payable and, if it is, as to—
- (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to [the appropriate tribunal]² for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.

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

20 Limitation of service charges: consultation requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) [the appropriate tribunal] .

(2) In this section “*relevant contribution*”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
- (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

20C.— Limitation of service charges: costs of proceedings.

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court [, residential property tribunal] or leasehold valuation tribunal [or the First-tier Tribunal] , or the [Upper Tribunal] , or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Service Charges (Consultation Requirements) (England) Regulations 2003/1987

Regulation 7(4)

Except in a case to which paragraph (3) applies, and subject to paragraph (5), where qualifying works are not the subject of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works–

- (a) in a case where public notice of those works is required to be given, are those specified in [Part 1 of Schedule 4](#);
- (b) in any other case, are those specified in [Part 2](#) of that Schedule

Part 2 of Schedule 4

1.

(1) The landlord shall give notice in writing of his intention to carry out qualifying works–

- (a) to each tenant; and
- (b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall–

- (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
- (b) state the landlord's reasons for considering it necessary to carry out the proposed works;
- (c) invite the making, in writing, of observations in relation to the proposed works; and
- (d) specify–
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

2.

(1) Where a notice under [paragraph 1](#) specifies a place and hours for inspection–

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

3.

Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations

4.

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate–

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate–

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)–

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement (“the paragraph (b) statement”) setting out–

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with [paragraph 3](#)) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

- (7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord–
- (a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
 - (c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
 - (d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
 - (e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
- (8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.
- (9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by–
- (a) each tenant; and
 - (b) the secretary of the recognised tenants' association (if any).
- (10) The landlord shall, by notice in writing to each tenant and the association (if any)–
- (a) specify the place and hours at which the estimates may be inspected;
 - (b) invite the making, in writing, of observations in relation to those estimates;
 - (c) specify–
 - (i) the address to which such observations may be sent;
 - (ii) that they must be delivered within the relevant period; and
 - (iii) the date on which the relevant period ends.
- (11) [Paragraph 2](#) shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

5.

Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

6.

(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)–

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) where he received observations to which (in accordance with [paragraph 5](#)) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) [Paragraph 2](#) shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Annex 3

Appeals

1. A person wishing to appeal this decision to the Upper Chamber must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision. Where possible you should send your further application for permission to appeal by email to **rpsouthern@justice.gov.uk** as this will enable the First-tier Tribunal to deal with it more efficiently.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.