FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00ML/LIS/2020/0035
Property	:	Flats 4 and 5, 32 Brunswick Square, Hove, East Sussex, BN3 1ED
Applicant	:	Alencon Flat Management Limited
Representative	:	Richard Alford – Counsel
Respondents	:	Simon Cox and Gaynor Cox-Case
Representative	:	In person
Type of Application	:	Liability to pay and reasonableness of service charges section 27A Landlord and Tenant Act 1985
Tribunal Members	:	Judge N P Jutton and Mr K Ridgeway MRICS
Date of Hearing	:	31 March 2021 by video enabled hearing
Date of Decision	:	8 April 2021

DECISION

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1 32 Brunswick Square is a grade 1 listed building divided into seven residential flats. The flats are held on long leases. The Applicant company owns the freehold. It is a company owned by the Lessees of the flats. The Lessees each own a share in it. The Respondents, Mr Simon Cox and Mrs Gaynor Cox-Case are the Lessees of Flats 4 and 5. Mr Cox is also a Director of the Applicant company.

2 The Applicant makes an application pursuant to section 27A of the Landlord & Tenant Act 1985 (the 1985 Act) for a determination of liability to pay and reasonableness of service charges in relation to the service charge years ending 29 September 2014, 2015, 2016, 2017 and 2018, and of estimated service charges demanded on account for the year ending 29 September 2019.

3 **Documents**

4 The documents before the Tribunal comprised two bundles of documents. A bundle prepared by the Applicant running to 465 pages. A bundle prepared by the Respondents running to 486 pages. References to page numbers in this Decision are references to page numbers in the Applicant's bundle. Where reference is made to a document in the Respondents bundle it is denoted by the letter 'R' (e.g. 123R). There was also before the Tribunal a Skeleton Argument prepared by Counsel for the Applicant, Mr Richard Alford.

5 **The Law**

6 The relevant statutory provisions are to be found in sections 18, 19 and 27A of the 1985 Act. They provide as follows:

The 1985 Act

18 (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, or a superior 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 (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

27A (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 for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

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

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

7 **The Lease**

8 A copy of the Respondents' Lease of Flat 4 is at pages 275-296 of the bundle and to Flat 5 at pages 297-323.

9 Clause 3 of the Lease contains covenants on the part of the Lessee. Clause 3(2)(i) provides that the Lessee will:

"Contribute and pay to the Lessor as a maintenance and service charge (hereinafter called 'the service charge') a proportion of the annual costs expenses and outgoings incurred by the Lessor in complying with the obligations in the Fourth Schedule hereto and of the other matters which without prejudice to the generality thereof are set out in the Fifth Schedule hereto such proportion to be the proportion which the rateable value of the flat bears to the aggregate of the rateable value of all the flats and other hereditaments comprised in the building".

10 Clause 3(2)(ii)(a) provides for an estimated service charge to be paid each year in advance by two instalments on the 25th of March and the 29th of September in each year.

11 Clause 3(2)(ii)(b) provides:

"On or as soon as possible after the 29th day of September in each year the respective annual costs expenses and outgoings of the matters referred to in sub-clause (i) of this clause shall be calculated and if the Lessee's share of such annual costs and expenses and outgoings under the provisions hereinbefore contained shall fall short of or exceed the aggregate of the sums paid by him on account of his contribution the Lessee shall forthwith pay to or shall be refunded by the Lessor the amount of such shortfall or excess as the case may be …".

12 Clause 3(2)(ii)(d) provides:

"The liability of the Lessee under the provisions hereinbefore contained shall be certified by a Chartered Accountant to be appointed by the Lessor".

13 The Fourth Schedule to the Lease sets out the Lessor's obligations which include lighting and cleaning common parts, keeping the structure and external parts in good and tenantable repair and condition, undertaking exterior decoration and insuring. The Fifth Schedule sets out further details of the expenses to which the Lessee is to contribute by way of service charge which include the fees of employing managing agents, accountant's fees, surveyor's fees for carrying out periodic inspections and preparation of maintenance schedules, and legal fees in connection with the management of

the building. There is also provision for the creation and maintenance of a reserve fund.

14 The parties have agreed that the Respondents' proportion of the service charge is 13.54% for Flat 4 and 11.30% for Flat 5.

15 **Background**

16 The Respondents and the Applicant have been in dispute for many years. There is at pages 234 to 258 a form of Scott Schedule (covering the years to which these proceedings relate) which has been completed by the parties following a meeting held between them. The Scott Schedule sets out those service charge items that remain in dispute and those that are agreed. There are certain items of service charge expense which are common to a number of years. The Tribunal has addressed the specific items which remain in dispute as set out in the Scott Schedule, below. However, there are a number of more general issues which have been raised by the Respondents which are relevant to the Respondents' response to this application and which touch and concern their opposition to payment of service charges generally.

17 In both bundles are papers in respect of proceedings previously brought by the Respondents in the County Court under case no. 3QT33487. By those proceedings, the Respondents (the Claimants to those proceedings) sought an Order that the Applicant (the Defendant to those proceedings) carry out certain remedial works to the building, for a determination of the amount of service charges payable for the years 2010-2013 and for damages. The Applicant counterclaimed for payment of arrears service charges and ground rent.

18 Those proceedings were settled following mediation. An Order by consent was made in the Brighton County Court on 15 October 2014. There is a copy of that Order at pages 115-119.

19 Paragraph 10 of the Schedule to the Order provided as follows:

"For the purposes of section 27A(4) of the Landlord & Tenant Act 1985 the Claimants admit the sum of £10,614.91 (less the contribution noted in paragraph 11 below) is payable as ground rent and service charge arrears up to and including 25 March 2014 and is to be paid within 30 days of the date of this Order. For the avoidance of doubt, ground rent and service charge due on 29 September 2014 falls outside the terms of this settlement".

20 Paragraph 11 of the Schedule to the Order provided:

"The Defendant pay the Claimants the sum of £2,000 for damages and/or credit for service charge to be set off against the arrears".

21 The final paragraph to the Schedule to the Order provided that the Applicant's costs of the proceedings would be borne by the Applicant and paid for as part of the service charge payable by each lessee, save that the Respondents' share of such costs payable would be limited to £2,000.

22 The Schedule to the Order made a provision for the appointment of an independent Chartered Building Surveyor and Structural Engineer, a Mr David Smith, to prepare a specification of works necessary to remedy certain defects at the property.

23 The Respondents in their written submissions and at the hearing sought to revisit service charge accounts that pre-dated the service charge year ending 29 September 2014. They suggested that the sum of £10,614.91 referred to in the Consent Order of 15 October 2014 should be taken into account in respect of the service charge accounts prepared for the year ending 29 September 2015 (paragraph 49 of the Respondents' Statement of Case page 45). The Respondents complain that the Applicant has failed to supply service charge accounts certified by a Chartered Accountant for certain years prior to 2014. Mr Cox at the hearing suggested that the balancing figure shown in the service charge accounts for the year ending 29 September 2013 was relevant to the Tribunal's consideration of the service charge accounts of the following year. Mr Cox contended that the payment of £10,614.91 was conditional upon the Applicant producing certified accounts for the service charge years that the payment covered. That they had not done so.

24 The Applicant says that the terms of the Consent Order (pages 115 to 119) are clear. That it settled by agreement all issues between the Parties which were the subject of the County Court litigation. That it provided in particular:

1. That the amount of service charges payable by the Respondents up to and including 25 March 2014 would be £10,614.91.

2. That the claim by the Respondents for damages that they contended was occasioned to the interior of flats 4 and 5 by reason of an alleged failure by the Applicants to maintain and repair the fabric of the building was agreed in the sum of £2,000.

3. That the Respondents would make a contribution to the Applicant's costs of the County Court proceedings via the service charge account limited to the sum of £2,000.

4. That an independent chartered surveyor and structural engineer, Mr David Smith, would be jointly appointed by the Parties to prepare a specification of works to remedy defects at the Property. That the Applicant would follow the consultation procedure required by Section 20 of the 1985 Act and would undertake the works identified in the specification produced by Mr Smith. That the cost of such works incurred by the Applicant would be recovered through the service charge account. The Respondents would pay their percentage contribution.

25 In accordance with the Agreement the Respondents paid the said sum of £10,614.91 on 13 November 2018.

26 In the view of the Tribunal the terms of the Consent Order are clear. In particular, by paragraph 10 of Schedule of the Order the Respondents agreed the amount of service charges payable by them up to and including 25 March 2014. That Agreement was not conditional as the Respondents contend upon the production of certified accounts or otherwise. It follows that the Tribunal does not have jurisdiction to address or revisit service charges prior to that date (Section 27A(4) of the 1985 Act as set out above).

27 The Tribunal also agrees with the Applicant that any liability that the Applicant may have had in relation to the cost of internal works to Flats 4 and 5 was settled as part of the terms of the Consent Order. That there is accordingly no scope for the Respondents to set off against service charges damages in relation to the cost to carry out internal repairs to Flats 4 and 5.

28 Clause 3(2)(ii)(d) of the Lease as set out above provides that the liability of the lessee (to pay service charges) is to be certified by a Chartered Accountant appointed by the lessor. That historically that has not happened. The Respondents say that until such time as certified accounts are produced by the Applicant that there is no balancing payment due from them at the end of the service charge year. Between 2014 and November 2016 the Property was managed on behalf of the Applicants by a company called The Property Shop. The accounts produced by The Property Shop did not contain a certificate from a Chartered Accountant. From November 2016 to date the Property has been managed by Pepper Fox Limited. Initially accounts produced by Pepper Fox Limited did not contain a certificate from a Chartered Accountant. However, in 2019 accounts were produced by Pepper Fox certified by UHY Hacker Young Chartered Accountants for the service charges which are the subject of these proceedings. Those appear at pages 324 -334.

29 The Respondents say that the historic failure on the part of the managing agents to produce accounts certified by a Chartered Accountant is symptomatic of poor management. That the absence of certified accounts

constitutes a breach of the terms of the Lease sufficient to entitle the Respondents to withhold payment of service charges event.

30 The Applicant says that the provision in Clause 3(2)(ii)(d) of the Lease requiring for the accounts to be certified by a Chartered Account is not a condition precedent for payment of service charges. That Clause 3(2)(ii)(b) makes it clear that any balancing payment due from the Lessee at the end of the service charge year shall be payable "forthwith". There is no provision in that sub-clause for the calculation of the balancing payment to be performed by a Chartered Accountant. That the role of the Chartered Accountant is to certify the calculation of the service charges in the interests of good accounting in order to protect the interests of the Lessees in the long-term. That it says is good practice. But, if the draftsman of the Lease had intended that a balancing payment would not fall due until such time as the accounts had been certified by a Chartered Accountant then the Lease would have been expressed in those terms. That some Leases do include such a provision, but not this one. There is the Applicant says, in short, no link between the obligation on the part of the Lessee to pay the balancing payment and the requirement for the accounts to be certified.

31 In the alternative the Applicant says that a form of Estoppel by Convention arises (bearing in mind not least that Mr Cox has at all material times been a director of the Applicant company) by reason of an accepted practice on the part of the Applicant for a number of years not to arrange for the service charge accounts to be certified by a Chartered Accountant. That the Respondents have historically paid service charges in the absence of certified accounts.

32 The point in the view of the Tribunal for the purpose of these proceedings is academic. As stated, certified service charge accounts have been produced. The provisions of Clause 3(2)(ii)(d) have (albeit belatedly)) been complied with.

33 That notwithstanding the Tribunal agrees with the Applicant's interpretation of the Lease. The liability of the Lessee to pay the balancing charge arises under Clause 3(2)(ii)(b). That sub-clause does not make the Lessee's liability to make payment conditional upon the production of certified accounts. The requirement for that liability to be certified by a Chartered Accountant arises after the liability has arisen. The wording of Clause 3(2)(ii)(d) does not provide that the liability to pay is conditional upon the accounts being first certified by a Chartered Accountant.

34 The Respondents have what is clearly a very strongly felt and genuine grievance that there has been an historic failure on the part of the Applicant through its managing agents to properly manage the Property and to comply

with the obligations on the part of the Lessor as set out in the Fourth Schedule of the Lease. Mr Cox was at pains to take the Tribunal to historic photographs of the building dating back to 2011. They illustrate, say the Respondents, an ongoing failure on the part of the Applicant to carry out works of repair and maintenance in accordance with the terms of the Lease. That opportunities, they say, to carry out certain works of repair and maintenance (e.g., when scaffolding has been in place) have been missed. The Respondents feel that precedence has been given to repair works which more directly affect other flats in the building. That as Flats 4 and 5 are at the top of the building they are more susceptible to damage being caused by a failure to maintain and repair the roof. A failure which does not, at least in the first instance, have an adverse effect upon the lower floors. That such failure on the part of the Applicant to comply with its repairing and maintenance obligation, is a failure, the Respondents say, to properly manage the building sufficient to justify the withholding of payment of service charges.

35 The Applicant doesn't accept the Respondents' submissions. This is a Grade I listed building. The management of it is not straightforward. That difficulties were experienced in the handover of the management from The Property Shop to Pepper Fox Limited. That nonetheless the Applicant has managed the Property to a reasonable standard. That there is nothing to suggest that the day-to-day management of the property has fallen below an acceptable standard. That no other Lessees at the Property have sought to withhold payment of service charges. That the long-running dispute with the Respondents and the failure of the Respondents to pay service charges have caused real practical difficulties for the Applicant in funding the management, maintenance and repair of the Property given that the combined service charge contribution for Flats 4 and 5 amounts to just under 25% of the total service charge income.

36 On the basis of the submissions of the parties, in particular the evidence before it, the Tribunal does not accept the Respondents' position that there has in effect been a blanket failure over a number of years to manage the building. The management may not have been perfect (for example, the historic failure to arrange for the service charge accounts to be certified by a Chartered Accountant). The Tribunal does not accept the Respondents' contention that because there has been such an absolute failure to manage the building, that they are entitled to withhold payment of service charges. Clearly the building has been managed. As is clear from the accounts (the certified accounts) expenditure has been incurred not least in the cleaning of common parts, in redecoration, in the maintenance of services such as the fire alarm system and in works of repair and maintenance. In the experience of the Tribunal, the management, maintenance and repair of a Grade I Listed Building on the coast is not straightforward. The nature of the building (in

reality, any building) is such that at any given time there will be some degree of want of repair (whether known to the Applicant or not).

37 The Respondents in their written submissions and in submissions before the Tribunal contend that following the re-instatement of historic balustrades at the top of the building a view previously enjoyed by Flat 5 was lost. That an agreement was reached, the Respondents say, with the Applicant that as compensation for the loss of view the Applicant would form a roof terrace to be enjoyed by Flat 5. That in the event works to create a roof terrace have not been undertaken. The Respondents say that they propose withholding a sum of money from service charge payments to cover the cost of completing such works (paragraph 292 of the Respondents' Statement of Case page 71).

38 The issue of whether or not historically an agreement was reached between the Parties as alleged by the Respondents is not a matter within the jurisdiction of this Tribunal. The liability on the part of the Respondents to pay service charges arise as a matter of contract under the terms of the lease. The issue for this Tribunal is to determine the liability to pay and the reasonableness of service charges for the years set out above.

39 At the hearing Mr Cox explained that his principal grievance as regards the items of expenditure which make up the service charges relates to managing agent's fees and to accountancy fees. The Tribunal addresses the items listed as set out in the dispute in the Scott Schedule as follows:

40 **Management Charges 2014, 2015 and 2016**

41 The certified accounts for these years are at pages 324 - 327. During this period the Property was managed by The Property Shop. The management charges shown for the year 2014 are £1,692, for the year 2015 £1,692, for the year 2016 £1,692 and for the period between 29 September 2016 and 30 November 2016 £282. Pepper Fox Limited took over the management of the Property from 30 November 2016.

42 **The Applicant's Case**

43 The Applicant says that the charges are reasonable in amount. That there were problems with the management of funds. That upon the transfer of the management to Pepper Fox Limited in November 2016 there were practically no funds to transfer. That, as Jacqueline Lefton puts it in her witness statement (para 39 page 264), it proved impossible to untangle the previous years' service charge accounts. Supporting vouchers or invoices could not be found for every item of expenditure. That in the event the certified accounts that were subsequently produced for the years 2014 to 2016 were based on` upon expenditure that could be verified by a voucher or invoice. However,

the Applicant says that the general day to day management of the Property including maintenance and repair works, was carried out by The Property Shop to an adequate level. That for the work carried out the management charges were reasonable. The charges have been accepted by all of the other Lessees of the Property. That it is noteworthy that the charges didn't change year on year between 2014 and 2016. That the building was insured throughout, repairs were undertaken and where required consultations pursuant to Section 20 of the 1985 Act were carried out.

44 If there was a delay in executing the Schedule of Works which were the subject of the Consent Order that delay could not be laid at the door of The Property Shop. That delay, the Applicant says, was caused by the failure on the part of the Respondents to agree to the specification of works which gave rise to the need for the Applicant to apply to the Court to enforce the terms of the Consent Order. The Respondents' approach, say the Applicant, is to pay nothing for management services because of alleged errors and failures to properly manage which the Respondents lay at the managing agent's door. That, the Applicant says, is not the correct approach. The Tribunal should take an over-reaching view of the service provided by The Property Shop and in all the circumstances determine whether or not the managing agent's fees were reasonably incurred. Those fees, the Applicant says, were reasonable and competitive. That even if the Tribunal were to find fault on the part of The Property Shop that should give rise to no more than a minor reduction. The Tribunal should be careful not to focus on specific issues or complaints raised by Mr Cox which relate primarily to those parts of the building that directly affect Flats 4 and 5 without having regard to the management of the rest of the Property.

45 The reality, the Applicant says, is that there has been a dispute between the Parties in relation to repairs to common parts and to the fabric of the building for many years. That includes years prior to the appointment of The Property Shop. That the Respondents are seeking to lay what are effectively historical issues at the door of the managing agents. That the Respondents complain that The Property Shop failed to comply with the RICS Residential Management Code of Practice. Whether or not that is the case the Applicant says that there is no requirement in the Lease for the managing agent to be a Chartered Surveyor. That the contention on the part of the Respondents that other Lessees have benefitted from the management of the Property to a greater extent than the Respondents is in itself telling. As Mr Alford put it "generally the property ticked over and functioned". That the Respondents raise issues in respect of alleged financial irregularities but provide no details. It is accepted that after the management was transferred to Pepper Fox Limited difficulties came to light in finding invoices and vouchers. However, these were relatively minor matters. That the service provided by The Property Shop may not have been perfect, but however there were no

significant financial irregularities. As Jacqueline Lefton put it in her statement, the service provided by The Property Shop was "adequate and reasonable". That the management fees of The Property Shop were reasonably incurred by the Applicant.

46 **The Respondents' Case**

47 The Respondents contend that The Property Shop undertook very little if any management of the Property. That they failed to provide accounts certified by a Chartered Accountant as required by the Lease. That they failed to execute repairs to the building. That they failed to keep adequate books of account. The management service provided was not to an adequate standard. That there was a failure on the part of the managing agents to hold service monies received in trust. Mr Cox suggested that the account in which service charges were held was in the name of the proprietor of The Property Shop a Mr Steve Simmonds. That the Respondents were not prepared he said to pay monies to a company which, in their view, was not properly run. That The Property Shop had historically sought to arbitrarily change the apportionment of service charges payable by the Lessees at the Property. That other Lessees, the Respondents say, may have benefitted from the management of the Property by The Property Shop but they hadn't. That because of poor management they had suffered from the ingress of water into their flats. In effect, Mr Cox said that The Property Shop had treated the management of the Property and the collection of service charges as a "cash cow".

48 **The Tribunal's Decision**

49 There is no dispute that managing agent's fees, provided they are reasonably incurred, are recoverable under the terms of the Lease as part of the service charge. The issue for the Tribunal is whether or not the management fees as set out above were reasonably incurred. The Tribunal notes that the fees equate to an average per flat of £241.71 per annum. From the Tribunal's own experience and expertise that is a reasonable and competitive fee for managing a Property of this nature.

50 It is clear from the certified accounts that management services were provided by The Property Shop. That included the cleaning of common parts, works of general maintenance, arranging insurance and undertaking items of repair and maintenance. Whether or not The Property Shop complied with the RICS Code is not clear. It is recommended that managing agents do comply with that Code but as Mr Alford submitted compliance is not a requirement of the Lease. Whether or not the Code was complied with or to what degree does not mean that The Property Shop did not provide a certain level of management services. On the basis of the evidence before it the

Tribunal accepts Jacqueline Lefton's contention that The Property Shop provided an adequate and reasonable management service.

51 In all the circumstances having carefully considered the evidence before it and the submissions made by the Parties the Tribunal is satisfied that the management fees as set out in the certified accounts for the said years were reasonably incurred.

52 **Accountancy Fees**

53 Accountancy fees for the years 2014, 2015 and 2016. The Respondents challenge the accountancy fees claimed for the above years in each case in the sum of £180 including for the period ending 30 November 2016.

54 **The Applicant's Case**

55 The Applicant accepts that the Lease provides for the service charge accounts to be certified by a Chartered Accountant. The Property Shop provided uncertified accounts. They did so the Applicant says because of a long-standing arrangement to save money. That the failure to provide certified accounts was not the fault of The Property Shop.

56 That the provisions of the Lease at Clause 3(2)(ii)(a) provide for the payment of service charges in advance. Payments on account in such sums as are specified by the Lessor, its accountants or its managing agents. That it is for the managing agents to specify under the terms of the Lease at their discretion as to what they consider to be a fair and reasonable payment on account.

57 That pursuant to Clause 3(2)(ii)(b) there is a requirement for actual expenses incurred by the Applicant to be calculated at the end of the service charge financial year for the purposes of ascertaining whether a balancing payment is due from the Lessee or a credit. That clause does not, the Applicant says, require the input of an accountant. It requires the production of an account. It is correct that The Property Shop did not arrange for the accounts to be subsequently certified by a Chartered Accountant but that nonetheless the work to produce an account was carried out as required by the Lease. That it was reasonable that The Property Shop was paid for that service. Even if, Mr Alford, said the Tribunal were to give the Applicant a "black mark" for a failure to produce certified accounts that is, he submitted, a relatively minor issue. That the fee for the production of accounts was reasonable incurred and is payable.

58 Mr Alford said that it wasn't accepted that the historic accounts produced by The Property Shop were incorrect. That new accounts certified by a

Chartered Accountant were produced in 2019 because the Respondents had insisted.

59 **The Respondents' Case**

60 The Respondents say that the fee for production of accounts is not payable because the accounts were not certified by a Chartered Accountant as required by the terms of the Lease. That historically the Applicant may have made a decision not to provide certified accounts but it was wrong to do so. That legislation requires the production of certified accounts. That prior to the appointment of The Property Shop the previous managing agents did arrange for the accounts to be certified. Further, the Respondents say, the demands they received based upon the accounts were incorrect. That in the event amended accounts had to be produced in 2019.

61 **The Tribunal's Decision**

62 For the reasons set out above the Tribunal is satisfied that the production of certified accounts is not a condition precedent for payment of service charges. The Lease requires the Lessor at the end of the service charge financial year to calculate the costs, expenses and outgoings incurred during the year and to determine whether or not there is a balancing payment due from a Lessee or a credit. What the Lessor is asked to do is to produce an end of year account. Properly under the terms of the Lease that account is then to be certified by a Chartered Accountant. However, the Lessor has to first produce the account. That is an expense that it will incur. It is an expense that is recoverable as part of the service charge. There is no evidence submitted by the Respondents that costs of £180 per annum for undertaking that work was unreasonable.

63 In the circumstances the Tribunal determines that the accountancy charges of £180 per annum for the said years were reasonably incurred.

64 **2015 Major Works £3,500 and 2016 Major Works £11,200**

65 It is convenient for these two items to be dealt with together. The Parties agree that they relate to the same works carried out to the building. The sum of £3,500 that appears in the 2015 accounts relate to scaffolding costs for external decoration works which were carried out between 2015 and 2016. That is why the cost of those works is split between the two years. The Respondents contend that there was a failure on the part of the Applicant to comply with the consultation processes required by Section 20 of the 1985 Act.

66 Given the nature of the Respondents' submissions it is convenient to deal with those first.

67 **Respondents' Case**

68 There is a copy of the Stage 2 Consultation Notice at page 415. This refers to tenders received from three contractors. They are Bashford & Bashford Painting and Decorating in the sum of £16,500 (no VAT). Link Up Lettings Limited £12,800 plus VAT total £15,360 and Property Building Trades £12,250 pus VAT total £14,700. In the event Property Building Trades were selected to carry out the works.

69 The regulations the Respondents say require the Lessor to produce at least two quotes for proposed works one of which must be from a contractor unrelated to the Lessor. That two if not three of the companies proposed by the Applicant were, the Respondents say, connected to the managing agent. That the proprietor of The Property Shop, a Mr Steve Simmonds was a director of each of two of the companies. That Bashford & Bashford Painting and Decorating appeared to be the trade name of a sole trader or possibly a partnership, not a limited company. In those circumstances Mr Cox submitted it was incumbent upon the Lessor to produce full details of that firm including a copy of its letterhead. That there was an onus he submitted on the Lessor to prove that that firm was genuine. He said that Mr Simmonds at the material time was the Company Secretary of the applicant company and thus there was he said a connection with the Lessor.

70 As to the costs of scaffolding in the sum of £3,500 referred to in the 2015 accounts he said that the scaffolding was up for too long a period. Further that while the scaffolding was up works that could have been undertaken were not undertaken. That the works that were undertaken were not done to a reasonable standard.

71 The Respondents say that the contractor that was appointed, Property Building Trades Limited was not in the event registered for VAT. That notwithstanding the fact that its tender was expressed in the sum of £12,250 plus VAT a total of £14,700 inclusive of VAT. That was not Mr Cox submitted a minor error. That as such the company had misrepresented the cost of the works. That the cost of the works should therefore be reduced by the VAT element notwithstanding that in the event the total bill came to £14,700 (inclusive of the scaffolding charge of £3,500). The Respondents accept that The Property Building Trades Limited's tender was the lowest tender.

72 Further, the Respondents say that the work carried out by Property Building Trades Limited was not completed to a satisfactory standard.

73 **The Applicant's Case**

74 The Applicant says that the Service Charges (Consultation etc) [England] Regulations 2003 provide that the Lessor is to provide at least two estimates of the cost of the proposed works one of which estimate must be from a person wholly unconnected with the Lessor. That, the Applicant says is what happened here. Even if there were a connection between the Applicant and two of the companies whose names were put forward in the consultation notice (which was not accepted) there was no connection with Bashford & Bashford Painting and Decorating. That as such the requirements of the regulations were met. For the Respondents to allege that The Property Shop had made up a contractor without evidence went, Mr Alford said, too far. That the Tribunal should not accept such allegations without evidence. That the Tribunal should take at face value the fact that there was no connection between the Applicant and Bashford & Bashford Painting and Decorating.

75 As to the VAT that in the event was not charged by The Property Building Trades Limited it was accepted that there was an error on the face of the Notice. However, there was no prejudice to the Respondents. The overall cost of the works was the same. That whether or not VAT were charged the overall cost to the Lessees was £14,700. That was the lowest of the three Tenders received.

76 Further the Applicant says that there is nothing in the regulations that binds the Lessor to the amount stated in the estimate as set out in the Notice. In the event the actual cost of the works could be more, it could be less. The question for the Tribunal was simply whether or not the costs were reasonably incurred in amount. That, on the face of it, the sum of £14,700 appeared reasonable for the cost of external works to a Grade I listed building. The sum didn't appear in any way excessive and should be allowed. That the Respondents had contended that the works that had been carried out were not carried out to a reasonable standard or were not complete. There was, Mr Alford submitted, no evidence to support that contention.

77 **The Tribunal's Decision**

78 Regulation 11(6) of Part 2 of Schedule 4 of the Service Charges (Consultation etc) (England) Regulations 2003 provides that one of the estimates obtained by a Lessor (for the purposes of a Section 20 Notice) must be from a contractor wholly unconnected with the Lessor. The

wording is "*at least one of the estimates must be that of a person wholly unconnected with the landlord*".

79 The Applicant says that that requirement was complied with. That Bashford & Bashford Painting and Decorating is a firm wholly unconnected with the Applicant. The Respondent says that the burden is on the Applicant to prove that to be the case. That was not an argument raised prior to the hearing by the Respondents in their Statement of Case.

80 There is nothing in the said regulations that provide that the Lessor must produce evidence that contractors that are named in a notice served for the purposes of Section 20 of the 1985 Act must be unconnected to it. There is no evidence before the Tribunal to suggest there is a connection between Bashford & Bashford Painting and Decorating and the Applicant. Nor is there any evidence to suggest, as Mr Cox contended might be the case, that Bashford & Bashford Painting and Decorating does not exist.

81 The Applicant accepts that there is an error on the face of the Section 20 Notice (page 415) whereby Property Building Trades Limited provided an estimate both net of and including VAT. However, the Tribunal agrees with the Applicant that no harm or prejudice was caused to the Respondents. In the event the cost of the works to the Applicant was £14,700. The expense to the Applicant and consequently to the Lessees by way of service charges was the same whether or not the contractor was registered for VAT. The estimate was accepted on the basis that it was the lowest estimate albeit stated to be inclusive of VAT. For there to be a credit given to the Lessees for the alleged "VAT element" would be to allow them to receive an unmerited profit.

82 As to the Respondents' contention that work was not carried out to a satisfactory standard or was not otherwise completed, having carefully considered the evidence before it the Tribunal is not satisfied that to be the case.

83 The Tribunal notes that there is no evidence to suggest that other Lessees are unsatisfied with the works carried out or were unsatisfied with the cost of those works.

84 In all the circumstances the Tribunal determines that notwithstanding the minor error in the Section 20 Notice in respect of VAT and upon the basis of the evidence before it the Section 20 consultation process was correctly followed. That the total cost of £14,700 in relation to major works were reasonably incurred and are recoverable as part of the service charge.

85 **Solicitors Costs 2016 £1,796.80, 2017 £2,874, 2018 £290.16**

86 **The Applicant's Case**

87 The Applicant says that these are expenses incurred by the Applicant and which are payable as part of the service charge pursuant to Clause 4(d) of the Fifth Schedule of the Lease. The Fifth Schedule sets out expenses and matters in respect of which a service charge is payable. Clause 4(d) provides that those expenses include "*Legal fees in connection with the management of the Buildings*".

88 The Applicant says that the legal costs incurred related to various issues which are more particularly set out in paragraph 75 (pages 101 and 102) of its Statement of Case. They include advice in relation to:

1. *Implementing the Settlement following the expert's Specification, such as dealing with questions to expert and considering responses.*
2. *The correct service charge apportionment under the leases by reference to rateable values.*
3. *Section 20 consultation for major works.*
4. *Moving to a new accounting regime with certified accounts in light of the discrepancies across the leases in the building.*
5. *Advising accounting issues that arising from the Settlement where costs are concerned (both costs under the Settlement and costs ordered by Brighton County Court).*
6. *The non-co-operation of the former managing agents to provide supporting documents.*
7. *The non payment of service charge by the Respondents.*

89 The Applicant's solicitors, the Applicant says, have had to deal with a number of lengthy communications from the Respondents including phone calls which have served only to increase costs. It is understood, the Applicant says, that the Respondents contend that advice given by solicitors was made negligently or was otherwise wrong. That is not accepted by the Applicant. That the Respondents were not privy to the advice received. They hadn't seen that advice. They were not in a position to comment upon it. That it was understood that the Respondents had contended that the advice received was wrong in relation to the allocation of service charges and as to the terms of the various Leases. There was no evidence the

Applicant says to suggest that the advice was wrong. Mr Alford took the Tribunal to the invoices for legal services contained in the bundle. All of the costs which are the subject of said invoices the Applicant says arose after the date of the Consent Order. That they are legal costs, the Applicant says, payable under the terms of the Lease and that they were reasonably incurred.

90 **The Respondents' Case**

91 The Respondents say they don't accept any of the legal costs included in the service charge accounts because they say the dispute between them and the Applicant has been protracted due to the "*negligence of the solicitors and the managing agents*" (para 130 page 54). They contend that the solicitors did not provide services to an adequate standard. That the solicitors failed to advise properly in relation to the VAT figure on the Section 20 Notice. That they failed to properly advise in relation to the apportionment of the service charges. The Respondents say that they are not prepared to accept responsibility for the payment of legal costs where, in their view, the solicitors have failed to provide accurate advice.

92 Mr Cox said that all he was trying to do was to fight for his rights. That he was not a party to the advice received from the Applicant's solicitors. That the Applicant's solicitors had wrongly advised in relation to the apportionment of service charges and for 15 months he was in correspondence with them for that reason. He said that he was taken to Court in 2015 by the Applicant to enforce the terms of the Consent Order rather than deal with what he described as the "*issue in hand*". That if the Applicant had supplied certified accounts as required by the Lease that would, Mr Cox suggested, have resolved matters and removed the need for further litigation. That, however, when the matter was referred back to the Court the Court just addressed items 1 and 3 in the Schedule to the Consent Order and an Order was made against him to pay costs. He was ordered to pay and did pay around £2,400. He suggested that had the Applicant properly complied with the terms of the Lease by producing certified accounts which complied with legislation and with the RICS Code then no legal fees would have been incurred. Instead of dealing with matters properly the Applicant had, Mr Cox said, overcomplicated issues. That there was no right, Mr Cox said, for the Applicant, as he put it, to break the law. That, he said, was why he opposed payment of legal fees. That there was an onus on the Applicant's solicitors to ensure that their client complied with their obligations pursuant to legislation. Had they done that then legal fees would not have been incurred.

93 **The Tribunal's Decision**

94 The Respondents don't contest the Applicant's contention that legal fees can be recovered as part of the service charge from Lessees pursuant to Clause 4(d) of the fifth schedule of the Lease. The Respondents made no submissions as to the amount of the legal costs being claimed. The Respondents' argument is that the Applicant would not have needed to incur legal costs had it complied with the terms of the Lease as they understood them. That advice given by the Applicant's solicitors was made negligently.

95 The Applicant has set out, in its Statement of Case, an outline of issues in respect of which the legal costs relate. In the view of the Tribunal those are issues which are relevant to the management of the Property. That it was reasonable in each case for the Applicant to seek legal advice. Jacqueline Lefton says in her statement (page 266) that she accepts that the costs are high but that there was she says no alternative but to incur those costs in order to recover money (service charges) from the Respondents.

96 There is no evidence to suggest that the advice given by the solicitors was given negligently. There is nothing to suggest that the costs were not reasonably incurred. In all the circumstances on the basis of the evidence before it and having proper regard to the submissions made by the Parties the Tribunal is satisfied that the legal costs incurred by the Applicant were reasonably incurred and are recoverable as part of the service charge.

97 **2016 Managing Agent Fee £900**

98 **The Applicant's Case**

99 These fees the Applicant says are fees incurred over and above the managing agent's fees of day to day management of the Property. They were fees that were incurred by reason of the ongoing dispute with the Respondents which caused additional work for the managing agents. That the fees were properly and reasonably incurred. That it was open to the Applicant to agree an additional feel with the managing agent to address matters which were over and above its standard management fee. At page 447R is a letter from The Property Shop addressed to Mr Cox dated 16 November 2011. The letter provides for a fixed fee. It provides that the fee will not increase if in the event in any particular year the amount of work increases. Conversely, if the work is lower than anticipated the fee remains the same. That does not, the Applicant says, prevent the Applicant from agreeing to fees over and above those set out in the letter for additional works which go beyond the work that the management agent has contracted to carry out. Further it is not known whether or not the terms set out in the

said letter of 16 November 2011 were subsequently updated. The question for the Tribunal, the Applicant says, is whether or not these additional fees were reasonably incurred and reasonable in amount.

100 **The Respondent's Case**

101 It is wrong, Mr Cox said, to lay an additional expense of £900 at his door on the basis that he was unwilling to pay service charges. He is and always has been, he submitted, willing to pay service charges provided that works to the building were carried out to a reasonable standard and were reasonably incurred in order to ensure that the building was properly maintained. That he was justified in not paying service charges for the reasons already outlined. That Mr Simmonds of The Property Shop, he said, had failed to comply with the RICS Code. That he hadn't properly organised for repairs to the building. That he had failed to produce proper accounts. Mr Simmonds was, Mr Cox suggested, in cohorts with the other residents. That he had failed to work in any form of competent manner.

102 Mr Cox referred the Tribunal to the said letter of 16 November 2011. The letter was addressed to Mr Cox. It sets out on the first page (446R) the work which was proposed would be carried out to be covered by the management fee. Mr Cox referred the Tribunal to two paragraphs on the second page of the letter (447R) which state "*We base our charges on monies collected (for example if the maintenance charges are £10,000 per year the charge would be 10% of this £1,000) we do not charge any extra in Years of lots of maintenance ie. we do not top up any bills received, if the bill is £500 that's what the maintenance account will be charged.*

This means that in years of lots of works our commissions will remain the same even though our workload will increase dramatically. This also works of course the other way and if and when we are completely up to date our workload go's down".

103 As such the Respondent says the management fees are fixed and there is no base upon which the managing agents could charge an additional sum of £900.

104 **The Tribunal's Decision**

105 Such contract as may have subsisted between the Applicant and The Property Shop was not before the Tribunal. The letter referred to by Mr Cox of 16 November 2011 is a letter which outlines the work which The Property Shop said would be included in the management the Property. What might be regarded as its fees for the day to day management of the property. The

letter provides that it's fee would be fixed for that work. The letter does not address the cost of additional work going beyond that set out in the letter.

106 The Applicant says that because of the ongoing dispute between the Applicant and the Respondents additional fees were incurred with the managing agents over and above the day to day management fees.

107 There was no detailed evidence before the Tribunal as to the work carried out by the managing agents to which the additional fees relate. There was no breakdown of those fees. There was no detailed explanation of the work carried out. There was no evidence to gainsay the Applicant's contention that additional fees were incurred. It may well have been the case that the managing agents were put to additional works by reason of the ongoing dispute with the Respondents.

108 On the basis of the evidence before it, there is nothing to suggest to the Tribunal that the additional fees of £900 were not incurred. That the managing agents were not put to additional work by reason of the dispute between the Respondents and the Applicant. A dispute that had gone on for many years. There is no evidence to suggest that the additional fees were not reasonably incurred. Indeed, upon the basis of the albeit limited evidence before it, the Tribunal is satisfied that these fees were, on balance, reasonably incurred and are recoverable by the Applicant as part of the service charge.

109 **2017 Building Repair and General Repairs £3,081.60 and £5028**

110 At the hearing Mr Cox very reasonably confirmed that this item was agreed. As such the Tribunal has no jurisdiction to address this matter. Mr Cox asked that it be noted that in his view the Section 20 consultation procedure had not been correctly followed but nonetheless he would agree to pay his "share".

111 Mr Alford referred to the item in the accounts for building repair in the sum of £3081.60. It was accepted, by reference to the Scott Schedule, that in respect of those works there had been a failure to comply with the Section 20 consultation process and as such the Respondents' share for the cost of those works were capped at £250 for Flat 4 and £250 for Flat 5. That the sum of £750 included in the figure of £5028 was not part of the same works to which the figure of £3081.60 related. It was therefore not subject to a Section 20 consultation.

112 **The Tribunal's Decision**

113 The sum of £5028 for general repairs is agreed by the Respondents. The sum of £3,081.60 related to works in respect of dampness in the communal entrance hall to the lower ground floor flats (See the letter from RH Smith (Worthing) Limited) dated 22 June 2017 pages 374 - 377) and should have been subject to consultation pursuant to Section 20 of the 1985 Act. Accordingly, the Respondents' contribution to those works are limited to £250 for Flat 4 and £250 for Flat 5.

114 **2018 General Repairs £950**

115 In the Scott Schedule it is noted that the Respondents agreed £240 of this sum but disputed the balance of £710. At the hearing Mr Cox, taking a pragmatic view confirmed that the Respondents agreed the figure of £950.

116 **2018 Periodical Electrical Inspection £150**

117 At the hearing Mr Cox confirmed that this figure was now agreed. However, he asked that his concerns be noted. His concerns were that the electrician may not have been suitably qualified. That the electrician may not have been properly registered. That as regards the invoice from Current Electrics dated 10 October 2017 in the sum of £150 at page 361, he said that he couldn't find any reference to Current Electrics as a company. He noted there was no formal report from the electrician.

118 Mr Alford referred the Tribunal to the invoice at page 361 and noted that it contained a certificate number for an NIC EIC qualified electrician. There was he said no basis to suggest that the electrician was not properly registered.

119 **Management Charges 2017 and 2018 Pepper Fox Limited**

120 The relevant fees are 2017 £1,099.08, 2018 £1,554 and management charges for major works £1,428.75.

121 **The Applicant's Case**

122 Mr Alford referred the Tribunal to the witness statement of Mr Gareth Elliot a director of Pepper Fox Limited (pages 268 - 272). Mr Elliot states that fees are charged in accordance with a management contract with the Applicant. The fees are he says competitive and comparable with fees of other managing agents. He doesn't accept the Respondents' contention that Pepper Fox Limited provide a poor standard of service. That his company he says operates in line with the RICS Service Charge Residential

Management Code. That it may have taken some time to prepare accounts following the transfer of the Property from The Property Shop but that was because of difficulties in obtaining documentation from The Property Shop. Mr Elliot says it is not accepted that there has been a failure on the part of Pepper Fox Limited to undertake repairs to the building. That as regards the Respondents' complaint of a failure to communicate or to return calls it was his companies' policy to have a single point of contact with the Applicant company rather than communicate with all of the directors. That the point of contact was Jacqueline Lefton. That each year Pepper Fox Limited produces a summary of expenditure and appoints accountants to certify those figures.

123 Mr Elliot states that the Respondents' contention that it should have made an insurance claim when the ceiling to one of the Respondents' flats collapsed is wrong. That the collapsed ceiling was not caused by storm damage and was not covered by insurance. In answer to a question put to him by Mr Cox, Mr Elliott said it was not the case that Pepper Fox would ever withhold management services. Mr Elliott said he recalled having one or two very long telephone conversations with Mr Cox.

124 Mr Alford said that it was the Applicant's case that Pepper Fox Limited managed the Property to a good and reasonable standard. That all of the other Lessees at the Property were happy with the service. For there to be one point of contact between the managing agents and the Applicant company was a practical and normal way of working. That the management fee for major works was properly and reasonably incurred. Those related to the major works that were carried out following the Consent Order. That the surveyor, Mr Smith, had inspected and signed off those works (letter 25 July 2019 page 180). That Mr Smith was satisfied that the works had been carried out to a good standard of workmanship. That although Mr Smith oversaw the works as a jointly appointed expert fees were incurred with the managing agents in carrying out inspections and in co-ordinating the various parties and releasing funds. That the management fees were properly and reasonably incurred.

125 **The Respondents' Case**

126 The Respondents say there has been a failure on the part of Pepper Fox to properly manage the building. That there has been a failure to communicate. Mr Cox referred the Tribunal to his timeline (pages 470-486R). He said that when he phoned the offices of Pepper Fox, there was never anyone available to speak to him; his calls were not returned. He had wanted to contact Pepper Fox he said not least because access to his flats had to be arranged for the purpose of carrying out the major works.

127 Mr Cox referred to the failure to serve a section 20 Consultation Notice in relation to the damp works. That, he said, was an example of a failure to manage. Further, he contended that when works were carried out, the agents had failed to include all works that were necessary or which otherwise reasonably and conveniently could have been carried out at the same time. That the works carried out did not include all of the works contained in the Specification of Works. That during the works, Mr Smith, who had been appointed to manage them, had gone on holiday. As such, for much of the time the works had not been not properly supervised.

128 Mr Cox repeated his view that other Lessees at the Property were treated more favourably than the Respondents. There was he felt a lack of oversight as regards the management of the property. That there was delay in carrying out works, a lack of supervision, and poor management. Mr Cox said that the Respondents did not get detailed answers to queries that they had raised with the managing agents.

129 **The Tribunal's Decision**

130 The Tribunal is satisfied, upon the basis of the evidence before it, that the management charges for the years 2017 and 2018 are reasonable in amount and reasonably incurred. They equate to an average in broad terms of under £200 per flat. Given the age and nature of the building, that in the view of the Tribunal, upon the basis of its own expertise and experience, is reasonable. Nor does the Tribunal accept the Respondents' contention that management services were not provided or not provided to a reasonable standard. The service charge accounts (as certified by Chartered Accountants) and the supporting invoices in the bundle are in themselves supportive of the Applicant's case that management services have been provided. Clearly, difficulties were encountered upon the transfer of the management from The Property Shop to Pepper Fox. It is entirely reasonable in the view of the Tribunal as a matter of practicality for the Applicant and the managing agents to nominate one point of contact at the Applicant company. Otherwise, there may be an element of duplication in dealing with communications from directors and a risk of confusion. The managing agents have produced service charge accounts and they have produced certified service charge accounts.

131 With a building of this age and nature, there will invariably be ongoing items of repair and maintenance. Undoubtedly at any one time a repair may be outstanding. The carrying out of repairs may be complicated by the building's Grade I Listed status.

132 As to the additional management charges for major works in 2018 of £1428.75, the Tribunal is satisfied that it was reasonable for those to be

incurred. It was reasonable to retain the managing agents to carry out additional management services associated with those major works. There was no evidence before the Tribunal to suggest that the charges incurred were unreasonable. As to the Respondents' criticism of the works carried out, the Tribunal notes that they were signed off by the Chartered Building Surveyor and Structural Engineer, David Smith; Mr Smith being the expert jointly appointed by the parties as part of the terms of the Consent Order.

133 In all the circumstances, the Tribunal is satisfied that the management charges for the years 2017 and 2018 and the management charges for major works in 2018 were reasonably incurred and are recoverable as part of the service charge.

134 **Estimated Service Charges 2019**

135 The estimated service charge budget is at page 411. The total is £31,655.

136 **The Applicant's Case**

137 The Applicant says that the budget is a reasonable estimate of anticipated expenses. It is produced for the purposes of clause 3(2)(ii)(a) of the Lease. That the discretion of the Tribunal, Mr Alford said, was limited to challenging the process giving rise to the budget. Mr Alford invited the Tribunal to compare the budget with the figures for the following year (page 409) and the service charge for 2018. He submitted that the estimated figures for 2019 were in line with those years.

138 **The Respondents' Case**

139 Mr Cox said that he was happy, as he put it, *"to contribute"*. However, he thought that the budget seemed excessive.

140 **The Tribunal's Decision**

141 In the view of the Tribunal, there is nothing in the budget of the estimated expenses for the service charge year ending 29 September 2019 as set out at page 411 which appears unreasonable. The Tribunal has in mind that the figures are no more than estimates of anticipated expenditure. They are in the view of the Tribunal, particularly having regard to expenditure for other years and given the nature and age of the building, a reasonable pre-estimate of expenditure.

142 **Section 20C Application**

143 At the conclusion of the hearing, the Respondents made an Application for an Order pursuant to section 20C of the 1985 Act. Section 20C provides as follows:

"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 … or the First Tier Tribunal … 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".

144 Mr Cox said that he felt that the action in bringing proceedings before the Tribunal was outside of the provisions of the RICS Code of Conduct. That his objections to the service charges were well-founded and justified. The way in which he felt he had been treated by the Applicant and the managing agents had caused suffering on his part. That in the Scott Schedule and at the hearing he had made a number of concessions. That in the circumstances, it would be unreasonable to allow the Applicant to recover the costs of these proceedings as part of the service charges.

145 **The Applicant's Case**

146 Mr Alford said that these proceedings had been brought because there was an historic failure on the part of the Respondents to pay any service charges at all. Indeed, nothing had been paid by the Respondents since the Consent Order. That prior to the Consent Order, nothing had been paid for many years. That the two flats owned by the Respondents represented almost 25% of the total service charge income. The failure on the part of the Respondents to pay had had a significant impact on the management of the building to the detriment of all Lessees. He accepted that the Respondents had made some concessions. But he submitted if the Respondents agreed certain items of expense, why not pay those? That Mr Cox's arguments, he said that the Tribunal could go behind the provisions of the Consent Order were entirely misconceived. That the Respondent's feeling of grievance was unjustified. That there was no contractual obligation on The Property Shop to comply with the RICS Code. The obligation to pay the service charges was a contractual one arising under the terms of the Lease. That by not paying service charges, the Respondents had put the Applicant to time and costs of these proceedings. That accordingly there should be no Order made pursuant to section 20C.

147 In answer to a question from the Tribunal, Mr Alford said that the Applicant relied upon clauses 4(a) and (d) of the Fifth Schedule to the Lease. That clause 4(a) allowed the recovery of the fees of managing agents for the collection of service charges and in relation to the general management of

the building. Clause 4(d) allowed the recovery of legal fees in connection with the management of the buildings. That the recovery of service charges, albeit through litigation before the Tribunal, formed part of those management charges.

148 **The Tribunal's Decision**

149 The first question for the Tribunal is whether or not the Lease allows upon its proper construction for the recovery of legal costs incurred by the Applicant in respect of these proceedings from the Lessee as part of the service charge. Mr Cox made no submissions in that regard. The principal provision relied upon by the Applicant is that at clause 4(d) of the Fifth Schedule. The Applicant says that legal fees incurred in relation to these proceedings are fees incurred in connection with the management of the property.

150 Certainly it would appear by reference to the Consent Order that historically the parties have taken the view that the costs of litigation could be recovered as part of the service charge. In the view of the Tribunal, they are right to do so. That the costs incurred by the Applicant in seeking to recover payment of service charges from the Respondents are legal costs incurred in connection with the management of the property. The Applicant has faced a significant shortfall in the amount of service charge that it has been able to collect by reason of the Respondents' failure to pay. That will undoubtedly have had an adverse impact on its ability to manage the property.

151 The Applicant in the view of the Tribunal was justified in bringing these proceedings. It has been successful. The Lease places a contractual obligation on the Respondents to pay a service charge. They have not sought to argue otherwise. They have simply withheld the entirety of their service charge payments for many years. They have done so even where there are elements of the service charge which they do not dispute. In the circumstances, the Tribunal declines to make an Order pursuant to section 20C of the 1985 Act.

152 **Summary of Tribunal's Decision**

153 With reference to the certified service charge accounts at pages 324-334, the items of expenditure agreed between the parties and the determination of the Tribunal of items of expenditure that were disputed, the Tribunal determines that the amount of service charge payable by the Respondents is as follows:

Year ending 29 September 2014

Total service charge £6,099.75
Respondents' share:

Flat 4	13.54%	£825.91
Flat 5	11.30%	£689.27

Year ending 29 September 2015

Total service charge £8,314.73
Respondents' share:

Flat 4	13.54%	£1,125.81
Flat 5	11.30%	£939.56

Year ending 29 September 2016

Total service charge £18,908.56
Respondents' share:

Flat 4	13.54%	£2,560.22
Flat 5	11.30%	£2,136.67

Period ending 30 November 2016

Total service charge £2,389.21
Respondents' share:

Flat 4	13.54%	£323.50
Flat 5	11.30%	£269.98

Year ending 29 September 2017

The item for building repair in the sum of £3,081.60 is reduced by reason of the failure on the Applicant's part to comply with the consultation process required by section 20 of the 1985 Act to £250 per flat, a reduction in total of £1,750.

The sum of £1,697 for the production of company accounts is removed by agreement.

Total service charge £13,993.46
Respondents' share:

Flat 4	13.54%	£1,894.71
Flat 5	11.30%	£1,581.26

Year ending 29 September 2018

The parties have agreed to remove the sum of £145 for the preparation of company accounts.

Total service charge £11,128.79
Respondents' share:

Flat 4	13.54%	£1,506.84
Flat 5	11.30%	£1,257.55

Estimated service charge for year ending 29 September 2019

Total estimated service charge £31,655.00
Respondents' share:

Flat 4	13.54%	£4,286.09
Flat 5	11.30%	£3,577.01

154 **Section 20C Application**

155 The Tribunal declines to make an Order pursuant to section 20C of the 1985 Act.

Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to rpsouthern@justice.gov.uk 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.

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.