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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/00ML/LSC/2014/0037** **CHI/00ML/LSC/2014 0058**
Property	:	**3B Sussex Heights, St Margaret's Place, Brighton BN1 2FQ**
Applicant	:	**Sussex Heights (Brighton) Limited**
Representative	:	**Ms. C. Whiteman of Dean Wilson LLP** **Mr. J. Laing Chairman of the Applicant** **Mr. N Mills of Austin Rees**
Respondent	:	**Mr. T. Coady (Leaseholder of Flat 3B)**
Type of Application	:	**Determination of liability to pay and reasonableness of service charges and administration charges**
Tribunal Members	:	**Judge D. R. Whitney** **Mr. R. A. Wilkey FRICS** **Ms. T. Wong**
Date and venue of Hearing	:	**3rd & 4th November 2014,** **Brighton Magistrates Court**
Date of Decision	:	**11th December 2014**

DECISION

INTRODUCTION

1. The Applicants are the owners of a Headlease of Sussex Heights, St Margaret's Place, Brighton ("the Property").

2. The Respondent is the current owner of a leasehold interest in Flat 3B at the Property under a lease dated 17th April 1968.

3. The Applicant issued proceedings in the County Court dated 19th December 2013 for the recovery of certain service charges and administration charges which it said were owed by the Respondent. The Respondent filed a defence dated 12th January 2014.

4. By way of Order dated 28th March 2014 the Brighton County Court transferred the proceedings to this tribunal for adjudication.

5. Substantive directions were given at an oral case management hearing attended by both parties on 23rd June 2014.

6. In accordance with paragraph 8 of the directions the Respondent issued an application for further service charge years to be determined. As a result the tribunal was to determine the service charges for the years 2007 to 2013 inclusive.

7. The parties substantially complied with the directions and the tribunal had before it a bundle of papers and references to page numbers within this decision are to the page numbers within that bundle.

THE LAW

8. The relevant law is contained in sections 19, 20 and 27A of the Landlord and Tenant Act 1985 which are set out in full in the Annex A to this decision.

9. The Respondent owns his flat pursuant to a lease dated 17th April 1968. The relevant clauses are at clauses 4 and 5 of this lease copies of which are annexed hereto marked Annex B.

INSPECTION

10. Immediately prior to making its determination the tribunal inspected the Property. The parties set out above were in attendance as well as the Property caretaker Mr. D. Taylor.

11. The Property consists of a 24 storey block of flats which sits above the Hilton. It is accessed via the end of a cul de sac called St Margaret's Place. The tribunal was informed that it is the highest building in Sussex and has some 115 flats. It was built in or about 1966.

12. There is a pleasant Reception area with a concierge desk and small porters office/cupboard. From this area there is access to the three lifts serving the building. There are two passenger lifts and one goods lift. The Reception area was carpeted with wood panelling to the walls.

13. To the rear of this area is an access to the external bin storage and then a ramp leading to an underground car park which we were told belongs to the Hilton.

14. From the bin store we were able to access the basement area. Again we were informed that this area belongs to the Hilton but the Applicant has access as the water pumps for the Property are within this area. We were shown the three new water pumps. The old electrical switching gear for the previous pumps was pointed out. The tribunal also inspected the 5000 litre water tank which had been installed as part of the pump replacement.

15. The tribunal then inspected in the car park below generators used to provide emergency power for the pumps. In this area was also a generator which we were told belonged to the Hilton. The generators appeared to be oil/petrol driven and looked as though they were probably those installed when the building was constructed.

16. The tribunal then proceeded to the top floor of the building. We were shown the two staircases serving the building. There is one staircase on either side of the building linked by a corridor off which the flats are situated.

17. The stairwells appeared clean and functional. It was evident in the south stairwell that there had been historic water penetration from the roof above as the paint was peeling and bubbling. There was no evidence of current water penetration.

18. The Chairman and Valuer member of the tribunal did go out onto the roof together with Mr Mills and Mr Coady. There was a perimeter around which we walked to view the front of the property and could see the penthouse terrace which appeared to be constructed of some form of marble tiles. The

roof itself appeared to have been recently repaired and some form of proprietary sealant had clearly been recently applied and protective tiles laid over the areas on which we walked. Drainage outlets around this perimeter walkway were evident and clear of debris.

19. The tribunal was shown the lift motor room area and also the area where the electronic equipment for roof masts was stored.

20. Mr Coady invited the tribunal and Mr Mills to inspect flat 22e which we were informed belonged to Mr Coady's mother. Mr Coady turned on the water tap on the kitchen sink. The water ran in a constant stream. The tribunal did not notice any differentiation in the water pressure whilst the tap was running.

21. The tribunal was invited to view flat 7c which is occupied by the caretaker. He was not prepared to allow the Respondent access. With the consent of all parties the tribunal alone viewed this flat in the company of Mr Taylor the caretaker occupier.

22. The flat was a spacious one bedroom flat with an enclosed balcony with South facing views. We were shown a cupboard adjacent to the entrance in which there was evidence that a gas supply had been capped off. We were informed that previously there had been a gas meter but this had recently been removed as the flat had no gas appliances.

23. The tribunal finally inspected again the reception area. We were shown the CCTV camera scheme which was within the Concierges cupboard. We were advised that there were 8 cameras in total. There was also an entry phone board which we were advised also had a CCTV camera so that residents could see who was at the board. This camera feed was accessible by residents. There was also a device for recognising key fobs which is for a new method of entry being implemented.

24. The tribunal was also asked to take note of the fact that the floor was covered with carpet which had supposedly been laid over marble floors in the common areas.

25. All parties confirmed the tribunal had inspected all areas they considered necessary for this application.

THE HEARING

26. The hearing took place over two days at Brighton Magistrates Court.

27. Prior to the start of the hearing the parties were invited to agree what additional documents by way of invoices which had been disclosed but were not within the bundle the parties wished to rely upon. A small bundle of invoices was provided which the parties confirmed were those which the Respondent wished to refer to.

28. Ms. Whiteman also provided a skeleton argument and bundle of authorities. The Respondent was concerned over this and the tribunal explained that it was often the case that advocates provided such documents which set out the oral arguments they would make. Given the hearing was to run for two days he would have opportunity to consider the same before it was to be dealt with as this would be at the end of the substantive hearing.

29. The tribunal was also supplied with an email on behalf of the Applicants from a company called O'Neil's of Brighton dated 24th October 2014.

30. The tribunal reminded the parties that the purpose of the hearing was to determine the matters in dispute in each of the relevant service charge years which now ran from 2007 to 2013 inclusive. It was agreed that the tribunal would deal with each item individually as set out in the respondents schedule found at B-29 of the supplemental bundle. This schedule set out the specific items which the Respondent sought to challenge.

31. Mr Coady confirmed that Mr Shaw of Clearwater Technology Limited, from whom he had filed an unsigned statement would not be attending. Mr Coady was also not looking to call Mr Geall (another leaseholder) who had also provided an unsigned statement. Mr Coady indicated that these documents were for the tribunal's information.

Buildings Insurance

32. The Applicant called Mr Nick Mills of Austin Rees, the building manager. He had supplied a statement at page 384 of the bundle which he confirmed was accurate. He was also referred to the Applicants statement in reply at page 527 of the bundle and confirmed that this was accurate.

33. Mr Mills explained that the insurance was renewed on the 1st October in each year. The Property had a large claims history and it had not been possible to obtain alternative quotes although brokers were used. Other insurers were not prepared to cover the Property due to ongoing claims and issues, in particular due to roof leaks.

34. Mr Mills explained that in 2011 an enclosed balcony on what he recalled was the 14th Floor had blown out and fallen on to the roof of the hotel below. This and other claims meant it was difficult to place the cover elsewhere although AVIVA had renewed cover.

35. Mr Mills was asked about issues arising from a claim made by the Respondent. He explained that his firm had little to do with this. The claim was made by the Respondent direct to the broker and insurers. He understood that the insurers believed this claim had been settled when they

had sent a cheque however it now appears, from Mr Coady's complaint, this cheque had not been received or cashed. He understood the insurers were investigating further.

36. The Respondent cross examined Mr Mills. Mr Mills explained that he might recover the insurance excess from the service charges. He explained that a block of this size was always likely to have claims going on at any one time. In his opinion the water pressure had improved and he was not aware that this had caused any problems although Mr Coady contended that the water pressure at the Property remained erratic and this was of concern to the insurers of the Property.

37. Mr Mills stated that he was not aware that the insurers had brought up issues surrounding the water pumps.

38. Mr Mills explained that problems had been caused due to a complaint made by another leaseholder to the insurers direct. This had reached the CEO of the insurers and had caused AVIVA to consider whether or not they would renew but they had agreed to do so.

39. Mr Coady also stated in his evidence that he believed the premium had risen exponentially. He believed that the cost should not have exceeded the rate of inflation. He was unable to obtain any alternative quotes himself as insurers he approached when they became aware of the Property's history declined to quote. He referred to his statement at page 402 of the bundle.

40. His view was that the cost was far to high but had no alternative figures to suggest. His challenge was general in nature.

Directors and Officers Insurance

41. The Applicant advised that the Directors and Officers Insurance ("D&O") for the year 2013 had been credited back. The Directors of the Applicant accepted that this separate policy should not be paid by the leaseholders.

42. It was explained in previous years the buildings insurance had contained a limited amount of cover (see page 509 of the bundle). The policy also contained an indemnity in respect of managing agents which was a standard term within this type of AVIVA policy.

43. Mr Laing, Chairman of the Applicant, who had given a statement at page 361 of the bundle confirmed that to the best of his knowledge the cost in previous years had all been included in one buildings policy rather than a separate Directors and Officers policy.

44. Mr Coady contended that such cost was not recoverable as a service charge and had been charged separately in the years 2007-2010 when Countrywide had managed the Property.

Staffing costs generally

45. The Applicants explained that there were three staff. A concierge/porter, a caretaker and a part time cleaner. The caretaker was also provided with a flat to live in the Property.

46. The caretakers flat was paid for by the Applicant including council tax and water rates. It was accepted that the water could be metered although this had not previously been challenged. The Applicant was looking into this.

47. The telephone and internet contract had recently been changed to a more cost effective contract.

48. The electricity supply to the flat was under the same contract as that for the common arears details of which were at pages 565 to 568 inclusive of the bundle. This contract was reviewed and renewed annually to ensure the best rates were obtained for the Property as a whole.

49. A charge was included for a Gas Safe Certificate as previously the caretakers flat had a gas supply and the Applicants took the view this was necessary. The meter had now been removed as the caretaker had no gas appliances so this cost would not be incurred in the future.

50. The Applicants evidence was that the Property is unique due to its size, height and town centre location. It is located at the end of a cul de sac which leads on to the Hilton loading area. The Applicant takes the view that due to the uniqueness and layout of access to the Property the staffing levels are required and that having full time staff adds value and is more cost effective than an external contract company providing these services. The Applicants contend that at meetings of residents the staffing levels have been voted on and approved.

51. Mr Mills relied upon the email from O'Neills. He accepted that the cost of a contract company was cheaper than he had expected but still the added value he believed employing the staff direct added was a significant benefit to the residents of the Property.

52. When cross examined by Mr Coady Mr Mills explained that in his opinion given the size and complexity of the building coupled with its town centre location meant a caretaker and concierge was required. They undertook different roles in the Property.

53. Mr Coady challenged Mr Mills over the need for a gas safe certificate if no appliances within the flat irrespective of whether there was a meter or not. Mr Mills stated he believed this was necessary but would not be required in the future due to the removal of the meter.
54. Mr Mills stated that he was not aware that the caretaker had caused damage to the hotel. Mr Coady contended that the Applicants staff had caused damage to the Hilton.

55. On the first day of the hearing Mr Coady had objected that the job descriptions of the employed caretaker and concierge had not been provided, asserting that it was not possible for him as a resident to understand their duties. The Applicant was unwilling to provide job descriptions for the caretaker and concierge as there was concerns as to how these documents would be used. On the second day the Applicants produced job descriptions for both. This was on the strict understanding and condition that they were for the use of this tribunal only and would not be circulated to others and not published. They were accepted by the tribunal on this basis and this was explained by the tribunal to Mr Coady who agreed and was given copies.

56. Mr Mills in evidence explained briefly the caretaker's role which was in line with the job description disclosed.

57. Mr Mills also explained that contract security guards were employed on Friday and Saturday nights. They would be in attendance at the building between 6pm and 6am the following morning. At the start of 2014 their use had been increased as to concerns over rough sleepers getting in to the building and allegations of violent conduct. It was felt their presence was needed to protect the residents. The security guards are meant to be proactive and patrol the building and external areas. There had been an issue with one guard supplied but this person had been changed after complaints he was not undertaking his duties properly.

58. Mr Mills explained that with regards to certain residents a "zero tolerance" policy is adopted due to issues the caretaker has had with them. Mr Mills explained that the caretaker will not deal directly with Mr Coady and that Royal Mail will not deliver to his flat. Mr Mills said the board accept this to protect their employee from what they believe is abuse.

59. Mr Mills gave evidence that in his experience the package offered to the caretaker is typical of that which would be offered to a live in caretaker and the cost is not excessive or unusual.

60. Mr Laing also gave evidence. He referred to page 51 of the bundle and a "Sussex Heights Newsletter". This referred to the question of security guards. In his evidence there had been ongoing issues over security. Often of a weekend people would try and access the building. For this reason he believed the security guards were necessary.

61. As to the caretaker in his evidence the caretaker was a very able man. He was invaluable in the assistance he gave to maintaining the building and directing contractors and the like. He also had developed a close working relationship with the hotel which was of great use to the building as a whole given the inevitable interaction which took place with the hotel given the building location above and adjacent to the hotel and the fact that certain facilities for the building were housed in areas belonging to the hotel.

62. Mr Laing stated that the majority of leaseholders supported the staff and security. It led to residents feeling reassured and safe. Mr Laing explained that the company has 113 shareholders, who are all leaseholders, and that there are 115 flats in the building so not all leaseholders are shareholders in the company. Mr Coady is a shareholder in the company.

63. Mr Coady in his evidence asserted that the duties of the staff all overlapped. The caretaker in particular appears to have a problem with him. IN his view he does not understand why such a high level of staffing is required as he believes that the caretaker could undertake the cleaning.

64. Mr Coady did not think it was appropriate for leaseholders to be charged rent on a flat owned by the management company.

65. As to security Mr Coady took the view this was completely unnecessary and that the building could rely upon the police to deal with any incidents which arose.

66. Mr Coady accepted that for minor works having a caretaker saved call out charges but in his opinion the cost of such charges would never equal the amounts paid by way of salary.

67. Mr Coady did accept that the cleaner should be paid for. He did not however accept that the caretaker would need to be paid a higher salary if he was not provided with accommodation. He did not understand why a rent was charged for a flat which he owned a share in.

68. In Mr Coadys view the staffing levels were excessive. In particular he saw no reason for the security guards or provision of a caretaker and concierge and believed the caretakers overall package was excessive.

69. In respect of the repairs element, save that he believed the caretaker could have undertaken these repairs, he was not objecting to the same.

Electrics

70. This head related to recovery of the costs of electricity for the aerials on the roof.

71. Mr Laing explained that he had been investigating the renewal of the two roof aerial leases. One to Metronet and the other to Juice Radio. It became apparent that no demands were made to either company for the costs of electricity consumed by these aerials despite there being clauses within the agreement whereby a sum of money should be paid. Copies of the agreements were included at page 73 onwards.

72. The Applicant had issued demands which were included at pages 77 and 78 for recovery of these amounts which will be credited to the service charges.

73. Mr Laing did not know why the amounts had not been claimed previously.

74. Mr Coady expressed surprise that these amounts had not been claimed back but he accepted that a claim had been made and that an allowance will be made to the service charge account in due course.

Adjournment

75. At this point the tribunal hearing adjourned until the second day.

Day Two

76. At the start of the second day the Applicants disclosed the two job descriptions as referred to above.

77. The Respondent sought to adduce further emails from Mr Geall. The tribunal declined to accept these as further evidence particularly given Mr Geall was not giving evidence at the hearing and it was apparent from the papers that he was involved in separate litigation with the Applicant.

Entryphone/CCTV

78. Mr Mills explained that the original entry phone system was supplied by a company called "Interphone". The installation would have been for free but on the basis that an ongoing rental was paid. These contracts were notoriously difficult to exit and expensive. The company would also make a charge for each visit they made.

79. Mr Mills confirmed that the agreement had now been ended with a termination fixed for December 2014. He referred to page 597 of the bundle being a copy of an invoice for the service provided. The tribunal had seen the system at the inspection and were shown the board which covered all 115 flats within the building. The board and equipment will be left when the contract ends but Mr Mills understands that the applicant is looking at other systems.

80. As to the CCTV in the Property there are about 8 cameras. These are owned by the applicant and not rented. Whilst there is a maintenance contract which covers some call out charges it does not cover all. Less cameras are currently in use than in the past but the system covers the front entrance. Mr Mills did not know who disconnected certain cameras but stated that this was on the advice of the police.

81. Mr Coady was concerned that it was not possible for residents to view the entryphone or CCTV cameras on a digital television. When previously they had been able to when using an analogue tv. In all other respects Mr Coady confirmed he was happy that the service and cost were reasonable.

Management fees

82. Mr Mills referred to page 390G of the bundle which was an exhibit to his statement. This exhibit was the management agreement between Austin Rees and the Applicant.

83. Mr Mills explained that Austin Rees began managing in August 2010. The agreement itself was not completed until July 2011 as the parties took time to negotiate the terms of the same and also to negotiate the changeover process itself.

84. Mr Mills explained that Austin Rees employ some 32 staff dealing with block management. Sussex Heights have a dedicated Property Manager and Accounts Manager assisted also by other staff members. Austin Rees do not deal with surveying matters as they took a commercial decision not to provide this service when they took on the block given its complex nature.

85. The basic fee payable is £160/flat per annum plus VAT. Within this basic fee they undertake usual property management roles including demanding service charges, visiting the building regularly and liaising with the staff to ensure repairs and maintenance are undertaken. Austin Ress also undertake section 20 Consultation exercises without extra charges being levied and attend monthly board meetings of the Applicant.

86. Mr Mills was referred to page 591 of the bundle. This was a newsletter for Sussex Heights. He confirmed that Austin Rees had given notice to terminate their agreement to manage. This was due to the fact that they had

experienced constant harassment and abuse from some residents over the four years they had managed the building. These came also from reviews posted on-line which were damaging to Austin Rees. As a result notice had been given before the September Quarter.

87. The tribunal highlighted to the parties that it did not seem relevant to the questions the tribunal had to determine as to why the contract was being terminated by Austin Rees.
88. In cross examination Mr Mills stated to Mr Coady that he believed emails were answered. The only exception was they did not accept email communication from two residents (for clarity they did accept emails from Mr Coady) as a result of allegations of abuse and harassment from those residents.

89. Mr Laing gave evidence that whilst he was not on the board at the time of Austin Rees' appointment he understood from the companies' records that notice had been given to the previous managing agent, Countrywide, due to their poor service. He understood various agents had been interviewed and this was narrowed to a short list of three. Following presentations Austin Rees were chosen. He understood that their price was cheaper than many other agents.

90. Mr Laing explained that it appeared the management cost in 2010 was significantly cheaper but in fact this was not so but simply due to the way the amounts had been recorded in the accounts. The year 2009 included what was in effect an advance payment for management in 2010 and that actually the cost for 2009 and 2010 was similar in amount.

91. Mr Laing understood that Countrywide had not produced proper accounts. In his experience of dealing with Austin Rees he had always found that they produced accounts and were in his opinion very competent.

92. Mr Coady indicated he would be making submissions that the agreement was a long term qualifying agreement upon which consultation should have been undertaken but otherwise he was satisfied that the cost charged of £160/flat per annum plus VAT was reasonable.

Fire Equipment

93. Mr Mills explained that the Fire Brigade inspect annually. In 2012 following their inspection they advised that the fire hoses on each floor of the building should be removed. The Fire Brigade were worried that the rubber the hoses were made of appeared to have perished and there was a risk of legionella. Also their guidance for a building of this type was that in the event of a fire the residents should remain within their own flats (what was referred to as a "stay put" policy). They were concerned that the presence of hoses might encourage residents to tackle a fire which the Fire Brigade wished to avoid.

94. As a result the hoses were removed and the tribunal had seen evidence of where the hoses had been at the inspection.

95. The managing agents had also commissioned a fire risk assessment which was at page 94 of the bundle. The removal of the hoses was not linked to this although it supported this action.

96. Mr Mills was referred to a photograph at page at page 526a of the bundle. This showed service record stickers which did not seem to have updated since 2010. Mr Mills explained these were stickers used by a previous servicing company. The new company who serviced the fire equipment provided an annual log and inspected and tested the equipment at least annually. The caretaker was also aware of the equipment.

97. Mr Mills was referred to various invoices at pages 593,595 and 598. These all covered various works undertaken in respect of the equipment and the risk assessment.

98. Mr Coady cross examined Mr Mills who explained the hoses had been removed in the August. He confirmed all equipment is serviced.

99. Mr Coady also cross examined Mr Laing and asked him about the legionella risk. Mr Laing stated that it had not occurred to the Applicant to test the hoses now removed although all tanks were tested regularly.

100. Mr Coady stated he was satisfied that the sums were payable provided there were no on-going charges for the hoses.

TV Aerial

101. It appeared that the issue here was that Mr Coady was unhappy as to why improved broadband capability was not available to the flats. All parties did confirm that broadband could be obtained (subject to a suitable contract) although supposedly the speed was slow.

102. Mr Laing explained that when Metronet had upgraded its aerial then the board had investigated whether better connections could be obtained. Metronet had provided quotes for so doing but the Board took the view this was not a priority and the board decided not to arrange the same although there was nothing to stop any resident making its own arrangement with Metronet. Mr Laing confirmed that the flats all have a TV service consisting of Freesat and also Sky if they enter into a subscription agreement with Sky directly.

103. Mr Laing was unable to say how many dishes were on the roof. With regards to the large cost in 2009 he believed that this was to effect the

switchover from analogue to digital and the re-wiring required with a cable ran into each flat.

104. Mr Coady took the view that an improved service should be provided giving better broadband and increased number of TV channels including international channels.

Reserve funds

105. Mr Laing referred to page 366 of his statement. He explained that the Applicant looks to collect funds to pay for major works and to spread the costs of the same. Currently the Applicant holds about £500,000 having paid for water pumps and roof works. All works are planned on the advice of surveyors.

106. In determining the current reserve funds the Applicant relied upon a Condition Report of Stuart Radley Associates (page 111 of the bundle) which had indicated that about £1 million of works were likely to be required to the Property. This was the basis used in calculating the build up of reserves of up to £1 million

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107. Mr Laing was asked about a report submitted to the AGM in 2012 (pages 499-502 of the bundle). He confirmed he was aware of the same. He confirmed that new surveyors, RLF, had been appointed to manage future major works.

108. Mr Mills explained that during a seven year window the Applicant was looking to recover £100k per annum to build up adequate reserves. In his opinion this meant now the reserves were adequate. When Austin Rees took over the reserves stood at about £150k and now just over £500k. Most of the reserve funds were held on treasury deposit.

109. Mr Coady referred to clause 4(vi) of the lease. He was not satisfied that the reserve fund had been reviewed in accordance with the timetable included. He agreed that the reserve should be reviewed every 7 years but in his opinion the Applicant had no plan. He suggested if there was no prospect of works being done nothing should be paid. He referred to page 448 of the bundle being his statement in reply.

110. Mr Coady stated to the tribunal that he wanted to know the precise amounts that were going to be spent as he feels he has no control over how the money will be spent.

Water Pumps

111. Mr Mills was taken to page 163 of the bundle being the First stage consultation notice in respect of replacement of water pumps and other associated works. The notice included Clearwater Technology Limited ("Clearwater") who were a contractor previously nominated by a leaseholder.

112. Mr Mills referred to page 241 being the second stage notice. He explained that whilst initially Clearwater appeared to be the cheapest quote the surveyor overseeing the tendering process Mott McDonald were able to negotiate with Clearwater and SMS (Southern) Limited ("SMS") so that ultimately the cheapest tender was from SMS and the Applicant proceeded with this contractor as the cheapest tender received. Mr Mills referred to pages 247 and 569 which were emails from Mott McDonald to Austin Rees explaining this process.

113. Mr Mills explained that savings had been achieved by omitting pipework for lower floors. Mott McDonald had assessed the suitability of the contractors and whilst the Applicants had had some concerns with Mott McDonald initially all seemed to have been resolved and the Applicant was happy with the outcome.

114. Mr Mills explained concerns over the pump were originally first raised by the previous contractor, Arun Pumps, who had serviced the original pumps (believed to have been installed when the Property was constructed). They believed that the pumps were reaching the end of their lifespan and were concerned that they would not be able to keep repairing the pumps. Initially they did provide a quote for replacing the pumps. It became apparent however that more was required to ensure compliance with new regulations and in the end they confirmed they would not quote for this work as it went beyond their expertise. Various additional works were required to ensure compliance with modern standards which have to be adhered to when a replacement was installed. The previous contractor who serviced the pumps seemed unaware of these requirements when they initially simply quoted the cost of a new pump.

115. The Applicants instructed a report from another company called Passionstar. They were a small local firm. This report was challenged by Clearwater as being defective as to the proposed specification. Passionstar refused to provide any further report and relations with them soured over the critiscm levelled at them.

116. Mott McDonald were then chosen as a large national company with the level of competencies required given the issues which had arisen. They took on board the comments made about the Passionstar report and produced a new specification.

117. It was correct that the Applicant had considered recovering the fees paid to Passionstar but were advised that it was not cost effective to do so in that much would have been differences in professional opinion.

118. Mr Mills in cross examination specifically asserted that at no point had he advised Clearwater they would not be selected for the contract.

119. Mr Mills explained that Mott McDonald dealt with the tender process. The pumps were installed towards the end of 2012. Certain works were undertaken to the pumps under warranty due to certain problems which arose.

120. Mr Laing confirmed that the advice received over pursuing Passionstar was that this would not be cost effective as a further expert report would be required for litigation and it was far from certain that it would be determined that the advice given was negligent.

121. Mr Coady asserted that the Applicant should simply have replaced like for like pumps and accepted the original quote from the contractor who had serviced the old pumps. He was not satisfied that SMS were capable of undertaking the job and challenged the checks Mott McDonald undertook. He also took the view steps should have been taken to pursue Passionstar.

Roof

122. Mr Mills was referred to page 1-12 of the bundle being the Applicants statement of case. He confirmed that Austin Rees were not the surveyors. Grumitt Wade had been appointed as they had considerable knowledge of the building having previously been appointed when Countrywide were managing.

123. Mr Mills explained it became apparent whilst works were being undertaken that the tiles which formed the Penthouse flats terrace on the roof had to be removed. It was not possible to re-install those removed and fresh tiles needed to be purchased and installed. The tiles were very expensive but the Applicant had to match those tiles which had previously formed the terrace.

124. The roof had been treated with a proprietary product which the tribunal had seen when it inspected the roof. This was called Decothane and came with a 10 year guarantee.

125. Mr Mills went through the two stage notice process (see pages 259 and 261 of the bundle). As a result Salnor Roofing Services Limited were appointed. At page 266 was Grummitt Wades tender analysis. At page 351 and 352 was the final account totalling £111,308.63 with the additional costs totalling just over £40,000.

126. It was clarified with Mr Coady that in 2011 there was no charge for £109,150 for roof works. It appeared this was the total of the amounts claimed in the service charge for 2012 and 2013 rather than a separate charge in that year.

127. Mr Mills confirmed that the contractor and consultant had signed off the works. To the best of his knowledge the roof was now weather tight. He accepted there was a report of a leak into one flat on the 24th floor but this was the subject of separate litigation. Mr Mills stated he was not aware of the insurers asking any questions about the roof.

128. In cross examination Mr Laing said he was aware of insurers raising concerns but the Applicant was dealing with the same. Mr Laing stated that the Applicant does not believe that any leaks are coming through the roof but that the leaks may be due to other causes and this is being investigated. He stated that the Applicant was co-operating with the insurers who had appointed Cunningham Lindsay to act but this firm had withdrawn after receiving abuse from a leaseholder. Mr Laing believed there were two flats affected by leaks. One was definitely not the roof and the second was subject to continuing investigation.

129. Mr Coady stated that he was not sure why the costs rose so substantially. He took the view the initial specification was not sufficient. He referred to the fact that reports he believed the Applicant had had not been disclosed. His view was that the roof had been leaking as was evident from the inspection and continued to leak. He took the view that it was odd that something like the need to replace the penthouse roof terrace had been missed.

Costs

130. The tribunal raised with the parties that the original particulars of claim at paragraph 8 contained a claim for certain defined costs. Given this appeared to be an administration charge then this may fall under the tribunal's jurisdiction.

131. Ms Whiteman explained that in effect these were pre-action costs of the litigation. She had submitted at the start of the second day a short bundle of pre-action correspondence.

132. The tribunal indicated that if both parties were content it would leave these costs to be determined by the county court when the county court made any determination on costs as a whole given it would be for the county court to make any award of costs on the litigation as a whole. Both parties agreed that it was more appropriate for the county court to rule on costs including those

set out in paragraph 8 of the particulars of claim. The tribunal makes no determination on these matters.

Submissions

133. Prior to submissions being made the tribunal confirmed again that they had read the bundles.

134. Ms Whiteman relied upon the Skeleton Argument and authorities she had submitted on the first day of the hearing.

135. She explained that the Applicant was the Head Lessor. All leaseholders were members of the Applicant save for two leaseholders. The Directors of the company were unpaid and tried to act in the best interests of the company and the leaseholders as a whole.

136. Ms Whiteman referred to Clause 5 (ii) to (vi) as setting out the Applicants responsibilities. Clause 5(iii) was in her submission widely drawn as to staff and their roles.

137. She referred to clause 4(v) which allowed recovery of costs from the leaseholder. In her submission this clause was also widely drawn and allowed recovery of all sums expended. She submitted that there was a discretion as to how services were provided and what would have been the rent had Flat 7 been let out was recoverable as a service charge expense.

138. Ms Whiteman referred the tribunal to Gilje v. Charlgrove Securiteis Limited [2001] EWCA Civ 1777. In her submission this authority could be distinguished as the lease terms were very different from that in the present case which is very widely drawn. She relied upon Lloyds Bank plc v. Bowker Orford [1992] 2 EGLR 44 which she says supports her position that the provision of staff and the like was of benefit to the occupiers.

139. In respect of the management agreement she submitted that this was not a qualifying long term agreement. It was for a term of 364 days and therefore less than 12 months. She referred to two authorities: Paddington Walk Management Limited v. The Governors of the Peabody Trust (2009) and Poynders Court Limited v. GLS Property Management Limited [2012] UKUT 339 (LC). In her opinion on a proper analysis of these two cases section 20ZA of the Landlord and Tenant Act 1985 does not apply.

140. In respect of the water pumps it was submitted that a proper consultation took place.

141. In respect of the overrun of the works to the roof it is submitted that a proper consultation was undertaken. It was only when the works were being

undertaken that it became apparent that further works would be required and it was not appropriate to stop and consult further. The works were an extension of the existing contract.

142. Mr Coady then made his submissions. In respect of the management contract in his opinion this was a rolling contract and as such is deemed to continue unless determined and therefore he relied upon the Poynders Court decision that this was a qualifying long terms agreement for which consultation should have been undertaken. As a result the sum recoverable should be limited to the statutory maximum.

143. Mr Coady explained that with regards to the entryphone he does not dispute this as such but he stated that he believed the cost was some 30 times the going rate.

144. In respect of the caretaker he submitted that when you look at the package as a whole the sum is too high.

145. He submitted that the other side had not supplied documents further to his requests. He relied on a letter from Ms Whiteman to him dated 2nd October 2014 which had been supplied to the tribunal. In this letter a request for supply of "all correspondence" had been refused but it was made clear in a reply from the Applicants solicitor that if Mr Coady wished to request any particular documents this would be considered.

146. Mr Coady wanted at this point to adduce further documents which were not in the bundle and had not previously been disclosed to Ms Whiteman. The tribunal refused highlighting that it was late in the second day. Mr Coady had not made any previous applications to the tribunal about disclosure despite having attended the original oral case management hearing when the process had been explained.

147. In respect of his own application Mr Coady sought to make an application under section 20C to limit the recoverability of the Applicants costs as a service charge in respect of his application as a service charge. He relied upon what had been said in his application which was at page B-34 of the supplemental bundle. He believed he had explained his case in full and that the matter could, and should, have been settled without recourse to the tribunal and this is the Applicants fault.

148. Ms Whiteman indicated that the Applicant can recover costs as service charges if necessary. In her opinion the tribunal should decline to make such an order. She submitted in support a small bundle of some of the pre-action correspondence. She submitted it was hard to work out what the Respondents challenge had been and the complaints were of a very general nature. The Respondents had sought to challenge numerous years and the sums in dispute and the effect it could have on the Property as a whole meant

it as reasonable for solicitors to have been employed. For all of these reason an order should not be made.

DETERMINATION

149. The tribunal notes that most of the Respondents challenges were general in nature. It is clear that the respondent is dissatisfied generally with the management of this block. What is further apparent to the tribunal is that some other litigation had taken place which is not relevant to this tribunal and its determination.

150. Both parties were given opportunity to call witnesses and cross examine the same. Save for himself the Respondent called no additional witnesses despite earlier indications that he would. The Applicants relied upon the evidence of Mr Laing and Mr Mills who were present throughout the whole course of the hearing.

151. The tribunal finds following its inspection that this is a very substantial block with the practical and complex issues that it raises. It is located in the very centre of Brighton, close to the shopping centres, hotels and pubs, at the end of a cul de sac. The block itself from inspection appeared generally well maintained although there was evidence of some historic water penetration in the South stairwell on the 22nd floor. All parties were afforded opportunity to point out any issues which they felt may be relevant at the inspection as set out above including visiting the roof, 22nd floor, pump and meter rooms.

Buildings Insurance

152. The tribunal is satisfied on the evidence that the insurance premium for each year in dispute is reasonable.

153. The evidence before the tribunal from both parties was that finding insurance for this block was not straightforward. The Respondent himself conceded that he had been unable to obtain alternative quotes. The tribunal took note, and accepts, Mr Mill's evidence that a block of this size is always likely to have claims. The Respondent produced no evidence that the premium (which was similar for all the years being examined) was unreasonable. The Respondent, quite rightly, accepted that the Applicant should insure and that this cost was recoverable.

154. Whilst the Respondent referred to his own insurance claim issues in this tribunals determination that has no bearing on whether the premium charged is reasonable.

Directors and Officers Insurance

155. The tribunal notes that the Applicant will be crediting back the charge for this head in the year 2013. However it was their case that charges in previous years were recoverable. Ms Whiteman relied upon the lease and in particular clause 4(v) which she suggested is widely drawn as to the costs recoverable from the Respondent.

156. It was suggested on the Applicants behalf that in earlier years this cover was provided as part of the buildings insurance. The tribunal notes however that this was separately charged in the years 2007-2010 inclusive and is plainly a type of insurance separate to buildings cover. There was no real documentary evidence due to difficulties obtaining documents from the previous agent.

157. The tribunal does not accept that these sums are recoverable as a service charge. Whilst the tribunal accepts that the lease is widely drawn as to recoverability however this is in respect of the Applicants performance of its covenants. Whilst the tribunal notes that the Directors being unpaid volunteers may wish to have this protection it is not in this tribunals view a service charge expense recoverable under the terms of the lease. For the avoidance of doubt the tribunal disallows the sums claimed for this head in the years 2007-2010 inclusive and 2013.

Staffing costs generally

158. The tribunal finds that all such sums claimed are reasonable and payable by the Respondent.

159. The tribunal heard much evidence on this issue. For the Applicant they explained that the block employed three staff members. A live in caretaker, a concierge and a part time cleaner. The block also employed external security staff to patrol the building at night during the weekend and on certain occasions at other times.

160. Mr Mills in evidence stated that in his view the wages and attendant costs were similar to other blocks of which he was aware. He also relied upon an email from a company called O'Neills who were contractors who provided such services to other buildings. Mr Mills candidly admitted that he was surprised that the cost of a contractor was not more. In his evidence having employed staff and in particular a live in caretaker added value in that they knew the building well and helped develop links with the hotel staff with whom they had to interact.

161. Mr Laing explained that the current arrangements had been in place for some years and reiterated and supported much of what Mr Mills said.

162. As to security guards it was explained that the Applicant was concerned as to members of the public who had visited the town centre accessing the building late at night. This was a building over 24 floors. Also another local building had an issue with a rough sleeper entering the building who when moved on started entering Sussex Heights. It was felt to ensure the Property's security and the safety of residents and given the location and specific characteristics this was desirable.

163. Mr Coady took the view that such high levels of staff were not required. He challenged what their roles were. Further as to elements such as the rent of the caretakers flat he could not understand why this was charged as a service charge.

164. As to the security guards Mr Coady felt this was entirely unnecessary. His view was that the police could resolve any problems.

165. The tribunal had regard to all the evidence. In respect of the staffing costs there was no evidence that the actual wages were unreasonable. As to the levels this is a substantial building with particular complexities given its location and interaction with the hotel as to services. The tribunal readily accepts that having employed staff would be of benefit and that the same is not unreasonable. The tribunal was satisfied that the lease allowed recoverability of all such charges and did not consider the employment of in effect two and half persons unreasonable.

166. In respect of the rent payable on the caretakers flat the challenge here seemed to be that Mr Coady did not understand why he was charged rent for a flat he had an interest in as a shareholder of the Applicant. The tribunal notes that whilst the vast majority of leaseholders are shareholders not all are. The flat is an asset of the company. It is therefore appropriate that the company charges the service charge a rent. The tribunal was satisfied on the evidence that the level is reasonable.

167. In respect of the security guards following the inspection it was apparent to this tribunal that the building could face issues with unauthorised persons trying to enter, particularly at weekends, given the high number of bars and clubs in the vicinity. The tribunal was satisfied that the provision of such guards is sensible to ensure that residents are safe and the building is protected from vandalism. The tribunal was satisfied that such costs are recoverable under the lease.

Electrics

168. It was accepted by Mr Coady that the Applicant had looked to recover relevant amounts from those companies with aerials on the roof and credits

would be given. For the avoidance of doubt the tribunal was satisfied that the sums claimed were reasonable and recoverable.

Entryphone/CCTV

169. At the hearing Mr Coady conceded the sum claimed was reasonable his concern was that pictures could not be viewed on digital televisions. The tribunal was told that the Applicant was investigating a new entry phone system.

170. It was clear that the systems were in place and in use as the tribunal saw these at the inspection. The tribunal is satisfied that all such sums claimed are recoverable and reasonable.

Management fees

171. The tribunal was satisfied that all sums claimed were reasonable and recoverable.

172. The tribunal heard evidence from Mr Mills as to the level of fee and what was involved in the work they undertook.

173. Mr Coady's challenge was that in his opinion the agreement was a Qualifying Long Term agreement and consultation should have taken place. He did however concede if he was wrong on this that the charge made was reasonable.

174. Ms Whiteman in her submissions referred to the management agreement at 390G of the bundle. The agreement was for 364 days. She also referred the tribunal to two cases (see paragraph 139 above).

175. Mr Coady contended that this was a "rolling contract" and was deemed to continue on an annual basis and so required consultation. He relied upon the authority in Poynders Court Limited v. GLS Property Management Limited [2012] UKUT.

176. This tribunal is satisfied this is not a qualifying agreement. The term was for less than 12 months and could have been determined. The tribunal preferred the submissions of Ms Whiteman on this point and finds that the management fee claimed is reasonable in amount and payable.

Fire Equipment

177. Following hearing the evidence of the Applicant Mr Coady appeared to concede in his evidence that these sums were payable on the basis there were no ongoing charges for fire hose maintenance.

178. The tribunal is satisfied by the explanations given by Mr Mills and Mr Laing and in particular that now the hoses had been removed there would be no future charges for the same. The tribunal was satisfied that the sums claimed are reasonable and payable.

TV Aerial

179. Mr Coady's challenge here appeared to be that the Applicant should have provided a better service than that currently afforded to residents.

180. Mr Laing explained the steps the Applicant had taken to ascertain if a better service could be provided. He also confirmed that all flats had access to normal freeview channels and broadband if they so wished.

181. The tribunal is satisfied that the sums claimed were reasonable and payable. The tribunal is satisfied as to Mr Laing's explanation as to what services were provided and as to why the Applicant had not looked to improve on this. It is for the Applicant to strike a balance as to how funds are spent and, in this tribunal's determination, it was reasonable for the Applicant to decide not to upgrade the service provided particularly since each resident has the freedom to choose and contract for their own preferred services.

Reserve Funds

182. The tribunal is satisfied that the sums claimed are reasonable and payable.

183. The tribunal heard from Mr Mills and Mr Laing as to the methodology for calculating reserve funds. Clearly this was based upon professional advice as to what sums may need to be expended. The tribunal acknowledges that the maintenance of a reserve fund is prudent management.

184. Mr Coady appeared to assert that only when the exact amounts to be spent were known could these amounts be calculated. Further in his opinion the lease had not been complied with.

185. The tribunal determines that the methodology used by the Applicant was fair and reasonable. At best these calculations can only ever be on estimates. A clear methodology was adopted by the Applicant relying upon a report prepared in 2009 to calculate the cost. The evidence of Mr Mils was that the Applicant had regard to the 7 year cycles referred to in the lease in setting the reserve fund levels.

186. The tribunal was satisfied that the Applicants had a clear plan as to what they wished to achieve in terms of major works and the reserve funds needed to be collected with that in view, and that they were calculated in accordance with the lease (clause 4(vi)) and the sum claimed was reasonable and payable.

Water Pumps

187. The tribunal is satisfied that all sums claimed under this head are reasonable and payable.

188. The Respondents challenge here seemed to be that the Applicant should simply have installed replacement pumps as originally suggested by the previous contractor, Arun Pumps. This was notwithstanding that the Applicant had been advised that such work was not complying with current regulations. Going on from this the Respondent appears to contend the lowest quote was not adopted.

189. The tribunal was satisfied that the Applicant adopted a proper and reasonable approach to this project. It was the previous contractor which maintained the pumps who suggested replacement. It quickly became apparent that they could not undertake replacement and if the Applicant had proceeded with their initial suggestion they would have faced enormous difficulties.

190. The Applicant, quite properly, sought external advice from Passionstar. When Clearwater, the contractor supposedly preferred by the Respondent, challenged Passionstar's specification the Applicants acted upon this. The tribunal accepts the Applicants evidence that pursuing the money paid to Passionstar for the advice received from them was not commercially expedient and fraught with difficulties.

191. It was clear from the evidence that Mott McDonald, a national consultancy, properly dealt with the tender process. Quite properly they sought to obtain savings and were successful in so doing. At this point the tribunal reminds itself that the Applicant in any event does not have to adopt the lowest priced quote but it is clear from the documents and evidence that they proceeded with the quote recommend and which offered best value and ultimately was the lowest priced quotation.

192. Mr Coady seems to assert that Clearwater (his preferred contractor) were told they would never obtain the contract. Mr Mills denied this categorically and we did not hear evidence form any representative of Clearwater.

193. The tribunal is satisfied that proper consultation had been undertaken and that this resulted in a reasonable price being charged for what was clear from the inspection had been major works.

Roof

194. Mr Coady appears to challenge these costs on two bases. Firstly that the works have not been completed or completed to a reasonable standard and that therefore the cost is unreasonable and secondly that additional costs have been incurred above and beyond the amounts consulted on and which are not payable above the statutory limit of £250 per leaseholder.

195. Dealing with the first aspect the tribunal preferred the evidence of Mr Mills and Mr Laing. The tribunal saw itself the works which had been undertaken. This was plainly a substantial piece of work and within the bundle were the documents showing the consultation process. The tribunal was satisfied that these works were completed notwithstanding the suggestion that there may still be leaks into certain flats (not being the Respondents). This was obviously a complicated issue, where the leaks could be caused by other reasons, but it did not mean the works had not been completed. The tribunal accepts the certificate of Grumitt Wade that the works have been completed.

196. As to the additional works Mr Coady suggested the specification should have included these. Further given it did not additional consultation should have taken place.

197. On behalf of the Applicant Ms Whiteman in her written submission stated that additional works were unavoidably required. She submits that these were unforeseen and had to be proceeded with. She submits that stopping would not have achieved any savings.

198. Having considered the evidence and the circumstances the tribunal has much sympathy with the Applicant and its submissions. However looking at the final account calculation at pages 351 and 352 prepared by Grumitt Wade the additional items total £40,023.08. This tribunal takes the view that the Applicant should have consulted on such matters or in the alternative seek dispensation from consultation as to the same. The tribunal determines that the Respondent is only liable currently to pay £250 for the additional works. The tribunal reminds the parties that the Applicant is at liberty to apply for dispensation from the consultation requirements.

199. If this tribunal is wrong in respect of the consultation this tribunal would have found that the cost of these extra works was reasonable on the evidence it had before it.

200. The tribunal accepts that the Applicant properly consulted on the original roof works and that they have been completed to a reasonable standard. The costs of the same are reasonable and payable.

Section 20C Application

201. The Respondent made an application under section 20C in respect of his application for a determination of the earlier years. In his opinion this matter could have been resolved without the intervention of the tribunal. Mr Coady also contended that the Applicant and their solicitors had not dealt with requests for disclosure of documents properly.

202. Ms Whiteman for the Applicants produced a small bundle of pre action correspondence. She explained that it had been difficult to work out what matters the Respondent disputed and his reasons for the same. Whilst the total amounts owed by the Respondent may seem relatively small this could have serious ramifications for the Applicant given the size of the block. Further as to disclosure Ms Whiteman contended that Mr Coadys requests were unreasonable and she and her client would deal with reasonable requests.

203. The tribunal declines to make an order under section 20C. The Applicant has in almost all areas been successful in resisting the challenges made to the charges and the tribunal makes no critiscm of the Applicants conduct.

204. The tribunal heard two full days of evidence and submissions ably made by the Applicants solicitor and Mr Coady.

205. This tribunal reminds itself that it is not determining the costs in respect of the county court. The tribunal does however express the view that in its opinion the challenges made by the Respondent have been general in nature and do appear to be a part of a general challenge to the running of the Applicant by its board of directors. The Applicant appears to have little choice but to defend itself within these proceedings and the tribunal accepts that given the potential ramifications this was vital and all the work the Applicant and its advisers undertook was reasonable and proportionate to the issues in dispute.

Summary

206. The tribunal determines that for the years 2007 to 2013 inclusive all sums claimed by the Applicant from the Respondent are reasonable and payable save for:

- All sums for Directors and Officers Insurance are not recoverable
- In respect of the Additional costs for the roof works the Respondent need only contribute £250

207. The tribunal makes no order under section 20C and the issue of the costs of the county court claim and any interest remain to be determined by the county court if the parties cannot agree the same.

208. For the avoidance of doubt matters referred by the county court relate to the service charge years 2011, 2012 and 2013 and as set out in the particulars of claim dated 19th December 2013. The tribunal determines in respect of the matters referred to it by the county court that all such sums claimed are reasonable and payable save that the Directors and Officers insurance claimed in the year 2013 is disallowed and in respect of the roofing works charged in 2012 and 2013 the cost of the additional works undertaken as part of that project are capped at £250 in respect of Mr Coadys contribution for the same. Obviously it will be for the parties to make submissions to the county court as to how this affects the sums claimed.

Judge D. R. Whitney

1. A person wishing to appeal this decision to the Upper Tribunal (Lands 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.

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.