

12497



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

Case Reference : **CHI/00HN/LIS/2017/0018**

Property : **Flat 1, 30 Somerset Road,
Bournemouth, BH7 6JH**

Applicant : **Mr Andrew Edwards and Mrs
Michelle Edwards**

Representative : **Mr Edwards in person**

Respondent : **AEL T101 Ltd**

Representative : **Mr Stephen Boon of Eyre & Johnson,
and Mrs Aileen Lacey-Payne of Napier
Management Services ("Napier")**

Type of Application : **Service Charges : Sections 27A and
20C of the Landlord and Tenant Act
1985 ("the 1985 Act")**

Tribunal Members : **Judge P R Boardman (Chairman) and
Mrs J Coupe FRICS**

**Date and venue of
Hearing** : **20 October 2017
Best Western Hotel Royale, 16 Gervis
Road, Bournemouth, BH1 3EQ**

Date of Decision : **23 October 2017**

DECISION

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Introduction

1. This application, dated 5 April 2017, challenges the payability by way of service charge of the following sums, for the following reasons :
 - a. 2007 :
 - major works £8576.55 (“the 2007 works”) : major works specification drawn up and not followed; project unsupervised during works; poor works carried out; this was later inspected by an independent surveyor; works not complete
 - insurance £179 : no consultation; over £100
 - surveyors fee £1049 : charge for surveyor on major works and again on charges
 - b. 2008 :
 - damp and remedial works £1292 : extras approved from sick surveyor who did not attend; damage caused by poor workmanship
 - insurance £182 : no consultation
 - surveyors fee £106 : no surveyor on site
 - c. 2013 :
 - building repairs £1411 : minor roof repair done; no major works consultation
 - d. 2014 :
 - insurance £254 : no consultation
 - management fee £237 : no management of issues or property
 - e. 2015 :
 - major works £1887 : major works for repair of poor works with no consultation, and assurance that works would not be charged for
 - insurance £263 : over the yearly amount allowed
 - admin fee £150 : charged even though account in dispute
 - f. 2016 :
 - insurance £283.96 : over £100 threshold
 - service charge £257 : no management, allowed contractor to stick roof tile on roof and did nothing to sort
2. However, during a case management hearing by telephone on 27 June 2017, joined by Mr Edwards, but not by anyone on behalf of the Respondent, the Tribunal explained to Mr Edwards that the requirement for statutory consultation was only for long-term contracts of over one year, and Mr Edwards agreed not to pursue further the challenges in respect of insurance for any of the years in question

3. The application describes the Property as a 3-bedroom flat in a converted house containing 3 flats on three levels, basement, ground and first
4. The application names Napier as the Respondent. However :
 - a. by directions issued following the case management hearing by telephone on 27 June 2017, the Tribunal directed that Ashcorn Estates Limited should be substituted for Napier as Respondent, on the then understanding that Ashcorn Estates Limited was the landlord
 - b. however, by further directions issued on 22 August 2017 the Tribunal recorded that it had received a letter dated 15 August 2017 and Land Registry entries stating that AEL T101 Limited was the freeholder of the Property
 - c. at the hearing before the Tribunal Mr Boon confirmed that that company should be the Respondent in this application

Documents

5. The documents before the Tribunal are as follows :
 - a. the application
 - b. a copy of a lease of the Property dated 29 November 1996
 - c. a bundle ("bundle 1") comprising pages 1 to 151
 - d. a bundle ("bundle 2") comprising pages 1 to 114E
 - e. a response by the Applicants dated 28 September 2017
 - f. five photographs submitted by Mrs Lacey-Payne at the hearing, to which Mr Edwards had no objection, and of which Mrs Lacey-Payne said that :
 - three had been attached to an e-mail by Mr Edwards to Napier in 2006
 - two had come from Napier's file, but with no information about who had taken them, or when
6. The bundles include the following documents :
 - a. a letter from Napier dated 9 June 2006 giving notice of intention to carry out work under section 20 of the 1985 Act (bundle 1 page 2)
 - b. a specification of works by Richard Poole dated 6 June 2006 (bundle 1 page 4), including, under the heading "External" :

"B. The rendering is in very poor condition and we feel that patching will not suffice, therefore the entire building will need to be stripped of render, use stainless steel mesh and then apply 2 coats of render and decorate"
 - c. a letter from Napier dated 6 November 2006 giving a statement of estimates for the works under section 20 of the 1985 Act (bundle 2 page 16)
 - d. two letters from Napier dated 4 January 2007 giving reasons for

awarding the contract to Timberwise (UK) Limited under section 20 of the 1985 Act (bundle 1 pages 5 and 6), and setting out the contract sum (all figures inclusive of VAT) as follows :

contract cost	26699.53
contract supervision/health and safety (3% of net cost)	800.99
managing agents' additional service charge	<u>229.13</u>
	27729.65

- e. a letter from Napier dated 14 May 2017 stating that Timberwise had advised that there would be a 5% increase in costs due to the fact that the prices were over a year old (bundle 1 page 9)
- f. a letter from Timberwise dated 2 July 2007 (bundle 2 page 22), stating that :
- the additional cost was £1136 plus VAT, making a total of £23859 plus VAT
 - since commencing work and the removal of the existing render, they had discovered a number of areas of unstable brickwork, which they would need to rebuild; in addition, redundant pipes and lead work could be removed, and the decayed doorway required repair; the extra cost of these works was £780 plus VAT
- g. a letter from Timberwise dated 7 August 2007 (bundle 2 page 24), stating that during the course of external remedial works they had discovered that the front and side gables were unstable and required rebuilding; the extra cost would be £1070 plus VAT – corrected in a further letter dated 9 August 2007 (bundle 2 page 25) to £610 plus VAT
- h. an e-mail from Mr Edwards dated 5 November 2007 (bundle 2 page 40), stating that “.....they did on Saturday start the works ie the list nearly complete, but they are going to come back. My main concern is still.....the damage done to the windows.....”
- i. a letter from Napier dated 15 January 2008 stating that the surveyor, Richard Poole, had had to organise additional works which had come to light during the course of the works, which had not been apparent during the initial survey, for which the overall additional cost was £1809.50 including VAT (bundle 1 page 13)
- j. an e-mail from Mr Edwards dated 22 February 2008 listing issues (bundle 1 page 18)
- k. a letter dated 7 March 2008 from Napier to Timberwise (bundle 2 pages 52 and 53) listing issues
- l. an e-mail from Mr Edwards dated 26 May 2008 listing issues (bundle 1 page 23 and 24)
- m. a letter from Mr Poole to Timberwise dated 5 June 2008 (bundle 1 page 25), stating that :
- the contract had been ongoing for a very considerable length of time, but despite repeated requests certain matters remained outstanding
 - Timberwise had sent various individuals to rectify the outstanding defects, but the standard of their work was abysmal

- enclosed [not before the Tribunal] were three photographs of internal damage where Timberwise had removed lead pipework
 - Timberwise had fourteen days to outline how they were going to finish the job, and no one was to visit the site without their prior schedule of works and timings, failing which Mr Poole reserved the right to appoint another contractor at Timberwise's expense
 - this had not been a happy contract
- n. a report dated August 2008 by Greenward Associates for Mr Edwards (bundle 1 pages 40 to 50)
 - o. a letter from Napier to Mr Poole dated 15 September 2008 (bundle 2 pages 70 and 71) pressing for comments on the Greenward Associates report
 - p. an e-mail dated 16 September 2008 from Mr Poole to Napier (bundle 2 page 72) commenting on the report
 - q. an income and expenditure account for the year ending 29 September 2008, including, under the heading "Expenditure" a figure of £3876 for "damp and remedial works" (bundle 1 page 63)
 - r. a report dated 3 April 2009 by BCB for Napier (bundle 1 pages 68 to 74)
 - s. a letter dated 23 August 2009 from Timberwise (bundle 1 page 79) offering to :
 - carry out repairs to the external crack at first floor level to the north and west elevations
 - decorate and make good five small patches of render where pipes were removed on the south elevation
 - carry out internal plastering repairs to crack in moulded coving on outside wall of sitting room, and apply sealant around windows including small bedroom
 - pay cost of owners' survey fee £560
 - t. a letter dated 2 October 2009 from Timberwise (bundle 1 pages 84 and 85) :
 - stating that the BCB report had disagreed with Greenward Associates that the render was substandard and needed to be replaced, and had concluded that the render coating applied had not been of such poor quality to warrant anything other than localised repairs
 - noting that Mr Edwards had suggested that the leaseholders were willing to pay the balance of £2826.33 of Timberwise's outstanding account less both survey fees, subject to completion of :
 - investigating the crack properly and carrying out the correct works – Timberwise agreed to offer to attend to this item
 - sanding and filling the whole building and then redecorating as in the surveyors' reports – Timberwise did not agree that this was necessary, in BCB's opinion
 - refunding the surveyors' costs
 - correctly cleaning the driveway as it had been painted to a

poor standard – Timberwise agreed to offer to attend to this item

- stating that, subject to prior payment to Napier, Timberwise would accept the reduced amount of £2000 including VAT, to include both survey fees
- u. a letter dated 19 February 2010 from Timberwise to Napier (bundle 2 page 93) offering to settle the matter by paying the survey fee of £560 direct to Mr Edwards, and issuing a credit note for £2826.33 as compensation to reduce the final contract outstanding invoice value
- v. a letter dated 7 August 2014 from Mr Edwards (bundle 1 pages 118 and 119), summarising the problems experienced, including water ingress causing damage in the ground floor lounge, additional cracking on all walls as in photograph [not before the Tribunal], and poor finish, still clearly visible, and proposing two options :
 - option 1 :
 - remove render from all walls and redo to the high standard paid for
 - future cracking
 - inspect and replace where needed the RSJs in the walls which for the past six years had not been protected by the removed lead tray and probably damaged by water ingress through the crack
 - option 2 :
 - clad or redo render on cracked walls and compensate leaseholders for the below-standard finish
 - refund the money for the mesh not being done
 - inspect and deal with the RSJ damage
 - refund the money for the poor supervision of the project
- w. an e-mail from Napier dated 3 September 2014 (bundle 1 page 120), stating that :
 - there was an issue with the cladding, as the lease did not permit improvements, and there would be an ongoing issue with maintenance
 - the surveyor had said that the lintel did not need replacing, and therefore it would be treated, and the render repaired
 - the contractor would return the next day to :
 - expose the friable brickwork above the lintels and repoint as required
 - wire brush the steel RSJ
 - treat the RSJs with Hammerite rustbeater
 - prepare area to receive cement render
 - supply stainless steel mesh
 - apply cement render
 - cut out and repair cracks at high level
 - when this was complete, damage inside Mr Edwards's flat could be addressed

The lease of the Property

7. The material provisions of the lease are as follows :

Brief particulars and definitions

(4) The development is situated at 30 Somerset Road.....

“Common parts” shall mean the main structure of roofs external walls and foundations and those other parts of the development not included in any lease or tenancy granted by the Lessor

“Service Charge” shall mean the Lessees contribution (by way of additional rent) towards the Lessors costs throughout the term for the services described in the Fourth Schedule of this Lease such contribution to be the Lessors proportion of the Lessors costs described in Clause 1 of the Fifth Schedule of this Lease

Building : the parts of the Phase comprising the block of private residential apartments shown edged in blue on plan number 3

Premises : Flat 23 shown edged red on plan number 2

The Third Schedule

The Lessees obligations

14 To pay all expenses (including solicitors costs and surveyors fees) incurred by the Lessor incidental to the preparation and service of any notice under section 146 of the Law of Property Act 1925 notwithstanding forfeiture is avoided otherwise than by relief granted by the court

The Fourth Schedule

The Lessors obligations

4 To manage and repair the Development including the service media and Common Parts

5 To repair renew clean paint glaze maintain and when necessary rebuild the Common Parts

11 To pay the costs of any managing agents appointed by the Lessor.....

The Fifth Schedule

(Agreements and declarations)

1(a) The Lessee shall pay to the Lessor without deduction the Service Charge being the relevant proportion of the cost and expenses of the Lessor in performing its obligations as are detailed in the Fourth Schedule

Inspection

8. The Tribunal inspected the Property on the morning of the hearing

9. Also present were Mr Edwards, Mr Boon and Mrs Lacey-Payne
10. The Tribunal found the Property to be a detached, two-storey building with a basement, under a pitched, tiled roof, and with rendered elevations, on the corner of Somerset Road and York Place
11. The west elevation, fronting Somerset Road, had thin horizontal cracks at ground floor ceiling height. The front section of the north elevation, fronting York Place, also had thin horizontal cracks at the same level. The front section of the south elevation also had thin horizontal cracks at the same level. The ridge tile at the right-hand end of the north-south roof ridge was of a different colour from the other ridge tiles

The hearing

12. Attending the hearing were Mr Edwards, Mr Boon and, until 13.10, Mrs Lacey-Payne

The issues and the Tribunal's findings

13. The nature of this application

14. The Tribunal noted at the hearing that in documents in the bundles the parties had used expressions such as "compensation" and "settlement", and that the parties appeared to have approached the issues in this application as if it had been a court case involving claims for breach of contract or negligence
15. However, the Tribunal indicated that the substantive issues in this application were payability by the Applicants of service charges in relation to the 2007 works for the purposes of sections 18, 19 and 27A of the 1985 Act, and, in particular, whether the 2007 works were carried out to a reasonable standard and at a reasonable cost

16. 2007 : major works £8576.55

17. Mr Edwards said that the reference to this sum in his application was to his one-third share of Timberwise's account. The issue before the Tribunal in this respect was the failure to install mesh on the west and north elevations in 2007 in accordance with Mr Poole's specification. Mr Edwards estimated that the cost of doing so in 2007 would have been about £2500 to £3000. Remedial works in 2014 had included the installation of a band of mesh, but it had been too narrow, and had not been properly fixed to the brickwork
18. Mrs Lacey-Payne accepted that mesh had not been installed to the west and north elevations in 2007, and agreed Mr Edwards's estimate of £2500 to £3000

19. Mr Boon said that the Respondent had retained £2826.33 from the amount owing to Timberwise, as shown in the letter dated 2 October 2009 from Timberwise (bundle 1 pages 84 and 85). The Respondent would have to check the service charge accounts to confirm Mr Boon's suspicion that that retention sum had been charged to leaseholders through the service charge
20. The Tribunal indicated that, subject to considering contrary submissions, the Tribunal proposed to find that mesh should have been, but had not been, installed to the west and north elevations in 2007, that the retention sum of £2826.33 was an appropriate figure to attribute to the cost of doing so in 2007, and that £2826.33 was accordingly not payable by the leaseholders by way of service charge in respect of that item
21. Neither party made any contrary submissions
22. The Tribunal accordingly finds that £2826.33 is not payable by the leaseholders by way of service charge in respect of that item
- 23. 2007 : surveyor's fee £1049**
24. Mr Edwards said that the reference to this figure in his application was to the whole of the figure for this item in the service charge account at bundle B1 page 11. Mr Edwards had been on site throughout the carrying out of the 2007 works, and he had never seen Mr Poole on site
25. Mrs Lacey-Payne said that the Respondent accepted that Mr Poole had had cancer at the time, and that that might have affected his supervision of the works, but supervision was not just about site visits, but was also about administering the project and signing off contractors' invoices
26. Mr Boon said that the figure of £1049 comprised Mr Poole's supervision fee of £800.99 (at 3% of the net contract sum) and the Napier fee of £229.13 shown in Napier's letter dated 4 January 2007 at bundle 1 page 6, but the only invoices from Mr Poole in this respect which the Respondent had been able to find were the ones at bundle 2 pages 23 (£349.69) and 26 (£250), totalling £593.69. The fact that Mr Poole had rendered invoices referring to overseeing the works was an indication that he had in fact done so
27. Mrs Lacey-Payne said that Mr Poole's had charged the two invoices at 5%, rather than 3%, but these were both still very reasonable charges, as supervision fees were typically between 9% and 12%
28. Mr Edwards said that he was not challenging the fact that Mr Poole had charged at 5% rather than 3%, nor the figure of £229.13 for Napier's fees

29. The Tribunal indicated that, subject to considering contrary submissions, the Tribunal proposed to find that £593.69 was payable in respect of Mr Poole's supervision fee of £800.99, and that the balance of £207.30 was accordingly not payable by way of service charge in respect of the sum of £1049

30. Neither party made any contrary submissions

31. The Tribunal accordingly finds that the sum of £207.30 is not payable by way of service charge in respect of this item

32. 2008 : damp and remedial works £1292

33. Mr Edwards said that the reference to this figure in his application was to his one-third share of the figure of £3876 in the service charge account at bundle 1 page 63

34. Mr Boon said that the service charge account had included figures for the 2007 works of £26412 for 2007 and £3876 for 2008 (bundle 1 page 63), making a total of £30288

35. However, Mr Boon said that the figures available showed only £29844 payable, made up as follows

initial contract sum	26699.53
additional 5% of initial contract sum of 26999.53	<u>1334.97</u>
	28034.50
additional works	<u>1809.50</u>
	29844.00

36. Mr Boon said that there was accordingly a difference unaccounted for of £444

37. The Tribunal indicated that, subject to contrary submissions, the Tribunal proposed to find that £444 was accordingly not payable by way of service charge in respect of the sum of £3876

38. Mr Boon made no contrary submissions

39. Mr Edwards made no contrary submissions in relation to the sum of £444, but said that he was also challenging the additional 5% of the contract sum (£1334.97) and the additional works (£1809.50)

40. *The additional 5% of the contract sum (£1334.97) : Napier's letter dated 14 May 2007 at bundle 1 page 9*

41. Mr Edwards said that he was challenging this item because of the Respondent's failure to comply with the consultation procedure under

section 20 of the 1985 Act in this respect

42. The Tribunal indicated that the test was whether the leaseholders had been prejudiced by the failure to consult : **Daejan Investments v Benson** [2013] UKSC 14
43. Mr Edwards said that if the leaseholders had been consulted about Timberwise increasing their prices, the leaseholders could have approached the other contractors who had tendered, namely Three Way Building (for whom Mr Edwards said he had worked at the time) and Don Hobbs, to see if they would have held their prices, and could have approached other contractors and requested estimates
44. Mr Boon said that there was no prejudice, because there was no evidence that a section 20 consultation would have led to any financial benefit, and, in any event, the letter from Napier dated 14 May 2007 had been before the commencement of the works, and had given the leaseholders the opportunity to make the enquiries referred to by Mr Edwards. Mr Edwards had worked for Three Way Building at the time, and would have challenged the 5% increase if he had thought that it was unreasonable
45. ***The additional works (£1809.50) : Napier's letter dated 15 January 2008 at bundle 1 page 13***
46. Mr Boon said that this figure comprised the following items referred to in Timberwise's letters dated 2 July 2007 (bundle 2 page 22) and 7 and 9 August 2007 (bundle 2 pages 24 and 25) and Timberwise's invoice dated 31 October 2007 (bundle 2 page 45) :
- | | |
|--|---------------|
| unstable brickwork, pipes and leadwork | 916.50 |
| gables | 716.75 |
| lintel | <u>176.25</u> |
| | 1809.50 |
47. The Tribunal referred to the decision in **Phillips v Francis** [2014] EWCA 1395 and asked Mr Edwards whether he was challenging the lack of consultation in relation to these items under section 20 of the 1985 Act. Mr Edwards said that he was not
48. Mr Edwards said that although he did not recall any lintels being replaced, he was not challenging this item
49. However, Mr Edwards said that he was challenging the other two items, which had arisen only because of Timberwise's poor workmanship
50. Mrs Lacey-Payne referred to Mr Poole's e-mail dated 13 February 2008 (bundle 2 page 49), and said that it had not been possible to assess the condition of the wall until the removal of the render

51. Mr Edwards said that the wall involved had been single skin, so that there was no question of it having had wall ties, so that Mr Poole's reference to wall ties in paragraph (a) of his e-mail was an indication that Mr Poole had not visited the site, so that it was difficult to follow how he could have known that the mortar joints were "powder", as suggested in paragraph (b) of his e-mail

52. The Tribunal finds, in relation to the sum of £3876, that :

- a. the sum of £444 is not payable, for reasons indicated at the hearing
- b. in relation to the additional 5% of the contract sum, the Respondent did not follow the consultation procedure under section 20 of the 1985 Act, but the Tribunal is bound by the decision of the Supreme Court in **Daejan**, and is not persuaded that the leaseholders have suffered any prejudice as a result, and accepts as persuasive Mr Boon's submissions in that respect; the Tribunal accordingly finds that the sum of £1334.97 is payable by way of service charge in this respect
- c. in relation to the additional works amounting to £1809.50 :
 - the Tribunal is not persuaded by Mr Edwards's assertions that the work to the unstable brickwork, pipes and leadwork was unnecessary, or that the work was not carried out to a reasonable standard, or that the sum charged was unreasonable, and accordingly finds that the sum of £916.50 is payable by way of service charge
 - however, the Tribunal accepts as persuasive Mr Edwards's evidence (as recorded in the Greenward report at bundle 1 page 43) that the work to the gables resulted from the use of inappropriate tools; in making that finding the Tribunal has taken account of Mr Poole's assertions in his e-mail, but the Tribunal accepts Mr Edwards's comments about Mr Poole's reference to wall ties, and the Tribunal is not persuaded by Mr Poole's assertions; the Tribunal accordingly finds that the sum of £716.75 is not payable by way of service charge
 - the sum of £176.25 in relation to the lintel is not in issue before the Tribunal

53. 2008 : surveyor's fees £106

54. Mr Edwards said that the reference to this figure in his application was to the whole of the figure for this item in the service charge account at bundle 1 page 63. He did not know what it related to

55. Mr Boon said that he had no submissions in relation to this item

56. The Tribunal indicated that, subject to contrary submissions, the Tribunal proposed to find, in the absence of any evidence, that this item was not payable by way of service charge

57. Neither party made any contrary submissions

58. The Tribunal accordingly finds that this item is not payable by way of service charge

59. 2013 : building repairs £1411

60. Mr Edwards said that the reference to this figure in his application was to the whole of the figure for this item in the service charge account at bundle 1 page 113

61. Mr Boon said that the sum of £1411 comprised the following items :

a. internal redecoration	775.00
b. light repair	83.94
c. external work to path	552.00

62. Mr Edwards made no submissions about the light repair and the path. However, in relation to the internal redecoration, the work had been only the painting of the walls of the communal hallway, for which the cost should have been no more than £400. He said that there had been no consultation under section 20 of the 1985 Act in relation to that item, but, in answer to a question from the Tribunal with reference to the decision in **Phillips v Francis**, Mr Edwards said that he was not challenging the lack of consultation in relation to the light repair and the path

63. Mr Boon accepted that the figure for internal redecoration exceeded the section 20 limit by £25, but made no further submissions

64. The Tribunal finds, in relation to the sum of £1411, that :

- a. the Tribunal accepts as persuasive Mr Edwards's submission that the sum of £775 related to the painting of the walls of the communal hallway, and that a reasonable sum for carrying out that work in 2007 would have been only £400; the Tribunal accordingly finds that the sum of £375 is not payable by way of service charge in relation to this item
- b. there is no issue before the Tribunal in relation to the light repair or the path work, and the Tribunal accordingly finds that the sums of £83.94 and £552.00 are each payable by way of service charge

65. 2014 : management fee £237

66. Mr Edwards said that the reference to this figure in his application was to his one-third share of the figure of £712 in the service charge account at bundle 1 page 130. Napier had stopped responding to the leaseholders and were not managing the block

67. Mr Boon said that the fees were reasonable for managing a block of this size, and were in line with the fees charged in other years, for example, £773 in 2011 (bundle 1 page 109), £780 in 2012 (bundle 1 page 113) and £638 in 2013 (bundle 1 page 130). The Respondent accepted that the relationship between Napier and Mr Edwards had broken down, but Napier had nevertheless carried out their duties as managing agents in, for example, sending out demands, arranging for the preparation of accounts and budgets, and arranging insurance

68. Mr Edwards said that by 2014 Napier had not been replying to the leaseholders, which had resulted in Mr Edwards having to write the letter dated 6 August 2014, following advice from the Citizens Advice Bureau

69. The Tribunal finds that :

- a. the Tribunal accepts that the relationship between Napier and Mr Edwards had broken down by 2014, but finds that it is clear from the papers before it that Napier were still managing the block, despite that breakdown in relationship
- b. the fees charged equate to approximately £198 plus VAT for each of the three flats, and are reasonable for the work actually carried out
- c. this sum is payable by way of service charge

70. 2015 : major works £1887

71. Mrs Lacey-Payne accepted that this sum was not payable by way of service charge

72. The Tribunal accordingly finds that this sum is not payable by way of service charge

73. 2015 : administration charge £150

74. Mr Edwards said that the reference to this figure in his application was to the charge in an invoice from Napier to him dated 3 August 2015 at bundle 1 page 134

75. In answer to questions from the Tribunal, Mr Boon said that :

- a. the Respondent was not challenging the Tribunal's jurisdiction to make a decision about the payability of this item in this application, even though it was not an item of service charge
- b. the Respondent had power under the lease to make such a charge, namely under paragraph 14 of the third schedule, in that a reference of the arrears to solicitors was part of the process of preparing and serving a notice under section 146 of the Law of Property Act 1925

76. Mr Edwards said that the sum demanded in the solicitors' letter was in

dispute

77. The Tribunal finds that :

- a. the Tribunal is not persuaded, on the facts of this case, that the administration charge of £150 was “incidental to the preparation and service of any notice under section 146 of the Law of Property Act 1925”, in that :
 - the solicitors’ subsequent letter dated 5 August 2015 (bundle 1 page 138) described the sums demanded in their letter as “service charges ground rent and fees due”
 - service charges, according to the definition section in the lease, are payable under the lease by way of additional rent
 - section 146 of the Law of Property Act 1925 does not apply to non-payment of rent : section 146(11)
 - the costs of a demand for rent and additional rent therefore cannot be “incidental to the preparation and service of any notice under section 146 of the Law of Property Act 1925”
 - in any event, although the solicitors’ letter ends by stating that failure to comply with the demands in the letter would lead to “legal proceedings” and might “ultimately result in the loss of your leasehold interest”, there is no reference in that letter, or in Napier’s invoice dated 3 August 2015, to the preparation and service, or even to the contemplation of the preparation and service, of any notice under section 146 of the Law of Property Act 1925
- b. this item is therefore not payable by way of administration charge under the lease

78. 2016 : management fee £257

79. Mr Edwards said that the reference to this figure in his application was to his one third share of the service charge figure of £771.01 in an invoice from Napier to him dated 19 December 2016 at bundle 1 page 145

80. However, Mr Boon said that the figure of £771.01 was one third of the budgeted service charge of £2313.00 for the year ending 23 September 2017, and that the management fee included in that figure of £2313.00 was £750

81. Mr Edwards agreed that his challenge in respect of this item was solely to the management fee of £750

82. The parties agreed that the same points arose as had been raised in relation to the 2014 management fee, and that there were no additional points

83. The Tribunal finds that :

- a. it is clear from the papers before it that Napier were still managing the block at the date of the budgeted service charge demand dated 19 December 2016, despite the continued breakdown in their relationship with Mr Edwards
- b. the fees charged equate to approximately £208 plus VAT for each of the three flats, and are reasonable for the work actually carried out
- c. this sum is payable by way of service charge

Section 20C of the 1985 Act

84. Mr Boon said that no legal costs were being charged to the Respondent in relation to these proceedings, and on that basis, the Respondent would not oppose the making of an order under section 20C

85. The Tribunal accordingly orders that none of the costs incurred, or to be incurred, by the Respondent in connection with these proceedings are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the leaseholders

Appeals

86. A person wishing to appeal against this decision 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

87. 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

88. 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 admit the application for permission to appeal

89. 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 which the person is seeking

Dated 23 October 2017

.....
Judge P R Boardman