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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**CHI/29UB/LAC/2014/0002** **CHI/29UB/LBC/2013/0042**
Property	:	**103 Beaver Road, Ashford, Kent TN23 7SF**
Applicant	:	**SE Powerbase Ltd**
Representative	:	**Ms Madjirska-Mossop of Mayfield Law, solicitors**
Respondent	:	**Fred Shellock**
Representative	:	**In person**
Type of Application	:	**In the matter of applications under the Commonhold & Leasehold Reform Act 2002 Sch.11 para 5 (Determination of liability to pay administration change) and s.168(4) (Breach of Covenant).**
Tribunal Members	:	**Judge M Loveday (Chairman)** **C Harbridge FRICS**
Date and venue of Hearing	:	**12 December 2014** **Ashford Tribunal Centre**
Date of Decision	:	**5 January 2015**

DECISION

INTRODUCTION

1. These are combined applications (1) for a determination as to liability to pay administration charges (CHI/29UB/LAC/2014/0002) and (2) for a determination that a breach of a covenant or a condition in the lease has occurred (CHI/29UB/LBC/2013/0042). The applications relate to 103 Beaver Road, Ashford, Kent TN23 7SF. The Applicant is the freehold owner of the property and the Respondent is the lessee.

2. The application relating to the breach of covenant was heard by a differently constituted tribunal ("the First Tribunal") on 17 June 2014 and a determination was given on 1 August 2014. On the same day, the Tribunal gave directions adjourning the administration charges application for separate consideration. On 14 October 2014, the Applicant renewed the administration charges application and the matter was listed for hearing on 12 December 2014.

3. On 4 November 2014, the Applicant also sought a separate order for costs under Rule 13(1) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Rules") arising from the Respondent's conduct of the hearing on 17 June. However, at the hearing on 12 December, the Applicant's solicitor gave oral notice that this part of the breach of covenant application was withdrawn. The Tribunal unconditionally consents to the withdrawal of this part of case no.CHI/29UB/LAC/2014/0002 under Rule 22(3) of the Rules.

4. The remaining issue is therefore the application for a determination of liability to pay administration charges under Leasehold Reform Housing and Urban Development Act 2002 Sch.11 para 5 ("the Act").

5. At the hearing, the Applicant was represented by Ms Madjirska-Mossop of Mayfield Law, solicitors. The Respondent appeared in person. The Tribunal is grateful to both Ms Madjirska-Mossop and the Respondent for their helpful and succinct submissions.

THE ADMINISTRATION CHARGES

6. The renewed application sought a determination of liability to pay three administration charges:
   a. A charge of £3,750 for legal costs incurred by the Applicant between 12 June 2012 and 6 August 2013: Statement of Costs dated 27 February 2013. This charge was demanded in writing on 4 September 2013.

b. A charge of £11,613.86[1] for legal and surveyor's costs incurred by the Applicant between 7 August 2013 and 19 September 2014: see Second Statement of Costs dated 4 November 2014. This charge was demanded in writing on 19 September 2014.

c. A charge of £190 for the Tribunal Court fee for the June 2014 hearing. This was demanded in writing on 3 October 2014.

7. The Respondent's lease is dated 12 October 1979 and it includes a proviso for re-entry at clause 6. The Applicant sought payment of the above sums under the lessee's covenants at clause 4(17):

> "(17) To pay all costs charges and expenses (including solicitors costs and surveyors fees) incurred by the Lessor for the purpose of or incidental to the preparation and service of a notice under Section 146 of the Law of Property Act, 1925 notwithstanding forfeiture may be avoided otherwise than by relief granted by the Court."

8. Both parties accept that:

a. The sums demanded by the Applicant were "administration charges" within the meaning of Sch.11 para 1 of the Act;

b. The Applicant in fact incurred the costs set out in the three demands, and;

c. The demands were each accompanied by the prescribed information required by Sch. 11 para 4 of the Act.

The issues in dispute were:

(1) Whether the charges are recoverable under clause 4(17) of the lease, and;

(2) To the extent that the administration charges are recoverable under the lease, whether the charges are reasonable under Sch. 11 para 2.

FACTS

9. The background to the dispute is set out in the First Tribunal's decision and need not be repeated here.

10. As far as the facts of the present application are concerned, Ms Madjirska-Mossop relied on the two Statements of Cost referred to above which were supported by various fee notes and other documents. The Statements of Cost each included a narrative section followed by an itemised statement in tabular form itemising the work done, the

[1] Note that the sum demanded on 19 September 2013 was £11,491.17. At the hearing, the Applicants pointed out that the demand was based on the Second Statement of Costs, which included a casting error of £100. The Tribunal has adopted the correct figure rather than the figure which appeared in the demand. In the event, the error makes no difference to the Tribunal's substantive decision below.

number of units of work recorded by Mayfield Law, the hourly rate charged and disbursements.

11. The First Statement of Costs can be summarised as follows:
    a. Period 9 May 2012 to 21 May 2012 ("Part 1"). The solicitors undertook 20 units of work for an initial meeting with the client, writing to the Respondent and considering documents on the file. This work included a letter from Mayfield Law (the Applicant's solicitors) to Kingsfords LLP (the Respondent's then solicitors) dated 16 May 2012, which is referred to below. Mayfield Law charged its client a rate of £190 per unit for work carried out by Ms Madjirska-Mossop. The total legal costs were therefore £456 (including VAT).
    b. Period 22 May 2012 to 11 June 2012 ("Part 2"). The solicitors undertook 26 units of work for similar matters to the above and charged their client a rate of £190 per unit. The total legal costs were therefore £592.80 (including VAT).
    c. Period 12 June 2012 to 5 September 2012 ("Part 3"). The solicitors undertook 47 units of work for similar work to the above, but also spent time instructing an expert (Mr Ford) and correspondence with a third party (Mr McMillan). Calculated at a rate of £190 per unit, the total legal costs were therefore £1,071.60 (including VAT).
    d. Period 6 September 2012 to 6 August 2013 ("Part 4"). The solicitors undertook 32 units of work for attending the client, the Respondent and Mr Ford. There were also disbursements for Mr Ford's report (£750 + VAT). At a rate of £190 per unit, the legal costs during this period were therefore £1,629.60 (including VAT).

12. The Second Statement of Costs can be summarise as follows:
    a. Period 7 August 2013 to 3 December 2013 ("Part 1"). The solicitors undertook 63 units of work for taking instructions, preparing a service charge demand, advising he client, communicating with the Respondent and drafting the application to the Tribunal in relation to the determination of the breach of covenant. The solicitors charged their client a rate of £190 per unit. The total legal costs were therefore £1,436.40 (including VAT).
    b. Period 13 December 2013 to 3 March 2014 ("Part 2"). The solicitors undertook 200 units of work for preparing witness statements and evidence, drafting a Statement of Case, preparing the trial bundle, legal research, dealing with the Applicant, the Respondent, the Land Registry and the Tribunal

and drafting the present application. The solicitors again charged a rate of £190 per unit and these costs were therefore £4,856.66 (including VAT).

c. Period 14 March 2014 to 19 September 2014 ("Part 3"). The solicitors undertook 174 units of work for attending the Applicant, its expert (Mr Ford), the Respondent, the Respondent and the Tribunal, for preparing for/attending the hearing and a separate item for "drafting s.146 notice" (6 units). In addition, there were disbursements for "Post Office" (£15.85) and Printing (£64.79). At a rate of £190 per unit, these costs amounted to £4,060.80 (including VAT).

13. As stated above, there was a separate charge of £190 for the FTT hearing fee on 17 June 2014.

14. The Applicant produced a copy of Mr Ford's report. It also produced a copy of the s.146 notice itself dated 19 September 2014. The notice was sent to the Respondent under cover of a letter from the solicitors on the same date. The s.146 notice referred to the Leasehold Property (Repairs) Act 1938 and cited alleged breaches of clauses 4(4), 4(5) and 4(21) of the lease. The notice included a brief Schedule of Works under eight headings, stating that "the dilapidations are described in more detail in the report on the condition of the property prepared by Graham Ford and in the decision of the Southern Residential Property First-tier Tribunal CHI/29UB/LAC/2014/0002". On 24 September 2014, Kingsfords LLP served a counter-notice on behalf of the Respondent, claiming the benefit of the 1938 Act.

15. The Respondent did not challenge the evidence of these costs.

ARE THE COSTS WITHIN THE LANGUAGE OF CLAUSE 4(17)?

16. The Applicant's case. Para 4 of the Applicant's Statement of Case dated 3 November 2014 states at that all the amounts "are payable pursuant to clause 4(17) of the" lease.

17. Ms Madjirska-Mossop made more detailed oral submissions to the Tribunal in respect of the language of the covenant. In essence, she relied on two arguments.

18. First, she submitted that covenants such as clause 4(17) were "pretty standard" and that the language was widely worded. Once a s.146 notice was served (as it had been in this case), clause 4(17) gave rise to a liability to pay all the landlord's costs in "contemplation" of the service of such a notice. The provision used the word "all" costs and charges and expressly included costs and charges for both "solicitors

and surveyors". As an ordinary use of language, costs which were for the "purposes of or incidental to" a s.146 notice covered anything spent in "commencing the process towards forfeiture".

19. Secondly, Ms Madjirska-Mossop's submitted that the scope of clause 4(17) must be determined in the light of legislative constraints, and in particular in the light of s.168 of the Act. Under s.168, no s.146 notice could be served until a breach of covenant to be "admitted" by the lessee or "finally determined" by a tribunal, court or other arbitral tribunal. These steps were (in Ms Madjirska-Mossop's words) a "necessary precondition to service of a s.146 notice". Anything connected with such steps were therefore "incidental to" the preparation or service of a s.146 notice within the words of clause 4(17).

20. Ms Madjirska-Mossop took the Tribunal through the various charges claimed to support the above arguments. As far as Part 1 of the First Statement of Costs was concerned, the letter dated 16 May 2012 specifically referred to clauses 4(17) and 6 of the lease and stated that the Applicant intended to appoint a surveyor to prepare a report "for the purposes section 146 notice [sic]". The letter and the other initial work in 2012 were therefore "commencing the process towards forfeiture". There was another letter from Mayfield Law dated 11 June 2012 which mentioned the need to serve a s.146 notice. Essentially all the costs incurred at that time arose from the Respondent's failure to respond satisfactorily to these letters. In essence, without repeating lengthy submissions made in respect of each item of cost, the correspondence, issuing of the Tribunal application, the hearing in June 2014 and the subsequent service of the s.146 notice were all in contemplation of service of the s.146 notice itself.

21. If she was wrong about the extent of the costs covered by clause 4(17), Madjirska-Mossop submitted that a more limited range of costs was undoubtedly recoverable. These included the cost of drafting the s.146 notice itself (£114 + VAT), the cost of serving the notice and the costs of Mr Ford's report (£750 + VAT). The report had been prepared not only for the Tribunal hearing, but also for the purpose of the s.146 notice and the terms of the report were carried through into the schedule of breaches in the notice. However, Ms Madjirska-Mossop stressed that clause 4(17) did not use any words of limitation and that it was a general indemnity clause covering all the charges claimed.

22. The Respondent's case. Para 11 of the Respondent's Statement dated 18 November 2014 (which he confirmed had been drafted by solicitors) states that:

> "I do not accept that the totality of the alleged costs claimed can properly be attributable to costs incurred for the purpose of or incidental to the preparation of the Section 146 notice".

The Respondent said he was not a lawyer, but he adopted this interpretation argument drafted by his solicitor. He could not really assist the Tribunal with the construction of clause 4(17) of the covenant, other than to say that the provision required payment of the s.146 notice alone. He did accept that drafting the notice (£114 + VAT) fell within the provision, but nothing else. The bulk of the Respondent's submissions addressed the question whether the charges were reasonable: see below.

23. Discussion. The administration charges in this application concern the type of indemnity covenant considered by the Court of Appeal in Freeholders of 69 Marina, St Leonards on Sea v Oram [2012] EWCA Civ 1258; [2012] L.&T.R. 4. In the very recent case of Barrett v Robinson [2014] UKUT 0302 (LC), the Deputy President however advised Tribunals to take care when dealing with such indemnity covenants:

> "57. Clauses such as clause 4(14) are regularly resorted to for the recovery of costs incurred in proceedings before the First-tier Tribunal where that tribunal has made no order of its own for the payment of such costs. The costs claimed often substantially exceed the service charge originally in issue in the proceedings in which they were incurred. Where a First-tier Tribunal has to determine whether such costs are recoverable as an administration charge it is important that it consider carefully whether the costs come within the language of the particular clause .... But the decision [in 69 Marina] does not require that whenever a lease includes such a clause the landlord will necessarily be entitled to recover its costs of any proceedings before the First-tier Tribunal to establish the amount of a service charge or administration charge. It is always necessary to consider the terms of the particular indemnity covenant and whether any relevant contemplation or anticipation existed in fact in the circumstances of an individual case. In this case it did not, so clause 4(14) provided no route to recovery by the respondent."

24. Although the above passage was not referred to by either party, both Ms Madjirska-Mossop and the Respondent quite sensibly accepted at the hearing that it was necessary to consider whether the

administration charge in this case came within the language of clause 4(17) of the lease.

25. It should be said that neither party referred to any provision of the lease other than clause 4(17) as an aid to construction and no authorities were drawn to the Tribunal's attention on interpretation. Ms Madjirska-Mossop submitted, and the Tribunal accepts, that previous decision of Tribunals on the effect of differently worded indemnity provisions (such as 69 Marina or Barrett v Robinson) are in any event of limited assistance in ascertaining the intention of the parties to the provisions of this particular lease.

26. The starting point, as always, is the language of the lease itself. As Ms Madjirska-Mossop submitted, the words "for the purposes of and incidental to" are of wide import. However, these words do not stand alone in clause 4(17). The words "for purposes of or incidental to" qualify the gerund phrase "the preparation and service of a notice under Section 146 of the Law of Property Act", rather than purporting to apply to the wider process of forfeiture. This is clear from the express use of the word "forfeiture" in the separate context of the proviso to clause 4(17). The words of the clause very much focus on the specifics of the s.146 notice itself, rather than on the more general processes involved with the forfeiture of a lease of a dwelling-house.

27. This narrow interpretation of clause 4(17) is supported by the fact that the clause itself expressly refers to only two features of the forfeiture process, namely the "preparation" of a s.146 notice itself and "service" of such a notice. The Tribunal considers that some meaning needs to be attached to these words. Had the draftsman intended the indemnity to extend to all steps taken in contemplation of forfeiture, it is unlikely he would have referred to two such limited aspects of the process which are so closely connected with the notice. One would have expected to see some more general reference to the recovery of costs relating to earlier steps in the forfeiture process.

28. Moreover, there is another way in which the words "preparation and service of a notice under Section 146 of the Law of Property Act" support a narrow interpretation of the covenant. If Ms Madjirska-Mossop is right, and the words "for the purposes of and incidental to" the s.146 notice are apt to cover all stages of forfeiture leading up to the service of a s.146 notice, the words "preparation and service of" would be mere surplusage. The Tribunal considers that some effect needs to be given to these words. They cannot simply be ignored

29. Finally, the Tribunal does not agree with Ms Madjirska-Mossop that the words "for the purpose of or incidental to" a s.146 notice mean costs incurred in "contemplation" of the service of such a notice. "For the purpose of" is an ordinary English phrase, suggesting something closely connected to the design or effect of the notice. Similarly, the words "incidental to" suggest a non-essential part of the notice process, but still something intimately connected with the notice itself. These words cannot generally be extended to cover all steps preparatory to a notice, no matter how reasonable or necessary it may be for a landlord to take those steps.

30. The Tribunal does not consider that the provisions of s.168(1) provide any direct assistance with interpretation of clause 4(17) of the lease. Ms Madjirska-Mossop pointed out (quite correctly) that before a landlord could serve a s.146 notice, it is now effectively a statutory requirement for a landlord to incur costs either by obtaining an agreement from the tenant or a decision of a Tribunal or court. However, the meaning of clause 4(17) is ascertained as at the date of the lease, namely 12 October 1979. Section 168 came into force on 28 February 2005: Commonhold and Leasehold Reform Act 2002 (Commencement No.5 and Saving and Transitional Provision) Order 2004/3056. One cannot ascertain the intention of the parties from legislation which came into force over a quarter of century after they committed their agreement to writing.

31. However, the Tribunal finds the legislative background to the lease in 1979 provides some evidence of the 'matrix of fact' at the date the covenant was agreed. As stated above, the requirement for a determination by a court or tribunal before a s.146 notice could be served was first introduced in 2005. Before that date, there were no material restrictions on the forfeiture of residential leases other than s.146 itself and s.2 of the Protection from Eviction Act 1977. At the date of the lease in 1979, a landlord could forfeit the lease of a dwelling-house merely by serving a s.146 notice (perhaps supported by a schedule of dilapidations prepared by a surveyor) and by issuing possession proceedings. There was no need to establish a breach and incur substantial pre-notice costs. Moreover, any post-s.146 notice costs incurred by the landlord could be recovered either as a condition of relief against forfeiture or by an order for costs in court. At the date this lease was entered into, the landlord did not therefore need to recover all its costs "in contemplation of" service of a s.146 notice. All it needed was a contractual provision enabling it to recover the costs of drawing up and serving the s.146 notice itself and preparing a schedule of repairs (if relevant).

32. In short, as a matter of interpretation, the Tribunal finds that clause 4(17) only permits the Applicant to recover (1) the solicitors' costs for the preparation of the s.146 notice of 19 September 2014, (2) the costs of serving the notice, and (3) any surveyors' costs for the preparation of the s.146 notice. The precise charges payable by the Respondent for these matters are dealt with below. However, they exclude almost all the costs in the First Costs Statement (apart from Mr Ford's report), almost all the costs in the Second Costs Statement (apart from the solicitors' cost of drafting and serving the s.146 notice) and they also exclude the hearing fee of £190 sought in the third administration charge demand.

ARE THE CHARGES REASONABLE?

33. In the light of the above, it is strictly speaking unnecessary to consider whether the bulk of the administration charges set out in the three demands are reasonable under Sch. 11 para 2. The Tribunal has found that the Respondent is only required to pay a small element of those charges. However, in case the matter proceeds further, the Tribunal will deal fairly briefly with the reasonableness of the charges in the three demands.

34. The Respondent's case. It is perhaps more convenient to start with the Respondent's objections.

35. The Respondent did not dispute the reasonableness of the hourly rate of £190 charged for Ms Madjirska-Mossop's time, and he accepted it was reasonable for her to handle the breaches of covenant herself. The Respondent also accepted that the number of units of work charged by Mayfield Law were not excessive for the various tasks undertaken.

36. As far as the First and Second Statement of Costs were concerned, the Respondent argued that these charges were not reasonable because the Applicant had pursued a number of alleged breaches which the Respondent disputed and which the Tribunal eventually rejected. These included allegations relating to chimney repairs, drains and trees. He submitted that most of the work in the First Statement of Costs related to these three items.

37. Secondly, it was not necessary to commission an expert report from Mr Ford. There was already a report from Ashford BC dated 2 September 2011. The Respondent referred to a copy of that report in the bundle.

38. The Respondent then addressed the specific costs of preparing and serving the s.146 notice. He argued it was not reasonable to pay

anything for the notice, since there had never been a need to serve the notice in the first place. The Respondent stated that he had agreed to carry out work in the Ashford BC survey. He would have rectified the matters the FTT found to breaches of the lease, had those been the only matters in issue. Moreover, the allegations of breach required legal interpretation, and it was therefore not unreasonable to dispute them.

39. If, contrary to the above, it was reasonable to pay something for the s.146 notice itself, the Respondent accepted that the charges could reasonably include something for Mr Ford's report of April 2013. However, the Respondent stressed that most of Mr Ford's report dealt with alleged breaches which were found in the Respondent's favour by the First Tribunal or which the Respondent had always been happy to rectify.

40. In relation to the hearing fee of £190, the Respondent submitted that it was wholly unnecessary to go to the Tribunal, and that a charge for the hearing fee was not reasonable.

41. Finally, the Respondent stated that he had incurred over £16,000 in meeting the Applicant's allegations (over and above the Applicant's own costs). As a result of the allegations of breach, he was now totally without any funds and in receipt of benefits. The Applicant's conduct, and the charges made by it, were wholly disproportionate to a dispute that largely involved a chimney stack.

42. The Applicant's case. In her initial submissions, Ms Madjirska-Mossop addressed the Tribunal in some detail about the work covered by the two Costs Statements. She produced an extract from the most recent Guideline Hourly Rates for Solicitors (2011), which showed that an hourly rate of £190 was rather less than a Grade B solicitor practising in the "National 1" area. However, in the light of the concessions made by the Respondent, it is unnecessary to rehearse the details of the work carried out or the Applicant's justification for each item of cost in the two Statements.

43. As far as the arguments made by the Applicant in relation to reasonableness, Ms Madjirska-Mossop dealt with these fairly succinctly in her closing submissions. Her response can be summarised as follows:

    a. It is of course true that the First Tribunal found that certain alleged breaches were not made out, but the majority of the breaches were established. The Respondent had not remedied many of the breaches prior to the First Tribunal hearing in June,

and indeed some of the work was still outstanding. The chimney was not the only issue. The reality was that throughout the period between May 2012 and June 2014, the Respondent had simply not agreed to carry out most of the work. Charges which covered the correspondence during this time, the application to the Tribunal and the subsequent service of the s.146 notice had therefore been reasonable.

b. Mr Ford's report had been absolutely necessary. It did not duplicate the Ashford BC report. The Ashford BC report was a Condition Survey, rather than a report into breaches of covenant. By contrast, Mr Ford was an expert and he specifically looked at breaches of covenant. The Applicant stressed that most of Mr Ford's report dealt with alleged breaches which were found in its favour by the First Tribunal.

c. If the charges were limited to the costs of preparing and serving the s.146 notice alone, these charges should reasonably include the cost of preparing the notice (£114 + VAT) and part of the disbursements for the Post Office (£15.85). The charge should also cover the cost of Mr Ford's report of April 2013 (£750 + VAT). Those costs were partly incurred for the purpose of the Tribunal hearing, and in part for the preparation of the s.146 notice.

d. The Applicant contended that it was reasonable to incur a charge for hearing fee for the present matter. The hearing fee was not dependent on the scope of the issues involved in the hearing. It was a fixed fee and it was perfectly reasonable to incur the fee where the Respondent contested all liability to pay the administration charges.

e. As far as the general complaints were concerned, the Applicant argued that the costs were proportionate to the many breaches established, and that the overall costs were not excessive.

44. Discussion. The main argument is that it is not reasonable to pay the charge, because the underlying costs dealt with many alleged breaches which were either unfounded or admitted. The Tribunal refers to the First Tribunal's conclusions in that respect. Paragraphs 69-72 summarise the findings of the Tribunal as follows:

> "69. The Tribunal determines under s.168(4) of the Commonhold and Leasehold Reform Act 2002 that breaches of clause 4(4) of the Lease dated 12 October 1979 have occurred as follows:
>
> a. Defective external rendering.
> b. Perished / bridging of the Damp Proof Course.
> c. Rot to timber fascias soffits and bargeboards.

d. Internal plaster defects at ground floor level
e. External decoration.
f. Internal decorations in the majority of rooms.

70. The Tribunal also determines under s.168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of clause 4(5) of the Lease dated 12 October 1979 has occurred in that the timber fascias, soffits and bargeboards have not been decorated in every third year of the term.

71. The Tribunal further determines under s.168(4) of the Commonhold and Leasehold Reform Act 2002 that a breach of clause 4(21) of the Lease dated 12 October 1979 has occurred in that the garden of the premises has not been kept tidy."

The short answer to the submission made by the Respondent is that the First Tribunal found substantial breaches of covenant had taken place. It is true that the First tribunal did not uphold a number of the Applicant's allegations of breach, but the breaches itemised in paras 69-71 of its decision show that the First Tribunal upheld the substance of the complaints. Moreover, insofar as the Respondent admitted other breaches of covenant, those breaches had not been remedied before the hearing in June 2014. The First Tribunal's record of the inspection (First Tribunal decision paras 7-17) shows that works were in progress, but only some two years after the breaches were first drawn to the attention of the Respondent. The dispute was not therefore simply about a chimney – as argued by the Respondent. The Tribunal therefore finds it was not unreasonable on this basis to incur the costs of the correspondence, the First Tribunal hearing in June 2014 and the preparation and service of the s.146 notice or the hearing fee for the present application.

69. The Tribunal has also carefully considered the contents of both the Ashford BC report and Mr Ford's report. It agrees with the Applicant that the former could not reasonably be used for the purposes of either the First Tribunal hearing or the preparation of the s.146 notice. It is a condition report which does not even refer to the covenants of the lease. It also lacks the detail of the defects that a Tribunal would find necessary for the purposes of finding a breach of repairing covenants or which would have to be supplied in a s.146 notice. The Tribunal therefore concludes that Mr Ford's work did not duplicate the Ashford BC report and that it was not unreasonable for the landlord to incur the cost of Mr Ford's report.

70. On the basis that the recoverable administration charges are limited to the costs of preparing and serving the s.146 notice alone, the Tribunal concludes that a charge of £114 + VAT (£136.80) for the solicitor's cost of drafting the notice itself is reasonable. The Tribunal rejects the Respondent's criticism of these costs. The First Tribunal established breaches of covenant and the s.146 notice was served after that determination. Similarly, the Tribunal considers a small charge for the cost of s.146 notice would also be reasonable. Although we are not told the actual costs of serving the notice in this case, the total disbursements by the solicitors in respect of "Post Office" costs were £15.85 during the relevant period. Doing its best, the Tribunal allows a notional figure of £3.20 for posting the s.146 notice. It therefore finds that a reasonable administration charge for these items would be £140.

71. The lease expressly allows recovery of surveyor's costs of preparing the s.146 notice. The Tribunal accepts (for the reasons given by Ms Madjirska-Mossop) that it was reasonable to make a charge for the surveyor's costs in this respect. However, the Respondent accepts that the April 2013 report was partly prepared for the purpose of the First Tribunal hearing and partly for the s.146 notice. Doing its best, the Tribunal therefore allows 50% of the cost of Mr Ford's report, namely £375 + VAT (£450). A reasonable administration charge relating to the solicitor's and surveyor's costs of preparing and serving the s.146 notice is therefore £140 + £450 (£590).

72. The Tribunal further accepts Ms Madjirska-Mossop's submission on the £190 cost of the hearing fee for June 2014 hearing. The fee was not dependent on the scope of the issues involved in the First Tribunal hearing. It was reasonable to incur it.

73. The Tribunal therefore rejects all the specific criticisms made of the charges which were incurred. However, that is not the only consideration. It may well be that clause 4(17) of the lease in this case provides for a contractual indemnity, but the limitation in Sch.11 para 4 requires the Tribunal to take into account a wider range of factors that are material to reasonableness. In particular, costs jurisdictions commonly provide for a court to take into account proportionality. The overriding objective in para 3 of the Rules also states that in dealing with a case justly, the Tribunal ought to do so in a way which is "proportionate to the importance of the case". Although the overriding objective applies only to the application of the Rules themselves, it is a useful reminder that proportionality is always a material factor when considering the reasonableness of charges relating to legal and other enforcement costs.

74. In this case, on the basis that clause 4(17) required the Respondent to pay all the charges in the three demands, the Tribunal would have found that administration charges of £15,553.86 were not proportionate to the breaches of covenant in this matter. In essence, the Applicant has been required to incur costs on correspondence, to issue two Tribunal applications, conduct a two day Tribunal hearing and serve a s.146 notice. The costs of £15,553.86 (not to mention the Respondent's own legal costs of £16,000) are likely to exceed the total cost of remedying the breaches identified by the First Tribunal. They are not, in the view of this Tribunal, proportionate. The Tribunal would therefore have allowed 50% of those costs as a reasonable administration charge (£7,776.93).

75. However, for the reasons given above, the scope of clause 4(17) is much more limited. A reasonable administration charge relating to the solicitor's and surveyor's costs of preparing and serving the s.146 notice alone is £590.

CONCLUSIONS

76. The Tribunal finds that the scope of clause 4(17) of the lease is limited to recovery of (1) the solicitors' costs for the preparation of the s.146 notice of 19 September 2014, (2) the costs of serving the notice, and (3) any surveyors' costs for the preparation of the s.146 notice.

77. On this basis, the Respondent is liable to pay to the Applicant administration charges of £590.

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Judge MA Loveday (Chairman)
5 January 2015

Appeals

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