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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/29UN/LIS/2013/0016
Property	:	Braeside, 8 Western Esplanade, Broadstairs, Kent CT10 1TF
Applicants	:	(1) Judith Ann Russell (Flats 1&5), (2) Terence Stead (3) Patricia Stead (Flat 2) (4) John Morgan (5) Patricia Morgan (Flat 4) (6) Sandra Hatt (Flat 6) (7) Peter Harper (Flat 7)
Representative	:	Mr Wade Barker
Respondent	:	Peppercorn Property Investment Ltd (landlord)
Representative	:	Ms Miriam Shalom of counsel
Type of Application	:	Landlord and Tenant Act 1985 s.27A
Tribunal Members	:	Judge Mark Loveday Mr Chris Harbridge FRICS Mr Peter Gammon MBE BA
Date and venue of Hearing	:	9 October 2013, Broadstairs
Date of Decision	:	7 November 2013

DECISION

Introduction

1. This is an application for a determination of liability to pay service charges under s.27A of the Landlord and Tenant Act 1985 ("LTA 1985"). The matter relates to charges demanded over a period of six years from the lessees of six flats in a converted house on the seafront in Broadstairs.

2. The background can be stated relatively briefly. The Respondent is the freehold owner of the property at Braeside, Western Esplanade, Broadstairs Kent CT10 1TF. The property (which is decribed in more detail below) essentially comprises six flats in a main building, with four annexes (described somewhat inaccurately as "the bungalows") to the rear. By six leases made in 1962[1], the flats were demised for 99 years from 29 September 1961. The following were the material provisions of Schedule 6 to the leases:

> "20. The Lessee shall keep the Lessor indemnified from and against the due proportion (as defined by the next succeeding clause) of all costs charges and expenses incurred by the Lessor in carrying out its obligations under the Seventh Schedule hereto or otherwise for the benefit of or in connection with the reserved property or the property generally.
>
> 21. Within one month after receipt of written notification from the Lessor of the sum due from the Lessee under this clause to pay the Lessor a due proportion of the amount by which the Lessor shall estimate that the cost expenses and charges in connection with the Lessor's obligations under the Seventh Schedule hereto during the succeeding six months from the date of the estimate shall exceed the balance at the date of the estimate of the maintenance fund hereinafter referred to. The due proportion aforesaid shall be based (a) as to the costs expenses and charges in connection with the Lessor's obligations under the Seventh Schedule hereto relating to the block of six residential flats known as Braeside on the rateable values for the time being of the flats and shall be in the proportion which the rateable value of the premises bears to the aggregate of the rateable value of all the six flats included in Braeside and (b) as to the remainder of the costs expenses and charges in connection with the Lessor's obligations under the Seventh Schedule hereto in the proportion of one tenth thereof."

3. It should be said that the leases for the bungalows apparently differed, although the bungalow lessees were not parties to this application.

4. Until April 2012, the premises were managed by a firm of managing agents Belmonte Commercial Ltd ("Belmonte"). In April 2012, Belmonte

[1] According to the application, the lease for Flat 5 was granted on 27 October 1994 for a term of 125 years from 29 September 1992. This appears to have replaced an earlier lease made in about 1962.

was replaced by a new firm of agents, The Block Management Company Ltd ("BMC"). On 11 February 2013, 8 WE RTM Company Ltd acquired the right to manage the property under the Commonhold and Leasehold Reform Act 2002.

5. By an application dated 7 February 2013, the six applicants applied to the Leasehold Valuation Tribunal for a determination of liability to pay service charges and insurance charges for the service charge years ending 31 December 2008 to 31 December 2013. The charges in dispute were included in two tables subsequently set out in a witness statement prepared by the First Applicant Mrs Russell dated 22 March 2013. Appendix A and Appendix B of this decision substantially reproduce these two tables, with a number of amendments made by the Tribunal (i) to give details of the demands for payment in the bundles and (ii) to reflect the demands that were withdrawn during the course of the proceedings.

6. Directions were given and a pre-trial review took place on 28 May 2013, during the course of which Peppercorn was joined as the sole Respondent to the application. On 25 June 2013, BMC withdrew five previous demands for payment of interim charges dated 13 December 2011, 20 March 2012, 6 July 2012, 1 October 2012 and 19 December 2012 and issued fresh service charge demands for 2012 as follows:

    a. Flat 1: £1,041.19.
    b. Flat 2: £937.31.
    c. Flat 4: £1,002.24.
    d. Flat 5: £937.31.
    e. Flat 6: £764.17.
    f. Flat 7: £764.17.

    The Leasehold Valuation Tribunal was of course superseded by the first-Tier Tribunal with effect from 1 July 2013.

7. A hearing took place on 9 October 2013. The Applicants were represented by a lay representative, Mr Wade Barker, while the Respondent was represented by Ms Miriam Shalom of counsel. Both parties gave oral submissions at the hearing. During the hearing, the Tribunal invited the parties to prepare further written submissions in relation to the form of demands and the Upper Tribunal decision in ***Johnson v County Bideford*** [2012] UKUT 457 (LC). The Tribunal is grateful to both Mr Barker and Ms Shalom for the succinct and helpful way in which their submissions were presented.

Inspection

8. The Tribunal inspected the premises before the hearing. Braeside is a substantial Victorian three storey house which stands on a large plot of land having a frontage to Western Esplanade, Broadstairs. The property sits in an elevated position overlooking the cliffs. The Tribunal was advised that the house was built in 1894, and converted into six self-

contained flats in about 1960, and this is consistent with what was seen on inspection. The six flats are referred to in the documentation as "Braeside Flats". Construction of the main building is traditional with brick and colour-washed roughcast rendered elevations, all beneath pitched, tile clad roof slopes which incorporates dormer windows. Retained, original windows are framed in timber with some replaced with PVC modules.

9. Attached to the main building, off the rear and northern flank elevations, are two single storey additions which accommodate four self-contained residential units, referred to in the documentation as "Braeside Bungalows". These are of similar age and construction to the main building with, in addition, some asbestos and felted roof surfaces.

10. At the rear of the complex described above and (it appears) formerly within the grounds of Braeside, is a modern, multi-storey block of flats called Viking Court. Viking Court retains a vehicular access along the flank of Braeside to the public highway at Western Esplanade.

Statutory Provisions

11. The relevant provisions of LTA 1985 referred to in this decision are:

> **"18 Meaning of "service charge" and "relevant costs"**
>
> (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a [dwelling] as part of or in addition to the rent—
>
> (a) which is payable, directly or indirectly, for services, repairs, maintenance[, improvements] or insurance or the **landlord's** costs of management, and
>
> (b) the whole or part of which varies or may vary according to the relevant costs.
>
> (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the **landlord,** or a superior **landlord,** in connection with the matters for which the service charge is payable.
>
> (3) For this purpose—
>
> (a) "costs" includes overheads, and
>
> (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.
>
> **"19 Limitation of service charges: reasonableness**
>
> (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—
>
> (a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

"27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c)the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

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

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6)An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

...

"21B Notice to accompany demands for service charges

21B(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.[2]

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand"...

12. The relevant provisions of the Landlord and Tenant Act 1987 ("LTA 1987") referred to in this decision are:

"47 Landlord's name and address to be contained in demands for rent etc.
(1)Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—
(a) the name and address of the landlord, and
(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.
(2) Where—
(a) a tenant of any such premises is given such a demand, but
(b) it does not contain any information required to be contained in it by virtue of subsection (1),
then (subject to subsection (3)) any part of the amount demanded which consists of a service charge ("the relevant amount") shall be

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[2] *The Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007 (S.I. 2007/1257) prescribe the statement which is to be included.*

treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

...

(4)In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy."

Witness evidence

13. Both parties called witnesses of fact (each of whom produced witness statements and who were cross-examined) and referred to documents to support their respective cases. The Applicants relied on evidence of the First Applicant Mrs Russell (witness statements dated 22 March 2013 and 16 September 2013), the Second Applicant Mr Morgan (witness statement dated 15 September 2013) and the Seventh Applicant Mr Harper (witness statement dated 15 September 2013). The Respondent relied on evidence of its director Mr Martin Nathan (witness statement signed at the hearing).

14. In examination in chief, Mrs Russell said that the leaseholders did not have a good working relationship with the managing agents, and that this had led her to query the "proposed charges" levied by BMC. She also said that the documentation that she had received about insurance had come from agents called Flats Insurance Consultants ("FIC"). This did not provide a sufficient breakdown of premiums charged in order to enable her to ascertain whether their calculations were in accordance with her lease. She denied the existence of any agreement with the freeholder as regards the charging of insurance outside of the service charge regime. She said that she now realised that no service charge demands should have been given in 2008, and complained that accounting records for Braeside were not correctly maintained. In particular she stated that during negotiations to acquire the right to manage, it had emerged that service charges collected from the six flats had been held by Belmonte in their general client account. Belmonte had mixed the charges with other sums relating to Viking Court and other clients. In cross-examination, Mrs Russell confirmed that she had been a leaseholder of Flat 4 since 2006 and Flat 1 since 2008 and that she had not been a party to any discussions regarding insuring the block that may have taken place in the 1980s. She told the Tribunal that she did not know that she was able challenge service charge demands, although the leaseholders had discussed matters between themselves. She believed that if she had complained, the freeholder would not have responded, and in any event at the time her property concerns were not a top priority for her. She also confirmed that she had never complained to the freeholder directly about the insurance costs, nor the fact that she was being billed directly by FIC. Mrs Russell stated that the managing agents did very little work (indeed she had never seen representatives of either Belmonte or BMC on site) and what they did was improperly supervised, leading to deterioration. She confirmed that matters had not been bad enough for her to make a complaint in the past.

15. Mr Morgan also confirmed that he had not had a good working relationship with Belmonte or BMC, and that he had queried BMC's service charges through Mrs Russell. Like Mrs Russell, he confirmed that insufficient information had been supplied to him by FIC, and that he now realised that he had been overcharged by FIC in respect of insurance - because the insurance costs had been incorrectly apportioned. He confirmed that he had made no alternative agreement with the freeholder as regards service charge demands and had he known of his rights, he would have challenged these matters further. In cross-examination, Mr Morgan confirmed that he had been a leaseholder of his flat since 1994 and he had not been a party to any discussions regarding insuring the block that may have taken place in the 1980s. He had been paying his insurance demands directly to the insurance brokers since 1994 and had never complained to the freeholder or the managing agents. Since 1994 he had been paying ground rent directly to Peppercorn Investments, and the demands (which had remained in the same format since 1994) set out the landlord's address at the bottom and made clear that Peppercorn was the landlord.

16. Mr Harper's evidence in chief was similar to that of Mrs Russell and Mr Morgan. He was not happy with the work of the agents and had queried BMC's service charges through Mrs Russell. He was not provided with sufficient documentation by FIC and said that he had been overcharged due to incorrect apportionment. He also had made no alternative agreement with the freeholder as regards service charge demands and had he known of his rights he would have challenged these matters further. Mr Harper said that his rateable value was considerably less than the one-sixth charge that was levied, and he has thus made considerable overpayments, especially given that he said he should not have been charged anything at all in 2008. In cross-examination, Mr Harper confirmed that he had been a leaseholder since 2002 and was not party to any discussions regarding insuring the block that may have taken place in the 1980s. He had not made a written complaint about the service charge demands and confirmed that he had received ground rent demands from Peppercorn with Peppercorn's name and address written on them. Mr Harper was shown an electronic version of a ground rent demand dated 12 September 2013 which he confirmed was in the same form as the demands that he had received. He confirmed that the address on the demand, 78 Hanover Road, was an address that he knew to be the landlord's address, but he couldn't remember if this address had changed since 2002.

17. In his evidence, Mr Nathan pointed out that at no time did the leaseholders complain about the service charges or insurance. He said that the leaseholders agreed in 1983 that insurance should not be a service charge item, and since that time the practice had been for the insurance brokers to send demands for insurance directly to the owners of each flat. For some years the block insurance had been placed with Aviva/Norwich Union and Mr Nathan highlighted the benefits of

Aviva's insurance policies. He also confirmed that his Managing Agents had made regular visits to the property, as it was in his interests to have the property well maintained. Mr Nathan admitted that 78 Hanover Road was not the registered office of the Respondent, but it was a place where they had an office and carried on business. He confirmed the Bluefin were Peppercorn's agents for insurance purposes, rather than FIC. In cross-examination, Mr Nathan was asked why the policy that he had placed with Aviva excluded liability for coastal erosion, this being a cliff top property. He said that this was a mistake; the property was covered for coastal erosion. He explained that he remained with Aviva because of his business relationship with them, and confirmed that Bluefin took a commission from the insurer when they arranged a policy. Mr Nathan stated that he was not aware of the way in which Belmonte had issued service charge demands, and had assumed that they had complied with the requirements. He stated that the leases were varied in 1983 in order to ensure that insurance payments were made promptly, and practice continued in this way. There were no written records of the variation, even though Mr Nathan said that this practice was in place across a number of his blocks.

Service charges: the Applicants' case

18. Mr Barker referred to the demands for payment of charges which are summarised in Appendix A. Between December 2007 and 20 March 2012, the demands were issued by Belmonte. He gave an example of one of the Belmonte demands which was typical of the rest of the demands made between December 2007 and April 2012. This is demand for payment in the sum of £167 for Flat 5 (the Fourth and Fifth Applicant) dated 15 December 2007. The demand refers to "25/12/2007 Service Charges to 25/03/08". There was no other information on the demand other than the address and contact details for "Belmonte – The Letting Specialists". After BMC took over in April 2012, there were rather different demands. The demands gave an address for service under LTA 1987 s.47 and were accompanied by summaries of rights and obligations under LTA 1985 s.21B. As an example, Mr Barker referred to a demand for Flat 5 dated 6 July 2012 for a sum of £167.50 "Due 24th June 2012".

19. The Applicants' first submission was that none of the Belmonte demands for service charges complied with the terms of the leases:
    a. the demands for payment were not a "further rent [of] the yearly sum of Twelve Pounds Ten Shillings" (or its decimal equivalent of £12.50) as a contribution to the Maintenance Fund demanded quarterly in advance on the usual quarter days.
    b. the demands for payment were not "a due proportion" of the Lessor's relevant costs as required by clause 21 of Schedule 6. The demands sought an equal contribution from each flat (see Appendix A) whereas the rateable values of each flat differed. The Applicants had done their own apportionment calculations based on the actual rateable values for each Flat (see para 9 of the "Response to Respondent's Statement of Case" dated 16

September 2013), but the underlying rateable values for the flats were not produced to the Tribunal.

c. the sums demanded were not based on any "estimate ... [of] the cost expenses and charges in connection with the Lessor's obligations under the Seventh Schedule ... during the succeeding six months". They were a simple quarterly figure which had been adopted for many years without reference to any estimated costs.
d. there was no attempt to take into account any "balance at the date of the estimate of the maintenance fund" under clause 21.
e. until 2012 it had not even been possible properly to calculate what ought to have been paid, since there was simply not enough information. After 2012, BMC had provided some information.
f. Mr Barker submitted that these requirements were fundamental to the service charge provisions in clauses 1 and para 21 of Sch 6 to the leases, and that the provisions had to be complied with as a condition precedent to any liability for service charges.

None of the sums demanded by Belmonte were therefore payable.

20. The Applicants' second argument was that none of the demands for payment of service charges before 20 March 2012 were in the correct statutory form. The Belmonte demands did not include the name and address of the landlord under the Landlord and Tenant Act 1987 s.47(1). The first demands which contained any reference to s.47(1) were the BMC demands dated 6 July 2012. Mr Barker referred to ***Beitov Properties v Elliston Bentley Martin*** [2012] UKUT 133 (LC) and ***Triplerose v Grantglen Limited*** [2012] UKUT 0204 (LC) to support his contention that a failure to include the name and address of the landlord was fatal to any liability to pay those charges. Similarly, he pointed out that none of the Belmonte demands were accompanied by a summary or rights and obligations as required by LTA 1985 s.21B(1). As a result of s.21B(3) there was again no liability to pay the sums set out in the Belmonte demands.

21. In her further written submissions dated 16 October 2013, the First Applicant accepted that some information had been given to the Applicants about the landlord. However, she suggested there was no evidence that any demands prior to 6 July 2012 included the landlord's proper name and address as required by s.47(1)(a) or (b). As to the ground rent demands which the Fourth and Seventh Applicants admitted receiving, there was no evidence as to which name and address had been given. The ground rent demand in electronic form referred to in cross-examination was for Viking Court and it may or may not have been in the same form as the ground rent demands for the subject flats. It was in any event a very recent demand which may or may not have been representative of older demands, it gave notice under LTA 1987 s.48 (rather than notice under LTA 1987 s.47) and the information given was in any event ambiguous. As to the later demands for payment given by BMC, these did not cure any defect in the earlier Belmonte demands, since the requirement of s.47 was for the information to be given "on the demand": see ***Triplerose*** at paras 12 and 13.

22. The Applicants' third argument was that certain of the landlord's relevant costs were not reasonable under LTA 1985 s.19. The Tribunal pointed out to Mr Barker that the demands for service charges issued by Belmonte up 29 September 2011 were *prima facie* interim charges, and that these would be covered by the test in LTA 1985 s.19(2), namely whether the "amount" of each quarterly interim "service charge" (or its annual equivalent) was "reasonable". By contrast, the replacement demands dated 25 June 2013 issued by BMC were balancing charges, which appeared to be covered by the rather different test in LTA 1985 s.19(1), namely whether the landlord's "relevant costs" were "reasonably incurred". Mr Barker nevertheless advanced his arguments for both sets of demands on the basis that s.19(1) applied.

23. Apart from insurance (which is dealt with separately below), the only element of the landlord's relevant costs which was challenged under s.19(1) was the cost of employing managing agents. Mr Barker referred to service charge accounts for 2009-2012 (dated 10 May 2013) which suggested the following relevant costs had been incurred on management fees for Belmonte and BMC:

Year ending 31 December	Relevant Cost
2009	£353
2010	£360
2011	£360
2012	£386

The Tribunal was not referred to any invoices from the two agents in this respect. Mr Barker argued that the agents failed to maintain the fabric of the building, leading to greater costs being incurred for repairs. Belmonte had also mixed together service charge moneys from the subject premises and Viking Court, in breach of the rules that applied to statutory trusts, and both agents failed to apply the terms of the leases in calculating service charges. He submitted that nothing should be allowed for management fees up to 2011, and that after that only 75%% of BMC's fees should be allowed.

24. In his closing submissions, Mr Barker addressed two new matters in relation to the replacement service charge demands dated 25 June 2013. First, he suggested that the s.47 notices set out in those demands did not give the landlord's registered office. Instead they gave an address at 78 Hanover Road London NW10 3DR. Secondly, he submitted that the demands still contained discrepancies. In particular, he referred to a spreadsheet headed "Combined Expenditure Breakdown for Braeside Flats and Bungalows for the service charge year ended 31/12/2012" which BMC had produced to support the calculations for each flat. The spreadsheet suggested that the Respondent incurred relevant costs of £1,149 on gardening in 2012. However, 10% of the cost of this (£114.90) was allocated to each flat – with the same allocated to each of the four bungalows. This was not the apportionment given in clause 21 of Schedule 6.

Service charges: the Respondent's case

25. The Respondent conceded that in some respects the demands from 15 December 2007 to 20 March 2012 in Appendix A (namely the Belmonte demands) were not in accordance with clause 21 of Schedule 6. First, the Respondent accepted that clause 21 required an estimate to be made during a period of "six months" and that this required payment for a six monthly period. Instead, the demands were each for three month periods. Secondly, the Respondent accepted that the figures demanded from the lessees for the period had not changed in any of the 18 quarters up to March 2012– being a single figure of £167.50 for each flat for each quarter. However, Ms Shalom submitted that if the estimated relevant costs were stable over the period this was not an incorrect way for the landlord to "estimate ... the cost expenses and charges" under clause 21. Thirdly, the Respondent accepted that it had not apportioned the estimated relevant costs between each flat in the way envisaged by the lease. Clause 21 required the landlord to calculate the "due proportion" of relevant costs in two ways, depending on whether the relevant costs related to the block containing the flats (based on rateable values) or other relevant costs (one tenth). Instead, an equal apportionment had been applied to each flat for each quarter for all the landlord's relevant costs. Finally, clause 21 required the charge to reflect any balance existing in the maintenance fund at the date of the assessment. The Respondent accepted that this had not been done.

26. Ms Shalom submitted that the breaches that were admitted did not amount in law to conditions precedent to liability. The above requirements were directory rather than mandatory. The overriding requirement in clause 20 of Schedule 6 was that the lessees were to "keep the Lessor indemnified from and against the due proportion ... of all costs" etc.

27. As to the demands for payment dated 13 December 2012, 20 March 2012, 6 July 2012 and 1 October 2012 and 19 December 2012, Ms Shalom stated that these had been withdrawn by the Respondent. They had been replaced by the new demands dated 25 June 2013 which related to the actual relevant costs incurred by the landlord in 2012. Those replacement demands gave a certified figure for actual relevant costs for the block (£7,008.99) and applied an apportionment percentage for each flat based on the rateable values as set out in clause 21. For example, the rateable value of the block was £1,081, the rateable value for Flat 1 was £211 and the apportionment for Flat 1 was therefore 19.52%. The fresh demands were not, however, made under clause 21 of Schedule 6 to the lease. They were made under clause 20, which contained the provision for recovering 'balancing charges' after the costs had in fact been incurred. The 2012 demands complied with the requirements of clause 20.

28. As to the statutory requirements, the Respondent accepted that the Belmonte demands did not contain the information required by LTA 1987 s.47. This was not the case with the BMC demands dated 25 June 2013, which did specifically state the landlord's name and address.

However, in respect of the demands up to March 2012, Ms Shalom relied on information subsequently furnished to the Applicants which satisfied the proviso to s.47(2). The witnesses had accepted in their evidence that the ground rent demands made by Belmonte had included the landlord's name and address (although these were not before the Tribunal). The same information was given in the more recent service charge demands. Ms Shalom submitted that ***Beitov*** was not relevant to this case. As to ***Triplerose***, this did not cover the situation where the name and address were given separately to the demand for payment. Ms Shalom further submitted that s.21B(3) was not intended to cover the situation where payments had already been made, but in any event the later demands made by BMC in 2012 satisfied the requirements of this provision.

29. In further written submissions dated 14 October 2013, the Respondent argued that LTA 1987 s.47 was complied with because the address given on the demand was the address where the landlord carried on business: see ***Beitov*** at para 11. The Respondent also argued that the only effect of LTA 1985 s.21B(3) was to entitle a lessee to "withhold payment of a service charge". Once a service charge was paid, s.21B(3) had no effect.

30. As to whether the costs of management were reasonably incurred, Ms Shalom argued that the charges up to March 2012 were interim charges under LTA 1985 s.19(2), so the arguments raised by the Applicants were generally speaking irrelevant. As to whether a charge of between £353 and £386 for managing a block of 6 flats was reasonable in amount, this was a fairly modest figure. In any event, the evidence from the witnesses that the agents did not visit was not conclusive. It may well be that the Applicants were simply unaware of visits, and Mr Nathan stated that the agents had carried out visits. As far as repairs are concerned, the lessees may feel aggrieved at the present state of repair, but there was no evidence of written complaints over the years.

Service charges: the Tribunal's decision

31. Contractual liability. The first question is whether the Respondent complied with the terms of the leases when seeking payment of the service charges.

32. The Respondent admits that in three respects the Belmonte demands failed to comply with clause 21 of Schedule 6. These three breaches of covenant are set out in para 25 above, and need not be repeated again here. In addition to the three admitted breaches, there is also the question whether the Respondent undertook an "estimate" of the cost expenses and charges under clause 21. On balance, the Tribunal finds that no "estimate" was in fact made by Braeside within the meaning of clause 21. In the context of this particular provision, the word "estimate" requires some process of calculation involving a separate consideration of the costs which were to be incurred by the lessor in any succeeding six month period. So much is clear from clause 21, which refers to both the relevant period of time and specifies the relevant costs to be considered for that period (the "costs expenses and charges in connection with [the

lessor's obligations] during the succeeding six months"). This "estimate" does not permit the adoption of a generic figure of £167.50 per quarter per flat without any independent consideration of the landlord's projected costs. The Tribunal rejects Ms Shalom's argument that the process of making an "estimate" every six months could properly produce the same figure of £167.50 per quarter per flat for a number of years. However, such an exercise properly carried out is inherently unlikely to produce a constant estimated cost over very many years, as in this case. Moreover, such evidence as there is does not suggest the landlord's relevant costs were in fact stable over the period from 2007 to 2012: see documents headed "summary of statements" from the Respondents for each year between 2002 and 2011. Finally, there was no evidence at all from the Respondent or Belmonte to suggest that the former did in fact exercise any independent judgment in reaching an "estimate" of the former's projected costs in any of the six month periods between 2007 and 2011. In short, the Tribunal accepts that during this period the Respondent also failed to comply with the requirement to "estimate" its' relevant costs as required by clause 21.

33. Was the failure to comply with these four requirements fatal to any liability to pay the interim charges demanded between December 2007 and September 2011? This question has been put on the basis that there were conditions precedent to the Applicants' liability to pay and that the requirements are mandatory. The Tribunal does not consider there is really any real difference to be made between these two considerations: the test has been put in various ways from time to time. For example, in the recent decision of the Upper Tribunal in ***Southwark LBC v Woelke*** [2013] UKUT 0349 (LC), the distinction was made at para 58 between "essential" elements of service charge machinery and what were described as "subsidiary, inessential or merely directory" elements. Applying this terminology, the Tribunal concludes that the four requirements set out above are "essential" elements of the service charge machinery. As far as clause 21 is concerned, the purpose of the clause is clear enough. That is to provide a machinery for assessing the money required by the landlord to discharge its obligations under Schedule 7 to the leases (taking into account the sums held in the Maintenance Fund) and to require the lessees to contribute a defined proportion of that requirement. However, the four breaches that have been admitted or established show that the charges in the Belmonte demands were for something of such a different quality that they bear no relationship whatsoever to the sums provided for in clause 21. The demands were not for the "due proportion" of expenditure defined by clause 21. They were not demands for a contribution to something that the lessor had "estimate[d]". They were not assessed by reference to what the lessor thought it would incur in the following six month period – or indeed any period of six months at all. They were not based on any assessment of costs by reference to the lessor's obligations under the Seventh Schedule. Taking all these points together, the Tribunal is satisfied that the demands made between December 2007 and September 2011 were of such different character to the sums provided for in clause 21 that they cannot be said to be recoverable under that provision. It may well be that

a deficiency in one respect would not have been fatal to recovery, but in this case the only part of clause 21 that has been complied with is that there has been "a written notification from the lessor of [a] sum due from the Lessee". That cannot possibly be enough to comply with the clause and to fix the Applicants with a liability to pay. Finally, the Tribunal rejects the argument that clause 21 is to be read in the light of clause 20. The latter is a very different provision dealing with a very different right to indemnify the landlord against relevant costs after those costs have been incurred.

34. As to the replacement BMC demands dated 25 June 2013, the parties urged the Tribunal to determine liability for these sums – notwithstanding the fact that the demands were issued after the present application was made. As far as contractual liability is concerned, there is no suggestion that the replacement demands dated 25 June 2013 complied with clause 21 of Schedule 6 to the lease. Instead, Ms Shalom argued that the replacement demands satisfied clause 20 of Schedule 6 to the lease. The Tribunal has been persuaded that clause 20, properly construed, is apt to cover the demands dated 25 June 2013. The demands seek an indemnity for costs charges and expenses. Those expenses have been "incurred" by the Respondent. The costs *prima facie* related to costs etc falling within obligations under Schedule 7 to the leases. The apportionment of costs again appears (arithmetically) to follow the apportionment defined as the "due proportion" in clause 21 of Schedule 6 the lease. The only substantive criticism raised by the Applicants was that there were discrepancies in the replacement demands. However, the only matter specifically mentioned was an apportionment of 10% of the cost of gardening to each flat. However, such an apportionment of "other costs" outside the block itself appears to follow the definition of "due proportion" in clause 21(b) of Schedule 6.

35. LTA 1987 s.47 and LTA 1985 s.21B. The second question is whether any of the service charges are not payable as a result of a failure to comply with LTA 1987 s.47 and LTA 1985 s.21B.

36. As far as s.47 is concerned, none of the written demands given by Belmonte between 15 December 2007 and 20 March 2012 included "the name and address of the landlord" as required by s.47(1). There is only limited evidence as to the information that may have been furnished by the Respondent in ground rent demands that were not produced to the Tribunal. Given the passage of time, and the lack of detail given by the Fourth and Seventh Applicants in their evidence, the Tribunal would not hold as a fact that the landlord's proper name and address was set out in any such ground rent demands.

37. However, the Tribunal considers that as a matter of law, the Respondent is entitled to rely on the proviso to s.47(2), because the requisite "information" was "furnished" by way of the BMC service charge demands dated 6 July 2012, 1 October 2012 and 25 June 2013. It is true that the requirement in s.47(1)(a) is for the name and address of the landlord to be included in any "written demand for payment", but the the

remedial action contemplated by s.47(2) does not require the landlord to issue a fresh service charge demand for the same amount. All that s.47(1)(a) requires is for the requisite "information [to be] furnished to the tenant". The point was expressly made by the Upper Tribunal in ***County Bideford*** at para 10, where the landlord provided proper information about its name and address in a service charge demand for a later year. The Upper Tribunal held that this cured any failure to include s.47(1) information in demands for previous years' charges:

> "An invalidity that arises by virtue of a failure to comply with the requirements of section 47(1) is by contrast one that can be corrected and can be corrected with retrospective effect. That is what subsection (2) provides. In my judgment, therefore, the lessees' contentions based on section 20B necessarily fail. The service of the demands in June 2011 had the effect of validating the earlier demands, and the amounts payable, therefore, are those set out in the schedule to the LVT's decision of 2 June 2011."

This Tribunal further rejects the contention that the decision in ***Triplerose*** at paras 11 and 13 is authority for the proposition that the proviso to s.47(2) can only be satisfied by issuing new service charge demands for the interim charges. In ***Triplerose***, HHJ Walden-Smith rejected a contention that s.47 could be satisfied by the landlord providing its correct name and address in an application to the LVT:

> "11. The section 47 notice failed to correctly identify the landlord by incorrectly naming Paul Marsh rather than Grantglen Limited. Section 47 provides that the name and address of the landlord must be included in the demand.
>
> 12. The requirement to provide the name and address of the landlord is not simply for the purpose of providing the tenant with an address through which he can communicate to the landlord, it is to enable the tenant to identify the landlord (see *Beitov Properties Limited v Elliston Bentley Martin* [2012] UKUT 133 (LC)). Even if the inclusion of Grantglen Limited on the demand had no practical benefit in the circumstances of this case, it was a still a breach of the provisions of section 47(1) so that, pursuant to the provisions of section 47(2) of the LTA 1987, the service charge is not due before the information is furnished on the demand in accordance with section 47 of the LTA 1987.
>
> 13. The failure to include the name and address in accordance with section 47 could not be rectified by the provision of the name and address on the application to the LVT. The statutory requirement is to provide the name and address of the landlord on the demand."

In ***Triplerose***, the Upper Tribunal concluded that a statement in an LVT application could not satisfy s.47. The facts can be distinguished from those in the present case and ***County Bideford***, where the required "information" in s.47(2) is subsequently "furnished" in service charge

demands for later years. Moreover, it is clear that in para 13 of ***Triplerose***, the learned judge was addressing the issue of whether information had initially been given under s.47(1) rather than the very different question of whether 'remedial' information had been given under s.47(2). The Tribunal therefore follows ***County Bideford***, which is not distinguishable from the present application. It concludes that the Applicants cannot rely on LTA 1987 s.47(2).

38. As far as LTA 1985 s.21B(3) is concerned, the Tribunal rejects the argument raised by Ms Shalom that the provision has no effect once the Applicants paid their charges. The provision states that the lessees "may" withhold payment, and that right is one which the Tribunal must give effect to. Moreover, LTA 1987 s.27A(5) is a deeming provision which directs that the tenants are "not to be taken to have agreed or admitted any matter by reason only of having made payment". The only material demands for payment that were accompanied by summaries of rights and obligations were the replacement demands dated 25 June 2013. By contrast, the Belmonte interim service charge demands were not accompanied by any summary of rights and obligations. It follows that (had the Belmonte demands been payable), the Applicants could have withheld payment under LTA 1985 s.21B(3) unless and until the Respondent issues demands that comply with s.21B(1).

39. Finally, in relation to the replacement service charge demands dated 25 June 2013, these appear to comply with both LTA 1987 s.47(1) and LTA 1985 s.21B. The only issue raised was whether the address for the Respondent given in the demands ("78 Hanover Road London NW10 3DR") was a proper "address" for the landlord for the purposes of LTA 1987 s.47. It was admitted that this was not the registered office of the Respondent. However, there is nothing in the provision to suggest that the landlord may only satisfy s.47(1) by stating its registered office. A place where it carries on business may suffice: ***Beitov*** at para 11. The evidence from Mr Nathan was that the Respondent carried on business at 78 Hanover Road. In short, the demands complied with LTA 1987 s.47 and LTA 1985 s.21B.

40. Reasonableness. It is clear that the Belmonte interim service charge demands raised between 2007 and 2011 were charges "payable before the relevant costs [of the landlord] were incurred. The test to be applied to these under LTA 1985 s.19(2) is therefore whether the "amount" of those charges is "reasonable". By contrast, the replacement service charge demands dated 25 June 2013 relate to relevant costs that have been incurred. The test to be applied to these under LTA 1985 s.19(1) is whether the relevant costs have been "reasonably incurred" and (insofar as they relate to services) that "the services ... [were] of a reasonable standard".

41. In the light of the above, it is not really necessary to consider whether the interim charges were reasonable in amount. However, in case the matter goes further, the Tribunal finds that a quarterly interim charge for each flat was £167.50 is not "a greater amount than is reasonable". The charge

is equivalent to £670 per annum. Applying its own experience, and bearing in mind that this is a block directly exposed to the corrosive effects of wind and sea air, the Tribunal is satisfied that such a charge would not exceed the charge for any similar seafront property in East Kent.

42. As far as the replacement service charge demands are concerned, the only element of the landlord's relevant costs which is challenged is the cost of employing managing agents. This cost amounted to £386 during the 2012 calendar year: see table at para 23 above. There was no suggestion that the cost was in itself not "reasonably incurred" – indeed management fees of £386 a year are (in the Tribunal's experience) very modest for managing a block of six flats in Kent. The contention was rather that the management services provided by the agents were not of a "reasonable standard" under LTA 1985 s.19(1)(b).

43. The Applicants relied on three matters, which can be dealt with fairly briefly. The allegation that there had been "historic neglect" of the block by the agents was specifically levelled at Belmonte. The evidence was that in the 2012 calendar year, Belmonte only the managed the property from January to April, when they were replaced by BMC. There was no specific evidence that Belmonte failed to maintain the block during the first four months of 2012. The allegation that there had been a mixing of funds by the agent (in breach of the landlord's obligations to hold service charge money on a statutory trust under LYA 1987 s.42) was again not supported by evidence. The Tribunal was specifically referred to service charge accounts for 2012 (dated 10 May 2013) which plainly set out the sums held by the landlord in 2012 and how these were accounted for. Moreover, no explanation was given as to why the mixing or pooling of service charge cash for the block, Viking Flats and Braeside Bungalows would be a breach of trust. The only cogent evidence that the services provided by the agents were not of a reasonable standard is the fact that they issued service charge demands on 20 March 2012, 6 July 2012 and 1 October 2012 that did not comply with the terms of the leases. This was effectively conceded when the agents had to issue replacement demands on 25 June 2013. However, the Tribunal notes that the agents' fees in 2012 were only £386. This suggests that the menu of management services offered was very limited indeed. The Tribunal also notes that the new agents from April 2012 were attempting to improve management and there is evidence that they were regularising the accounting and management of the property (for example, proper service charge accounts appear for the first time in 2012). In the light of these considerations, the Tribunal does not consider that the default is sufficient to warrant a limitation of the 2012 management charges under LTA 1985 s.19(2) as suggested by the Applicants.

44. Summary. The Tribunal finds that the service charges demanded by Belmonte between 15 December 2007 and 29 September 2011 are not payable under the terms of the leases, and in any event such charges

would not be payable until the Respondent makes proper demands that comply with LTA 1985 s.21B.

45. However, the Tribunal finds that the replacement demands issued by BMC and dated 25 June 2013 complied with the terms of the leases, that the demands were in proper form, and that none of the relevant costs referred to in those service charges were unreasonably incurred.

Insurance: the Applicants' submissions

46. Mr Barker referred to a number of invoices headed "Application for Insurance Premium" summarised in Appendix B to these reasons. In each case, the invoices were sent by Flats Insurance Consultants ("FIC") of PO Box 299, Douglas, Isle of Man to the lessees. After 2009, the insurance invoices referred to Bluefin Underwriting Agency ("Bluefin"). The invoices did not include any details of the landlord and were not accompanied by any summary of rights and obligations.

47. The Applicants' first submission was that insurance contributions ought to be part of the service charges and that none of demands complied with the terms of the leases. Specifically, in relation to insurance, he referred to the case of ***Wrigley v Landchance Propertty Management Ltd*** [2013] UKUT 0376 (LC). In essence, the Applicants suggested that it was not permissible to issue *ad hoc* supplemental demands for insurance and he repeated they repeated their arguments in relation to the Belmonte service charges. In particular, the demands for payment of insurance sought the same contribution from each flat in each year, rather than apportioning the contributions according to rateable values. For example, the contribution by Flat 1 for 2007 was £302.16 (namely 16.66% of the total premiums for the six flats), whereas a percentage based on rateable values ought to have been 19.52%. Moreover, the respective figures appeared to be based on the cost of insuring each individual flat, rather than a proportion of the overall cost of insuring the block. Mr Barker submitted that these requirements were fundamental to the service charge provisions in clauses 1 and Sch 6 para 21 of the lease, and that the provisions had to be complied with as a condition precedent to any liability for insurance contributions.

48. The Applicants' second submission was that none of the demands for payment of insurance were in the correct statutory form. They did not include the name and address of the landlord under LTA 1987 s.47(1) and they were not accompanied by any summary of rights and obligations under LTA 1985 s.21B.

49. The Applicants' third argument was that the relevant costs of insurance were not reasonable under LTA 1985 s.19. At one stage, Mr Barker sought to raise arguments that the insurance brokers, Flats Insurance Consultants, was not a regulated body and that the insurance agreements were not enforceable under the Financial Services and Markets Act 2000 s.27. However, this was not pursued with Mr Nathan in cross-examination. Instead, the argument was twofold:

a. The premiums were excessive. The policy taken out by the Respondent on 25 September 2012 had a premium of £2,933, whereas the RTM Company obtained cover through the same brokers shortly afterwards in March 2013 for a premium of £1,594.77. Moreover, Mr Barker pointed to ways in which he said the March 2013 policy was more favourable. For example, the insured sum for the landlord's 2012 policy was £1,102,288 (compared to £1,290,000), the contents cover was for £10,000 (compared to £10,000), loss of rent cover was 40% (compared to 33.33%) and the property damage excess was £0 (compared to £250). Remarkably, for a building on a seafront cliff, the landlord's policy terms expressly excluded any liability for "coastal or river erosion" and general subsidence. The insurance policy taken out by the RTM Company in 2013 was 43% less than the landlord's policy taken out in September 2012. Doing his best, Mr Barker submitted that the relevant costs of all the premiums in Appendix B should be reduced by 43%.
b. The policy premiums included commissions. The Respondent had declined to give details of any of these commissions, but an allowance of 25% should be made for a rebate of commissions.

50. In closing submissions, Mr Barker dealt with the estoppel arguments raised by the Respondents. There had been no unambiguous or unequivocal representations to the effect that the terms of the leases did not apply.

Insurance: the Respondent's submissions

51. As far as the contractual position is concerned, Ms Shalom accepted that for some years insurance had not been demanded strictly in accordance with the terms of the lease. An arrangement had been arrived at whereby each year the lessees simply paid insurance contributions directly to the broker - rather than paying the landlord a due proportion of the costs of insuring the block. Ms Shalom submitted that the charges in Appendix B were not service charges within the definition of LTA 1985 s.18, and that the Tribunal had no jurisdiction to determine liability. She further submitted that this arrangement had displaced any liability under the leases. Although she accepted that as a proposition of law, a lease made by deed could only be varied by deed, she submitted that the lease terms had been varied by estoppel. When pressed by the Tribunal as to the nature of the estoppel, Ms Shalom submitted that this was an estoppel by representation or an estoppel by convention. The representations were made by the tenants' conduct in paying the contributions directly to the broker, those representations were clear and unequivocal, and the Respondent acted to its detriment by not collecting service charge contributions since at least 1994. As a result, the demands made by the broker were not demands for service charges under the leases – although the lessees might well be under a personal collateral obligation to pay the sums set out in those demands.

52. If this argument failed, and the Tribunal had jurisdiction in respect of the insurance demands, the Respondent accepted that LTA 1987 s.47 and LTA 1985 s.21B applied to the demands at Appendix B. Ms Shalom dealt with this issue at the same time as her submissions on the effect of the two statutory provisions on the service charge demands and essentially deployed the same arguments.

53. As to the reasonableness of the premiums, it was of course true that the Applicant had identified a cheaper premium. However, the policy taken out by the RTM company in March 2013 and the landlord's policy of September 2012 were not comparable. In particular, the landlord's 2012 policy was provided by a large insurer of repute (Norwich Union/Aviva) whereas the RTM Company's 2013 policy was with a smaller insurer Liberty Mutual. As to the exclusion clause in the former, Ms Shalom pointed out that the Applicants had not given notice of the line of argument, so the landlord had been unable to consider the exclusion clause with its brokers before the hearing – but that Mr Nathan did not consider the clause was applicable to this property. In any event, one could not simply make the suggested generic deduction to premiums in all years going back to 2007 on the basis of the evidence of premiums in 2012 and 2013.

54. As far as commissions were concerned, Ms Shalom referred to ***Williams v Southwark LBC*** (2011) 33 HLR 22. The essential point was that the landlord did not receive any commission or rebate in this case. Bluefin may well have received a commission from the insurer, but the agent provided services in lieu of those ordinarily provided by an insurer.

Insurance: the Tribunal's decision

55. The main argument in respect of insurance is in a sense a curious one. On the one hand, the Applicants argue that the Tribunal should determine that there is no contractual liability to pay the insurance contributions set out in Appendix B. On the other hand, the Respondent argues that the Tribunal should not make any determination that the insurance contributions are payable under the terms of the leases. Neither side therefore seeks a determination under LTA 1985 s.27A that the sums in Appendix B (or similar sums) are payable.

56. Estoppel. The estoppel argument was not apparently raised at any stage before the hearing itself. No criticism is intended of counsel in this respect, since the Tribunal was told that she had been instructed at a very late stage indeed. However, as a result of the late appearance of this argument, the essential elements of the estoppel were never reduced to writing. Moreover, no authorities or texts were referred to by either party at the hearing to support their rival positions. The inevitable effect of this was that the parties faced considerable difficulty in identifying the alleged representations (or common assumptions) supporting the estoppel(s) and in analysing the effect on liability to pay the insurance cobtributions.

57. The Tribunal is not satisfied on the evidence that any estoppel arose in this case. As to estoppel by representation, no evidence was given about any specific written or oral representation relating to insurance, whether made by the lessor or any lessee. It is true that a course of conduct might in some situations amount to a sufficient representation, provided that the conduct involved was sufficiently unequivocal. However, the only evidence of any course of conduct in this case is that over a period of years, lessees regularly paid insurance contributions when an insurance broker sent them a demand for payment. It is impossible to find from this act alone that there was any unequivocal promise that the provisions of clauses 20 or 21 of Schedule 6 to the leases would no longer have any effect, or that they were suspended. There may be a host of other explanations as to why a lessee chooses to pay a bill when presented – not least a unilateral misunderstanding of the contractual position in his or her lease. As far as estoppel by convention is concerned, this arises where two parties act, or negotiate, or operate a contract (each to the knowledge of the other) on the basis of a particular belief, assumption or agreement. However, the relevant assumption or agreement must be communicated by one party to the other, either by words or conduct, and the representation must be clear and unequivocal. It may well be that this requirement is less onerous in cases of estoppel by convention than in cases of estoppel by representation, but in essence the problem for the Respondent is the same. In this case, the conduct lacks the necessary degree of clarity to found any estoppel by convention. There may be a host of reasons why the insurer sent the insurance invoices directly to the lessees and why the lessees paid the invoices - without any unequivocally assumption that the contractual obligations to pay insurance contributions were discharged or suspended.

58. It follows that the right of the Respondent to demand contributions to insurance costs under clauses 20 and 21 of Schedule 6 to the leases remains in place, as does the obligation of the Applicants to pay any contributions properly demanded.

59. Contractual liability. The Tribunal has little hesitation in concluding that the sums set out in Appendix B are not payable under the terms of the lease. The demands plainly did not seek any indemnity of costs charges or expenses incurred by the Applicant in carrying out any obligations to insure: the Respondent did not suggest it had ever in fact incurred any insurance costs etc. Nor was there any suggestion that the demands sent to each lessee sought payment of the "due proportion" of insurance costs as defined by the lease. Clause 20 of Schedule 6 to the leases does not therefore apply. As far as Clause 21 of Schedule 6 is concerned, the sums in Appendix B again did not comply with the terms of the leases in a number of respects. In essence, the Tribunal reaches the same conclusion on insurance costs as it does in relation to the service charge demands raised by Belmonte. The demands did not comply with the service charge machinery in clause 21 of Schedule 6 to the lease and those requirements were essential: see paras 31 and 32 above.

60. The Tribunal's conclusion on this is supported by the decision of the Upper Tribunal in ***Wrigley v Landchance Propertty Management Ltd*** (supra) at paras 26 and 27, albeit that the service charge provisions in that case differed from the leases in this matter:

> "26. However the demands for insurance premiums stand in a different position. The respondent has in effect two opportunities to obtain money by way of service charge from the appellant, namely first by way of the on account half-yearly payments on 25 March and 29 September based upon estimates, and secondly by way of a claim for payment of a shortfall, which needs to be calculated in accordance with paras 3 and 4 of the Fourth Schedule and will require audited accounts. The leases do not give the respondent the power to demand half-yearly payments based upon estimates and then to demand separately at such time of the year as it happens to fall due a contribution towards an insurance premium. The respondents could and should have cast their estimate so as to include within it the estimated cost of placing the insurance. It seems they have not done this and have as a result estimated too small a sum. The solution for the respondent if it has estimated too small a sum and if there is therefore a shortfall is for the respondent to procure audited accounts and to demand payment of a shortfall. This however has not happened.
>
> 27. In consequence I find that ... the separate demands for insurance premiums have not been demanded in accordance with the provisions of the leases and are not payable. They may become payable if and when audited accounts in accordance with para 3 have been prepared and a proper demand for the relevant shortfalls for the relevant years has been served."

61. LTA 1987 s.47 and LTA 1985 s.21B. The above conclusion means that strictly speaking the Tribunal does not need to consider the arguments about the validity of the demands for payment of the insurance contributions. If the Tribunal is wrong about the contractual position, its conclusions can be stated briefly on these points. In essence, the arguments between the parties closely followed the arguments raised in respect of the Belmonte service charge demands. For the same reasons that are given above, the Tribunal finds that the Respondent is entitled to rely on the proviso to s.47(2), because the requisite "information" was "furnished" by way of the subsequent BMC service charge demands. Again, for the same reasons that are given above, the Tribunal finds that, the Applicants may withhold payment of the sums demanded under LTA 1985 s.21B(3) unless and until the Respondent complies with the requirements of s.21B(1).

62. Reasonableness. Once again, the above conclusions render it unnecessary to reach any conclusion as to whether the insurance charges in Appendix B were 'reasonable' or not under LTA 1985 s.19(1) or (2). However, the Tribunal does not consider that any recoverable amounts ought to be limited as suggested by the Applicants. As far as the premium payable for

the 2013 insurance is concerned, this was obtained at a significantly lower figure than the 2012 policy using the same broker. However, the Respondent points out that the former policy was placed with a leading 'household name' insurer. More significantly, a premium payable for a policy obtained in 2013 is of limited assistance in assessing whether a premium paid in 2012 was excessive. That consideration increases when the premiums obtained in 2013 are used to assess premiums paid in 2011 or earlier years. The Tribunal was not assisted by any insurance broker or professional to explain the premiums (or the differences between the policies) and has insufficient material to find that the cost of premiums in each year were unreasonably high. As to commissions, the Tribunal considers that the facts in this case differ markedly from those in ***Williams v Southwark*** (supra), where a local authority was required to pass on commissions that it received for placing insurance across its housing stock with a single insurer. Here, the Respondent states that it has not itself received any commission – and there is no evidence to the contrary. The evidence is that commissions have been received by a broker or sub-agent – but that does not place the Respondent or the Applicants in any different position to other consumers who are liable to pay the cost of insurance. The cost of the insurance premium is the same, whether or not the insurer chooses to share its profit with a broker or other third party.

63. It follows that neither of the deductions should be made on the grounds that the relevant costs of insurance were not reasonably incurred or that the insurance 'service charges' were not reasonable in amount under LTA 1985 s.19.

64. Summary. The insurance demands set out in Appendix B are not payable under the terms of the leases.

65. The Tribunal notes that in ***Wrigley*** (supra) at para 27, the Upper Tribunal considered that (on the facts of that case), it was still open to the landlord to prepare end of year accounts and demands in proper form and to recover the cost of insurance. Suffice it to say that this would be a matter for a future Tribunal.

Costs – s.20C

66. There was an application for the costs incurred in connection with proceedings before the Tribunal not to be treated as relevant costs under LTA 1985 s.20C. However, Ms Shalom conceded that there was no provision in the leases that enabled the Respondent to add any of its costs to the service charges for the flats. The Tribunal records that concession.

Conclusions

67. The Tribunal finds that the interim charges of £167.50 per quarter per flat demanded between 15 December 2007 and 29 September 2011 are not payable under the terms of the leases. They are in any event not payable unless and until demanded in accordance with LTA 1985 s.21B.

68. The Tribunal finds that the replacement demands dated 25 June 2013 demanded by BMC complied with the terms of the leases, that the demands were in proper form, and that the relevant costs referred to in those service charges were reasonably incurred. The Applicants are therefore liable to pay the following sums to the Respondent:

    a. Flat 1: £1,041.19.
    b. Flat 2: £937.31.
    c. Flat 4: £1,002.24.
    d. Flat 5: £937.31.
    e. Flat 6: £764.17.
    f. Flat 7: £764.17.

69. The insurance demands set out in Appendix B are not payable under the terms of the leases.

Judge Mark Loveday
7 November 2013

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.

Appendix A: Service Charges									
Demand	*Period*	*Period*							
date	*From*	*To*	*Flat 1*	*Flat 2*	*Flat 4*	*Flat 5*	*Flat 6*	*Flat 7*	*agent*
15/12/2007	25/12/2007	24/03/2008	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
15/03/2008	24/03/2008	24/06/2008	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
16/06/2008	24/06/2008	29/09/2008	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
10/09/2008	29/09/2008	25/12/2008	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
15/12/2008	25/12/2008	25/03/2009	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
11/03/2009	25/03/2009	24/06/2009	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
11/06/2009	24/06/2009	29/09/2009	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
16/09/2009	29/09/2009	25/12/2009	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
17/12/2009	25/12/2009	25/03/2010	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
23/03/2010	25/03/2010	24/06/2010	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
15/06/2010	24/06/2010	29/09/2010	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
14/09/2010	29/09/2010	25/12/2010	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
14/12/2010	25/12/2010	25/03/2011	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
28/03/2011	25/03/2011	24/06/2011	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
21/06/2011	24/06/2011	29/09/2011	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
29/09/2011	29/09/2011	25/12/2011	£167.50	£167.50	£167.50	£167.50	£167.50	£167.50	Belmonte
*13/12/2011**	*25/12/2011*	*25/03/2012*	*£167.50*	*£167.50*	*£167.50*	*£167.50*	*£167.50*	*£167.50*	*Belmonte**
*20/03/2012**	*25/03/2012*	*24/06/2012*	*£167.50*	*£167.50*	*£167.50*	*£167.50*	*£167.50*	*£167.50*	*Belmonte**
*06/07/2012**	*24/06/2012*		*£167.50*	*£167.50*	*£167.50*	*£167.50*	*£167.50*	*£167.50*	*BMC**
*01/10/2012**	*29/09/2012*		*£220.00*	*£220.00*	*£220.00*	*£220.00*	*£220.00*	*£220.00*	*BMC**
*19/12/2012**	*25/12/2012*		*£220.00*	*£220.00*	*£220.00*	*£220.00*	*£220.00*	*£220.00*	*BMC**
Total			£3,622.50	£3,622.50	£3,622.50	£3,622.50	£3,622.50	£3,622.50	
Total (excluding withdrawn demands)			£2,680.00	£2,680.00	£2,680.00	£2,680.00	£2,680.00	£2,680.00	

Note that not all demands for payment were included in the papers before the Tribunal

* demand withdrawn and replaced by demand dated 25 June

Appendix B: Insurance									
			Flat 1	*Flat 2*	*Flat 4*	*Flat 5*	*Flat 6*	*Flat 7*	
2007			£302.16	£302.16	£302.16	£302.16	£302.16	£302.16	**£1,812.96**
2008			£316.43	£316.43	£316.43	£316.43	£316.43	£316.43	
2009			£344.23	£344.23	£344.23	£344.23	£344.23	£344.23	
2010			£351.12	£351.12	£351.12	£351.12	£351.12	£351.12	
2011			£381.05	£381.05	£381.05	£381.05	£381.05	£381.05	
2012			£385.24	£385.24	£385.24	£385.24	£385.24	£385.24	
			£2,080.23	£2,080.23	£2,080.23	£2,080.23	£2,080.23	£2,080.23	**£12,481.38**