11261

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/00BS/LSC/2014/0006**
Property	:	**Various at Victoria Mill, Houldsworth Street, Reddish, Stockport SK5 6AX**
Applicants	:	**See attached sheet**
Represented by	:	**Mr.K.Barton**
Respondent	:	**Houldsworth Village Management Co.Limited**
Represented by	:	**LivingCity**
Type of Application	:	**Landlord and Tenant Act 1985, s27A** **Landlord and Tenant Act 1985, s20C** **The Tribunal Procedure (First Tier Tribunal) (Property Chamber) (Rules 2013, Rules 13(1)(b) and (2)**
Tribunal Members	:	**Judge C.Wood** **Mr.M.Bennett** **Mrs.H.Clayton**
Date of Decision	:	**10 January 2016**

DECISION

ORDER

1. The Tribunal orders as follows:

   1.1 that, in respect of each of the service charge years (or part years) ended 31.07.07 , 31.07.08, 31.07.09, 31.07.10, 31.07.11 and 31.12.11, the costs of the insurance premiums had been reasonably incurred by the Respondent and the following amounts paid by way of premium were reasonable:

01.10.06 – 31.07.07:	£10,200
01.08.07 – 31.07.08:	£10,072
01.08.08 – 31.07-09:	£14,807
01.08.09 – 31.07.10:	£12,600
01.08.10 – 31.07.11:	£9,862
01.08.11 – 31.12.11:	£6,941

   1.2 that the costs incurred to repair items which constituted "latent defects" in the Estate Common Parts and/or the Building Common Parts in the service charge years (or part years) ended 31.07.07, 31.07.08, 31.07.09, 31.07.10, 31.07.11 and 31.12.11 were reasonably incurred ;

   1.3 that the costs of £49,309 in respect of staff costs in the service charge year ended 31.12.12 are reasonable;

   1.4 that the costs incurred in respect of audit/accountancy fees in each of the service charge years (or part years) ended 31.07.07, 31.07.08, 31.07.09, 31.07.10, 31.07.11 and 31.12.11 are not reasonable and are reduced, in each year, to £950. The accountancy fees of £966 for the service charge year ended 31.12.12 are reasonable;

   1.5 that the accruals in respect of water rates in each of the service charge years (or part years) ended 31.07.07, 31.07.08, 31.07.09, 31.07.10, 31.07.11 and 31.12.11 are reasonable;

   1.6 that, having regard to all of the circumstances, the Tribunal does not consider it fair and equitable to grant the Applicants' s20C application;

   1.7 that no order is made against either of the parties under Rule 13(1)(b) of The Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013, ("the Rules"); and,

   1.8 that no order is made reimbursing the Applicants' application and hearing fees under Rule 13(2) of the Rules.

BACKGROUND

2. By an application dated 14 January 2014, the Applicants sought a determination under section 27A of the Landlord and Tenant Act 1985 of the liability to pay, and reasonableness of, service charges for the service charge years (or part years) ended 31.07.07, 31.07.08, 31.07.09, 31.07.10, 31.07.11 and 31.07.12, ("the Application").

3. Initial directions were issued on 6 February 2014 and, following a Case Management Conference, ("CMC"), held on 2 April 2014, further directions dated 2 April 2014 were issued.

4. A second CMC was held on 5 May 2015, and directions were issued dated 5 April 2015, and a telephone CMC was held on 22 September 2015, and directions were issued on 22 September 2015.

5. A hearing was scheduled for 11:00 on Friday 16 October 2015, following an inspection of the Property at 09:30 on the same date.

INSPECTION

6. The inspection was attended by representatives of both parties.

7. The Property is a former mill converted in or about 2005/6 into 180 apartments over 4 floors. The apartments on the 4th floor are 2-storey duplex apartments

8. There are substantial internal communal areas on each floor which are carpeted with painted walls. There are 2 lifts. These areas were in reasonable decorative condition.

9. There is a concierge in attendance at the main ground floor entrance .

10. The external communal areas are substantially comprised of car parking. There is an area of undeveloped land within the curtilage of the Estate. Adjoining the Property is Elizabeth Mill. The original intention was to convert this property into apartments but this did not happen and the property is derelict. Parking for this development would have been accommodated within the Estate. There are currently 230 parking spaces.

LAW

11. Section 27A(1) of the Landlord and Tenant Act 1985 provides:

    11.1 *An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to-*

        (a) the person by whom it is payable,

        (b) the person to whom it is payable,

        (c) the amount which is payable,

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

        (e) the manner in which it is payable.

    11.2 The Tribunal is "the appropriate tribunal" for this purpose, and it has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

    11.3 The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.

11.4 In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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.

11.5 "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

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.

11.6 There is no presumption for or against the reasonableness of the standard of works or services, or of the reasonableness of the amount of costs as regards service charges. If a tenant argues that the standard or the costs of the service are unreasonable, he will need to specify the item complained of and the general nature of his case. However, the tenant need only put forward sufficient evidence to show that the question of reasonableness is arguable. Then it is for the landlord to meet the tenant's case with evidence of its own. The Tribunal then decides on the basis of the evidence put before it.

11.7 Section 20C of the 1985 Act permits the Tribunal to order that all or any of the costs incurred by the landlord in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or by any other person specified in the application for the order. The Tribunal may make such order as it considers just and equitable in the circumstances.

11.8 Rule 13(1)(b) of The Tribunal Procedure (First-tier Tribunal)(Property Chamber)Rules 2013, ("the Rules") states that the Tribunal may only make an order in respect of costs "if a person has acted unreasonably in bringing, defending or conducting proceedings".

11.9 Rule 13(2) permits the Tribunal to make an order requiring one party to reimburse the other the whole, or any part of, the fees paid in respect of the application.

EVIDENCE

12. The hearing was attended by Mr.K.Barton for the Applicants, and by Mr.I.Macdonald for the Respondent, and also by Mr.P.Atkins and Mrs.W.Walker of LivingCity, (the current managing agents), and Ms.C.Zanelli of Taylor & Emmet, Solicitors for the Respondent.

13. The Applicants provided a copy of a lease dated 29.11.06 made between Millshomes Limited ("the Landlord") (1) the Respondent (2) and Mr.K.Barton (3) in respect of Apartment 93 at the Property, (pages 55-97 of the Applicants' Bundle). It was accepted by the parties that the leases of the apartments are substantially in this form, ("the Leases"). References to defined terms have the meanings set out in the Leases.

14. At the outset of the hearing, the Tribunal sought to identify the items of expenditure within the service charge which remained in dispute. It was accepted by both parties that these included the following:

14.1 buildings insurance for the service charge years (or part years) as follows:

Period		£
(i)	01.10.06 – 31.07.07:	10200
(ii)	01.08.07 – 31.07.08:	10072
(iii)	01.08.08 – 31.07.09:	14807
(iv)	01.08.09 – 31.07.10:	12600
(v)	01.08.10 – 31.07.11:	9862
(vi)	01.08.11 – 31.12.11:	6941

14.2 latent defects as itemised at page 224 of the Applicants' Bundle and aggregated as follows:

Period		£
(i)	01.10.06 – 31.07.07	211.50
(ii)	01.08.07 – 31.07.08	600.00
(iii)	01.08.08 – 31.07.09	12387.90
(iv)	01.08.09 – 31.07.10	22165.44
(v)	01.08.10 – 31.07.11	10902.56

14.3 management fees for the service charge year ended 31.12.12;

14.4 staff costs of £49309 for the service charge year ended 31.12.12;

14.5 audit and accountancy fees for the service charge years (or part years) as follows:

Period		£
(i)	01.10.06 – 31.07.07:	2970
(ii)	01.08.07 – 31.07.08:	3060
(iii)	01.08.08 – 31.07.09:	3150
(iv)	01.08.09 – 31.07.10:	3240
(v)	01.08.10 – 31.07.11:	3330
(vi)	01.08.11 – 31.12.11:	1425
(vii)	01.01.12 – 31.12.12:	966

14.6 water rates' accruals for each of the service charge years (or part years) as follows:

Period		£
(i)	01.10.06 – 31.07.07:	500
(ii)	01.08.07 – 31.07.08:	500
(iii)	01.08.08 – 31.07.09:	500
(iv)	01.08.09 – 31.07.10:	550
(v)	01.08.10 – 31.07.11:	650
(vi)	01.08.11 – 31.12.11:	265
(vii)	01.01.12 – 31.12.12:	650

15. Mr.Barton also raised an issue regarding the charging for, and application of, the income received from, the car parking spaces at the Property by the Respondent. This issue had been raised on the Scott Schedule by the Applicants pursuant to paragraph 4 of the directions dated 22 September 2015, although previously the Applicants had indicated that they were not pursuing this issue. Since the Respondent was not given any opportunity within the directions to respond to new issues raised, the Tribunal accepted that, on balance, it was unreasonable to expect them to address this issue by oral submissions at the hearing. Further, having considered the terms of the Leases, and, in particular, to the definitions of "Estate Common Parts", and "Estate Accessways", to the Respondent's covenant contained in clause 4(1), and to paragraph 5 of Part 1 of the Third Schedule, it appeared to the Tribunal that as the car park maintenance and/or car park income did not raise issues of service charge expenditure, they did not fall within its jurisdiction for determination under s27A of the 1985 Act.

16. The Tribunal also noted that the Applicants had made a s20C application, and that applications had been made by the Applicants under Rules 13(1)(b) and (2) of the Rules and by the Respondent under Rule 13(1)(b).

17. The Respondent also stated that a costs' order under Rule 13 had been made against the Applicants at the CMC on 2 April 2014. The Tribunal stated that they had no information available to it of the making of such an order and that there was no reference to it in the directions dated 2 April 2014 issued following the CMC.

18. The parties' submissions in respect of the buildings' insurance are summarised as follows:

18.1 the Applicants:

(i) the Leases make it clear that it is the Landlord's obligation to insure and that the cost of insurance is not properly chargeable by the Respondent as service charge but is recoverable as the "Insurance Rent";

(ii) by assuming the obligation to arrange the insurance, the Respondent has ignored the terms of the Leases and has also created a debt due from the Landlord which has proved to be irrecoverable by reason of its' insolvency;

(iii) there is no evidence that insurance had not been effected by the Landlord in 2006;

(iv) with regard to the Guinness Northern Counties' block policy arranged by Encore Homes Limited ("Encore") as managing agent from 2007 – 2011, the Applicants questioned: (a) in respect of Encore/Guinness Northern Counties, the existence of any insurable interest and whether disclosure had been made of any commission or other benefits paid to them consequent on placing the insurance through the

block policy; (b) the lack of evidence of the premium payable, the number of units insured and the method of apportionment of the premium; (c) the practice of accruing for the premium rather than charging the actual amount of the premium;

(v) following theLandlord's administration on 29 March 2011, the administrator insured the Property and the Applicants questioned whether there had been a duplication of insurance;

18.2. the Respondent:

(i) the Respondent admitted that it was not their obligation to insure under the Leases. It was reasonable for Encore, as managing agent, to arrange insurance on being requested by the Landlord to do so, (page 524 of the Respondent's Bundle) and on becoming aware that the Landlord had failed to do so;

(ii) there has been no "double-charging" of insurance and the leaseholders have not been prejudiced, financially or otherwise, by the Respondent's decision to assume responsibility for insuring the Building and the Estate because, whether the insurance was paid for by the Landlord or the Respondent, the cost was always recoverable from the leaseholders under the terms of the Leases;

(iii) the Respondent was satisfied that the Guinness Northern Counties' block policy offered suitable insurance for the Building and the Estate at reasonable cost. In support of this, Mrs. Wendy Walker reiterated the evidence given in her witness statement dated 27 September 2015, (pages 522-527 of the Respondent's Bundle), specifically, that insurance services were tendered annually by the Guinness Northern Counties' procurement team; that the total cost of the insurance was divided by the number of units covered which would be in excess of 100,000; that, in her opinion, this method of procurement involving considerable economies of scale ensured better value for money than placing insurance on an individual development basis;

(iv) the Respondent had carried out an analysis of the cost of the insurance premium per square foot (which was the method of apportionment adopted by the Respondent for re-charging the premium as service charge), (page 340 of the Respondent's Bundle) which ranges from 5p – 11p, whilst the current cost (which the Respondent still considers to be reasonable) is 22p per square foot;

(v) the evidence of the premium payable was the amounts as stated in the Respondent's accounts for each of the years in question. Whilst the Applicants had not previously questioned the apportionment of the premium to leaseholders, the Respondent was happy to provide an apportionment schedule to the Tribunal, if required to do so;

(vi) with regard to the practice of estimating the premium in the service charge accounts, this was due to the premium year and the service charge year covering different periods. Any over-accrual was reconciled subsequently.

18.3 The Tribunal invited comment from the parties on paragraph 6 of Part 1 of the Third Schedule to which they responded as follows:

(i) the Respondent considered that it was consistent with recent Upper Tribunal decisions to construe such "sweep up" clauses broadly;

(ii) the Applicants considered that, if the Respondent was entitled to effect the insurance, then they should nonetheless have done so in accordance with the provisions of the Leases regarding the charging for, and collection of the "Insurance Rent".

19. The parties' submissions in respect of latent defects are summarised as follows:

19.1 the Applicants:

(i) reference was made to the itemised list entitled "latent defects" at page 224 of the Applicants' Bundle, to the letter dated 15 June 2012 from the Respondent to the "property owners" and to the Applicants' summary of the costs incurred as set out in the accounts for the years ended 31.07.07 to 31.07.11 (inclusive), (page 312);

(ii) these costs did not constitute service charge expenditure: in some cases, they related to repairs undertaken within flats which were not the Respondent's responsibility;

(iii) where they related to latent defects in the Estate Common Parts and the Building Common Parts, the Applicants referred to clause 7(5) of the Leases which states that the Respondent's liability for defects and want of repair does not arise until "after the expiry of any defects liability period under any relevant building contract". This seemed to have been acknowledged by the Respondent in the letter dated 15 June 2012, (page 225);

(iv) there existed a Zurich insurance policy, which the Applicants understood was comparable to a NHBC policy but the Respondent had failed to claim on this;

(v) further acknowledgment that this was not the Respondent's responsibility was in the accounts for the year ended 31 July 2011 where, in the Notes to the Accounts at page 162, there was a debt of £33,000 due from the freeholder for "Latent defects/repairs contribution".

19.2 the Respondent:

(i) there did exist insurance policies for major structural defects but the excesses on them were £217,980 and £293,580 respectively;

(ii) it was noted that the list at page 224 of the Applicants' Bundle was paginated "663" which indicated that this was only one page of a larger document (which had not been disclosed). The nature of that document, and the context in which it had been produced, were questioned;

(iii) in the Scott Schedule, the Applicants had stated that they were not pursuing the issue of expenditure in respect of "day to day repairs"

(iv) the Respondent referred to the Respondent's obligations of maintenance and repair in clauses 4(1) and (2) of the Leases; they also acknowledged the provisions of clause 7(5) of the Leases but explained that those who might be responsible for the defects, eg the Landlord/the building contractor, were no longer around to sue having become insolvent;

(v) in response to a comment from the Tribunal that it appeared that the Landlord/building contractor were around between 2007-2011, the Respondent stated that, during this period, attempts had been made to recover monies from the Landlord and that they had reached agreement that they would pay a contribution of £33,000 (as stated in the 2011 accounts). Shortly afterwards, however, the Landlord went into administration;

(vi) one of the Landlord's directors was also a director of the Respondent and, whilst discussions were ongoing, it appears that there are no funds available;

(vii) in the meantime, repairs need doing and there is evidence of water ingress which requires attention.

20. In respect of the management fee for the year ended 31.12.12, both parties confirmed that this had been agreed at £36,674 and was no longer a matter for determination by the Tribunal.

21. The parties' submissions in respect of the staff costs in the year ended 31 December 2012 are summarised as follows:

21.1 the Applicants:

(i) the management company, LivingCity, have added 18% onto the cost of the wages for the on-site staff which, in the Applicants' submission, constitutes a "hidden" management fee;

(ii) the costs for 2012 were £49,309. The previous manager (Encore) did not charge extra for employing staff: this was included within the management fee: page 248 of the Applicants' Bundle;

(iii) the RICS Code of Practice states that employees should be employed by the management company rather than by the managing agent;

(iv) in the year ended 31 July 2007, the wages and costs of the concierge were £17,992.97 and £417.21 respectively.

21.2 the Respondent:

(i) since the Applicants are aware of the 18% uplift, the Respondent stated that it is clear that the Respondent is not attempting to "hide" this;

(ii) the Respondent referred to the job specifications for the cleaner and the concierge (pages 443 and 445 respectively of the Respondent's Bundle);

(iii) they explained that they had "inherited" some staff from Encore. The concierge was on duty at the Property from 7am-7pm Monday-Friday. The cleaner was employed for 25 hours per week. They confirmed that the global cost for this was £49,309 and this included an administration charge for dealing with the "backroom matters" relating to their employment eg payment of wages, administration of holidays, sickness etc. There were 2 people employed as concierge/building manager and 1 cleaner (with alternative cover arranged where necessary);

(iv) the Respondent stated that it was more usual for a managing agent to employ staff rather than a management company and, in this case, the Respondent does not want to be involved as an employer;

(v) they confirmed the wages/rates of pay/hours of the building manager, part-time concierge and cleaner as follows:

Wages	Rate per hour	Hours per week
£18360	£10.09	35
£9343.93	£9.58	18.75
£12879	£6.50	35 (since reduced to 25)

22. The parties' submissions in respect of audit and accountancy fees are summarised as follows:

22.1 the Applicants:

(i) Beevers & Struthers were the Landlord's accountants and the Applicants stated that the services provided were unsatisfactory. By way of example, the Applicants

referred to adjustments which it had been necessary to make to accounts in succeeding years: in the accounts for the year ended 31 July 2008, an adjustment was made to the 2007 accounts (Note 6 at page 125 of the Applicants' Bundle); how was it deemed acceptable that the managing agent should owe the Respondent £105,000? (Also Note 6 at page 125); further adjustments in the accounts for the year ended 31 July 2010: Notes 6 and 7 at page 145; and again in the accounts for the year ended 31 July 2011 (page 154);

(ii) reference was made to the joint statement of Beever & Struthers and the Chartered Institute of Accountants at page 227 of the Applicants' Bundle in which it was acknowledged that no audit work had been performed, and that insufficient evidence had been obtained to permit Beever & Struthers to state that "the accounts showed a fair summary of the state of affairs of the scheme". Paragraphs 2 and 3 of the statement refer to specific examples;

(iii) the Applicants also questioned whether the basis upon which the audit fee had been charged ie according to the number of residences (Note 2 to the accounts ended 31 July 2007, page 118) was reasonable: details of this apportionment were set out in the invoices and apportionment schedules at pages 252-5. From this, it was clear that as the Property had the largest number of apartments, it bore the highest apportionment. The Applicants submitted that this was an artificial allocation of cost; it was not reasonable that the fee should increase by reference to the size of the development; the fee should be charged on a "normal" time basis;

(iv) new accountants were appointed in 2012 and the fee was £966. However there was a failure to recognise that the Landlord was in administration and that the debt due from it was therefore irrecoverable, and the accounts suggested that the reserve fund was intact where the Applicants maintain that it was not. For these reasons, the Applicants still maintain that the service provided, and the costs incurred are unreasonable;

22.2 the Respondent:

(i) Beevers & Struthers were appointed by the Respondent and their services were procured in the same way as insurance. An audit was performed in the earlier years but not latterly;

(ii) referring to the document at page 227, the Respondent stated that there was nothing in the document which refers to the Respondent; there is no information about the provenance of the document; it was produced by Mr.Barton at a board meeting of the Respondent; LivingCity have attempted to speak to Beever & Struthers about it but without success; the Respondent consider that all reasonable enquiries have been made;

(iii) the fee was always c£3,000; the Respondent was not clear if the Applicants are challenging the 2012 fee. Beever & Struthers always carried out an audit; now the accountants undertake a certification process. This was approved by Mr.Barton during his tenure as a director of the Respondent;

(iv) with regard to the reserve fund, the 2013 accounts show a reserve fund balance in excess of £80,000 so the Applicants' comment that the funds are not intact is not understood. The Respondent stated that a reasonable service had been provided and the fees were within the range of reasonable fees;

(v) the Leases provide at paragraph 2 of Part 1 of the Third Schedule for the recovery of such fees as service charge whilst, under clause 6(3), the Respondent is obliged to keep service charge accounts. This does not specify whether the accounts should

be audited or certified and the Respondent stated that it had a discretion to choose either;

22.3 with reference to the Respondent's challenge to the provenance and/or relevance of the statement (page 227) and to its knowledge and understanding of it, Mr.Barton cross-referenced paragraph 2 to the Respondent's accounts for the year ended 31 July 2011 and, in particular, to the balance sheet item entitled "Due from Landlord £70,206.07), (page 155), and paragraph 3 to the Respondent's accounts for the period ended 31 December 2011 and, in particular, to the balance sheet item entitled "Service charge payable by Leaseholders £79,518.37";

22.4 the Tribunal made clear the obligation on all parties appearing before it to disclose relevant information to the Tribunal in both written and oral submissions;

23. the parties' submissions in relation to the water rates' accruals are summarised as follows:

23.1 the Applicants:

(i) no bill has ever been received for the water rates but accruals for "ever-increasing" amounts have been made;

(ii) no bill can now be raised for the earlier years (as they will be limited to 6 years from the date of invoice) and, rather than continue to charge in the service charge, the Respondent should merely note in the accounts that the bill will be paid if, and when, it arrives.

23.2 the Respondent:

(i) accruing amounts where there is no amount demanded, but it is known that charges have been incurred, is an entirely proper way to act;

(ii) the communal water supply includes the kitchen and the cleaner's sink/washbasin;

(iii) United Utilities have been contacted but it has proved a struggle to get them to issue a bill;

(iv) they were aware that water rates for a 6 year period for a comparable development of 100+ units were £1080;

24. The Applicants then requested to cross-examine Mrs.Wendy Walker on her witness statement and in response to questions asked by Mr.Barton about the insurance and the audit/accountancy fees, she stated as follows:

(i) her predecessor, Tim, had been responsible for arranging the insurance but she had discussed this with him subsequently and there was information about the insurance in the Respondent's board minutes;

(ii) she was not aware that Encore had requested the Landlord to insure;

(iii) she was not involved in the procurement of the insurance: this was dealt with by Guinness Northern Counties' procurement team which was based in London;

(iv) she was not aware that Beevers & Struther were the Landlord's accountants;

(v) likewise she was not involved in the procurement of accountancy services which again was carried out by the procurement team in London;

(vi) the amount to be charged for accountancy services was confirmed to Encore by e-mail.

25. Both parties then made their submissions in respect of their respective Rule 13 costs' applications as follows:

25.1 the Applicants:

(i) the Applicants are seeking reimbursement of the application and hearing fees totalling £630 pursuant to Rule 13(2);

(ii) the Applicants are also seeking a costs' order against the Respondent pursuant to Rule 13(1)(b). They contend that the Respondent has sought to "fight" the Application on the instructions of the managing agent who, by reason of the existence of a legal fees' insurance policy (upon which they have already claimed), will benefit from doing so. The parties should have been able to resolve the matters without recourse to the Tribunal;

(iii) a further example of the Respondent's unreasonable conduct is that they have kept leaseholders "in the dark" because:

(a) they did not declare the debt due from the Landlord;

(b) they allowed the debt from the Landlord to increase too much;

(c) they did not disclose the Landlord's administration;

(d) they did not disclose the contents of the administrator's report;

(e) they did not disclose that there would be no recovery from the Landlord;

(f) they made an incorrect statement about the reserve fund; and,

(g) they have not complied with many of the Directions eg they have not disclosed, as required by the Directions dated 6 February 2014, the service charge accounts for all relevant years; service charge budgets; accounts, demands and invoices; no information about service charge apportionment;

(iv) the Applicants did not consider that the 6 February 2014 Directions had been superseded by the Further Directions dated 2 April 2014;

(v) with regard to paragraph 2 of the Directions dated 5 May 2015, nothing had been received from the Respondent whilst the Applicants had delivered 4 bundles of documents;

(vi) the Respondent had agreed to make payment of Mr.Barton's costs;

(vii) the Respondent chose not to make any adjustments to the accounts until 2013 although it should have done so as soon as the Landlord went into administration;

25.2 the Respondent :

(i) they stated that the Applicants' application could only be granted if it was established that the Respondent had acted unreasonably in defending the proceedings;

(ii) they questioned what costs had been incurred by the Applicants/Mr.Barton, and contrasted this with the Respondent's position where legal costs had been incurred;

(iii) they explained that there was a D&O liability policy in place for the Respondent's directors and officers which included legal expenses cover. This would meet the Respondent's legal costs but any recovery of costs from the Applicants will be payable to the insurance company;

(iv) as the Respondent was a lessee owned/controlled management company whose only income was the service charges collected from those leaseholders, no-one benefitted from the "in-fighting" which had culminated in the Tribunal proceedings;

(v) the examples given of the Respondent keeping leaseholders "in the dark" were irrelevant to the issue of costs since this only related to conduct in defending the Application which was considered to be unreasonable;

(vi) the 6 February 2014 Directions were "standard" directions and, once solicitors were instructed, it became apparent that they were not appropriate in this case and a CMC was requested. The 2 April 2014 Directions did supersede the February 2014 Directions and further a Rule 13 costs' order was made against the Respondent at the CMC;

(vii) the Respondent accepted that they had been unable to disclose certain documents because they were held by a solicitor's lien which would have required a payment of £10,000 to release. As Mr.Barton had the documents in his possession/available to him, it was agreed that he should make them available. The Respondent accepts that, to this extent, compliance was "one-sided";

(viii) the Respondent believed that, once the consent order, (page 314 of the Respondent's Bundle), had been agreed, the matter was "all over bar the shouting". The consent order included an agreement not to pursue a costs' order against Mr.Barton. Mr.Barton then sought to recover his costs in the sum of £22,189.70. The "invoice" appears at pages 464-469 of the Respondent's Bundle;

(ix) the Respondent stated that they had agreed to pay out-of-pocket expenses and the application fees but Mr.Barton then refused to sign the consent order unless his costs in full were met. The Respondent considered that, from that point, the Applicants' conduct in pursuing the Application is to be considered unreasonable. They contended that they had no authority to pay these costs and that, if they had done so, the likelihood is that leaseholders would have brought a further application disputing the Respondent's authority to pay and re-charge them as service charge expenditure;

25.3 in response Mr.Barton stated as follows:

(i) no costs' order was made at the 2 April 2014 CMC;

(ii) he accepted that there would be no recovery for him under this determination in respect of any period covered by the previous decision made in which he was an Applicant;

(iii) there were a number of reasons why the consent order was not made: in particular, the Applicants wished it to cover the matters which have been the subject of this Application;

(iv) two of the Respondent's directors had agreed that he should be recompensed for the time he had spent on this matter and this is why he produced the timesheet.

26. With regard to the section 20C application, the Applicants made no submissions. The Respondent stated that, in accordance with recent UT decisions it should not be made "as a matter of course", particularly where the Respondent is a lessee-owned management company.

REASONS

27. In making the determinations set out in paragraph 1 of this Decision, the Tribunal took into account the following matters:

27.1 paragraph 1.1: insurance:

(i) whilst the Tribunal accepted that the primary obligation to insure under the Leases was upon the Landlord, it was satisfied that, where the Landlord had failed to do so, the Respondent was authorised to effect such insurance, and entitled to charge the premiums as service charge expenditure under paragraphs 6 and 12 of Part 1 of the Third Schedule of the Leases. It was also noted that the Applicants had suffered no financial disadvantage by the Respondent insuring the Building and the Estate since they were obliged under the terms of the Leases to pay the cost of the insurance premium as Insurance Rent (albeit at a different date in each year). By contrast, the risk to all of the leaseholders of the Building and the Estate being uninsured were real and significant;

(ii) the Tribunal was satisfied that the Respondent's "use" of the block policy made available to them through their managing agent, Encore, provided insurance cover at a reasonable cost. The Tribunal noted that the Applicants had not produced any evidence which indicated that the premiums charged were unreasonable;

27.2 latent defects: paragraph 1.2: whilst acknowledging that, under the clause 7(5) of the Leases, the Respondent's liability for defects or want of repair did not arise until after the expiry of the defects liability period, the Tribunal accepted the Respondent's evidence of difficulties in recovering monies from the Landlord for such works even prior to its administration and certainly afterwards, and of the excesses on the insurance policies which effectively prevented claims being made for these works. In such circumstances, it appeared to the Tribunal that the Respondent could either effect the repairs or it could allow them to remain unrepaired until such time as their liability arose, the effect of which may have been to exacerbate the damage and increase the cost of ultimate repair. The Tribunal was told that one of the defects involved water ingress and the Tribunal considered that it was reasonable to assume that failing to take prompt action to address such a defect would have resulted in greater damage and increased cost of repair. The Tribunal was satisfied that the costs of repair had been reasonably incurred, and that the Respondent was entitled to charge such costs as service charge expenditure under paragraphs 6 and 12 of Part 1 of the Third Schedule of the Lease. In particular, the Tribunal noted the wording in paragraph 6: "All sums paid by the Management Company in and about the repair...of the Estate Common Parts and the Building Common Parts **whether or not the Management Company was liable to incur the same under its covenants herein contained**" (Tribunal's emphasis) ;

27.3 staff costs: paragraph 1.3: having regard to the evidence presented to the Tribunal by the Respondent of the hours worked, hourly rates and annual salaries (see paragraph 20.2(v) above), the Tribunal was satisfied that the costs had been reasonably incurred. Whilst they considered that the administration charge of 18% was towards the top end of the scale, they did not consider that it was unreasonable. They did not agree with the Applicants that this was purely a "hidden" management fee as they accepted that there was administration carried out in connection with the organisation of the concierge/caretaker and cleaner services at the Estate;

27.4 audit/accountancy fees: paragraph 1.4:

(i) the Tribunal considered that the audit/accountancy fees were unreasonable because (a) there was no requirement under the Leases for an audit to be carried out; (b) the per unit basis of charging for the audit/accountancy services was unreasonable as it was entirely arbitrary and did not appear to reflect the actual time taken or relative complexity of the services provided to the individual developments; (c) the Tribunal was satisfied that the statement which appears in the Applicants' Bundle at page 227 relates to services performed by Beever and Struthers in relation to the Estate, notwithstanding the Respondent's questions as to its' provenance and relevance: specifically, the Tribunal accepted the Applicant's evidence set out in paragraph 22.3 of the cross-references to the Estate accounts which thus supported his claim that the statement referred to accountancy services provided to the Estate by Beever & Struthers. The Tribunal was further satisfied that, in view of the determinations made in the statement, that the services had not been provided to a reasonable standard;

(ii) in response to the Tribunal's e-mail dated 16 November 2015 regarding the Respondent's challenges to the provenance and/or relevance of the document which appeared at page 227 of the Applicant's Bundle, further witness statements each dated 23 November 2015 of I.J.MacDonald, T.Stafford and P.Atkins for the Respondent were received.

The Tribunal noted that each of the witnesses confirmed that the document had been produced by the Applicant at a board meeting held on 24 March 2015, although they had appeared to be uncertain as to the date at the hearing. They also confirmed that the Applicant was requested at that time to provide additional information about this document but was unwilling or unable to do so and that enquiries subsequently made of Beever & Struthers elicited no information. The remaining content of the witness statements of Mr.Macdonald and Ms.Stafford relates to matters pertaining to Mr.Barton as a director of the Respondent and otherwise apparently by way of explanation of their concerns as to the veracity of the document.

On consideration of the evidence presented by the Respondent prior to and at the hearing and subsequently, the Tribunal is satisfied that, other than instructing their solicitor as to the date of the board meeting at which the document was produced by Mr.Barton, the Respondent's witnesses have disclosed to the Tribunal all relevant information within their knowledge as to the provenance and/or relevance of this document.

The Tribunal questions whether it is correct to claim (as the Respondent did at the hearing) that "all reasonable enquiries" were made by the Respondent about this document. It is apparent from the witness statements of Mr.MacDonald and Ms. Stafford that, by March 2015, relations between Mr.Barton and the rest of the Respondent's board were strained. Without commenting on the merits or otherwise of this situation, this appears to explain the Respondent's attitude towards the document and their requests for further information and Mr.Barton's failure to respond to those requests. It does not explain why the Respondent remained sceptical of its relevance even when directed towards the cross-references to figures appearing in the Estate accounts or why enquiry was not made of the Chartered Institute of Accountants;

(iii) having regard to the accountancy fee of £966 charged in respect of the 2012 accounts, the Tribunal considered that a fee of £950 was reasonable for accountancy services for the service charge years (or part years) ended 31.07.07, 31.07.08, 31.07.09, 31.07.10, 31.07.11, and 31.12.11;

27.5 water rates' accrual: paragraph 1.5: the Tribunal considered that it was reasonable to include an accrual for the water rates as part of the service charge expenditure, although this should be reviewed going forward having regard to the 6 year time limitation on any bill now produced, and the Respondent's evidence as to the anticipated amount of a bill when issued of c£1000. The Tribunal also urged the Respondent to do whatever they could to obtain the issue of a bill by United Utilities without further undue delay (acknowledging the difficulties that may be encountered in achieving this);

27.6 section 20C: paragraph 1.6: having regard to the determinations made by the Tribunal in paragraphs 1.1-1.3 and 1.5 of this Decision, they did not consider that it was just and equitable in the circumstances to grant the Applicants' s20C application;

27.7 costs' applications under Rules 13(1)(b) and 13(2): paragraphs 1.7 and 1.8: whilst the Tribunal considered that both parties had demonstrated conduct which may have increased the antagonism between them and rendered less likely a resolution of the issues without recourse to the Tribunal, they did not consider that either party had demonstrated that the other had acted unreasonably in bringing or defending the Application sufficient to justify the making of an order under Rule 13(1)(b). Specifically:

(i) many of the complaints by the Applicants about the Respondent's conduct related to conduct which was not relevant to their defence of the Application, but rather to their management of the Building and the Estate;

(ii) the Tribunal was satisfied that the 6 February 2014 Directions had been superseded by those dated 2 April 2014. Whilst they accepted that there had been some failure to disclose documents by the Respondent (indeed, the Respondent had acknowledged that disclosure had been, to some extent, "one-sided"), they also accepted that for the Respondent to have paid to discharge the lien on these papers would have been to incur expense unreasonably (which they would presumably have sought to recover as service charge expenditure from the leaseholders) when that documentation was available to the Applicants. They did not consider that there had been substantial non-compliance by the Respondent with the Tribunal's Directions as alleged by the Applicants;

(iii) with regard to the Respondent's claim, this appeared to be a claim in respect of Mr.Barton's conduct in seeking payment of his "costs" rather than that of the Applicants, (although the Tribunal acknowledges that the Applicants had agreed to continuation of the Application as a result). Whatever the reasons for the failure of the parties to agree to sign the consent order, (which remains a matter of dispute between the parties), the Applicants were entitled to continue with the Application and, in doing so, the Tribunal had determined in the Applicants' favour in respect of the audit/accountancy fees;

(iv) in view of the determinations made, the Tribunal did not consider that the circumstances justified the making of an order requiring the Respondent to reimburse the Applicants' their application and hearing fees.

List of Applicants

Applicant	Property at Victoria Mill
Mr Corr	Apartments 1, 4, 17, 51, 52, 60, 131
Ms K Welch	Apartment 2
Ms N McGee	Apartment 9
Ms F Rendina	Apartment 12
Mr T Marchant	Apartment 14
Mr & Mrs Proctor	Apartments 20, 142
Mr B Ranson	Apartments 28 and 91
Mr Atherford	Apartment 29
Ms N Hoyle	Apartment 31
Mr & Mrs Gunning	Apartment 40
Miss Hutchinson & Mr Johnson	Apartment 42
Mr Bottomley & Ms Rowlands	Apartment 56
Ms A Cooper	Apartment 75
Mr & Mrs Davies	Apartment 82
Mr & Mrs Stafford	Apartment 83
Mr Keith Barton (Lead Applicant)	Apartment 93
Mr I Cardoza	Apartment 96
Mr M Duffin	Apartment 98
Messrs Herring	Apartment 112
Mr J Cramp	Apartment 115
Mr D Parkinson	Apartment 135
Mr J Mannering	Apartment 141
Mr & Mrs Henley	Apartment 143
Mr K Hatch	Apartment 148
R G Wicklands Limited	Apartment 152
Ms J Palmer	Apartment 157
Ms R Lyne	Apartment 179