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

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| **Case Reference:** | **CHI/21UF/LSC/2021/0119** |
| **Property:** | **Villandry, Fort Road, Newhaven, East Sussex, BN9 9GD** |
| **Applicants:** | **Mr C Hudson (Flat 3)**<br>**Mr J Gearing (Flat 4)**<br>**Mr & Mrs P Revell (Flat 8)** |
| **Respondents:** | **Villandry RTM Company Ltd** |
| **Representative:** | **Ms S Massingham, Director.** |
| **Type of Application:** | **Determination of liability to pay and reasonableness of service charges under Section 27A of the Landlord and Tenant Act 1985** |
| **Tribunal:** | **Judge Professor David Clarke, Solicitor** |
| **Date of Hearing:** | **7 April 2022** |
| **Venue of hearing:** | **Paper Determination** |

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**DETERMINATION and STATEMENT OF REASONS**

## Determination

**The Tribunal determines that the sum of £3,927, being the amount of an invoice from BLB, chartered surveyors, dated 30 April 2019, is not a cost properly incurred within the service charge on the Property for the accounting year 2020.**

**The Tribunal determines that the sum of £1,653.60, being the amount of the invoice from Coole Bevis, solicitors, dated 17 March 2020, is a properly incurred service charge expense within the service charge on the Property for the accounting year 2020.**

**The Tribunal determines that the charge of £287.67 included in the service charge for 2020, covered by an invoice dated 24 February 2020 from RT Williams, insurance brokers and relating to an insurance policy for 'Directors and Officers Liability insurance' is a properly incurred service charge expense.**

**In respect of the applications for an order under section 20C of the Landlord and Tenant Act 1985 and for an order under paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002, the Tribunal makes no order under these sections.**

# Statement of Reasons

## The Application

1. This application ("the Application") is for the determination of liability to pay three specific items of service charge and was made on 22 December 2021. It is made in relation to a block of thirteen residential flats or apartments and six commercial units known as Villandry, Fort Road in Newhaven in East Sussex ("the Property"). The Application is only concerned with the service charge relating to the residential units in the Property.

2. The Applicants are three of the residential leaseholders, namely Mr Hudson of Flat 3, Mr Gearing of Flat 4 and Mr and Mrs Revell of Flat 8. The Respondent is Villandry RTM Company Ltd, a Right to Manage company formed on 17 June 2019, which assumed management of the residential part of the Property from 1 January 2020. The Applicants are not members of the Respondent company (though the Tribunal is told that they were invited to participate); the other 10 leaseholders constitute the members of the Respondent company. The director of the Respondent providing the written evidence and statement of case on behalf of the Respondent is Ms Massingham who is the leaseholder of three flats in the Property. Though the remaining residential owners are listed in the Application as members of the Respondent, with three of them stated as directors of the Respondent, none of them provided direct evidence to the Tribunal.

3. The Property was developed in about 2006-7 (the copy Lease supplied is dated 27 April 2007) by a firm called Oakdene Homes plc. It seems that this firm went into administration in 2010 and a company, Villandry Property Ltd ("VPL"), was formed to purchase the freehold reversion to the Property from the administrators of Oakdene Homes plc. There are, the Tribunal was informed, four shareholders of that company, which is the current freeholder. Those shareholders are the Applicants (Mr and Mrs Revell being a joint shareholder) with the fourth share being held by Ms Joyce, the leaseholder of Flat 14 (the Penthouse). Ms Joyce is also a member of the Respondent company so has a 'foot in both camps' so to speak but has not chosen to participate directly in the paperwork submitted to the Tribunal. The framework behind this Application is therefore of the thirteen flat owners falling into two groups, with the three Applicants forming the majority shareholding in the freeholder, VPL, (and having management responsibilities taken from them) and the other leaseholders now manging the Property and operating through the Respondent RTM company. It is three items in the Respondent's service charge accounts for the year 2020 that are in issue before this Tribunal.

4. VPL managed the Property from the acquisition of the freehold until 31 December 2019. However, the leaseholders who were not shareholders in VPL became dissatisfied with the quality of management. The Respondent says that repair work was neglected. Matters apparently came to a head when the then agents prepared a schedule of works and sought three tenders for that work with costs submitted ranging from £142k to £209k. The Tribunal was told that the required notices under section 20 of the Landlord and Tenant Act 1985 had not been served. In any event, the Respondent Company was formed and successfully applied to take over management of the Property. This Tribunal is not

concerned with any details of the history but needs to outline the position since it forms the background to the first of the three issues that fall for determination.

5. The Application was subject to Directions made on 17 February 2022. The Tribunal identified that there was one matter to be determined, namely, whether the three service charge items which are disputed by the Applicants are properly recoverable under the terms of the Leases. There is no claim that the sums so charged are unreasonable in amount. If they are recoverable under the Lease, then they are recoverable in full. The Directions also considered that this Application was suitable for determination on the papers alone without an oral hearing in accordance with Rule 31 of the Tribunal Procedure Rules 2013. Since no objection was received from either party, this matter is determined on the evidence provided by the bundle of papers submitted, without a hearing and without an inspection of the Property.

6. Applications are also made for an Order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

7. The Tribunal notes that there have been a series of previous Tribunal applications and determinations in relation to this property, as briefly listed in the Application. It is there stated that there have been three, in 2013, 2014 and 2016, taken by a leaseholder with VPL as respondent; and one taken out by the Respondent RTM company in 2020 against VPL. None of these have been referred to in any further detail by either party in the papers submitted. This Tribunal therefore knows nothing about the detail of any of those applications and assumes that they are not relevant to this determination.

**The Issues**

8. The Applicant seeks a determination as to whether legal and professional fees and an insurance premium, together totalling £5,867.27, are recoverable through the service charge. Within that total, there are three issues that the Tribunal is asked to determine. They are as follows:

(1) An invoice for £3927,00 dated 30 April 2019 from BLB (a firm of chartered surveyors). This invoice was paid by Ms Massingham personally but was reimbursed to her by the Respondent Company.
(2) An invoice for £1,653.50 from Coole Bevis (a firm of solicitors) and dated 17 March 2020.
(3) An invoice for £286.67 from RT Williams (insurance brokers) relating to director's liability insurance and dated 24 February 2020.

Each issue will be considered in turn, after consideration of the terms of the Lease.

**The Lease(s)**

9. The Tribunal has been supplied with a copy of the lease ("the Lease") of flat 3. It is dated 27 April 2007 and grants a term of 125 years from 29 September 2006. It is made between Oakdene Homes plc as Landlord, Oakdene Estate Management Ltd ("Oakdene Management"), as the Management Company, and Christopher John Hudson as the

Tenant. It contains the usual provision that the leases of each of the apartment buildings will be in substantially the same form. In the absence of any evidence to the contrary, the Tribunal proceeds on the basis that the provisions of the relevant provisions in the leases of all 13 flats in the Property are in the same form as in the copy of the Lease supplied. In the Lease, references to the Property are to the 'Estate' as defined in the Lease.

10. The responsibility of the management of the Property is given by the Lease to Oakdeen Management and that company, which is recorded in the Lease with the same address as the developer and original landlord (which went into administration in 2010), joined in the Lease as party to take on that responsibility for the servicing, repair, maintenance, insurance and management of the Property. The papers and evidence before the Tribunal make no reference at all to Oakdene Management, so it is unclear if that company also entered administration or, indeed, whether and to what extent it ever exercised its management functions. But the appointment of the Respondent as a right to manage company under Part 2, Chapter 1 of the Commonhold and Leasehold Reform Act 2002 allows the Respondent to neatly take on the responsibilities of Oakdene Management under the provisions of the Lease as they relate to the thirteen residential flats, particularly as clause 3.2 of the Lease provides for the interpretation of the expression 'the Management Company' to include any other company to which the rights and duties of the Management Company are assigned or transferred or any other body that is responsible for the time being for the administration of the Property. In exercising the statutory right to manage, the Respondent company is subject to sections 95-103 of the Commonhold and Leasehold Reform Act 2002 but the issues to be decided in this case do not appear to be affected by those provisions.

11. The Lease provides for a service charge, defined in clauses 1.9 and 2.1 of the Lease as the aggregate of the expenditure described in the Second Schedule to the Lease. The Management Company, subject to the service charge being paid, covenants in clause 4 (inter alia) to keep the retained parts in good and substantial repair, to decorate every five years, to stock the grounds with plants, to repair boundaries and to insure the Property. The insurance covenant, clause 4.6, does not need to be set out in full but specifically includes public liability insurance; and a separate clause 4.7 requires insurance of the Management Company and its employees against all third-party claims for damage to property or injury to any person. Clause 4.10 requires the Management Company to indemnify the landlord against all actions, proceedings, costs, claims and demands in respect of occupier's and owner's liability and the acts, neglects or defaults of the Management Company, its members, agents, servants or contractors.

12. The Second Schedule to the Lease defines service charge expenditure incurred in the following ways (relevant provisions only):

> "(1) In the performance and observance of the covenants, obligations and powers on the part of the Management Company and contained in this Lease. . . .
> (2) In the payment of the expenses of management of the Estate of the expenses of the administration of the Management Company of the proper fees of surveyors or agents appointed by the Management Company . . . and with the apportionment and collection if those fees and expenses . . .
> (3) In the provision of services facilities amenities improvements and other works where the Management Company in its . . . absolute discretion from time to time

considers the provision to be for the general benefit of the Estate and the tenants of the apartments and whether or not the Management Company has covenanted to make the provision."

**Issue One**

13. The Applicants contend that invoice for £3927.00 dated 30 April 2019 from BLB (a firm of chartered surveyors) should not be included in the service charge for 2020. The work was to review the schedules of work previously prepared by the then agents on behalf of VPL, resulting in three tenders from contractors for amounts ranging from £142k to £209k, and, after inspection of the Property, in preparing an expert report. The invoice was addressed to 'Villandry' but for the attention of Ms Sue Massingham. This invoice was paid by Ms Massingham personally. It was, however, reimbursed to her by the Respondent Company early in 2020 and included as a service charge expense.

14. If BLB as a firm had been instructed by the Respondent, it seems clear that this would have been a chargeable management expense within the Second Schedule to the Lease (set out above) incurred in performance of the covenant to repair. It would also have been a properly incurred surveyor's fee required as part of the management of the Property to deal with the need for repair. However, the Applicants contend that is it not a cost incurred and payable as a service charge within section 27A of the Landlord and Tenant Act 1985 because the firm was instructed to Act by Ms Massingham, not the Respondent and those instructions were issued before the Respondent was formed as a company (the Tribunal was supplied with a copy of the Certificate of Incorporation dated 17 June 2019) and even longer before it assumed management of the Property on 1 January 2020. They also question whether it is right that the reimbursement of the cost of the work by BLB was made by a payment direct to Ms Massingham's bank account.

15. The Respondent contends that the advice sought from BLB was endorsed by Mr Hudson and an email was produced in evidence showing that Mr Hudson wrote on 27 March 2019 that 'to do an independent report was a good idea'. It is further contended 'that all leaseholders agreed and supported the payment for a second opinion' and that the work based on that report gives an average cost saving to each leaseholder of £9,393.

16. While it is possible that the cost of the surveyor's fees incurred would have been a properly incurred service charge expense if BLB had been instructed by the Respondent after it had been formed but before it assumed its management responsibilities, that is not the question the Tribunal has to decide. The Tribunal is clear in its conclusion that, with the firm being instructed by Ms Massingham before the Respondent was formed, the Respondent cannot assume the amount of the costs so incurred and charge the amount in the service charge. The Lease is clear that it is the performance of the covenants '*on the part of the Management Company*' and in payment of expenses of the administration *of the Management Company*'. It would require the wording of the Lease to be stretched beyond the natural reading to permit a cost requested by a leaseholder before the Management Company was formed and not endorsed by the authorised managers of the Property at the time to be included in a later service charge. Words in a lease should not be invoked retrospectively to give a meaning that the words cannot plainly bear and the

meaning of the relevant words in a lease must be read in their documentary, factual and commercial context - *Arnold v Britten* [2015] UKSC 36 per Lord Neuberger.

17. It may seem harsh to the Respondent and Ms Massingham that the Applicants should have the benefit of a much more economical set of works to remedy disrepair yet do not have to pay for the expert's report on which they are based. However, the Tribunal must apply the law, and service charges are only payable if they are properly recoverable under the terms of the Lease.

18. Whether it is possible for a service charge to properly include items not authorised by the Lease but agreed to by the leaseholders now disputing the charge does not have to be decided (and it is likely that it would be a contractual obligation if at all). For the email produced by the Respondent whereby Mr Hudson stated that 'to do an independent report was a good idea' falls far short of an agreement to pay a share of the costs. Indeed, the Applicants have each filed a witness statement saying categorically that they did not agree to the payment for this expert opinion. The Tribunal accepts those witness statements which are not contradicted by the Respondent.

19. The Tribunal therefore determines that the sum of £3,927, being the amount of the invoice of BLB, surveyors, dated 30 April 2019 is not a cost properly incurred within the service charge on the Property for the accounting year 2020.

**Issue Two**

20. The Applicants challenge the cost incurred by Cole Bevis in the sum of £1,653.60 covered by an invoice dated 17 March 2020. They do so on two grounds. First, they submit that the invoice is 'clearly' for legal services relating to the setting up of the Respondent RTM company and therefore not a proper charge. Reference is made to a schedule of legal fees, with six listed from this firm, headed 'Costs to set up RTM'. The second basis put forward is that the Lease makes no provision for the recovery of legal fees.

21. The Respondent's case is that the work covered by the invoice was in creating an agreement for the freeholder to pay to the service charge accounts receipts from the commercial units within the Property. Ms Massingham attaches the total schedule of fees (with the heading 'Costs to set up the RTM 'as set out above) but points out that, while the remaining invoices totalling £6,185.80 were indeed for the setting up of the RTM and paid for by the members of the RTM company, the sum of £1,653.60 was incurred for the benefit of the service charge account.

22. On the evidence submitted, the Tribunal finds that the work covered by the disputed invoice was indeed an expense incurred within the management of the estate and within the service charge expenditure as defined by the Second Schedule to the Lease.

23. The first submission of the Appellants cannot be sustained from the evidence. The fees of Coole Bevis do not relate to litigation between the parties (discussed in paragraph 25 below) but to advice that the Respondent required to set up its management of the estate. The invoice on its face summarises the work as relating to work done 'post-

completion of the acquisition of the right to manage'. Therefore, it does not relate to acquisition costs (as the Applicants submitted) and is directly related to the management of the estate and so falls squarely within paragraph 1(2) of the Second Schedule to the Lease set out in paragraph 12 above. The Respondent's explanation that the work was for creating an agreement for the freeholder to pay to the service charge accounts receipts from the commercial units within the Property is accepted by the Tribunal and the Applicants provide no evidence to the contrary. The importance of getting such arrangements done properly and with clear legal advice on the powers of an RTM company is shown by the recent decision of the Supreme Court in *FirstPort Services Ltd v Settlers Court RTM Company Ltd* [2022] UKSC 1 which decided that not only did an RTM company not have jurisdiction to manage non-residential units but that it could not manage facilities shared with other blocks.

24. As to their second submission, the Applicants are correct that there is no specific provision in the Lease providing for recovery of service charges. But this does not mean that every legal charge incurred by a landlord or management company is irrecoverable if there is no direct reference to recovery of solicitor's fees. The Lease in this case must be construed on its own terms to ascertain if the solicitor's fees for advice on management of the estate are properly recoverable. There are no special rules for the construction of service charge provisions - *Arnold v Britten* [2015] UKSC 36.

25. There is a substantial case law on whether solicitor's costs for work done for a landlord or management company are recoverable in the service charge. There is, on the one hand, no strict rule that legal costs cannot be recovered where the service charge clause uses general words. As was stated in *Union Pension Trustees v Slavin* [2015] UKUT 103, there are authorities that hold that a reference to legal expenses is not a precondition of recovery. On the other hand, as *Slavin* makes clear, those same authorities do not provide a general basis for recovery of all legal expenses incurred by an 'any other costs' clause'. Many of the decided cases relate to earlier litigation costs, often between the parties. Where there is a general and widely drawn power to recover all the expenses of management and in the administration of the estate (as in this Lease) then legal costs necessarily incurred may be properly chargeable to the service charge – *Sinclair Gardens Investments (Kensington) Ltd v Avon Estates (London) Ltd* [2016] UKUT 317. But in *Sinclair Gardens* legal fees incurred during litigation between the parties were not recoverable.

26. In this case, the costs relate to advice on management requested by a newly established RTM company responsible for management of the residential units in a mixed development. In *Bretby Hall Management Company Ltd v Pratt* [2017] UKUT 70, the Judge said: 'it was to my mind, plainly contemplated that the reasonable costs of managing the development should be recoverable under the service charge'. In the opinion of the Tribunal, the Lease in this case provides that same contemplation that the reasonable costs in managing Villandry should be recoverable under the provisions of the Second Schedule. Both the wording of paragraphs 1(2) and 1(3) set out in paragraph 12 above provide the same 'plain contemplation' that was found in the *Bretby Hall* decision. This conclusion is supported by *Assethold Ltd Watts* [2014] UKUT 0537 where legal costs incurred in party wall proceedings were chargeable under a clause that provided for

recovery which 'in the reasonable discretion of the Landlord may be considered necessary or desirable for proper maintenance and administration of the development'.

27. The Tribunal therefore determines that the sum of £1,653.60, being the amount of the invoice of Coole Bevis, solicitors, dated 17 March 2020 is a cost properly incurred within the service charge on the Property for the accounting year 2020.

**Issue Three**

28. The Applicants challenge a charge of £287.67 included in the service charge covered by an invoice dated 24 February 2020 from RT Williams, insurance brokers. The charge relates to an insurance policy for 'Directors and Officers Liability insurance'. The Applicants submit that this is not a cost directly related to the insurance of the Property and is not therefore allowable as a service charge cost.

29. The Respondent Company simply submits that the liability insurance is for the running of the building and should therefore be paid as part of, and chargeable to, the service charge.

30. The Tribunal considers that liability insurance is permitted by the Lease both within the insurance covenant in clause 4.7 and as an expense of management of the estate with paragraph 1(2) of the Second Schedule. Clause 4.7 is wide in its terminology requiring insurance of the Managing Company and its employees to the extent that the employees are concerned with the estate. An RTM company is solely concerned with management of the estate or property in respect of its appointment. Directors and officer's liability insurance, a desirable form of cover for all directors and trustees, will be within this covenant. It would also be an expense of the management of the estate within paragraph 1(2).

31. The Tribunal therefore determines that the charge of £287.67 is a properly incurred service charge expense.

**Applications under section 20C and Paragraph 5A**

32. No submission was made by either party in respect of the applications for an Order under section 20C of the Landlord and Tenant Act 1985 and paragraph 5A of Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

33. The Applicants have succeeded on one of the submissions made but failed in two others. In the absence of cogent reasons being put forward by the Applicants for the making of an order under section 20C, the Tribunal declines to make an order under that section.

34. No order is made under section 5A as there is no administration charge relating to litigation costs identified by the Applicants and relevant to this determination.

## Right of Appeal

35. 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 (RPSouthern@justice.gov.uk). 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.

36. 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.

37. 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 that the party who is making the application for permission to appeal is seeking.

12 April 2022.