



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

Case Reference : CHI/24UE/LIS/2013/0120

Property : Apartment 11, Rosemary House, 136 Botley Road,
Swanwick, Southampton, SO31 1BU

Applicant : Dr Terence Dodgson

Respondent : Rosemary House Limited

Respondent's Representative : Mr Richard Robinson

Type of Application : Section 27A of the Landlord and Tenant Act 1985

Tribunal Members : Judge J Brownhill (Chair)
Mr A J Mellery-Pratt FRICS

Date and venue of Hearing : 1st April 2014 Tribunal Office, Midland House, 1
Market Avenue, Chichester, West Sussex.

Date of Decision : 1st April 2014

DECISION

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Introduction

- 1 Where numbers appear in square brackets [] in the body of this decision, they refer to pages of the bundle before the Tribunal. Where page numbers in brackets are prefaced with [A] it refers to a page number in the Applicants bundle, and with an [R] it refers to a page number in the Respondent's bundle.

- 2 The Applicant applied under section 27A of the Landlord and Tenant Act 1985 (the '1985 Act') for a determination of the reasonableness of a number of elements of service charges in the years 2012/2013, and 2013/2014, specifically:
 - a. Gardening costs;
 - b. Accountancy;
 - c. External cleaning costs; and
 - d. The increase in the special reserve.

- 3 The Tribunal had the benefit of paginated bundles prepared by the parties

Summary

- 4 The Tribunal found:
 - a. Re the service charge year 2012/2013:
 - i. No refund is due to the Applicant in relation to the budgeted gardening costs; and
 - ii. There is no requirement for an external accountant to be appointed under the terms of the lease unless and until required by the landlord. The accounts produced by the Respondent were adequate and complied with the terms of the lease.
 - b. Re service charge year 2013/2014:
 - i. No refund is due to the Applicant in relation to budgeted gardening or external cleaning costs. The budgeted figures in relation to these headings were appropriate and reasonable at the time the budget was set. Any surplus or deficit will be treated as required under the terms of the lease, once the actual accounts/ amounts are known and any overall surplus or deficit applied;
 - ii. The general reserve figure of £2,500 is reasonable and appropriate; and
 - iii. Dr Dodgson's complaints concerning the costs associated with a lack of repair to the retaining wall to the driveway exit cannot be determined at the current time or on the basis of the information currently before the Tribunal;
 - c. No order will be made under section 20C of the 1985 Act.

The Inspection

- 5 The Tribunal had the benefit of inspecting the exterior and gardens of the building in which the property is situated on the morning of the 01/04/2014. Present at the inspection were the Tribunal, Dr Dodgson (the Applicant); Mr Robinson (of and for the Respondent), Mark Butcher (of the Respondent), and Julia Vaughan (of the Respondent).

- 6 The property is situated in a purpose built block of 14 flats. The block is of a conventional brick construction, set in spacious grounds. There is a one way entrance and exit system in place to the block's car park. The car park is situated at the front of the building. The Tribunal were shown various areas of the garden by Dr Dodgson, including various flower beds, and areas of lawn as well as behind bin sheds.
- 7 The Tribunal were also shown the retaining wall to one side of the driveway exit. The wall was of brick construction and had clearly been subject to movement; there was significant cracking in at least two places. Behind the retaining wall there was a high soil bank and a large tree. The soil bank had been partially excavated directly behind the wall.

The Hearing

- 8 Present at the hearing were: the Tribunal; Dr Dodgson (the Applicant), Mr Nigel Spencer (of Hampshire Property Management - attending with the Applicant); Richard Robinson (of and for the Respondent), Mark Butcher; Julia Vaughan; Carol Egan; Frank Crozier and Grace Jacca (all of the Respondent).

The Law

- 9 The statutory provisions primarily relevant to applications of this nature are contained in sections 18, 19 and 27A of the 1985 Act. A copy of those provisions is attached as an appendix to this judgment.
- 10 The Tribunal made it very clear to both parties that it was only considering the aspects of the service charges which had been explicitly and specifically raised on the face of the Application. If there were other items of service charge which the Applicant wished to challenge as being unreasonable then a new application would need to be made.
- 11 Mr Dodgson at one point invited the Tribunal to consider the reasonableness and of a one off charge of £1,500 within the 2012/2013 service charge accounts headed 'Management Agent – buyout £1,500' [R51]. This related to the cost of the Respondent's early termination of the contract with Hampshire Property Management. A contract which the Applicant had entered into with Hampshire Property Management when he was a director of the Respondent.
- 12 Mr Robinson for the Respondent indicated that they did not want the Tribunal to consider the issue during the hearing. Dr Dodgson stated that he was asking the Tribunal to look at this issue during the hearing because, even though he hadn't brought it up, it had been referred to in the Respondent's bundle. He stated "I didn't think that the managing agent is part of this, but as it has been brought up. I feel that there are lots of documents I should have submitted in relation to that issue but I don't have now."
- 13 The Tribunal decided that it was not going to examine the issue of the £1,500 payment to terminate the property management contract with Hampshire Property Management. This was not an issue that either party had come

prepared to argue before the Tribunal. Dr Dodgson indicated that he had more documentation that he would wish to rely on in relation to this issue. That documentation was not before the Tribunal. It was not appropriate for voluminous new documents to be introduced at the hearing in relation to a new issue. That would cause prejudice to the Respondents. Indeed there could be prejudice to both parties as the issues had not been clearly delineated. It further seemed to the Tribunal that to consider this issue would involve a potentially lengthy consideration of some of the history and the circumstances in which the contract was first entered into. The time estimate of the hearing and the allocated Tribunal resources, may therefore prove to be insufficient. The Tribunal considered that a decision could be reached on the matters raised by the Applicant in his application, without deciding this issue. If, as was made clear at the hearing the Applicant wished to raise this matter before a Tribunal, he would be free to do so in another application.

- 14 The Tribunal also made it clear to Dr Dodgson that its jurisdiction was limited in scope, especially given the type of application he had made. The Tribunal were looking at the individual service charge items he had identified in his application and deciding whether they were payable under the terms of the lease; reasonable in amount; and the related work was of a reasonable standard. The Tribunal could not direct that external accountants should be appointed, nor regulate the constitution of the Respondent's board of directors.

The Lease

- 15 The Tribunal has seen a copy of the lease for flat 11 Rosemary House. The Tribunal identified several clauses at the outset of the hearing as being specifically relevant:
 - a. Clause 1.19 Maintenance Expenses
 - b. The 6th Schedule – Maintenance Expenses, in particular paragraphs 6.4; 6.5; 6.12; 6.13; and 6.19; and
 - c. The 7th Schedule – particularly paragraphs 7.1.2; 7.3 and 7.4.2.

Preliminary matters

- 16 The block consists of 14 flats, each of which is let on a long lease. The Tribunal were told that the Respondent is the landlord. The Respondent is a limited company with shareholders comprising the lessees of the flats. The Respondent is also listed in the terms of the lease as the management company. The Respondent has a board of some 7 directors.
- 17 At one stage the Applicant was a director (possibly the sole director) of the Respondent. For a number of reasons, which were not explored during the hearing, he resigned his position. At that time the Tribunal understood that the number of directors of the Respondent company had grown significantly. The Applicant was unhappy about this, as well as the manner in which decisions were made by the Respondent in general: he felt aggrieved in particular at the way in which the Respondent treated suggestions made by him: at one point he made allegations of harassment against the current directors, and he told the

Tribunal that he was seeking the advice of criminal solicitors in relation to the actions of the directors. As was explained to Dr Dodgson during the hearing. Those are not matters over which the Tribunal has any jurisdiction.

Service Charge year 2012/2013

18 Dr Dodgson made two substantive complaints about items in the 2012/2013 service charge year:

- a. The gardening contract had been cancelled with effect from January 2013. For the period from January 2013 to March 2013 inclusive no gardening services had been provided. He therefore requested that the monies saved by the Respondent not having paid the gardeners should be proportionately reimbursed to the lessees; and
- b. The Respondent, while having produced accounts, had not had accounts produced or audited by an external accountant.

Dr Dodgson then contended that if sums were to be repaid that cumulative interest at a rate of 3% should be applied.

19 Dr Dodgson accepted that during the three month period Jan- March 2013 the directors of the Respondent company had been trying to carry out the gardening jobs in the common grounds of the property. He criticised their work. He accepted that they were doing such work for free and had not been paid for their time or effort. He accepted that it was appropriate for the directors to be paid for the materials (weed killer etc.) that they had purchased and used in order to carry out such works. Dr Dodgson's argument was in effect that an amount had been set in the budget in respect of gardening works, that amount had not been spent as the contract was cancelled, therefore the lessees were entitled to be repaid the relevant unpaid sums. Dr Dodgson accepted that the charges of £1,486 in relation to gardening services were reasonable [R51], and that the standard of work covered by those charges was reasonable.

20 Mr Robinson for the Respondent argued simply that the contract had been terminated as the Respondent was unhappy with the gardening contractors work. The Respondent had investigated alternative gardening contractors. All of the quotes obtained required the existing 'rubbish' on site to be removed before they started. The Tribunal had not seen those quotes. The directors decided, as a costs saving measure, to remove the 'rubbish' themselves in a piecemeal fashion. During the time it took them to do this there was no external gardening contractor employed. Directors were not paid in relation to this work. The reason why there had been no refund to lessees in relation to the under spend on this item (budgeted expenditure at £2,575 [R38] (this budget having been actually set by Dr Dodgson), actual spend £1,486 plus £34 re gardening extra [R51]) was because there had been overspends elsewhere in the budget and there was a deficit of £1,237 overall for the 2012/2013 year [R50].

21 Mr Robinson also pointed to paragraph 7.4.2 of the seventh schedule [R8] of the lease in relation to how the lease required the Respondent to treat any surplus or deficit on the accounts.

- 22 He explained that the Respondent had decided to cover the deficit for that year from the reserve funds, rather than seek an additional payment from the lessees.
- 23 Dr Dodgson in reply argued that he did not accept or trust the accounts produced and relied on by the Respondent. He believed that any deficit had been caused by the Respondents own actions, principally he pointed to what he characterised as unnecessary charges in the accounts relating to the managing agent; specifically photocopying and the 'buy out' costs. As has been stated above, and was explained to Dr Dodgson during the course of the hearing, the Tribunal were not going to look at those other items of the service charge as they had not formed the basis of his application. The Tribunal refers to paragraphs 10 to 14 above.
- 24 The Tribunal found that the gardening charges of £1, 486 were reasonable and appropriate. The Tribunal found that while the expenditure in relation to gardening was below the budgeted figure, the overall accounts showed a deficit and so there was no refund properly due. The Tribunal did not, for the reasons explained above, look at other items of expenditure raised by Dr Dodgson by way of a collateral attack on the conclusion that there was a deficit. Dr Dodgson did not complain about the gardening that was undertaken for the 9 months of the year to which the charges related, nor to that cost. Dr Dodgson's complaint was really that the contract had been cancelled and no, or no sufficient gardening was done in the remaining three months of the 2012/2013 service charge year. The Tribunal found that there had been no cost charged in relation to those three months, and further that as these were winter months there was in reality little gardening to be done.
- 25 Dr Dodgson also complained about an item of £800 for tree surgery included within the budget for 2012/2013, saying that no such works had been carried out and he therefore claimed that this amount should be refunded. The Tribunal found that the accounts for 2012/2013 showed that no sums had been expended in relation to tree surgery. However, as with the gardening contract, there was no surplus to be refunded as there was an overall deficit on the accounts that year.
- 26 The Tribunal therefore found the gardening charges for the 2012/2013 service charge year to be reasonable, and that there was no refund due to Dr Dodgson or the other tenants.
- 27 To the extent that Dr Dodgson wishes to challenge the fact of the overspend in that service charge year in any new application, he needs to identify which specific items in the service charge accounts he alleges were unreasonable or not properly paid or payable under the lease and gave rise to the overspend. The Tribunal need to have the issues identified in a timely fashion and the relevant documentation properly disclosed.
- 28 The second item raised by Dr Dodgson in relation to this service charge year related to the accounts provided by the Respondent. In his application he specifically refers to the fact the no external accountant was used and no detailed accounts were submitted to the lessees [A11].

- 29 During his oral evidence to the Tribunal Dr Dodgson explicitly stated that he did not think that the lease required that an external accountant should be used to produce the relevant accounts. Indeed the Tribunal noted that during Dr Dodgson's period as a director of the Respondent an external accountant had not been used and the accounts were not audited.
- 30 Dr Dodgson's complaint was rather, in effect, that the Respondents were not doing things how he had done them, and that he didn't think that the way the Respondents produced their accounts gave him enough information. He referred to wanting to see receipts and the like and copies of bank accounts and said at one point "I accept that it isn't a requirement under the terms of the lease that an external accountant is appointed, but I'd like one."
- 31 The Tribunal were satisfied, having regard to paragraph 6.12 of the sixth schedule of the lease, that the issue of whether an external accountant was to be employed to prepare the accounts was a matter within the landlord's discretion. The landlord, (the Respondent company) had not required an accountant to be employed. While Dr Dodgson, as a shareholder of the Respondents, may seek to persuade the Respondents to invoke their power under this clause, he could not compel them to do so. He was a shareholder only, the decisions of the Respondent were made by the board of directors. Any criticisms of the board or that decision making process were not within the jurisdiction of the Tribunal.
- 32 No charge for accountancy was made to lessees within the 2012/2013 service charge accounts [R51]. The Tribunal noted that the 2012/2013 budget [R38] prepared and set by Dr Dodgson, referred only to a nominal figure of £100 in relation to accountancy/audit fees/solicitors fees. While such a cost had seemingly not been incurred [R51], as there was a deficit in the accounts, there was no refund to be made to the lessees.
- 33 The fact that when Dr Dodgson was a director he produced the accounts in a certain way and provided information with a certain degree of detail did not entitle him to require the Respondents to replicate his approach now. The Tribunal found that the accounts produced by the Respondent in relation 2012/2013 were sufficient under the terms of the lease.
- 34 Given the conclusions reached by the Tribunal on these matters the issue of any cumulative interest to be applied to any refunded monies, did not fall to be considered. The Tribunal makes no finding upon the same.

Service charge Year 2013/2014

- 35 Dr Dodgson's application in relation to the service charge year 2013/2014 is based on the budget set for that financial year [A62]. By the date of the hearing (01/04/2014) the financial year had only just ended and so final figures were not available for the year.
- 36 Dr Dodgson's' complaints can be categorised as follows:

- a. That in relation to garden maintenance, garden upkeep and external cleaning, a figure had been inserted in relation to each item in the budget, and yet no external company had been contracted to do these works and the works were in effect being done, for free, by the Directors of the Respondent. Therefore Dr Dodgson argued that by paying the service charge the lessees were paying for something they were not getting. He required a reimbursement of those sums;
- b. The retaining wall to the exit drive way had not been remedied in a timely fashion and because of the delay and the excavations to the bank behind the wall (carried out by the Respondents directors), the costs of repair had increased;
- c. That an external accountant had not been employed to prepare the accounts; and
- d. That the special reserve level within the budget had been increased from £1,000 to £2,500 without any proper basis or explanation for the same.

37 Looking first at the figures inserted into the budget in relation to gardening and external cleaning. Mr Robinson stated that the Respondents had been considering and had anticipated employing external contractors to do these works when the budget was set in March 2013 and had got quotes for the same. In relation to the gardening works, and as stated above, the external contractors required the existing rubbish (left by the previous gardener) to be removed from the site before they started. The Directors decided to do this themselves in order to save costs. More time was taken than had been originally envisaged in removing the rubbish from the site as it was being done on a piecemeal basis. By June 2013 part way through the growing season the directors had already undertaken some substantive gardening works themselves trimming bushes etc. and so the decision was taken at this point that they would continue to do the gardening themselves. The budget for 2013/2014 had been set in March 2013 and so was set prior to those decisions being made. The Tribunal found that it was appropriate to set a budget which included some provision in relation to those items. The Respondents indicated (and the Tribunal accepted) that they had thought they might, in the course of the 2013/2014 service charge year, incur costs under these heads by employing an external contractor, it was therefore appropriate for some provision to be included within the budget. If the Respondents had employed a gardener in 2013/2014 year and had not included any provision for the same in the budget, there would have been understandable questions to answer.

38 Dr Dodgson accepted that the Directors of the Respondent were not being paid to provide what gardening/cleaning services they carried out. He accepted too that the cost of materials used by them carrying out those services should be paid out of the budget (weed killer etc.). Dr Dodgson stated that his preference would be that there was no reference to this item in the budget and that he therefore paid a lower costs initially. He then stated that if someone was contracted to provide those services later in the year, resulting in a deficit, he would prefer to pay for the same at that stage.

39 The Tribunal accepted entirely the Respondent's explanations for the course of events in relation to the gardening/ cleaning contracts and its submissions in

this regard: the budget is designed to set out anticipated likely expenditure. The Tribunal accepted that the Respondents considered that they would be engaging external contractors to provide these services at some point later in the year (when the rubbish had been removed from site). As was put to Dr Dodgson during the course of the hearing, if his approach were to be adopted then any deficit could have only been recovered from the lessees at the end of the financial year and would have needed to be financed in some fashion during the course of the year. That is clearly not a sensible approach to budgeting. If Dr Dodgson's approach were to be utilised it would mean, in effect that the Respondents would not have been able to engage a gardening/cleaning contractor at all in the relevant service charge year. The Tribunal found and accepted that there was an intention on the part of the Respondent to engage a contractor subject to price etc. at the time when the budget was set. A figure was therefore properly and reasonably included in the budget. The Tribunal found such figures as had been included to be reasonable; indeed Dr Dodgson did not seek to argue that the figures themselves were excessive.

- 40 The Respondents confirmed that if, at the end of the financial year, given the under spend on the gardening and external cleaning items in the budget, there was an overall surplus then they would refund such appropriate sums to the lessees and treat any surplus as required under the terms of paragraph 7.4.2 of the seventh schedule of the lease.
- 41 The Tribunal therefore rejected Dr Dodgson's challenge to these budgeted items of expenditure. No cost (beyond provision of materials) had in fact been incurred in relation to these items of expenditure. There was therefore no real argument about whether the costs incurred were reasonable given the standard of works undertaken; there had been no cost incurred. The inclusion of the figures within the budget was reasonable for the reasons given above.
- 42 Turning next to the retaining wall and the repairs required in relation to the same. Dr Dodgson stated that he believed that the wall would come within the heading of the gardening budget figure: it had done when he had been a director, but that he wasn't now sure where in the budget it would fall to be considered. Mr Robinson stated that it fell to be considered under the special reserve.
- 43 Dr Dodgson stated he had raised the issue of problems to the wall three years ago, and yet nothing substantive had been done in relation to the same. Dr Dodgson stated that in his view the Respondents should have instructed professionals to advise them in relation to the wall and should not have excavated it themselves. He believed that these actions would have all resulted in the eventual works to rectify the wall being more expensive.
- 44 The Tribunal explained to Dr Dodgson that there was no expert evidence before it in relation to the wall. The Respondents stated in their submission that they had been advised to carry out the excavations themselves. There was no information before the Tribunal in relation to the cost of rectifying the problem with the retaining wall, nor whether that cost would have been less if the works or repair/replacement had been undertaken sooner or if the

excavation had not been undertaken, or had been undertaken in a different fashion. The Tribunal therefore would be unable to make decisions in relation to the reasonable costs of remedying the problem with the retaining wall in this application. Now was not the appropriate time for arguments in relation to the cost of repair of the wall; the appropriate time for those argument was when the relevant costs were known and appropriate evidence could be put before the Tribunal. At present there was insufficient information to allow the Tribunal to make any appropriate decision in this regard. The Tribunal noticed in passing that George Tutte and Associates had written to lessees at the end of January 2014 in relation to works to the wall R140]. It appeared that the section 20 consultation procedure had been commenced. Dr Dodgson was not, so far as the Tribunal could see, taking issue with the method of repair being proposed.

- 45 The issue concerning the engagement of an external accountant, has been dealt with above in the context of the 2012/2013 service charge year – see paragraphs 28 to 33 above.
- 46 Finally Dr Dodgson raised the issue of the special reserve figures included in the 2013/2014 budget. Dr Dodgson's application referred to the fact that in previous years, the reserve had been set at £1,000 yet the 2013/2014 budget set the reserves at £2,500.
- 47 In fact the 2012/2013 budget (which Dr Dodgson had himself set) showed that the general repair contingency had been set at £1,000 and the General Reserves had also been set at £1,000, making a total of £2,000. In addition to which the 2012/2013 budget included all the costs of interior painting at Rosemary House, amounting to some £2,000. That had, Dr Dodgson said, been his way of doing things; he would attribute the entire cost of interior repainting in one service charge year and not spread across a number of years.
- 48 If one looked therefore at the total amount under these three heads it amounted to some £4,000. Mr Robinson for the Respondents submitted that all that had been done in the 2013/2014 budget was to amalgamate these disparate headings under one heading, called the special reserve. In fact, and as Dr Dodgson rightly pointed out, at [A62] the 2013/2014 budget referred to two headings in this regard: special reserve £2,500 and general contingency £1,000. However, even on that basis the total cost was £3,500. This represented a decrease of £500 from that set in the previous year.
- 49 The Tribunal considered the Respondent's explanation for this sum as set out in their submission at page 11 of 21 onwards, and specifically at page 13 of 21 of the submission. The Tribunal accepted that explanation and finds that the amount referred to in the budget for 2013/2014 in relation to both the special reserve and general contingency are appropriate and reasonable.
- 50 Dr Dodgson's position adopted during the hearing that the budget should be adjusted to reflect £1,000 for the reserve and £1,000 for the contingency was rejected by the Tribunal. That approach would have meant keeping the cyclical costs of painting out of the reserve heading and including it as a separate item only in the relevant year – therefore the entire cost of the painting falling due

in one year, rather than being spread over several years. As was put to Dr Dodgson during the hearing it is clearly more appropriate and usual for the decorating costs to be included the reserve. That is what the reserve is for: items of expenditure that come up less frequently, the idea being to even out the costs to lessees of such expenditure, rather than the entire amount falling due in one year.

51 Dr Dodgson also stated that the detail in relation to the special reserve had only come out in the last few weeks in the Respondent's submission. The Tribunal considered the Respondent's letter of 20/05/2013 [A12], in which at [A14] the issue of the special reserve was specifically referred to. While the Tribunal was of the view that the letter was perhaps not as full in its explanation of the special reserve figure as the Respondent's submission had been, it was nonetheless more than adequate to explain the Respondent's approach to this issue and the amalgamation of certain headings under the previous budget/accounts under one called special reserve. That letter, in the Tribunal's view gave an adequate explanation of the position in relation to the special reserve. Further the Tribunal concluded that had Dr Dodgson engaged in a constructive way with the Respondents, both in relation to correspondence and also attending meetings, any further information would have been provided to him then.

52 Dr Dodgson referred repeatedly to a 'wish list' and his concern that this was what was really behind the special reserve. He directed the Tribunal to a letter in which the words 'wish list' appeared. This was in fact a letter written to him (whilst he was director) from various lessees who were not directors at that time [R104]. Mr Robinson specifically referred the Tribunal to paragraph 6.19 of the Sixth schedule of the lease. This specifically requires the Respondent to provide a reserve fund through the annual service charge for items of expenditure to be or expected to be incurred at any time in the next twenty years. While he accepted that the phrase 'wish list' was not perhaps appropriate terminology what was sought to be conveyed, and what was covered by the special reserve was the desired objectives contained in clause 6.19 of the sixth schedule of the lease.

Section 20C Landlord and Tenant Act 1985

53 Dr Dodgson additionally made an application for an order under section 20C of the 1985 Act that that all or any of the costs incurred by the Respondent in connection with the proceedings before the Tribunal were 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 any other person or persons specified in the application. A Tribunal may make an order under section 20C if it considered it to be just and equitable to do so.

54 The Tribunal does not make an order under section 20C of the 1985 Act. The Tribunal does not find it just and equitable to make such an order for the following reasons:

55 Dr Dodgson has not succeeded on any of the points raised in his application.

- 56 The Tribunal found the correspondence it had seen from Dr Dodgson to be confrontational, and unnecessarily aggressive. The tone he adopted in his correspondence was inappropriate. He was unnecessarily dismissive of explanations that he was given by the Respondent. The Tribunal noted too that even orally and during the hearing Dr Dodgson made a series of statements which the Tribunal also considered to be inappropriate, including at one point referring to his engagement of criminal solicitors in order to investigate the Respondent Directors, and alleging that the Directors of the Respondent were “..knowingly over charging on gardening services, this is fraudulent.” He also stated that “..my impression is that the figures are massaged.”
- 57 At one point Dr Dodgson referred to the Respondents as having been antagonistic in their response to his letters. Having read the correspondence, in the Tribunal’s view the reverse is true. It was Dr Dodgson who was antagonistic. The Respondents’ correspondence, has been neutral and appropriate in tone throughout.
- 58 The Tribunal noted the full letter sent by the Respondents dated 20/05/2013 [A12] in which they sought to answer in detail Dr Dodgson’s queries. That letter set out much of the argument the Tribunal heard during the hearing. While the Tribunal noted that in its letter of 02/08/2013 [A29] the Respondent indicated that it did “..not propose to enter into further correspondence.” with Dr Dodgson, in the circumstances, given the explanations already given and the attitude of Dr Dodgson, the Tribunal did not consider this to be unreasonable. The Tribunal also noted that Dr Dodgson did not attend at any of the meetings, either general meetings or specially convened meetings arranged by the Respondents over this period. One meeting was specifically arranged so that Dr Dodgson could attend – he chose not to do so.
- 59 In his oral evidence Dr Dodgson stated that he didn’t attend meetings as he felt that his comments were not accurately recorded in the minutes or minutes were subsequently and inaccurately amended. He also stated that such meetings were uncomfortable for him to sit through. There are of course steps Dr Dodgson could have taken to address any concerns he had about the way minutes were recorded (producing his own minutes, recording meetings etc.), and the fact that the meetings were not comfortable for him to sit through, was not, in the Tribunal’s view, a sufficient reason for him not to have attended. Had he attended any legitimate queries or concerns he had could have been addressed.
- 60 The Tribunal also considered that the terms of the lease, specifically paragraphs 6.13 and 6.15 of the Sixth schedule of the lease, and whether these would allow the costs of the Respondent in dealing with the application (if any had been incurred) to be recovered through the service charge. The Tribunal can find no clear words such as would permit the inclusion of legal costs and/or costs of representation at the Tribunal as a recoverable service charge.
- 61 The Tribunal concluded that preparation for, and/or representation at a Tribunal hearing goes beyond what would normally be understood by the ‘care and management of the building’, or the ‘fulfilment of the landlord’s

obligations', and therefore paragraph 6.13 would not be of assistance. Further the Tribunal were not aware of any person or body being employed within the meaning of paragraph 6.13 in relation to the landlord's obligations in this regard. Mr Robinson appeared at the hearing in his capacity as a lessee and director of the Respondent company.

62 The Tribunal then considered paragraph 6.15: Was the Tribunal a 'competent authority' within the meaning of that clause of the lease? The Tribunal concluded that it was not. While there was no definition within the lease as to what was meant by a 'competent authority', the Tribunal construed it as meaning an authority which would regulate and/or enforce compliance with certain obligations and the law. The Tribunal was not such a regulator: the Tribunal was an arm of the judiciary. The Tribunal concluded that the reference to a 'competent authority' referred to a local authority or planning regulator or the like which could serve for example building notices or dangerous structure or enforcement notices and the like. It did not, in its ordinary meaning, refer to a judicial body. Nor was there any reference to legal costs within paragraph 6.15.

63 In the circumstances therefore the Tribunal concluded that there was no power under the lease to permit the inclusion of legal costs and/or costs of representation at the Tribunal as a recoverable service charge

Decision

64 The Tribunal finds that:

- a. Re service charge year 2012/2013;
 - i. No refund is due to the Applicant in relation to the budgeted gardening costs;
 - ii. There is no requirement for an external accountant to be appointed under the terms of the lease unless and until required by the landlord. The accounts produced by the Respondent were adequate and complied with the terms of the lease;
- b. Re service charge year 2013/2014;
 - i. No refund is due to the Applicant in relation to budgeted gardening or external cleaning costs. The budgeted figures in relation to these headings were appropriate and reasonable at the time the budget was set. Any surplus or deficit will be treated as required under the terms of the lease, once the actual accounts/ amounts are known and any overall surplus or deficit applied.
 - ii. The general reserve figure of £2,500 is reasonable and appropriate as is a general contingency of £1,000;
 - iii. Dr Dodgson's complaints concerning the costs associated with a lack of repair to the retaining wall to the driveway exit cannot be determined at the current time or on the basis of the information currently before the Tribunal;
- c. No order will be made under section 20C of the 1985 Act.

Appeals

- 64 A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making a written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
- 65 The application must arrive at the Tribunal office within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
- 66 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.
- 67 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.

Judge J Brownhill (Chair)

Dated; 4th April 2014