

**WITNESS STATEMENT BY APPLICANT**

My Statement of Case (Bundle 28-35) has been presented but I feel this supplementary Statement is worthwhile to detail **chronologically** the sequence of events and add further clarity on principal matters and issues addressed.

- 1.** By **2017** the Respondent's first two sets of Accounts (Bundle 60 and 61) had been published but they attracted complaints by Leaseholders for their lack of transparency. Neither the 'Care Home' nor the 'Restaurant' and the 'Laundry' were mentioned in any of the Accounts' cost-centres.
- 2.** Early in **2018** the third set of Budget Accounts for **2018/2019** were published and were a complete eye-opener (Bundle: 62-70). The earlier Accounts were just one page containing 75 totals. These latest Budget Accounts now comprised 6 pages, with over 500 totals, and now, for the first time, included itemised 'Restaurant' and 'Laundry' cost-centres.
- 3.** However, the major revelation throughout were entries titled 'Care Home Contribution'. I was aware that there was an integral Care Home ('Care Home' is not mentioned anywhere in the Lease: Bundle 144-210) but completely unaware that it was so financially integrated with Hampshire Lakes: the Respondent had always been clear that the Care Home was completely independent of Hampshire Lakes.

4. The Restaurant's cost-centre (Bundles 66, 75 and 85) now revealed firstly that the total cost of ALL food, drink etc from outside suppliers was charged to the Leaseholders' Service Charge.
5. Secondly (Bundle 80), that the Restaurant had two customers... Leaseholders (Residents) enjoying 8.90% of all Annual Meals and also the Care Home ...supplied 24/7/365... with 82.91% of all Annual Meals.
6. together with ingredients for Care Home staff-prepared beverages and snacks dispensed throughout 24 hours via three Care Home categorised 'Hydration Stations'.
7. In 2019 I wrote to the Manager of the Care Home (Angela McCormack) asking for confirmation that the Restaurant also supplied its three 'Hydration Stations' with all ingredients for 24-hour beverages/snacks for (a) their residents (b) residents' visitors and (c) and up to 12 care-staff... without extra cost. No reply was ever received.
8. I am claiming £2412.48 as my 1/119<sup>th</sup> share of the published Restaurant/Shop Deficits paid by Leaseholders in the Service Charge.
9. The following example (extrapolated from the Accounts) explains simply how daily under-funding by the Care Home created these Deficits: *A Leaseholder buying Breakfast Lunch and Dinner from a standard HL-Restaurant menu would pay a total of c£42.00 for these three meals*

*(excl. any drinks) plus a **£5.31** daily Service Charge totalling **£47.31**.*

*However, the same three meals prepared for one resident in the Care*

*Home would trigger just **£5.04**...by way of a unilaterally-calculated food*

*Contribution... plus **£6.86**... a unilaterally-calculated staff-wages*

*Contribution... totalling **£11.90** contributed to the Restaurant's costs.*

**10.** I am also claiming £1772.82 as my 1/119<sup>th</sup> share of Laundry staff wages wrongly apportioned to Leaseholders.

**11.** Evidence by Respondent-prepared documents (Bundles 90-94 incl) prove that the confirmed Care Home contribution ...of just 30 weekly staff-hours for Laundry (Bundle 47 and 111)... as unilaterally-calculated and naïve.

**12.** As nearly all apartments are fitted with their own washer/dryer facilities I would conclude that had there not been a Care Home there would never have been an on-site Laundry.

**13. August 2019** Mrs Russam will attest that she wrote to the Respondent (Bundles 43-45) challenging its apportionment of Restaurant and Laundry costs.

**14. April 2021:** an Accounts Model flaw had been conceded by the Respondent and all costs for the Restaurant and Laundry were expunged from the Service Charge.

**15. May 2021:** I complained officially to the Respondent claiming reimbursement and compensation (Bundle 50-54).

**16. June/July 2021:** Respondent dismissed my Complaint (Bundle 55-59) without meaningful comment.

**17. November 2022:** First-tier Tribunal Hearing

**18.** In my evidence I have established what the Respondent initially failed to grasp: that both the Restaurant and the Laundry existed in the main for the benefit of the Care Home and should never have been the liability of the Leaseholders.

**19.** Since April 2021 Leaseholders continue to use the Restaurant and the Laundry and continue to pay for their services...but no longer with the burden of these facilities' costs.

**20.** I am convinced that had the Residents' Association not challenged the Respondent in August 2019 the flawed Accounting Model would still be in place today.

I believe that the facts stated in this Statement are true.

Alan Anning (November 22)



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

|                            |                                                                              |
|----------------------------|------------------------------------------------------------------------------|
| <b>Case Reference</b>      | : CHI/24UG/LSC/2022/0037                                                     |
| <b>Property</b>            | : 56 Oakleigh Square, Hampshire Lakes,<br>Hammond Way, Yateley, GU46 7AG     |
| <b>Applicant</b>           | : Alan Anning                                                                |
| <b>Representative</b>      | : In person                                                                  |
| <b>Respondents</b>         | : Anchor Hanover Group                                                       |
| <b>Representative</b>      | : Justin Bates - Counsel                                                     |
| <b>Type of Application</b> | : Determination of service charges section 27A<br>Landlord & Tenant Act 1985 |
| <b>Tribunal Members</b>    | : Judge N P Jutton and Mr B Bourne MRICS<br>MCIArb                           |
| <b>Date of Hearing</b>     | : 14 November 2022                                                           |
| <b>Date of Decision</b>    | : 21 November 2022                                                           |

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DECISION

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- 1 Hampshire Lakes, Yateley, Hampshire is a development of 119 residential properties (1 and 2 bedroom apartments) and a 36 bedroom care home. It is a purpose built independent living retirement village. There are on the development a number of facilities available to residents including a restaurant, a shop and a laundry.
- 2 The Applicant was the Lessee of one of the apartments: 56 Oakleigh Square, Hampshire Lakes, Hammond Way, Yateley, Hampshire GU46 7AG (the Property). The Applicant sold the Property on 17 May 2021.
- 3 The Applicant makes an application pursuant to Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act) for a determination of the liability to pay and the reasonableness of service charges for the years ending 31 March 2019, 31 March 2020 and 31 March 2021. In particular, the Applicant challenges certain elements of services charges that relate to costs incurred by the Respondent in the running of a restaurant and a laundry.

#### 4 **Documents**

- 5 The documents before the Tribunal comprised two bundles. One bundle produced by the Applicant and one produced by the Respondent. References to page numbers followed by the letter 'A' are references to page numbers in the Applicant's bundle. References to page numbers followed by the letter 'R' are references to page numbers in the Respondent's bundle. The bundles include the parties' respective statements of case, the lease of the Property, a witness statement made by Mrs Joan Russam, various forms of service charge accounts, other accounts and correspondence between the parties.

#### 6 **The Law**

- 7 The relevant statutory provisions are to be found in sections 18, 19 and 27A of the 1985 Act. They provide as follows:

#### **The 1985 Act**

- 18       (1)     *In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –*
- (a)     *which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and*
- (b)     *the whole or part of which varies or may vary according to the relevant costs.*
- (2)     *The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.*

- (3) *For this purpose –*
- (a) *“costs” includes overheads, and*
  - (b) *costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.*
- 19 (1) *Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –*
- (a) *only to the extent that they are reasonably incurred, and*
  - (b) *where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;*
- and the amount payable shall be limited accordingly.*
- (2) *Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise*
- 27A (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*
- (2) *Subsection (1) applies whether or not any payment has been made.*
- (3) *An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to –*
- (a) *the person by whom it would be payable,*
  - (b) *the person to whom it would be payable,*
  - (c) *the amount which would be payable,*
  - (d) *the date at or by which it would be payable, and*
  - (e) *the manner in which it would be payable.*
- (4) *No application under subsection (1) or (3) may be made in respect of a matter which –*
- (a) *has been agreed or admitted by the tenant,*
  - (b) *has been, or is to be, referred to arbitration pursuant to a post dispute arbitration agreement to which the tenant is a party,*
  - (c) *has been the subject of determination by a court, or*

- (d) *has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.*
- (5) *But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.*

## 8 The Lease

- 9 The Lease is dated 22 September 2016. The parties are Anchor Lifestyle Developments Ltd (described as 'Landlord'), Alan Patrick Anning and Sylvia Jane Anning (described as 'Tenant') and Anchor Trust (Company Registration No. 03147851) (described as 'Anchor'). Anchor is the registered proprietor of the freehold interest in Hampshire Lakes (HM Land Registry Title No. HP761148). There is a Head Lease of Hampshire Lakes dated 7 October 2013 and made between Anchor and Anchor Lifestyle Developments Limited out of which is granted the Lease.

- 10 Clause 1.1 of the Lease sets out certain defined terms. They include the following:

*"The Service Charge: The total of the expenses incurred in accordance with or as otherwise referred to in Schedule 3 hereof".*

*"Service Charge Proportion: A fair proportion of the Service Charge as demanded by Anchor from time to time".*

*"Village Facilities: Initially the Wellness Centre and such other facilities as the Landlord and Anchor shall acting in their absolute discretion from time to time provide which may include a shop, bar area, restaurant, private dining room and library".*

- 11 Clause 6.3 of the Lease provides as follows;

*"The Tenant covenants with the Landlord and separately Anchor that he will pay to Anchor at the direction of the Landlord by way of additional rent the Service Charge Proportion and in accordance with the provisions hereof relating to payment of the Service Charge Proportion which will be Anchor's estimate of the Tenant's contribution to Service Charge for the year to which the service charge relates".*

- 12 Clause 6.4 provides:

*"Such estimate shall be based on the actual costs and expenses of providing the services set out in Schedule 3 for the previous service charge year with due allowance being made for any expected increase above or decrease below*



*the costs and expenses of providing the said services in the current service charge year”.*

- 13 Clause 7.1 provides:

*“Notwithstanding the provisions of the Service Charge the Landlord and Anchor as appropriate may at any time review the costs and expenses referred to in those Service Charges and shall be entitled to add thereto any item of expenditure (including but not limited to) for provision of service or equipment not mentioned elsewhere in this Lease and shall be entitled to recover from the Tenant a fair and reasonable proportion of the cost of provision and of such service to the Tenant the Estate and/or the Building on a similar basis to that set out in Schedule 3”.*

- 14 Clause 13 of the Lease contains covenants on the part of Anchor. They include covenants to repair, renew, replace, redecorate, upgrade and carry out improvements to buildings on the land and to insure.

- 15 Clause 13.1.3 provides that Anchor will:

*“Keep the Village Facilities in good repair and well maintained and to undertake a regular cycle of inspection maintenance decoration and repair”.*

- 16 Clause 13.1.14 provides that Anchor will:

*“employ staff as at Anchors absolute discretion may be required in the performance of Anchors duties in observance of its covenants under this lease and the services provided and the management of the Estate, Anchor’s Land and the Village Facilities”.*

- 17 Part 1 of Schedule 3 to the Lease provides that:

*“The expression “Service Charge” shall consist of all expenses incurred by Anchor of and incidental to observing and performing the provisions of clause 13 of this Lease. The Service Charge shall include:-.*

*1.1 all costs, expenses and outgoings whatsoever incurred by Anchor which relate to the observance and performance of the provisions in clause 13 of this Lease hereof except items that are allocated to Schedule 3, Part 2 of this Lease .....*

*1.4 the cost of employing staff for any building service and the performance of the duties and services of Anchor in connection with the observance and performance of the provisions of this*

*Schedule 3 and all other incidental expenditure in relation to such employment .....*”.

## **18 The Issues**

19 The issues for the Tribunal to determine are as follows:

1. For each of the said service charge years, whether certain expenses incurred in the operation and the running of the restaurant can under the terms of the Lease be recovered from the Lessees as part of the service charge and if so, whether such expenses have been reasonably incurred.
2. For each of the said service charge years, whether the costs and expenses of staffing the laundry which form part of the service charge can, under the terms of the Lease, be recovered by the Respondent as part of the service charge and if so, whether such charges have been reasonably incurred.
3. Whether, pursuant to Section 20C of the 1985 Act, costs incurred in connection with these proceedings should not be included in the amount of any service charge payable.
4. Whether, pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, any costs incurred by the Respondent in connection with these proceedings should not be recoverable under the terms of the Lease as an administration charge.

## **20 The Applicant's Case**

- 21 The Applicant's case is set out in his Statement of Case, in other documents contained in the Applicant's Bundle including a Witness Statement by Mrs Joan Russam (pages 106A-109A – to which Mr Bates did not object) and in a written form of Submission read out by the Applicant at the hearing, a copy of which was handed to the Tribunal and to Mr Bates at the hearing (Mr Bates confirmed he did not object to the late submission of that document). The Tribunal has read all of the documents carefully.
- 22 The Applicant asks whether expenses that have been incurred by the Respondent in the operation of the laundry and the restaurant at the Property are recoverable under the terms of the Lease and if so, whether such expenses have been reasonably incurred.

## **23 The Restaurant**

- 24 The Applicant says, that because of the way that the costs of running the restaurant are apportioned by the Respondent between the owners of the 119 apartments (the Lessees) and the care home that the Lessees are through the service charge paying a disproportionate share of the costs of running the restaurant to the benefit of the care home residents. That of all the meals prepared in the restaurant each year, 87% are prepared for the care home and only 13% for Lessees. Further, that the costs that he understands that are charged to care home residents for the preparation and supply of meals equates to £4.80 per day (to cover 3 meals) (Mr Bates suggested the figure was actually £4.76 per day by reference to the document at 23R), whilst the cost to Lessees is closer to £20 per meal (should they elect to have a restaurant meal). That the Lessees, by the Applicant's calculation, enjoy just 10.83% of all meals provided by the restaurant but through the service charge they are paying for all food and drink etc delivered to the restaurant and for the bulk of the staffing costs. That includes the cost, the Applicant says, of the provision of three hydration stations in the care home which are enjoyed free of charge by care home residents, visitors and staff.
- 25 Further the Applicant says that the care homes contribution to the staffing costs for the restaurant as arbitrarily calculated by the Respondent is just 38% of the total cost despite the fact that the care home residents enjoy over 87% of the meals provided. The effect, the Applicant says, is that the Lessees through the service charge are significantly subsidising the costs of running the restaurant to the benefit of the care home residents. The Applicant calculates the extent of that subsidy in total for the three service charge years in question, as £287,088 of which he says his 119<sup>th</sup> share equates to £2,412.48.

## **26 The Laundry**

- 27 The charges for the operation of the laundry including staff charges are in the accounts under the heading of 'Housekeeping and Maintenance Staffing Costs'. The Applicant referred the Tribunal to certain documents (pages 91A-94A) which he said had been given to him by a member of the Respondent's staff. Those documents demonstrate, the Applicant says, that the Lessees are significantly subsidising the laundry costs to the benefit of the care home residents. The laundry costs he suggests in a care home invariably are very high. That Lessees more usually have their own washer/drier facilities and therefore their use of the laundry at best is minimal. The Applicant submits that around 83% of weekly laundry usage can be attributable to the care home and only 17% to the leaseholders. Some 153 hours of staff time, the Applicant calculates, is attributable to the care home residents per week but only 32 hours to the Lessees. That notwithstanding, it appears, the Applicant says, that only 30 hours per week have been attributable to the care home. By calculating

staff hours paid at £11 per hour to include employer's national insurance contributions, the effect, the Applicant says, is that the Lessees are subsidising to the benefit of the care home residents the staffing costs of running the laundry by a total sum over the 3 year period of the said service charge years of £210,963. The Applicant seeks to recover 1/119<sup>th</sup> of that amount in the sum of £1,772.82.

- 28 The Applicant has complained to the Respondent. His complaints, he says, have been dismissed. In short, he says the evidence is that the Lessees are substantially subsidising the running costs of both the restaurant and the laundry to the benefit of the care home residents.
- 29 The Applicant says that it must be clear to the Respondent that they have made errors, not least because they have changed the model by which they calculate the service charge contribution. He referred to a letter from Melanie Gowers of the Respondent company addressed to Mrs Russam dated 20 December 2019 (page 113A) and to a paragraph which states that:

*"I apologise once again about the time that this matter has taken to resolve and should like to reiterate, we remain fully committed to providing a clear and transparent service charge and if determined that this has not been the case against the lease requirements then will promptly arrange this to be clarified, rectified and reimbursed".*

30 **The Respondent's Case**

- 31 The Respondent's case was set out in its Statement of Case and in Submissions made to the Tribunal by Mr Bates.
- 32 Mr Bates suggested that the Applicant's case can be summarised (as set out at page 16A) in terms that the Lessees are wrongly through the service charge subsidising to the benefit of the care home residents, the costs of running the on-site restaurant and laundry facilities.
- 33 Mr Bates explained that in practice service charges are paid monthly throughout the year on account of estimated service charges. By reference to the service charge accounts (defined in the Lease as the Financial Statements) Mr Bates sought to explain how the Respondent apportions the staffing costs in respect of the laundry.
- 34 By way of example, Mr Bates took the Tribunal to the Financial Statements for the year ending 31 March 2019. Under the heading of 'Staffing Costs' (page 67R) there appears a figure of £161,603 in relation to 'front of house management' and £257,604 for 'housekeeping and maintenance staffing'. Taken together, Mr Bates explained that is the total staffing costs. From that

the Respondent makes the following deductions in respect of those elements that do not relate to the Lessees. They are:

1. 'Staff Care Home Contribution' £86,188. That is staff costs that relate to the care home.
2. 'Staff Private Contribution' £24,000. That is the cost of providing private housekeeping services to residents.
3. 'Staff ALU Contribution' £30,903. That is the cost of providing staff for the assisted living unit.
4. 'Staff Home Care Contribution' £1,836. That, Mr Bates said, is the cost office staff.

The effect is to reduce the total staffing costs for that year which may form part of the service charge to £276,275.

- 35 Mr Bates then referred the Tribunal to Appendix 1 to the Respondent's Statement of Case (page 17R). He explained that those items highlighted in yellow were designated as the contribution to be made on the part of the care home. They total £86,188 which is the figure that appears in the accounts as 'staff care home contribution' at page 67R. That with reference to Appendix 1, the total figure for 'housekeeping and maintenance staffing' which includes the laundry for the year ending 31 March 2019 was £117,931. From that there was a deduction of £45,082 in relation to the housekeeping for the care home, of £25,399 in relation to the housekeeping for the assisted living unit and £24,000 in relation to the costs of the private housekeeping service. That left a balance of £22,910 which was allocated to the service charge. That covered the Lessees' contribution to communal cleaning and to the cost of laundry staff albeit it was understood that the majority of those monies related to communal cleaning and only a small part to the laundry.
- 36 The Respondent, Mr Bates said, had apportioned the staffing costs in respect of the laundry following a consultation with its staff. That the staff had calculated that the amount of time spent in the laundry in respect of work for the care home was the equivalent to one member of staff working 5 days a week. It was reasonable, Mr Bates said, for the Respondent to approach the question of how to apportion staffing hours in respect of the laundry between the care home and the service charge by consulting with its staff. To ascertain from the staff their calculation of how many hours on average they worked in the laundry in carrying out work solely for the care home. Mr Bates submitted that it would in theory be possible for the Respondent to undertake a time and motion survey to establish how much time was spent by staff working exclusively for the care home and how much for the benefit of the Lessees. But

that would he said be a time-consuming and expensive process. That the Respondent's approach of simply asking the staff how much time in any given week they may spend in the laundry working exclusively for the care home was an entirely reasonable way of addressing the question of how to apportion staffing costs between the service charge and that attributable to the care home.

- 37 There was one element of the staffing costs in respect of the provision of housekeeping services which had been changed by the Respondent in the accounts for the years ending 31 March 2020 and 2021. That was in respect of charges for private housekeeping services paid for individually by residents at an hourly rate. For the year ending 31 March 2019, the costs of providing those services were paid for by the Respondent and the income received retained by the Respondent. The costs of providing those private housekeeping services for that year was £24,000 (page 17R). However, over the two subsequent years the Respondent had changed its approach. It instead had added the costs of providing private housekeeping services to the service charge account but credited to it the amount of income received. The effect, the Respondent says, was to the detriment of the Respondent and to the benefit of the Lessees. That indeed, the effect for the year ending 31 March 2020 was to create a minus service charge (paragraph 5.2 of the Respondents Statement of Case at page 14R).
- 38 When questioned by the Tribunal as to which approach the Respondent contends is the correct approach, Mr Bates said that it was entirely possible for both to be correct. That just because they were different did not mean that they could not both be reasonable or fair. He accepted it would be unreasonable if the Lessees were for example charged for the cost of providing private housekeeping services but did not receive the benefit of the income. However, that was not the case.
- 39 As to the documents referred to by the Applicant at pages 91A-94A, Mr Bates suggested that the figures at page 91A did not appear to be hourly rates but the cost of laundering individual items of laundry. They did not address the issue of time or hours. That the figures at 93A and 94A did look like time but were at best only a snapshot over a short 4 week period, and the document from which the figures had been taken did not appear to be complete. It should not he suggested be given any weight.
- 40 **The Restaurant**
- 41 By way of explanation as to how the Respondent addressed the apportionment of the restaurant staffing costs, Mr Bates took the Tribunal to the Financial Statement for the year ending 31 March 2019, and in particular to page 69R.

This shows restaurant staffing costs totalling £198,211. To that the Respondent he explained had provided a credit to reflect the care home contribution of £80,460. It had also allowed a credit in relation to the cost of restaurant staff for the assisted living unit of £24,000 which left a net figure of £93,751. For the same year, Mr Bates took the Tribunal to Appendix 2 to the Respondent's Statement of Case (page 20R). He explained that items highlighted in yellow which totalled £80,460 were those (as per page 69R) attributable to the care home. That the allocation of kitchen staffing hours was split as to 60% to the service charge and 40% in respect of services provided to care home residents. That allocation is more particularly set out at page 24R.

- 42 As with the housekeeping/laundry, the apportionment of staffing costs in relation to the restaurant was achieved he explained from discussions held by the Respondent with its staff. That the staff guided the Respondent in respect of the number of hours which they estimated they worked for the benefit of the care home and those for the benefit of the leaseholders. That the Respondent says is a reasonable way of apportioning restaurant staffing costs between the two.
- 43 The Respondent however accepts that it has for the 3 service charge years made an error. The error is that it has included as part of the service charge the cost of materials for the restaurant. In essence the cost of buying food. The figure for the year ending 31 March 2019 was £146,811 ('catering costs' page 69R). At the same time however, the Respondent had credited the income that it received from the restaurant to the service charge account. That income for the year ending 31 March 2019, described as 'commercial income' in the Accounts was £89,813 (page 69R). The effect was to provide a credit to the service charge account (described as a form of subsidy) which for that year was £22,683 (Appendix 3 at page 23R).
- 44 In short, the Respondent says that it was wrong under the terms of the Lease to charge catering costs (as opposed to staffing costs) to the service charge account, and also wrong to credit the service charge account with the commercial income received. However, that somewhat fortuitously, the effect was to create a relatively small loss to the Respondent, and a credit to the service charge account.
- 45 The Respondent says that it does not intend to charge catering costs to the service charge account or to credit the service charge account with income received in the future. Indeed, the Respondent goes further and says in its Statement of Case that it also henceforth intends to absorb all restaurant staffing costs and thus manage the restaurant as a separate commercial entity.
- 46 Mr Bates took the Tribunal to various provisions in the Lease. He suggested that the definition of 'Village Facilities' provides that the facilities may include

*provision of such service to the Tenant, the Estate and/or the Building on a similar basis to that set out in Schedule 3”.*

- 56 Accordingly, in the view of the Tribunal, the lease allows the Respondent to employ staff in respect of the running and management of the laundry pursuant to either clause 13.1.14 or clause 7.1.

57 **The Laundry**

- 58 The cost of employing staff to run the laundry is not dealt with separately in the accounts. It is included within the item of housekeeping and maintenance staffing. That covers both staff costs in respect of housekeeping and the running of the laundry. The matter is further complicated by the Respondent's treatment of private housekeeping costs and income. Residents at Hampshire Lakes can pay the Respondent an hourly rate for private housekeeping services. In the accounts for the year ending 31 March 2019, the costs of the provision of private housekeeping services was paid for by the Respondent and the Respondent retained the income that it received. However, in the accounts for the years ending 31 March 2020 and 2021, the Respondent allocated the costs of providing private housekeeping to the service charge account but also credited the account with the income received. The effect, the Respondent says, for the year ending 31 March 2020 was to achieve a negative figure to the benefit of the Lessees.

- 59 The Respondent says that its staff work both in the laundry and undertake housekeeping to include cleaning. The staff are not allocated to just work in the laundry or to just undertake housekeeping. In order therefore to determine as far as it reasonably could the expense of employing staff to work in the laundry, in particular in undertaking laundry for the care home, the Respondent spoke to its staff. In essence, it asked its staff how much time in any given week they would spend working in the laundry solely for the benefit of the care home residents. The answer was the equivalent of one member of staff working full time in the laundry between Monday and Friday inclusive. That, the Respondent says, is a reasonable and proportionate approach to determine what element of staffing costs involved in the operation of the laundry just relate to the care home. The alternative, Mr Bates suggested, might be for the Respondent to undertake a form of time and motion study but that would be, he suggested, be an expensive and disproportionate exercise.

- 60 The Applicant says that any care home has very high laundry demands. That the costs in respect of the employment of staff in the laundry are included within the housekeeping and maintenance staffing costs in the accounts. The effect is to disguise what the Applicant describes as a “*substantial subsidy in the service charge for the benefit of the care home*”. He makes the point that



as most leaseholders have their own washing machines and/or drier facilities, that their use of the laundry will be minimal.

- 61 Matters are further complicated by the fact that the figure in the accounts for housekeeping and maintenance staffing includes communal cleaning. For example, for the year ending 31 March 2019, the total which the Respondent says that it has charged to the service charge account for housekeeping to include cleaning and laundry staffing was £22,910. That equates, on the basis of each apartment paying the same amount, to a figure of £192.52 per Lessee per year. The bulk of that undoubtedly relates to housekeeping and cleaning of communal areas and a small proportion to the cost of staffing the laundry.
- 62 The Tribunal is sympathetic to the Applicant's position. On the face of it, it is understandable that he would feel that the leaseholders are subsidising the staffing costs in relation to the laundry for the care home. Undoubtedly the laundry is used primarily for the benefit of the care home residents. However, in the event, the amount which the leaseholders contribute to the staffing costs of running the laundry is relatively small. Further, more particularly, the Tribunal is of the view that the Respondent's approach to calculating and apportioning the staffing costs of running the laundry between the leaseholders and the care home is reasonable. The staff employed by the Respondent do a number of jobs. They do not just work in the laundry. They do not just work in the laundry undertaking washing for the care home. It is reasonable, in the view of the Tribunal, for the Respondent to ask its staff how much time they calculate that they spend in the laundry and how much time they calculate that they spend carrying out laundry just for the care home. To then utilise that information to assist the Respondent in its determination of the apportionment of staffing costs in respect of the laundry between the service charge and the care home.
- 63 For the years ending 31 March 2020 and 31 March 2021, the Respondent has allocated the costs of providing the Applicant with private housekeeping services and of the income received to the service charge account. In the view of the Tribunal, it is wrong to do so. The nature of the services provided by the Respondent which make up the service charge and which are more particularly set out in clause 13 and Schedule 3 of the Lease are for the benefit of all of the Lessees at Hampshire Lakes. They are services which the Respondent is obliged to provide under the terms of the Lease. The Respondent recovers from the Lessees the expenses that it reasonably incurs by way of the service charge. The provision of private housekeeping is a different matter. It is a service provided by the Respondent to a single Lessee at the Lessee's request and for which the Lessee then pays the Respondent. That payment is met solely by the Lessee concerned. It is not a payment which is shared between the other Lessees. That is because it is payment for a service provided solely for the benefit of the individual Lessee. It is not a service which the Respondent is

obliged to provide under the terms of the Lease. Nor is there a provision in the lease which allows or provides that income received by the Respondent from the provision of private housekeeping services may be credited to the service charge account.

- 64 Accordingly, the Tribunal determines that there is an error in the service charge accounts for the years ending 31 March 2020 and 31 March 2021 as regards the treatment of the expense of providing private housekeeping services and of the income received. The expenses in providing private housekeeping services are not an expense in the view of the Tribunal that can be recovered by the Respondent under the terms of the Lease from the Lessees as part of the service charge. They are not 'relevant costs' (S18 of the 1985 Act). Conversely, nor are the Lessees entitled to receive the benefit through the service charge accounts of the income received by the Respondent for providing private housekeeping services.

**65 Restaurant**

- 66 The Respondent accepts that it has made an error. That it was wrong to charge catering costs (essentially the costs of the purchase of food) to the service charge. That it was also wrong to credit the service charge account with income received from the restaurant. The Tribunal agrees. However, somewhat fortuitously for the Respondent, in essence no harm was done because the net effect it says is that the leaseholders are better off. That because in each of the service charge years, the effect was to provide a form of credit or surplus to the service charge account.
- 67 As to the staffing costs, the Respondent says that it is entitled to debit part of those to the extent that they are reasonably incurred for the benefit of the Lessees to the service charge account. That it takes the total staffing costs for the restaurant and then deducts from that its calculation of the amount of staffing costs which are attributable to providing meals to the care home residents and to the assisted living unit and the balance it then charges to the leaseholders as part of the service charge. Its calculations are set out in the accounts, for example for the year ending 31 March 2019 at page 69R and further broken down in Appendix 2 to the Respondent's Statement of Case at page 20R. In allocating the amount of time spent by staff in providing meals to each element of Hampshire Lakes (the Lessees, the care home and the assisted living unit), it takes the same approach as it did in respect of the laundry. It speaks to its staff. It seeks guidance from its staff as to the amount of time that the members of staff calculate that they spend in working for each element.
- 68 The Applicant's argument that the cost of meals provided to the care home residents should be higher is Mr Bates says is to miss the point. That if you

remove the figure for catering costs from the accounts, you also remove the income received whether that be from the care home residents or from the Lessees. At issue is the expense incurred by the Respondent not the income that it receives.

- 69 The Tribunal agrees. Once the catering costs and thus the catering income are removed from the service charge accounts, the only item of expenditure in relation to the restaurant remaining is the staffing costs. Although leaseholders are required to pay for meals at the restaurant, the Lease provides that the staffing costs in running the restaurant reasonably incurred by the Respondent can be recovered as part of the service charge. That because the restaurant forms part of the "*Village Facilities*". As stated, Clause 13.1.14 allows the Respondent to employ staff inter alia in providing services and in respect of the management of the Village Facilities. That is echoed at clause 1.4 of Part 1 of the Third Schedule.
- 70 For the reasons stated in respect of the laundry, the Tribunal is satisfied that the Respondent's approach in speaking to staff in order to ascertain an appropriate apportionment of staffing costs in respect of the restaurant between the Lessees and the care home (and the assisted living unit) is reasonable.
- 71 For each of the 3 years ending 31 March 2019, 31 March 2020 and 31 March 2021, the figure for catering costs are not expenses that the Respondent can recover under the terms of the Lease from the Lessees as part of the service charge. They are not 'relevant costs' (S18 of the 1985 Act). Nor are the Lessees entitled to receive the benefit through the service charge accounts of the income received by the Respondent from the restaurant.
- 72 **Section 20C**
- 73 The Applicant applies for an Order that all or any of the costs incurred by the Respondent in connection with these proceedings are not to be regarded as relevant costs for taking into account in determining the amount of any service charge payable.
- 74 At the start of the hearing, Mr Bates informed the Tribunal that the Respondent would not be seeking to recover its costs incurred in these proceedings and therefore, would not oppose the Tribunal making an Order pursuant to section 20C of the 1985 Act.
- 75 The Tribunal therefore makes an Order pursuant to section 20C of the 1985 Act that the costs incurred by the Respondent 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.

**76 Paragraph 5A of Schedule 11 Application**

77 The Applicant also applies for an Order pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 reducing or extinguishing any liability he may have to pay an administration charge in respect of the costs incurred by the Respondent in these proceedings.

78 Again, Mr Bates told the Tribunal that the Respondent did not seek to recover any of its costs in relation to these proceedings as an administration charge and accordingly, would not oppose an Order being made.

79 The Tribunal accordingly orders that any costs incurred by the Respondent in connection with these proceedings shall not be recoverable by the Respondent as an administration charge.

**80 Summary of Tribunal's Decision**

1. That for the service charge year ending 31 March 2019, the staffing costs incurred by the Respondent in the running of the laundry, to the extent that they form part of the staffing costs that appear in the service charge accounts, are reasonably incurred.
2. For the service charge years ending 31 March 2020 and 31 March 2021, the staffing costs incurred by the Respondent for running the laundry and which are apportioned to the service charge accounts for each of those years are reasonable in amount, save that that element of costs incurred for the provision of private housekeeping services are not relevant costs and are not recoverable as part of the service charge, nor should income received by the Respondent in respect of the provision of private housekeeping services be credited to the service charge account.
3. That for each of the service charge years ending 31 March 2019, 31 March 2020 and 31 March 2021, the staffing costs incurred by the Respondent in the running of the restaurant, to the extent that they form part of the staffing costs that appear in the service charge accounts, are reasonably incurred.
4. That for each of the said service charge years, the catering costs incurred by the Respondent in respect of the restaurant are not relevant costs and are not recoverable by it as part of the service charge, nor should any income received from the restaurant by the Respondent in respect of the restaurant be credited to the service charge account.

5. The Tribunal orders that all or any of the costs incurred by the Respondent 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.
6. The Tribunal orders that all or any costs incurred by the Respondent in connection with these proceedings may not be recovered by the Respondent as an administration charge.

## 81 Costs

- 82 At the conclusion of the hearing, the Applicant made an application pursuant to rule 13(2) of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 that the fees paid by the Applicant to the Tribunal be reimbursed to him by the Respondent.
- 83 The Respondent did not make any representations in respect of the Applicant's application at the hearing. The Respondent is invited to send to the Tribunal and to the Respondent any written representations that it wishes to make in respect of the Applicant's application to recover the Tribunal fees paid by the Applicant by **4.00 pm on 9 December 2022.**

Dated this 21<sup>st</sup> day of November 2022

Judge N P Jutton

## Appeals

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application by email to [rpsouthern@justice.gov.uk](mailto:rpsouthern@justice.gov.uk) to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time

limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.