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FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**BIR/00GG/LIS/2015/0040**
Property	:	**Meadowbrook Court, Gobowen, Oswestry, Shropshire SY10 7HD**
Applicants	:	**Mr N Hartland (1)** **Mr R D Morris (2)**
Representative	:	**None**
Respondent	:	**Leabrook Lodge Limited**
Representative	:	**Mr Andrew Vinson (Counsel) instructed by Mc Kays, Solicitors**
Type of Application	:	**Application for determination of liability to pay and reasonableness of service charges under sections 27A and 19 of the Landlord and Tenant Act 1985**
Tribunal Members	:	**Judge C Goodall LLB** **Mr R Brown FRICS**
Date and venue of Hearing	:	**28 September 2015 at Shrewsbury Magistrates Court**
Date of Decision	:	**18th November 2015**

DECISION

Background

1. On 14 April 2015, Mr Nick Hartland (the First Applicant, described in this decision as "Mr Hartland") applied to the Tribunal for a determination of whether he was liable to pay what he described as a social care subsidy as part of the service charge which he pays under the lease of his property at 10 Meadowbrook Court, Gobowen, Oswestry, Shropshire SY10 7HD.

2. In his application form, Mr Hartland had named Mr R Morris, a fellow lessee at Meadowbrook Court, as his representative. In fact that was not Mr Hartland's intention, but Mr Morris, on 29 April 2015, submitted an application to be an applicant in the proceedings, which was duly granted by the Tribunal. He is the Second Applicant. He has not submitted any separate documentation on his own behalf, but he appeared at the hearing of the application and supports Mr Hartland's case.

3. Meadowbrook Court is a complex of 60 individual bungalows set behind the Meadowbrook Care Home at Gobowen in Oswestry. The bungalows are let on long leases, Mr Hartland's lease being dated 25 September 1995. The lease is for a term of one hundred years from 1 April 1992. For the purposes of this decision, the following terms of Mr Hartland's lease are the relevant terms that need to be considered by the Tribunal.

4. Clauses 3(6) of the lease obliges the lessee to pay a "Service Charge" and clause 3(7) of the lease obliges him to pay a "Care Charge". The Service Charge covers all the expenditure which the lessor (the Respondent in this case) is obliged to expend under the lease. This expenditure includes the cost to the lessor of complying with its obligations in the Sixth Schedule of the lease. Those costs include insurance, maintenance of common parts and facilities, external redecoration of the individual bungalows, maintenance of communal gardens and the cost of management. These elements have not played a part in this decision.

5. What is unusual about the Sixth Schedule is the inclusion (at paragraph 9) of a further obligation to employ a Director of Healthcare and a deputy (if required), and to provide a nursing station for the use of the Director of Healthcare, and to provide one person on twenty four hour call at the Nursing Station. In other words, there is a package of staffing cost for care staff and related ancillary cost that has to be paid for within the Service Charge.

6. The "Care Charge" under clause 3(7) of the Sixth Schedule is defined as the sum to be paid for the standard of care to be provided as set out in part II of the Seventh Schedule of the lease. The draftsman who prepared the lease clearly envisaged that a package of care would be agreed prior to the entering into of the lease, and details of that package (being the weekly fee and the identification of a particular package of care) would then be inserted into part II of the Seventh Schedule. In fact, the blanks in the Seventh Schedule of Mr Hartland's lease were never completed. It is

common ground that the arrangements for payment of a specific care package under part II of the Seventh Schedule of the lease, this being the "Care Charge" envisaged in clause 3(7) of the leases, do not operate. Instead, a care package is provided by the Respondent to those bungalow occupants who need it based on a direct contractual arrangement outside the terms of the lease. The Respondent runs this provision as a separate domiciliary care business.

7. Mr Hartland feels strongly that he should not have to contribute towards the care staffing costs that are included within the Service Charge because he does not need or use the care. His wife is in need of care, and Mr Hartland provides her care himself and does not call (so far as the Tribunal understands it) upon additional help from the Respondent either under the lease or via its separate domiciliary care business.

8. In 2013, Mr Hartland (and others) brought the question of whether they should have to contribute towards the care cost element of the Service Charge within their monthly Service Charge to the Tribunal under references BIR/00GG/LIS/2012/0073C and 0092. That Tribunal (which included Mr Brown, who also sat on this case) determined, by a decision dated 30 September 2013, that the lease, correctly interpreted, meant that the lessees (including Mr Hartland) were obliged to pay their share of the care staff costs included within the Service Charge. The relevant section of that decision stated:

> "68. As explained above, the service charge includes the remuneration of the Director of Health Care and other care staff. The (assumed) fact that these employees of the Respondent also do other work for the Respondent's care business – which generates large profits for the Respondent – and which is subsidised by the service charge and without which the Respondent's care business would not be viable – is in our view, irrelevant.
>
> 69. If no care was in fact provided by the Director of Health Care and other care staff, the Lessees would still be obliged to pay, as part of the service charge, the (reasonable) remuneration of the Director of Health Care and the other care staff."

9. But the Tribunal in 2013 also noted that in previous years "the income and expenditure in respect of the [domiciliary] care business has been (unlawfully) amalgamated with the service charge income and expenditure of the Meadowbrook Bungalows and this amalgamation has given rise to great problems for the Lessees (and the Tribunal)."

10. The 2013 Tribunal's determination reduced the Service Charge that had been charged to lessees in previous years. The Tribunal had also been asked to determine the appropriate budget Service Charge for the 2013/14 service charge year, which it determined as £336.46 per bungalow per month, based upon a small percentage uplift on the Service Charge it had

determined was reasonable for 2012/13. The Respondent had, until that determination, been collecting £360.00 per month for the 2013/14 service charge year.

The reason for the current application

11. On 23 October 2013, after the receipt of the 2013 Tribunal decision, the Respondent wrote to all lessees at Meadowbrook Court. The following paragraphs of that letter, commenting on the 2013 Tribunal decision, are relevant:

> "The Tribunal's decision was based on the Service Charge paying for a percentage of the services provided and the care side paying for the remainder. This could only happen if the care was a viable business. It is not. The care side by itself is non-viable without the subsidy from the service charge.
>
> We would therefore like to invite all residents to a meeting where they can make an informed decision whether they wish to continue to subsidise the care through the service charge or go to outside providers. This meeting will take place on **Thursday 31 October 2013** ...
>
> Should the decision be that **ALL** residents do not wish to have the care services, we will offer support and assistance to those needing to make new arrangement with alternative care providers."

12. In brief, it is Mr Hartland's case that at the meeting on 31 October 2013, Mr Dulson, a Director of the Respondent, made an offer to reduce the cost of the Service Charge to any resident who agreed not to use the care services by £110 per month, which Mr Dulson is said to have identified as the difference between the existing Service Charge and what the Service Charge would be if the care element were stripped out. Mr Hartland describes this as the social care subsidy. Mr Hartland then accepted the alleged offer in writing by a letter dated 1 November 2013. As the Service Charge year runs from 1 April to 31 March, and until November 2013 Mr Hartland thought he had been paying £360 per month, he therefore reduced his payments for the rest of the year to £250 per month. The application was for a determination that the rate of £250 per month should apply to the whole year, and hence Mr Hartland was entitled to a credit of £880 for the eight months when he had paid £360 rather than £250.

13. The Tribunal understands that Mr Morris also reduced his monthly payments to £250 per month.

14. It is therefore entirely apparent that this application requires the Tribunal to consider whether there was any offer and acceptance resulting in an agreement by the Respondent to remove the cost of care from the Service

Charge for 2013/14, by which the Applicants are entitled to pay a reduced Service Charge for that year. That issue is considered below.

15. Mr Hartland's application form went beyond this narrow point in the narrative section and in Mr Hartland's further supporting submission dated 2 June 2015. These documents provided a number of facts and opinions about the 2013/14 accounts and raised issues about the practical administration of Meadowbrook Court that concerned Mr Hartland. In summary, the additional issues raised were:

    a. Failure to explain adequately how the staff costs of £168,030 were made up, including failure to provide adequate supporting documentation

    b. A concern that the costs for 2013/14 are hiding an unlawful profit, which Mr Hartland described as a "slush fund"

    c. A refusal by the Respondent to provide contractual domiciliary care to some residents

    d. Refusal by the Respondents to provide some services covered by the Service Charge to certain lessees, with particular reference to window cleaning services

Legal background

16. The powers of the Tribunal to consider service charges are contained in sections 18 to 30 of the Landlord & Tenant Act 1985 (" the Act").

17. Under Section 27A of the Act, the Tribunal has jurisdiction to decide whether a service charge is or would be payable and if it is or would be, the Tribunal may also decide:-
    a. The person by whom it is or would be payable
    b. The person to whom it is or would be payable
    c. The amount, which is or would be payable
    d. The date at or by which it is or would be payable; and
    e. The manner in which it is or would be payable

18. In effect, this gives an opportunity for both a proposed budget for service charges to be raised with the Tribunal and a further opportunity for the sums then actually spent, when they are known, to be challenged.

19. Section 19(1) of the Act provides that:

    "Relevant costs shall be taken into account in determining the amount of the 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 and the carrying out of works, only if the services or works are of a reasonable standard:

and the amount payable shall be limited accordingly."

20. A service charge is only payable if the terms of the lease permit the lessor to charge for the specific service. The general rule is that service charge clauses in a lease are to be construed restrictively, and only those items clearly included in the Lease can be recovered as a charge (*Gilje v Charlgrove Securities* [2002] 1EGLR41).

21. The construction of the lease is a matter of law, whilst the reasonableness of the service charge is a matter of fact. On the question of burden of proof, there is no presumption either way in deciding the reasonableness of a service charge. Essentially the Tribunal will decide reasonableness on the evidence presented to it (*Yorkbrook Investments Ltd v Batten* [1985] 2EGLR100).

22. In relation to the test of establishing whether a cost was reasonably incurred, in *Forcelux v Sweetman* [2001] 2 EGLR 173, the Lands Tribunal (as it then was) (Mr P R Francis) FRICS said:

"39. ...The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

40. But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. Firstly, the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Secondly, whether the amount charged was reasonable in the light of that evidence..."

23. In *Veena v Cheong* [2003] 1 EGLR 175, the Lands Tribunal (Mr P H Clarke FRICS) said:

"103. ...The question is not solely whether costs are 'reasonable' but whether they were 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were both reasonable."

24. And further clarification of the meaning of "reasonably incurred" has been provided by the Upper Tribunal in *London Borough of Lewisham v Luis Rey-Ordieres and others* ([2013] UKUT 014) which said (at para 43):

"...there are two criteria that must be satisfied before the relevant costs can be said to have been reasonably incurred:

(i) the works to which the costs relate must have been reasonably necessary; and

(ii) the costs incurred in carrying out the works must have been reasonable in amount."

The inspection and hearing

25. The application was heard at Shrewsbury Magistrates Court on 28 September 2015. Mr Hartland and Mr Morris were present and represented themselves. Mr Andrew Vinson of counsel represented the Respondent. His instructing solicitor, Mr McKay was present, as was Mrs Deborah Dunham, Manager of the Meadowbrook care complex, who is the daughter of a Director of the Respondent, Mr Dulson.

26. Prior to the hearing, the Tribunal had inspected the exterior of the Meadowbrook care village. In addition to the sixty bungalows, there is a separate communal building with a lounge, dining area and kitchen, though at the time of inspection the Tribunal was informed that the kitchen and dining facilities are no longer operated. There are two flats available for use by visitors (for a separate fee), and there is an office for use by the staff on site.

27. In order to manage the hearing itself, the Tribunal commenced by requesting Mr Hartland to identify the key issues he required the Tribunal to determine. As expected, he identified the issue he had raised as being the item in issue on page 10 of his application form as the key issue. This was the social care subsidy which he felt he had been overcharged, as has already been explained in paragraph 12 above.

28. The Tribunal heard evidence and submissions on this key issue at the hearing and this determination is the Tribunal's decision on that issue.

29. There would not have been time to proceed to consider any of the other issues raised by Mr Hartland on the 2013/14 accounts which the Tribunal has identified in paragraph 15 above. Because the Tribunal is limited to considering whether an item charged within a service charge is payable, that issue normally being determined by reference to whether it was reasonably incurred or of a reasonable standard, it was also unclear to the Tribunal what service charge items within the 2013/14 accounts were being challenged and why. Mr Hartland explained that his main additional concern was the level of staff cost shown in the 2013/14 accounts, and his concern that there was a hidden profit within those staff costs. At the end of the hearing the Tribunal therefore adjourned the application for further directions, which were provided to the parties in a letter dated 1 October 2015. The Tribunal asked Mr Hartland and Mr Morris to confirm whether they wished the Tribunal to continue the case by considering Mr Hartland's application for a determination of the reasonableness of the staff costs.

30. Mr Hartland replied to the Tribunal's letter on 5 October 2015. His letter explained that his efforts to obtain full disclosure of the supporting

documentation for the staff costs incurred in 2013/14 had already been the subject of an application to Shropshire Council under section 22 of the Act (presumably for consideration by the Council of whether to prosecute the Respondent in the local magistrates court, as that is the remedy for breach of that section). The Council had declined to take any such action on the basis that they were satisfied with the documents that had been produced. Mr Hartland said that it was highly probable that the Tribunal would also be persuaded that the documentation was reasonable, and he was fearful that he would face costs if the Tribunal found the accounts were reasonable. For that reason he did not wish to pursue any further investigation into the 2013/14 service charge accounts.

31. Mr Morris also replied in simpler terms. He confirmed that he did not wish the Tribunal to continue any further investigation into the accounts for 2013/14.

32. The Tribunal is concerned that Mr Hartland may not have fully understood the Tribunal's position on costs. In its letter of 1 October 2015, it commented on the costs issue as follows:

> "At the hearing on 28 September 2015, the Tribunal mentioned the question of costs. To confirm the position, the Tribunal has power to order either party to this case to pay the costs of the other, but only if in the view of the Tribunal, the party against whom a costs order is sought has behaved UNREASONABLY. So as to be very clear, costs are not normally awarded in Tribunal proceedings, and it will be necessary for any party who seeks a costs order to persuade the Tribunal that it has been required to expend those costs without good reason. The Tribunal has not formed any view at this stage on the merits or otherwise of the [staff costs issue] and neither party should reach any assumptions about whether the Tribunal is currently minded to make any costs order should an application for costs be made."

33. The awarding of costs therefore does not depend on whether the Tribunal agrees that the staff costs were reasonable; it depends on whether the actions of the Applicants in bringing the application were reasonable. It can be reasonable to bring a tribunal case because it is the only method of resolving a reasonable dispute or obtaining crucial information, even if the ultimate decision of the Tribunal does not go in favour of the Applicants.

34. As both Applicants have confirmed in writing that they do not wish this application to proceed beyond a determination of the key issue identified in paragraph 27 above, the Tribunal accepts these written confirmations and this decision is therefore limited to that issue. The parties should note that if there remains an unresolved issue concerning any other aspect of the 2013/14 service charge accounts, either party may still bring that issue to the Tribunal. A party should not fear a costs sanction if he/she/it can persuade the Tribunal that the action was reasonably pursued.

35. Mr Hartland wrote a second letter to the Tribunal dated 12 October 2015 within the deadline set by the Tribunal for final submissions. The Tribunal has noted the contents of this letter and has taken them into account is so far as they relate to the issue the Tribunal has determined. Mainly though, the letter raises issues of compliance by the Respondent with previous decisions of the Tribunal. These are not matters for the Tribunal to consider, enforcement of its decisions being a matter that an aggrieved party must raise in the County Court.

36. The Tribunal did not receive any further submissions from the Respondent.

Evidence and submission on the key issue

37. The Tribunal heard oral evidence from Mr Hartland, Mr Morris and Mrs Dunham, and considered the documentary evidence provided by the parties.

38. Mr Hartland's starting point was the letter from the Respondent of 23 October 2013, which has been set out in paragraph 11 above. Mr Hartland said he regarded the third paragraph (the first paragraph in the extract in paragraph 11) as an admission that the domiciliary care business was not viable without a subsidy from the Service Charge. The final paragraph of the letter was, in his view, providing the lessees with the option of opting out of the care element of the Service Charge, i.e. the costs of the care staff required under paragraph 9 of the Sixth Schedule of the leases. Mr Hartland said he did not know what the option would be exactly. He anticipated he would hear that at the meeting on 31 October.

39. At the meeting, Mr Hartland said, Mr Dulson informed lessees that the cost of the service charge without the care element would be £250 per month. He initially said that a figure of £110 as the value of the care element of the Service Charge had been specifically mentioned at the meeting, but he then became unsure about the specific mention of £110. But because he knew he was paying £360 per month, he understood Mr Dulson's statement that without the care element the cost would be £250 to be a clear indication that the amount he could reduce his Service Charge by was £110 per month.

40. Mr Hartland accepted that there was a condition attached to the offer to allow lessees to reduce their Service Charge, which was that they would be denied the opportunity of purchasing further care from the Respondent for life. He was willing to accept that condition. However, he said he was told by Mr Dulson at the meeting that availability of 24 hour emergency help would not be removed from the Service Charge.

41. The next day (1 November 2013), Mr Hartland wrote to Mr Dulson. He wrote:

"With reference to your meeting with residents in the estate's Day Room at 2pm Thursday 31 October 2013, you stated several aspects that will have a significant result on the residents from now on. Your dissertation was at times disjointed and difficult to follow but we heard you say the following:

1 You stated that those who elected to opt out of paying the personal care subsidy that you levy through the service charge will have all personal care facilities that your care company offers withdrawn for life

2 You assured me that the 24 hour emergency person that is covenanted in the lease will not be affected

3 You stated that when the amount of care subsidy contained in the current £360 per month Service Charge is removed, the resulting monthly Service Charge would be £250

4 When Mr Jack Churchill then asked where was the care subsidy contained in the Service Charge items, your daughter Mrs Dunham said that it was in the staff costs"

...

I have decided to accept your option for me to opt out of paying £110 per month for the personal care subsidy that is enjoyed by those buying your care services.

...

... my opt out of paying the personal care subsidy and the consequential ban imposed for life will commence 1st December 2013. Your lack of response will be accepted as confirmation."

42. Mr Dulson replied to this letter the same day. He said:

"I am in receipt of your letter of 1 November 2013. It does appear that you have very selective hearing. The Tribunal quite clearly states the Service Charge, without any subsidy to care, to be £336.46. I understand your wish to opt out. However, this will of course be subject to Mrs Hartland's assessment."

43. In cross examination, Mr Hartland resisted the suggestion that the last paragraph of the 23 October 2103 letter required all residents to agree to any offer to change the terms of the supply of care. He agreed that the meeting was hard to follow (as he had confirmed in this letter), but he said it was not impossible. He accepted that he was not able to hear everything at the meeting very well, but he said that he heard nobody suggest that they were in favour of retaining care services. He then said it was possible

some lessees might have said this, but not likely. He was adamant that his version of the course of the meeting was correct.

44. Mr Morris also gave evidence. He confirmed that he had heard a statement at the meeting to the effect that if a subsidy wasn't provided for the cost of care, the lessees would be paying £250 not £360. He was not able to recall a great deal more about the meeting and there was no cross-examination.

45. Mrs Dunham gave evidence. She said the purpose of the letter of 23 October 2013 and the subsequent meeting was to allay fears some residents had about the outcome of the 2013 Tribunal decision and to find out whether residents wanted the Respondent to continue to provide the care element at Meadowbrook. She said that the Service Charge covered all facilities on site to enable domiciliary care to be provided at a lower rate. Mr Dulson had wanted to discuss whether lessees wanted to continue to be supplied with care services on site and if not to discuss what support could be offered to help lessees find other carers.

46. Mrs Dunham said that not all lessees were at the meeting, and it would not be possible to change the lease terms unless all residents agreed. She said that at some point during the meeting, a question was asked about the amount of the Service Charge if care was removed. She said that the answer given was that removing the provision of care would need to be the subject of a change in the planning consent for Meadowbrook, which was for C2 use, requiring the provision of domiciliary care. If however that hurdle was overcome and there was no care, lessees would still be expected to pay around £250 per month. She said that question had not been raised before and the answer given was just an estimate based on removing the cost of the Director of Care's salary. Mrs Dunham was adamant that the figure of £110 per month was not mentioned at the meeting.

47. Although not every lessee attended the meeting, Mrs Dunham said she was surprised at the number of lessees who did attend. One lessee who is blind stood up to say she wanted the care to continue, and a number of the original lessees also attended to explain that the provision of care provided the assurance of help and was the reason they moved to Meadowbrook Court in the first place. Mrs Dunham said she would consider it impossible to have attended the meeting and be unaware that some lessees were in favour of retaining the status quo. She said that nobody else apart from Mr Hartland and Mr Morris has objected to continuation of the provision of a care package at Meadowbrook. She was adamant that the Respondent had never agreed with Mr Hartland that he could opt out of the costs of care included within his Service Charge.

Submissions

48. Mr Vinson submitted that there were sound legal reasons for rejecting Mr Hartland's case that there had been a legal agreement between him and the

Respondent allowing him to pay for a Service Charge with any care element stripped out, being:

a. There has to be an objective basis for any variation of a contract. There was none here;

b. Any contract has to have certainly of terms. There was a considerable lack of certainly about what offer had been made (if any) and what terms it was subject to. There was no meeting of minds;

c. If there was an offer of change the terms of the purchase of care, it would only come into effect if agreed unanimously be all lessees; this was the effect of the final paragraph of the letter of 23 October 2013. Otherwise, if some lessees were allowed to opt out, this would simply mean that others would have to pay more, which would be commercial lunacy. No unanimity on the alleged offer was ever achieved;

d. Any variation of the lease would be subject to the requirements of section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 which provides that a disposition of an interest in land can only be made in writing and only by incorporating all the terms which the parties have expressly agreed in one document or, where contracts are exchanged, in each, and there is no document in this case that complies with this requirement.

e. Mr Hartland's case is directly challenged by Mrs Dunhams' evidence that the reference to any reduction in Service Charge was not an offer put to the meeting, but was an answer to a question which gave only an estimate of the cost.

49. Mr Hartland replied by stating that in his view the 23 October 2013 letter clearly makes an offer, which he has accepted and which is therefore now binding upon the Respondent.

The Tribunal's decision

50. The Tribunal does not agree with the Applicants' case. The question that requires determination is a fairly simple point; was there an offer made to individual lessees to vary the Service Charge provisions in their leases to remove some of the cost of care and therefore reduce the costs in the Service Charge that are recoverable from those individual lessees? In basic contractual terms, there cannot be a binding agreement to vary any contractual arrangements without an offer of variation which is accepted. The Tribunal does not accept that there was any such offer made.

51. The letter of 23 October 2013 makes no offer to reduce the Service Charge. It is a strange letter. It frankly acknowledges the existence of a "subsidy"

for the domiciliary care business from the Service Charge, says that the domiciliary care business is not viable without the Service Charge income, and invites lessees to a meeting to discuss the continued viability of the "care side". There is unfortunately no clarity about whether that means the domiciliary care side only is under threat, but the paragraph 9 Sixth Schedule services are not, or whether both elements are being considered for closure. But however difficult it is to interpret, it makes no offer beyond a suggestion that if all lessees decide not to continue to have the provision of "care services" (whatever that means), that might be acceptable to the Respondent.

52. Was there an offer at the meeting on 31 October 2013? The evidence is contradictory. Mr Hartland says there clearly was, and it was made in such a way that it was open to an individual lessee to accept and thereupon became binding. He is clear about the amount. The new Service Charge figure was to be £250 per month, which meant he was entitled to reduce his payments by £110, though he was unsure about whether the £110 per month figure had actually been mentioned. Mrs Dunham says there was no such offer. She confirms the figure of £250 per month was mentioned in answer to a question as an indicative figure that the service charge might reduce to if all lessees agreed to a variation.

53. Other inconsistencies in the evidence about the meeting also exist. Mrs Dunham says the sum of £110 was never mentioned. She says a number of residents spoke in support of retaining care services at Meadowbrook. Mr Hartland denies that.

54. Mr Hartland says that he found the meeting difficult to follow and that it was difficult to hear. That means the Tribunal must be cautious in accepting his version of events. The Tribunal found Mrs Dunham to be a perfectly credible witness and in broad terms it accepts her version of the meeting. It is inherently unlikely, in the view of the Tribunal, that the Respondent would be in a position to offer a precise figure for reduction of Service Charge at a meeting called to discuss whether lessees want to continue with a Service Charge at all. It is also difficult to see why such an offer would be made. If there was an issue about the commercial viability of continuing to provide care, it would hardly be solved by allowing a few individuals to reduce their payments. That would worsen the commercial position, not improve it. There is much more of a sense, in the opinion of the Tribunal, that this was a meeting for discussion and the airing of views so that further consideration could be given to resolving concerns, than that it was intended to be a meeting at which a legally binding offer to vary the leases was to be made.

55. If the Tribunal is wrong on this interpretation of the outcome of the meeting, it also finds that if there was an offer at the meeting, it was one that could only be accepted if all the lessees agreed, which they patently have not. It would be commercial nonsense to allow some of the lessees to withdraw from one element of the Service Charge and to expect others to

continue to pay. Not only that, but it would be a breach of the Respondent's obligations to all the other lessees as the whole scheme requires that all the lessees contribute to the Service Charge. The only pocket available out of which the lost income could come would be the Respondents. It is impossible to imagine that the Respondent would unilaterally offer to forego income it would have to bear out of its own pocket.

56. Finally, the Tribunal accepts that any lease variation would have to be subject to legal formalities; normally a deed of variation would be put in place for the variation of any lease. So even if it is wrong on the question of whether there was an offer and acceptance of a lease variation, or whether that could come into effect for the benefit of a class less than the whole, it would have found that the necessary legal formalities under section 2 of the Law of Property (Miscellaneous Provisions) Act 1989 to put that offer into effect had not been completed. Any variation to the terms of Mr Hartland's lease to remove the obligation to pay care costs would have to be in writing in one document, or where contracts are exchanged in each document. That document must be signed by each party to the contract, or when contracts are exchanged, one of the exchanged documents, must be signed by each party.

57. The upshot is that the Tribunal rejects the Applicants' case to the effect that the letter of 23 Oct 2013, the meeting on 31 October 2013, and Mr Hartland's letter of 1 November 2013 resulted in an agreement that for the 2013/14 service charge year the Applicants were entitled to reduce their Service Charge by £110 per month, or as Mr Hartland calculated in his case by £880 over the year, or at all, below the budget figure of £336.46 which was found by the 2013 Tribunal decision to be the sum payable as a budget figure for that year.

58. This decision does not conclude the question of the correct service charge for 2013/14. £336.46 per month, approved by the 2013 Tribunal, was a budget figure. Actual accounts have been produced, but the Tribunal has seen nothing that complies with paragraphs 2(2) and 2(3) of Part I of the Seventh Schedule of the leases. But if there is any continuing dispute concerning the 2013/14 service charge, it is for any disputing party to raise in further proceedings. It has not been the question raised in these proceedings.

Appeal

59. Any appeal against this decision must be made to the Upper Tribunal (Lands Chamber). Prior to making such an appeal the party appealing must apply, in writing, to this Tribunal for permission to appeal within 28 days of the date of issue of this decision (or, if applicable, within 28 days of any decision on a review or application to set aside) identifying the decision to which the appeal relates, stating the grounds on which that

party intends to rely in the appeal, and stating the result sought by the party making the application.

Judge C Goodall
Chair
First-tier Tribunal (Property Chamber)