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Ref: LON/00AG/LSC/2009/0671

LEASEHOLD VALUATION TRIBUNAL

LONDON RENT ASSESSMENT PANEL

DETERMINATION

Of Transferred Application Under Para.3 of Schedule 12 to Commonhold and Leasehold Reform Act 2002

Premises: Flats 29 & 108 Hillsborough Court, London NW6 5NT

Applicant: Northumberland & Durham Property Trust Ltd [*Landlord*]

Respondent: Mr Shahram Kamyab [*Tenant*]

Hearing: Monday 15 February 2010

Representatives of Applicant:

Mr Matthew Hall of Counsel with Ms Helen Roberts of Dickinson Dees LLP, Ms Joan Hathaway BSc MRICS of Martin Russell Jones (managing agents) and Mr Chris Steward (building services consultant)

Representatives of Respondent:

Mr Kamjab in Person

Tribunal: Professor J T Farrand QC LLD FCIArb Solicitor
Mrs J E Davies FRICS
Mr L G Packer

Introductory

1. By a Claim in the Central London County Court, issued on 18 June 2009, the Applicant sought "a Declaration from the Court pursuant to the provisions of Section 81 of the Housing Act 1996 that the Service Charge claimed from the [Respondent] as detailed in the Particulars of Claim is payable in full by the [Respondent] together with Judgment for the sum due and costs."

2. Section 81 of the 1996 Act restricts forfeiture proceedings in respect of a tenancy (or lease) of a dwelling by a landlord for failure by a tenant to pay a service charge before final determination by a tribunal, court or arbitrator or else an admission from the tenant that the amount of the charge is payable.

3. The Particulars of Claim (bundle p.3) referred in detail to the long leases of the two flats constituting the subject Premises, each for a term of 199 years from 25 December 1985, of which the Respondent has been the registered leasehold proprietor since 2005 (No.29) and 2003 (No.108) and for which the stated prices paid were £141,500 and £154,000 respectively. Apparently, the Respondent has sub-let these flats and is also the leaseholder of another six flats in the building (No.s 21, 42, 50, 77, 95 and 116), which do not feature in the present proceedings.

4. Both leasehold titles of flats No.s 29 and 108 are subject to registered charges: HSBC Bank Plc and National Westminster Bank Plc re No.29 and Mortgage Express re No.108 (bundle pp.296-299). According to the Particulars of Claim (para.10 at bundle p.6), these mortgagees had been invited by the Applicant to pay the amounts claimed in order to avoid forfeiture of their security but they have declined to do so without, in effect, an admission by the Respondent or a determination by a tribunal or court of his liability: "They will then be able to make payment" (see also letter from Dickinson Dees LLP to the Respondent dated 10 October 2008; bundle p.113).

5. The Applicant has been the registered freehold proprietor of the building including the Premises since 1989 (price paid not stated); notices of 123 leases of flats are entered on the title but there are no registered charges (bundle pp.288-295).

6. After outlining the service charge provisions in the two leases, essentially identical, and asserting that the Applicant had "made proper demand" for payment, the amounts claimed as a service charge in the Particulars of Claim were £10,313.10 for flat No.29 and £10,675.96 for flat

No.108. Also claimed was £100 as two years ground rent for each flat and £913.75 as "legal fees" ref. flat No.29 together with interest at 5.5% pa from the dates when individual sums were allegedly payable. Thus the total amount claimed, with ground rent and legal fees but without interest or costs, was £22,202.81.

7. Statements of arrears prepared by the Applicant's managing agents were exhibited with the Particulars of Claim (bundle pp.81 and 82). These statements showed that the periods in issue ran from mid-2006 to 28 September 2009. Each statement lists a number of sums as "Quarterly Service Charge in Advance": these sums rise from £562.70 to £642.60 for flat No.29 and from £410.85 to £470.38 for flat No.108. In addition, the statement for flat No.29 lists £3,938.50 for "Boiler & Central Heating Major Works" with a date payable of 6 July 2006 and an indication that £390.60 had been paid so that the balance still payable would be £3,547.90. That statement for flat No.29 also lists £1,826.66 for "Major Lift Works" with a date payable of 1 December 2008. Similarly, the statement for flat No.108 lists £2,882.96 for "Boiler & Central Heating Major Works", but with a date payable of 24 June 2006, and £1.337.11 for "Major Lift Works", but with a date payable of 9 June 2008. Also listed for flat No.108 is £840.25 for "Pipe repair & policy excess" with a date payable of 26 March 2008 (as to this see para.47 below).

8. The Respondent filed a Defence dated 17 August 2009 (bundle p.123). He admitted £13,998.27 of the amount claimed and stated that he had paid the amount admitted by way of numerous cheques on various dates. He stated that the service charge had been paid and that he was not liable for any interest or legal fees. Otherwise, there was a barely comprehensible or relevant statement, as follows:

> "Since I purchased the property there are a number of urgents jobs on the building which the management company not taking into account and resolve because they are interested on highly costing jobs with hidden costs to create more revenue. There is lots of evidence that Major Works never completed..."

9. On 13 October 2009, District Judge Taylor made the following short Order: "Transfer to Leasehold Valuation Tribunal".

10.Such a transfer by a Court to a Leasehold Valuation Tribunal may only be made of proceedings relating to "a question falling within the jurisdiction of a leasehold valuation tribunal", with remaining proceedings being adjourned or disposed of by the Court (see para.3(1) of Schedule 12 to

the 2002 Act). Then, when a transferred question has been determined by the Tribunal, the Court may give effect to the determination in an order of the Court (para.3(2)).

11. An oral Pre-Trial Review was held on 18 November 2009, attended by the Respondent in person (bundle p.138). By way of explanation, the procedural Chairman recorded (para.3):

> "The Respondent contended that some service charges are not in contention, and that the major areas of dispute are in respect of Major Works concerning Boiler and Central Heating Installation (July 2006) and Lift Repairs (June 2008). He also asserted that he had tendered certain payments of service charge, but that his cheque or cheques had not been cashed on behalf of the Applicant."

Directions were then made requiring the Respondent to serve a Statement of Case setting out, with reference to the Applicant's claim and statements of arrears, exactly what sums were disputed. In particular, it was directed that, "as to disputed items, a full explanation should be supplied, coupled with copies of alternative quotations or any other documents relied upon". Then Directions were made as to the Applicant's Statement of Case in Reply. There was also an emphasised warning that failure to comply with directions might prejudice a party's case and debar reliance on evidence at the Hearing.

12. In purported pursuance of the Directions, apparently, the Respondent wrote a letter to the Applicant's solicitors, dated 23 November 2009 (bundle p.144), which began:

> "Refer to our previous correspondence in regard of the Service Charge for the above properties I have made it clear to you that I don't have any problem towards the Service Charge despite it was raised without any reason constantly by Martin Russell Jones since they take over the management. I have paid our Service Charge up to September 2009 accordingly (attached a letter No 1, which shows clearly how much and up to which date I paid the Service Charge along with copies of my cheque payments No 2). After July 2009 I have not received any other invoices and if Martin Russell Jones has decided not to cash my payments is not my problem, perhaps this is another tactic for the revenue raising."

After this, questions were asked by him about the managing agents "charging 15% on the top of every expense" as well as about progress of the Major Works and payments to contractors.

13. One matter listed by the Respondent in his letter as a question read as follows:

> "The two figures for Major Works (lift and plumbing), which stated in 3 letters No 3 (enclosed copies) without any clear explanation about this ridicules [*sic*] amount and consultation with the lessee."

The three copy letters were from the Respondent (bundle pp.153-155). Two of them were addressed to the managing agent: one, dated 10 February 2006, related to complaints from his (sub) tenants about hot water and heating and the other, dated 12 January 2007, queried a "balance brought forward" amount in an invoice and stated that payments had been made for 2006. The third letter to Dickenson Dees, dated 28 May 2008 and relating to flats No.d 29, 50, 108 and 116, was as follows:

> "Refer to your letter dated 22/05/2008, I must inform you that the main important point why we have not paid the outstanding service charge for above-mentioned properties - the Martin Russell Jones unreasonable invoice for the Major Work at £3,547.90 for each flat. As most of my flats have been modified and heated with electricity, and the bathrooms have electric showers after winter-disappointed service, these flats do not benefit from management heating works and should not be charged for it.
>
> However, we would pay immediately if Martin Russell Jones remove extras and issue the correct invoices. If we do not receive these in the nearest future, we would make payments according to our calculation.
>
> Please do not hesitate to contact me if you have any query."

14. Similarly, the concluding paragraph of the Respondent's letter of 23 November 2009 to Dickinson Dees began (bundle p.145):

> "In my opinion, I think the best solution for the heating and hot water problem in this block, as I mentioned before, it should be independent heating and hot water for each flat and the deduction of the Service Charge accordingly, which most of the residents agree with."

The letter then referred further to mismanagement by the managing agents.

15. The Applicant's solicitors served a Reply to Defence on 5 January 2010 (bundle p.161). Primarily, this dealt with the issue of payments being tendered by the Respondent but not accepted because the cheques were not for the full amount of service charges allegedly owing, together with full legal costs, and acceptance might waive the Applicant's right to full

payment and/or forfeiture of the tenancies. The Reply also dealt with Legal Fees, justifying these by reference to the tenant's covenant to pay costs incurred by the landlord in contemplation of, in effect, proceedings for forfeiture.

16.As to the Major Works, the Reply to Defence denied that the charges were unreasonable and that the Premises did not benefit from the central heating and lifts. After referring to the relevant statutory provisions, it was also stated that (para.14 bundle p.163): "The Applicant therefore avers that there was full consultation and notification with regard to major works."

Hearing

17.For the Applicant, Mr Hall identified the area of dispute for the Tribunal to consider as lying in what the Respondent had described as the "Major Works", ie works on the boiler and the lift. He pointed out that the cheques tendered by the Respondent but not accepted by the Applicant had been intended to be payment of all amounts claimed except the sums for Major Works and for legal costs. Apart from the apparent double-counting of one cheque for £2,128.70 (cp letter at bundle p.146 and statement at bundle p.500; see also the admission in para.4 of the Applicant's Reply to Defence at bundle p.161), this was accepted as the position on behalf of the Applicant.

18.However, Mr Hall's submission was that the issue of whether or not the tendered but rejected cheques should be treated technically as if payments of service charges was not one for the Tribunal to determine. Since the cheques had not been accepted they did not affect the Respondent's overall liability in respect of service charges. He also submitted that the legal fees of £913.75 claimed with reference to flat No.29 were not service charges within the jurisdiction of the Tribunal but were payable individually by virtue of a covenant in the Respondent's lease.

19.Accordingly, Mr Hall had stated in his Skeleton Points of the Applicant (para.6): "The only question which the tribunal is respectfully asked to determine is whether the service charges shown on the schedules at pages 81 and 82 are payable." These schedules or statements of arrears have already been described (see para.7 above).

20.Mr Hall had referred in his Skeleton to the provisions in the practically identical leases of the two flats, No.s 29 and 108, on which he relied as establishing the Applicant's entitlement to be paid these service

charges. In particular, he quoted para.s 2 and 8 of the Sixth Schedule, each of which contained a landlord's covenant to maintain, repair or renew "the central heating boiler pipes and radiators...and the lifts and their equipment". Then he noted that a "Maintenance Contribution" was reserved as additional rent payable "at the times and in the manner set out in the Seventh Schedule" (clause 2(b)). The Maintenance Contribution is defined as a stated percentage (0.847% for flat No.29 and 0.620% for flat No.108) of the cost to the Landlord each year (as from 25 December) of complying with its obligations in Schedule 6 (clause 1 and First Schedule). It is to be both calculated and paid as provided in the Seventh Schedule" (clauses 1 and 2(b)).

21. The Seventh Schedule provides that the amount of the Maintenance Contribution should be ascertained and certified after the year in question by a certificate, signed by the Landlord's Auditors and supplied on request to the Tenant, which should contain a summary of "the expenses and outgoings incurred by the Landlord" (para.s 1-3). However, this is given an extended meaning by para.4 which calls for complete quotation:

> "The expression "the expenses and outgoings incurred by the Landlord" as hereinbefore used shall be deemed to include not only those expenses outgoings and other expenditure which have been actually disbursed incurred or made by the Landlord during the year in question in performing its obligations hereunder but also such reasonable part of all such expenses outgoings and other expenditure hereinbefore described which are of a periodically recurring nature (whether recurring by regular or irregular periods) whenever disbursed incurred or made otherwise including a sum or sums of money by way of reasonable provision for anticipated expenditure in respect thereof as the Landlord or its accountants or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances and relates pro rata to the Flat"

22. Although certified and summarised after each year, payments in advance are provided for by para.5 of the Seventh Schedule:

> "The Tenant shall on each of the four usual quarter days in every Maintenance Year pay to the Landlord an interim sum of £150 in advance and on account of the Maintenance Contribution Provided that the Landlord or the Landlord's Managing Agents may at any time by notice in writing given to the Tenant require that as from the

quarter day next after the service of such notice until further notice the said sum payable in advance and on account of the Maintenance Contribution shall be such amount as shall be specified in such notice and provided further that the Landlord may at any time during the Term where (but only where) the sums it has accumulated in respect of anticipated expenditure pursuant to the provisions hereinbefore contained are insufficient therefor require the Tenant to pay on demand a further sum on account of the Maintenance Contribution in respect of any sum properly expended by the Landlord under the provisions hereof in addition to the interim sum paid on account of the Maintenance Contribution"

23. Lastly, as to payment, provision is made for subsequent adjustments (as required, in effect, under s.19(2) of the Landlord and Tenant Act 1985) by para.6 of the Seventh Schedule:

> "As soon as practicable after the signature of the certificate the Landlord shall furnish to the Tenant an account of the Maintenance Contribution payable by the Tenant for the year in question due credit being given therein for all interim payments made by the Tenant in respect of the said year and upon the furnishing of such account showing such adjustment as may be appropriate there shall be paid by the Tenant to the Landlord within 14 days the amount of the Maintenance Contribution as aforesaid or any balance found payable or there shall be allowed by the Landlord to the Tenant any amount which may have been overpaid by the Tenant by way of interim payment as the case may require"

24. Mr Hall explains in his Skeleton that sums listed as "Quarterly Service Charge in Advance", which all exceed £150, are ascertained by applying the appropriate percentage to the estimate for the year. He took 2009 as an illustration but 2006 appears better. The managing agent's so-called "Estimated Service Charge For Year Ending 31st December 2007" showed a total estimate of expenditure of £265,065 (bundle p.413). Ignoring the fact that the Maintenance Year should end on 24 December, applying 0.62% for flat No.108 produces an interim service charge of £1,643.40 payable by quarterly sums of £410.85. Two such sums are listed in the statement of arrears for this flat as having been payable on 24 June and 29 September 2006 (bundle p.82).

25. As to this, however, the Tribunal has certain observations and reservations. The first of these is that the Tribunal has not seen any copies

of any notices in writing specifying future quarterly sums other than £150 as required by para.5 of the Seventh Schedule. Mere invoices would not seem to suffice. The second and more serious observation is that, although the estimate for 2006 includes £10,000 for "Boiler Repairs/Maintenance" and £50,000 for "Major Works", the statement of arrears also lists £2,882.50 for "Boiler & Central Heating Major Works", with a date payable of 6 July 2006. That date is when Notice of Estimates was sent to the Respondent (bundle p.385): payments were formally requested from lessees within 14 days on 30 August 2006 (bundle p.387). Apart from the date, the Tribunal has a serious reservation about whether this request for payment actually complied with the provisions of the Seventh Schedule of the Respondent's lease.

26. Mr Hall's submission as to this aspect in his Skeleton (para.16.6) was as follows:

> "The "Boiler and Central Heating Major Works" and "Lift" major works were due as a separate item because the managing agents were entitled to treat it as part of the Maintenance Contribution under paragraph 4 as a "... reasonable provision for anticipated expenditure in respect thereof as the Landlord or its accountants or managing agents (as the case may be) may in their discretion allocate to the year in question as being fair and reasonable in the circumstances and relates pro rata to the Flat""

27. Regrettably, the Tribunal considers that this submission misconstrues the operation of para.4 of the Seventh Schedule (see para.21 above). That paragraph expressly refers to an expression used in preceding paragraphs and thereby enables the inclusion of anticipated expenditure in the Auditor's post end of year certificate of the amount of Maintenance Contribution. Then, instead of simply including the amount in the following year's estimate, payment by the tenant can be required under the subsequent adjustment provision in para.6 of the Seventh Schedule (see para.23 above). For this purpose, an account should be furnished to the tenant after the certificate has been signed showing the balance payable. The only provision for separate demands to be made for additional items of service charge during a Maintenance Year in addition to the notified quarterly payments in advance appears to be in para.5 where, in effect, actual expenditure exceeds reserves for anticipated expenditure (see para.22 above).

28. A further problem for operating the lease machinery of collection, is that the certified service charge account for 2006 (bundle pp.405-408) does

not include any item of anticipated expenditure. An amount of Reserves for unidentified Major Works to be carried forward is shown (£265,883), as is another amount for Service Charge (£150,716), but as a figure provided by the managing agents. The certified account for 2007 is similar except that actual expenditure on Major Works is shown (£315,762, bundle pp.409-412). No certified accounts for other years have been seen.

29.A different difficulty, adverted to by Mr Hall in his Skeleton (para.17), concerns compliance with the statutory consultation requirements for qualifying works within s.20 of the Landlord and Tenant Act 1985. Separate consultations were undertaken for the boiler etc works and for the lift works. As to the latter consultation, Mr Hall properly drew attention in his Skeleton (para.17.2) to a deficiency in a letter, dated 29 April 2009 (bundle p.107), from the managing agents informing the Respondent that the Applicant intended "to enter into a contract with Amalgamated Lifts Limited from whom the lowest estimate was received and therefore no further notice is required under the regulations". In fact, that company's estimate (£215,662.20) was higher by £389.16 than the only other estimate (£215,273.04). Therefore, a further notice in writing to each tenant was required, within 21 days, stating or specifying a place for inspection of the Applicant's reasons for awarding the contract (Part 2 para.13 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003). An order dispensing with this requirement was, therefore, sought under s.20ZA of the 1985 Act so as to avoid the Respondent's liability in respect of the works being limited to £250 by virtue of s.20 of the 1985 Act.

30.At the Hearing, held on a Monday, Mr Hall also very properly drew attention to a more significant deficiency in the consultation for the boiler etc works of which he had become aware at the weekend. According to a Notice of Estimates, dated 6 July 2006, and a letter from the managing agents dated 30 August 2006, the Applicant proposed to enter into a contract for phases 1 and 2 of the proposed works with Haydon Mechanical & Electrical Ltd from which the lowest estimate of three had been received (£464,993.51). Demands for payment in advance by tenants of appropriate percentages of this sum were then made and Ms Hathaway confirmed in her oral evidence that the vast majority of tenants had made their payments although some were doing so by instalments. .

31.However, because "it became apparent that insufficient funds were available" a second tender was sought (see Mr Steward's Witness Statement pra.7). This insufficiency was not because of a failure by tenants to make the advance payments demanded but because the managing agents had spent

funds on other things (see Second Witness statement of Ms Hathaway para.14 re reimbursements for insurance claims and para.16 re works due to neglect of previous managing agents, both quoted in para.42 below).

32.Therefore, the proposed works were 'repackaged' by Mr Steward, so as not to include some elements of phase 1 and most elements of phase 2, which was shelved. This repackage was retendered in January 2007 with the contract being awarded to a different company, MS Services, which had not originally tendered but whose estimate for the repackaged works was now the lowest (£129,369). However, Mr Seward has stated that MS Services alone also quoted in April 2007 for a so-called addendum specification, issued to them only as they had already started work, in the sum of £69,072.90. This makes a total of £198,441. The Tribunal noted from a Tender Analysis Reports by Mr Steward that Haydon's estimated figure for phase 1 works had been £161,511 although with an extra provisional sum of £12,000, making a total of £173,511.

33.No statutory Notices as to these changes in and additions to proposed works, estimates and contractor nor any other information or explanations were given to the Respondent or any other tenants. According to Mr Steward these works were completed in 2009 for an actual cost of £214,597.42, the constituent parts being slightly below the first quotation from MS Services (£128,597.42) but substantially exceeding the additional quotation (£85,597.42). The Tribunal noted that this cost was less than half the quoted sum (£464,993.51) in respect of which advance payments had been demanded from tenants and considered the statutory provision that no greater amount of service charges than is reasonable is payable in advance by tenants (s.19(2) of the 1985 Act) . Again, an order dispensing with the relevant requirements was sought under s.20ZA of the 1985 Act on behalf of the Applicant.

34.Although Mr Hall made oral submissions at the Hearing in support of dispensation from the statutory consultation requirements, the Tribunal decided that it should receive written submissions as to the two eleventh hour applications made on behalf of the Applicant Landlord to the Tribunal under s.20ZA of the Landlord and Tenant Act 1985. The Tribunal was mindful of the fact that the Respondent had not been afforded an adequate opportunity of considering the applications in advance. The Tribunal also had in mind that notice of the applications should be given to any person likely to be significantly affected (eg other tenants at Hillsborough Court with service charge liability) and that fees might be payable before it could

proceed (see reg.s 5 and 7 of LVT (Procedure) (England) Regulations 2003).

35. Accordingly, the Tribunal made the following Directions:

> 1. The Applicant shall serve written submissions as to the s.20ZA applications on the Respondent with a copy to the Tribunal within 10 days (ie on or before 25 February 2010).
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> 2. The Respondent shall serve written submissions on the Applicant with a copy to the Tribunal within a further 10 days (ie on or before 8 March 2010).
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> 3. The Applicant may serve written submissions in reply on the Respondent with a copy to the Tribunal within a further 5 days (ie on or before 13 March 2010).
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> 4. The Tribunal will consider the additional written submissions received duly together with the representations and evidence already submitted without reconvening the oral Hearing with a view to issuing a Determination of the case by the end of March 2010.

36. The Tribunal has received such Written Submissions for the Applicant as well as six letters from other tenants or their representatives, together with one from a newly formed Hillsborough Court Residents Action Group comprising, apparently, the tenants of eleven flats. These letters were written in response to a letter from the Applicant's solicitors, dated 23 February 2010, giving notice to tenants of the applications for dispensation orders and informing them that they were entitled to make their own representations to the Tribunal. Although, understandably, containing representations relating to issues other than dispensation orders, these letters have been considered by the Tribunal and, so far as relevant, taken into account. The conclusions reached are set out below (see para.56 et seq).

37. On the necessary assumption that dispensation would be ordered by the Tribunal from, in effect, the Applicant's non-compliance with the statutory consultation requirements and the consequent service charge caps of £250, Mr Hall made submissions at the Hearing as to the Respondent's objections to the Major Works. Referring to the Respondent's purported Statement of Case (see para.s 12-14 above) and "distilling issues", generally he submitted that the Respondent's objections to the costs as ridiculous were not only not supported by any evidence but also misconceived. In particular, he submitted in his Skeleton (para.s 19.2.5-6):

"It is no answer to the claim to say that, since independent sources of heating and hot water have been fitted, there is no liability to pay the service charge. The liability to pay is fixed by percentage. Renewing the boiler is part of the landlord's obligation.

The same point applies to the lift. There is no obligation on the landlord to apportion the service costs to those who use the lift most. Such an approach would no doubt provoke controversy and would be unworkable."

38. In order to establish the Applicant's basic position that the Major Works were necessary and the costs charged reasonable, Mr Hall also called Mr Steward as well as Ms Hathaway to give oral evidence in support of their Witness Statements

39. Mr Steward is a Building Services Consultant with 34 years experience. He had been instructed by the Applicant's managing agents in 2005 to provide a condition survey report and these instructions had been extended, following pipework and boiler failures, to include a feasibility appraisal as to alternative heating systems. A copy of his Report, dated February 2006, was an exhibit to his Witness Statement, dated 10 February in which he stated (para.4):

"In summary, my report discounted the possibility of installing individual systems as there was insufficient space within each flat to mount a boiler and because of other implications such as an inadequate gas and mains cold water supply on the estate and possible legal issues with the positioning of boiler flues. In my considered opinion the refurbishment of the existing communal systems was the most cost effective and expedient way to proceed."

40. Mr Steward also referred in his Witness Statement to the second tender for phase 1 works, now completed, and to phase 2 being tendered again but "subsequently shelved due to insufficient funds" (para.7 and 9). He did not mention any changes in proposed works, estimates or contractor but endeavoured to explain these in his oral evidence.

41. An opportunity to question Mr Steward was given to the Respondent who briefly queried his qualification to act as if a central heating engineer and asked about drawings and his office telephone number. Otherwise he sought to use the opportunity to express forceful representations.

42.Ms Hathaway is a Chartered Surveyor employed by the Applicant's managing agents appointed in 2002. Her Second Witness Statement, dated 10 February 2010, included the following pertinent paragraphs:

> "7) The major lift works were also considered to be necessary. We instructed by ILECS Limited, International Lift and Escalator Consultants, to prepare a Lift Condition Survey Report, to establish the condition of both lifts and identify any areas of concern. I attach as "Exhibit JH1" a copy of the report. The report recommended that with the lifts approaching 17 years old and approaching the end of their design life, the building would require a complete modernisation and refurbishment of the equipment within 3 to 4 years. The report estimated the costs of installing a lift to be in the region of £113,400 plus VAT per lift, plus any, builders' work, statutory fees and professional consultancy fees.
>
> 14) The general reserve fund is currently empty, as the monies held in this account have been used to reimburse leaseholders for insurance claims which are currently being processed and are due to be repaid into the reserve fund when received from the insurance company. The outstanding insurance claims total £125,015.85. A list of payments made and to be reclaimed through insurance is attached as "Exhibit JH2".
>
> 16) Funds were not available to pay for the major works due to massive amount of works the current managing agents have had to put in place due to the neglect of the previous managing agents. In any event, there is no obligation for the managing agents to provide a reserve fund; there is just a general provision in the Lease allowing one (Clause 11 of the Sixth Schedule). In any event, whether or not there was a reserve fund in place, the lessee would still be asked to pay the same amount of money, just not necessarily in one lump sum.
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> 24) Our management fee is recoverable under Clause 8 of the Seventh Schedule whereby it is agreed and declared that the cost of the Landlord of fulfilling its obligations shall be deemed to include all administration accountancy or legal costs of the Landlord in carrying on its services including the fees charged by managing agents. 15% is only charged on the major works where external contractors are involved (the usual fee charged for major works such as internal and external redecorations is 10%) — being the work involved in managing the services, obtaining tenders, instructing contractors,

supervision of the work and any other work involved. Included in this fee is the cost of the engineers' fees for professional services. For this site, the managing agents charge a fee per unit of £175.81 plus VAT."

43. In evidence, Ms Hathaway conceded that, in retrospect, consultation notices should have been served in respect of the retendering for the boiler works. At the time, however, the need to issue such notices had been discussed by the managing agents with the Landlord and it had been decided not to consult the tenants again because the amount of costs for the repackaged works would be less than for the works as originally proposed and because of there was a sense of urgency about undertaking the works.

44. The Respondent used his opportunity to ask questions by asking nothing of relevance to the Major Works issues but by enquiring about the employment of one contractor for minor works.

45. It should be recorded that Ms Hathaway was not asked about the propriety of using the reserve fund for the purposes indicated in para.14) of her Witness Statement. Nor was it put to her that, contrary to her statement in para.16), clause 11 in the Sixth Schedule of the leases appears not to be a mere power but to constitute a covenant on the part of the Landlord which imposes an obligation to set up a reserve fund.

46. In presenting his case at the Hearing, the Respondent accepted that he had not complied properly with the Directions as to a Statement of Case issued following the Pre-Trial Review (see para.11 above) and that there had been a warning note that non-compliance might prejudice a party's case. He said he had not had enough time to obtain documentary evidence in support and explained that he had relied on his own expertise and experience: before 1983 he had, apparently, obtained two Masters degrees in Iran, one in Architectural Engineering and the other in City Planning, as well as a BSc in Business Management. Although he had practical experience of housing and building since leaving Iran, there was no suggestion that he had acquired any professional qualifications.

47. He asserted that he had no confidence in the Applicant's managing agents and no confidence in Mr Steward's feasibility study. His basic position as to the Major Works was that the costs incurred in repairs and renewal were unnecessary: the lifts would still be too small for the building and communal heating and hot water should be replaced by individual systems.

Decisions

48. The Tribunal accepts Mr Hall's submission that the Tribunal is not concerned in these proceedings with the tendering of cheques by the Respondent and their rejection on behalf of the Applicant. It may be thought arguable that the tenders were valid, eg because the Respondent had effectively appropriated them to separate and severable parts of the Applicant's claim (ie everything except Major Works and legal costs) or because the other parts of the claim relate to amounts that are not due for payment. But even if such arguments succeeded, the Respondent would remain liable to pay the due amounts even though tendering the cheques would mean that he had not been in breach of covenant. The Tribunal also accepts that it should not express a view as to whether the rejection of the cheques on behalf of the Applicant was well-advised. In law it might be argued that the acceptance and crediting of the cheque for £2,128.70 in July 2007 had already waived any right to forfeiture. In practice it might be thought that professing to contemplate forfeiture of two valuable tenancies because of a dispute as to liability to make advance payments totalling approximately £10,000, despite the fact that relief would be readily obtainable on payment, does nothing for good landlord and tenant relations. Justifying the legal fees incurred as reasonable could prove to be a problem but is not a matter in front of this Tribunal.

49. As to the legal fees of £913.75 included in the statement of arrears for flat No.29, the Tribunal also accepts Mr Hall's submission that these are not service charges as to which the tribunal would have jurisdiction under s.27A of the 1985 Act. However, the Tribunal considers that they do constitute administration charges which are within the Tribunal's jurisdiction (see para.1 (c) and (d) of Part 1 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002). The Tribunal has received no submissions justifying these legal fees. Further, the Tribunal notes that although listed in the statement of arrears for flat No.29, the actual item is "Legal fees re Flats 29, 50, 77, 108, 118": three of these flats are not within the current proceedings. Accordingly, the Tribunal is unable to determine that the sum of £913.75 is payable by the Respondent as legal fees.

50. Although the Tribunal accepts Mr Hall's view that the only question for it to determine is whether "the service charges shown on the schedules at pages 81 and 82 [of the bundle] are payable" (see para.19 above), this is subject to two points. One of these is the administration charge point in the previous paragraph and the other is the item listed for flat No.108 of £840.25 for "Pipe repair & policy excess". The point is that this item does not appear

to be a service charge and the justification for the Applicant claiming payment of it from the Respondent has never been explained. Accordingly, the Tribunal is again unable to determine that the sum of £840.25 is payable by the Respondent.

51. The Tribunal also accepts Mr Hall's submission that the Respondent has failed to substantiate his objections to the charges for the Major Works. The respective merits of individual systems and of communal heating of blocks of flats is a common cause of discussion. The Tribunal tends to favour the Respondent's preference for individual systems on the grounds of economy and convenience whilst not finding Mr Steward's conclusions in his Feasibility Report compelling. However, the Applicant as Landlord is subject to explicit legal obligations by virtue of lease covenants to repair and renew the central heating boilers and pipes as well as the lifts and equipment. This means that it is impossible for this Tribunal to find that incurring expenditure in so doing is completely unreasonable. Indeed, without the agreement of all the tenants to a variation of their leases, the Applicant would not be legally entitled to change to individual systems for heating and hot water instead of a communal one. Similarly, the Applicant would not be entitled to install improved or larger lifts and make necessary alterations within the building, all at a cost to be recovered as service charges, instead of repairing and renewing the existing lifts.

52. However, it does not follow from this that all the costs of repairing and renewing the boilers and pipes as well as the lift are recoverable as service charges: such costs should only be taken into account to the extent that they are reasonably incurred (ie not excessive) and the works are of reasonable standard (see s.19(1)(a) and (b) of the 1985 Act). Each of these aspects can only be determined after completion of the works and when actual costs are confirmed. Here payment of service charges in respect of the Major Works has been sought before the costs have been incurred on the basis of estimates and a different rule applies to payments in advance: "no greater amount than is reasonable is so payable" (s.19(2) of the 1985 Act). Payment in full before commencement of phased works with staged payments to a contractor might seem unreasonable to tenants whilst landlords and managing agents might well consider it unwise and, therefore, unreasonable to enter into a contract for works without having first collected sufficient funds. Here, however, as already noted, contracts were entered into for repackaged works at a significantly lesser cost than the amounts demanded in advance from tenants (see para.s 31-33 above).

53. In the currently known circumstances of the present case, the Tribunal considers that the requirement that the Respondent pay appropriate percentages of the estimated cost of £464,955.51 for the boiler works would involve payment of a greater amount than is reasonable. This is because of the retendering leading to the award of a contract for restricted works at an estimated cost of £229,600. Recalculation would produce a contribution for flat No.29 of £1,944.71 (instead of £3,938.50) and for flat No.108 of £1,423.52 (instead of £2,882.96).

54. Notwithstanding this significant reduction in the amount payable by the Respondent in respect of the boiler works and despite the fact that no similar reduction appears requisite as to the lift works, the Tribunal is unable to determine that the Respondent has become liable to make any payment in respect of the Major Works in issue. This is because the provisions of his leases as to time and manner of payment have not yet been operated properly on behalf of the Applicant (see the explanations in para.s 25-28 above).

Capping or Dispensation?

55. In any event, even if the Tribunal were wrong as to the conclusion in the previous paragraph and/or when the lease provisions have been operated properly, the contribution of the Respondent as also of other tenants would be strictly limited to £250 in relation to each set of qualifying works each of the two flats constituting the Premises (ie £1,000 in total). This is because the deficiencies in the consultations not only for the lift works but also for the boiler works mean that the statutory requirements have not been complied with and the capping consequences follow (see s.20 of the 1985 Act and reg.6 of the Service Charge (Consultation Requirements) (England) Regulations 2003). However, these consequences may be avoided if appropriate dispensation orders can be obtained from the Tribunal (see para.s 34-36 above as to written representations).

56. The statutory provisions as to dispensation are ss.2(1) and 20ZA(1) of the Landlord and Tenant Act 1985, as follows:

> "20(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either –
>
> (a) complied with in relation to the works or agreement, or
>
> (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal."

and

"20ZA(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

57. These provisions conferring jurisdiction on this Tribunal were inserted by the Commonhold and Leasehold Reform Act 2002 (s.151). Before the 2002 Act amendments there was a two-stage process under which the discretion to dispense with the consultation requirements arose only if a Court was satisfied that the landlord had acted reasonably. In consequence of this change, it was decided by a Lands Tribunal (member Andrew J. Trott FRICS) that the conduct of the landlord should, in effect, be disregarded and that, in deciding whether dispensation would be reasonable: "The most important consideration is likely to be the degree of prejudice that there would be to the tenants in terms of their ability to respond to the consultation if the requirements were not met" (*Eltham Properties Ltd v Kenny* 2007 [LRX/161/2006] at para.26).

58. The prejudice test thus introduced and applied as if a statutory criterion in other Tribunal cases was reconsidered but confirmed by the Senior President of the Lands Tribunal (Lord Justice Carnwarh sitting with Mr N J Rose FRICS) in *Daejan Invesments Ltd v Benson & Others* [2009] UKUT 233. This decision was cited by Mr Hall in his Written Submissions for the Applicant, where he drew attention to certain observations made as possibly pertinent to the present case (para.22). He first noted, not necessarily with approval, the point that:

"The potential effects [of dispensation] – draconian on the one side and a windfall on the other – are an intrinsic part of the legislative scheme, which it is not open to the Tribunal to rewrite".

For this point he referred to para.40 of the *Daejan* decision. After this Mr Hall referred to para.s 41 and 42 of that decision for other points, and the present Tribunal feels it helpful to quote the Lands Tribunal's words, as follows:

"41. We agree, however, ... that the potential consequences for the parties are relevant as part of the context in which the matter is to be considered. Although we do not think it helpful or accurate to describe the provisions as "penal" ..., the tribunal should keep in mind that their purpose is to encourage practical co-operation between the

parties on matters of substance, not to create an obstacle race. If the non-compliance has not detracted significantly from the purpose of the regulations and has caused no significant prejudice, there will normally be no reason to refuse dispensation. ...

42. Furthermore, having regard to that context the tribunal will be conscious that both landlord and tenant may have considerable financial incentives to play down or (conversely) play up the significance of non-compliance. It needs to examine critically such claims, using its own experience and common sense, rather than giving undue weight to the unsupported protestations of the parties."

59. In the light of these observations, Mr Hall then submitted that "the purpose of the regulations has not been significantly detracted from in this case" (para.23 of his Written Submissions). He gave five reasons in support:

"23.1 There was no default by the landlord in the steps taken to ensure awareness of, and to allow debate about, the proposal to carry out the works. As the letter of the 30th August 2006 records, only one tenant took issue with the need to replace the hot water and heating system. Presumably this was Mr. Kamyab.

23.2 There was a tender process in January 2007. Advice was sought from Mr. Steward and the lowest bid was accepted. Mrs. Hathaway in her second witness statement says "As far as I am aware, there is no connection between any of the companies that tendered for the major works and the Landlord / Managing Agents"

23.3 The decision to split Phase 1 from Phase 2 involved extra expense. But there was nothing which the landlord could do about that. It did not have enough money to carry out the whole of the works. The situation was, no doubt, exacerbated by the refusal of Mr. Kamyab to discharge his share of the service charge. The "increase" in cost was unfortunate, but is not prejudice which flows from a failure to serve a second set of notices.

23.4 It is difficult to say whether, had a second round of notices been served, objections would have been raised either to the content of the new specification, the costs referred to or the identity of the proposed contractors. But the Tribunal is entitled to be dubious about any claim that this would have been the case given (a) the absence of any substantive objection to the first set of proposals (b) the similarity of the "new" works and (c) the overarching need to get the works done

(as evidenced by the Condition Survey and Feasibility Report attached to the statement of Mr. Steward at "Exhibit CS1").

23.5 This is not a case where the landlord has cynically bypassed a live debate about some issue of the works. Furthermore, no point has been taken by Mr. Kamyab about the failure to serve another set of notices."

60. These five quoted reasons related to the defective consultation as to the boiler works only. This would be because Mr Hall had already made a similar submission as to the lift works consultation (Written Submissions para.s 5 and 6):

"5. The evidence of Ms Hathaway was that, in response to the notices referred to above, one tenant had stated that there should be no lift at all. There was, so far as the writer can recall, no other evidence of any observation received from any tenant about the identity of the lift provider, the necessity of the works, or the amount of the estimates.

6. The Tribunal is asked to find that little or no prejudice has been caused to the tenants by reason of the failure by the landlord to serve a notice giving reasons for accepting the higher tender. The difference between the two amounts is negligible; especially when divided between 124 flats."

61. Accordingly, Mr Hall concluded his Written Submissions by stating that, for the reasons set out, the Tribunal should make appropriate dispensation orders.

62. Against this submission for the Applicant, one of the letters received by the Tribunal from a tenant (Ms Francesca Wellman of Flat 44 on 8 March 2010) contained a submission relevant to the making of a dispensation order in respect of the boiler works, which should be quoted:

"I submit that the Applicant has acted wrongfully in its expenditure of the funds collected from tenants for the boiler repairs. This is because, after receiving payment, it unilaterally made significant changes to the notified scope of work, which formed the basis of the demands for payment. The effect of the changes was to significantly reduce the scope of work without due consultation.

The sums I paid were on the premise that they were to cover the cost of the boiler room and the risers. However it transpired that the money was spent only on the boiler room. My understanding is that the Applicant has 'shelved' the riser replacement works and will now need

to make a demand for further funds from Tenants to cover those costs. I consider the conduct of the Applicant wrong and unfair.

Moreover, the Applicant instructed additional works for the further sum of £85,085.47. Again that was a unilateral decision by the Applicant which by-passed both the necessary consultation process and any competitive tendering process."

63. Although the Tribunal agrees with Mr Hall that the principles applicable to dispensation orders are now to be found in the Lands Tribunals' recent *Daejan* decision, it does not entirely accept the points he made in support of his submissions. In the view of the Tribunal, certain aspects require emphasis whilst other points should be noted.

64. Therefore, in order to assess the validity his general submission that "the purpose of the regulations has not been significantly detracted from", it seems to the present Tribunal necessary to appreciate that the purpose identified by the Lands Tribunal was: "*to encourage practical co-operation between the parties on matters of substance*" (italics supplied for emphasis). It is difficult to see how the Applicant's decision not to tell tenants about the repackaging and retendering of the boiler works could do anything other than detract from that purpose. Again, it should be emphasised that the prejudice test relates to the tenants "in terms of their *ability* to respond to the consultation" (see para.57 above), not in terms of the likelihood of objections being raised by them. This point can be found elaborated in the *Daejan* decision (at para. 38 quoting from *Camden LBC v Grafton Way Leaseholders* (2008) [LRX/185/2006]:

> "What the leaseholders were not provided with was the basic information about the tenders, the opportunity to inspect the tenders and the opportunity to make observations on them, with the council being obliged to take those observations into account and publish them later together with their response to them. The extent to which, had they been told of the estimates, the leaseholders would have wished to examine them and make observations upon them, can only be a matter of speculation. The fact is that they did not have the opportunity and this amounted to significant prejudice."

The fact that a landlord had been through a tendering process that employed the services of an expert and at various times provided information about the project and its progress did not, in the *Grafton* case, remove the prejudice,

65. A point to which Mr Hall did not draw attention was as follows (*Daejan* decision para.42):

> "Finally, we emphasise the need to consider these issues having regard to the particular facts of each case, including the nature of the parties and their relationship. *For example, the tribunal may reasonably take a more rigorous approach to non-compliance by a local authority or commercial landlord*, than to a case where the landlord is simply a group of lessees in another form."

In the present case, the Applicant is a commercial landlord with commercial managing agents. In the *Daejan* decision the conclusion was reached (at para.61), despite the evidence of actual prejudice being weak, that:

> "The LVT was in our view entitled to regard this as a serious breach, rather than a technical or excusable oversight. It involved a failure by a corporate landlord to ensure that those responsible in their office for the stage 2 consultation properly understood its requirements and its significance. The result was that the lessees' statutory right at stage 2, to make further representations following examination of the estimates, was nullified."

Even with a non-commercial/corporate landlord, it was stated (at para.43): "given the carefully constructed sequence laid down by the regulations, it would rarely be "reasonable" to dispense completely with a whole stage of the consultation process".

66. There is another important point to be borne in mind: in applying the prejudice test, the burden of proof appears to be on the landlord. In the *Daejan* decision, it was stated in the final paragraph (para.62 brackets supplied) that:

> "As to prejudice, the tribunal was entitled to start from the position that, given the seriousness of the breach, it was not for the lessees to prove specific [lack of] prejudice. It was enough that there was a realistic possibility that further representations might have influenced the decision."

In context, this statement plainly makes sense only if the bracketed words – "lack of" – are deleted.

67. In the judgment of the Tribunal, the view taken by the Applicant and its managing agent in relation to the repackaged boiler works that "because notices had been served referring to a very large sum, then it would be permissible to proceed with works on a more limited scale on the strength of the notices" was not merely wrong (as conceded by Mr Hall at para.21.5 of his Written Submissions). It also meant that, effectively, no statutory

consultation at all was undertaken in relation the major works which were actually carried out. Although lesser rather than greater in scale and cost, the repackaged project differed fundamentally from the original project about which there had been consultation and for which advanced service charges had been demanded. The seriousness of this breach by the Landlord was such that the Respondent did not need to prove specific prejudice. The failure to consult about the repackaging significantly and inevitably prejudiced the tenants' ability to respond as to what was now proposed with a view to influencing the Landlord's decisions: there was a complete absence of practical cooperation between Landlord and tenants, incidentally involving additional prejudice of the sort identified by Ms Wellman (see para.62 above).

68. In the light of the preceding paragraphs, the Tribunal is not satisfied that it would be reasonable to make any dispensation from the statutory consultation requirements in respect of the boiler works. Consequently, it has determined not to do so. It follows that the Respondent's liability to contribute to the costs of the boiler works would be capped as indicated in para.55 above, as should be the liability of other tenants of flats at Hillsborough Court.

69. The position appears distinguishable in relation to the lift works (as to which see para.29 above). A letter, dated 29 April 2009, from the managing agents to the Respondent (also presumably to other tenants) stated that the Landlord "is intending to enter into a contract with Amalgamated Lifts Limited from whom the lowest estimate was received and therefore no further notice is required under the regulations " (bundle p.107). In fact, that contractor had given the higher estimate of two received: £215,662.50 compared to £215,273.04. Consequently, a further notice was required stating the reasons for awarding the contract to that contractor (under reg.13(1) of Service Charges (Consultation Requirements) (England) Regulations 2003).

70. In her Second Witness Statement (para.9), Ms Hathaway stated: "This is simply a mistake and was simply an oversight given that the figures were so close." She proceeded to express her belief that the Notice requirements had been complied with. Obviously, they had not been complied with and, strictly, no longer can be because the further notice had to be given within 21 days of entering into the contract. The failure might have been mitigated by an explanation of the mistake – was the contract awarded to the wrong contractor? – and/or by a statement of the reasons for awarding the contract to the contactor with the slightly higher estimate – was a coin tossed? The

Tribunal remains unaware of any explanation or reasons, as presumably do the Respondent and other tenants.

71.However, the Tribunal has been asked to make a dispensation order. Consequently, the prejudice test must be considered again. But here the distinction arises: the test calls for an assessment of "the degree of prejudice that there would be to the tenants in terms of their ability to respond to the consultation if the requirements were not met". The point is that the further notice which tenants have not received does not have to invite observations: the notice is one of information, not of consultation, from which it must follow that there can be no real prejudice in terms of the ability to respond.

72.Further, the amount of monetary prejudice for tenants caused by acceptance of the higher estimate is small: Ms Hathaway stated that, for the Respondent, the difference would be £3.30 for Flat 29 and £2.42 for Flat 108. What is more, it remains open to tenants to contend that accepting the higher estimate involves an unreasonably incurred cost, so that the excess should not be included as a service charge (see s.19 of the 1985 Act).

73.In all the circumstances of this case, including the lack of relevant submissions from the Respondent or other tenants as to this aspect of the consultations, the Tribunal is sufficiently satisfied that it would be reasonable to make a dispensation order as requested. Therefore, the Tribunal determines that the requirement for the Applicant to serve a notice under paragraph 13(1) of Part 2 of Schedule 4 to the Service Charges (Consultation Requirements) (England) Regulations 2003 is dispensed with in relation to the lift works recently completed at Hillsborough Court. It follows that the liability of the Respondent and of other tenants to pay service charges in respect of the costs of the lift works, unlike the costs of the boiler works, would not be capped at £250 per flat but would be payable in full.

Determination

74. In conclusion and in the light of the reasons set out in various preceding paragraphs, a direct answer can be provided to the "only question" which Mr Hall had asked the Tribunal to determine. This question is whether the service charges shown on the schedules at pages 81 and 82 of the bundle are payable (see para.19 above). By way of answer, these schedules or statements of arrears are reproduced below with deletions:

Flat 29 Hillsborough Court

From	To	Description	Transaction	Settled
~~6 Jul 2006~~	-	~~Boiler & Central Heating Major Works~~	~~3,938.50~~	390.60
29 Sep 2007	24 Dec 2007	Quarterly Service Charge in Advance	562.70	0.00
~~25 Dec 2007~~	~~24 Dec 2008~~	~~Yearly Ground Rent in Advance~~	~~50.00~~	0.00
25 Dec 2007	24 Mar 2008	Quarterly Service Charge in Advance	612.01	0.00
25 Mar 2008	23 Jun 2008	Quarterly Service Charge in Advance	612.01	0.00
~~9 Jun 2008~~	-	~~Major Lift Works~~	~~1,826.66~~	0.00
24 Jun 2008	28 Sep 2008	Quarterly Service Charge in Advance	612.01	0.00
29 Sep 2008	24 Dec 2008	Quarterly Service Charge in Advance	612.01	0.00
~~1 Dec 2008~~	-	~~Legal fees re Flats 29,50,77,108,116~~	~~913.75~~	0.00
~~25 Dec 2008~~	~~24 Dec 2009~~	~~Yearly Ground Rent in Advance~~	~~50.00~~	0.00
25 Dec 2008	24 Mar 2009	Quarterly Service Charge in Advance	642.60	0.00
25 Mar 2009	23 Jun 2009	Quarterly Service Charge in Advance	642.60	0.00
24 Jun 2009	28 Sep 2009	Quarterly Service Charge in Advance	642.60	0.00
			~~11,717.45~~	
		Balance to pay	~~£11,328.85~~	

Deducting the total of the sums deleted (£6,778.91) reduces the Transaction total to £4,938.54 and the Balance to pay becomes £4,547.94.

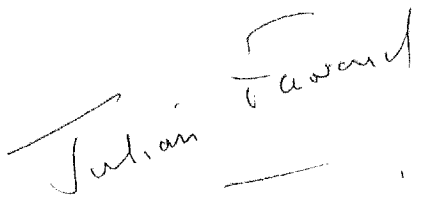
Flat 108 Hillsborough Court

From	To	Description	Transaction	Settled
24 Jun 2006	28 Sep 2006	Quarterly Service charge in Advance	410.85	156.76
~~6 Jul 2006~~	-	~~Boiler & Central Heating Major Works~~	~~2,882.96~~	0.00
29 Sep 2006	24 Dec 2006	Quarterly Service charge in Advance	410.85	0.00
~~25 Dec 2006~~	~~24 Dec 2007~~	~~Yearly Ground Rent in Advance~~	~~100.00~~	0.00
25 Dec 2006	24 Mar 2007	Quarterly Service Charge in Advance	411.90	0.00
25 Mar 2007	23 Jun 2007	Quarterly Service Charge in Advance	411.90	0.00
24 Jun 2007	28 Sep 2007	Quarterly Service Charge in Advance	411.90	0.00
29 Sep 2007	24 Dec 2007	Quarterly Service Charge in Advance	411.90	0.00
~~25 Dec 2007~~	~~24 Dec 2008~~	~~Yearly Ground Rent in Advance~~	~~100.00~~	0.00
25 Dec 2007	24 Mar 2008	Quarterly Service Charge in Advance	447.99	0.00
25 Mar 2008	23 Jun 2008	Quarterly Service Charge in Advance.	447.99	0.00
~~26 Mar 2008~~	-	~~Pipe repair & policy excess~~	~~840.25~~	0.00
~~9 Jun 2008~~	-	~~Major Lift Works~~	~~1,337.11~~	0.00
24 Jun 2008	28 Sep 2008	Quarterly Service Charge in Advance	447.99	0.00
29 Sep 2008	24 Dec 2008	Quarterly Service Charge in Advance	447.99	0.00
~~25 Dec 2008~~	~~24 Dec 2009~~	~~Yearly Ground Rent in Advance~~	~~100.00~~	0.00
25 Dec 2008	24 Mar 2009	Quarterly Service Charge in Advance	470.38	0.00
25 Mar 2009	23 Jun 2009	Quarterly Service Charge in Advance	470.38	0.00
24 Jun 2009	28 Sep 2009	Quarterly Service Charge in Advance	470.38	0.00
			~~11,032.72~~	
		Balance to pay	~~£10,876.96~~	

Here deducting the total of the sums deleted (£5,360.32) reduces the Transaction total to £5,672.4 and the Balance to pay becomes £5,515.64.

75.The items deleted from the schedules or statements are either not service charges at all (eg ground rent – outside the Tribunal's jurisdiction) or service charges not payable (yet or in full) by the Respondent for the purposes of these proceeding. In particular, it should be appreciated that the Major Works items (Boiler & Central Heating and Lift) have been deleted because the provisions of the Respondents' leases as to payment have not yet been complied with (see para.54 above, which refers to para.s 25-28). The Applicant is not precluded from rectifying this aspect, but the full amounts would still not be recoverable in respect of the Boiler & Central Heating Works. This is primarily because the Tribunal has decided that the amounts payable by the Respondent should be significantly reduced as being greater than reasonable (see para.55 above). Apart from this reduction, however, the amounts payable by the Respondent in respect of each of his flats must actually be capped at £250 (total £500) because of the Applicant's failure to comply with the statutory consultation requirements, which failure has not been excused by any dispensation order from the Tribunal (see para.s 55-73 above).

76.Therefore, for the purposes of the Applicant's Claim pursuant to s.81 of the Housing Act 1996, the Tribunal hereby determines that the total amount of service charges payable by the Respondent under the leases held by him of the two flats comprised in the Premises is **£10,063.58**.



CHAIRMAN **26 March 2010**