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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AH/LSC/2013/0122, LON/00AH/LDC/2013/0052 and LON/00AH/LAM/2013/0016**
Property	:	**6-16 Tudor Court, Russell Hill Road, Purley CR8 2LA**
Applicants	:	**Rasath Liyanarachchi and 7 others (details in Schedule)**
Representative	:	**The Applicants represented themselves**
Respondent	:	**Ms T Sidhu**
Representative	:	**Mr H Warwick, Counsel**
Type of Application	:	**For the determination of (a) the liability to pay a service charge and (b) an application for the appointment of a manager**
Tribunal Members	:	**Judge P Korn (chairman) Mr F Coffey FRICS Mr O N Miller BSc**
Date and venue of Hearing	:	**23rd to 25th July 2013 at 10 Alfred Place, London WC1E 7LR**
Date of reconvene for making Decision		**6th August 2013**
Date of Decision	:	**23rd September 2013**

DECISION

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Decisions of the tribunal

(1) In relation to the various disputed service charge items, the tribunal determines as follows:-

- The management fees are reduced to £75 per unit per year in respect of Flats 12B and 12C and £150 per unit per year for the other flats for each of the years 2007 to 2012 inclusive.
- The contributions to the sinking fund for each of the years 2008 to 2011 inclusive are disallowed in their entirety and therefore not payable.
- The contributions to the contested drainage costs for 2009 are payable in full.
- The contributions towards the cost of the new intercom system in 2011 are disallowed in their entirety and therefore not payable.
- The contributions to the cost of maintaining the skylights for 2011 are payable in full.
- The contributions to the building insurance premiums for 2012 and 2013 are payable in full.
- The contributions to the communal electricity charges for 2012 are limited to a maximum of £400.

(2) No determination is necessary or appropriate in relation to the pest control costs for 2007 as the Respondent accepts that these costs are not payable and will be refunded.

(3) No determination is made in relation to the management fees and freeholder's fees for 2013 as no actual or estimated figures have been provided.

(4) To the extent that the Applicants are requesting a determination that the cost of the 2007, 2010 and 2012 major works was not reasonably incurred (separately from the issue of dispensation), the tribunal considers that there is insufficient evidence to determine that the cost was not reasonably incurred, save insofar as the Applicants' contributions to the cost of those works are limited (see below) by reason of the Respondent's failure to consult and the tribunal's refusal to give dispensation.

(5) The tribunal refuses dispensation from compliance with the consultation requirements in respect of the 2007 major works, and

the contributions towards the cost of those works (totalling £14,896.57) is limited to £250 per Applicant.

(6) The tribunal refuses dispensation from compliance with the consultation requirements in respect of the 2010 major works, and the contributions towards the cost of those works (totalling £7,130) is limited to £250 per Applicant.

(7) The tribunal grants dispensation from compliance with the consultation requirements in respect of the 2012 scaffolding works, and the Applicants' contributions towards the scaffolding works are payable in full.

(8) The tribunal refuses dispensation from compliance with the consultation requirements in respect of the remainder of the 2012 major works, and the contributions towards the cost of those works (£7,807.08 less the cost of the scaffolding) is limited to £250 per Applicant.

(9) The tribunal is agreeable in principle to appointing a manager in relation to the property but does not consider the manager proposed by the Applicants to be suitable. Towards the end of this Decision are further directions as to the next steps that need to be taken in relation to this issue.

(10) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(11) The tribunal determines that the Respondent shall pay the Applicants £500 within 28 days of this Decision, in respect of the reimbursement of the tribunal fees paid by the Applicants in connection with the section 27A application.

The application

1. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years.

2. In response to the above-mentioned application the Respondent has applied under section 20ZA of the 1985 Act for dispensation from compliance with some or all of the consultation requirements referred to in section 20 of the 1985 Act in respect of certain qualifying works. In relation to this particular application the Respondent is technically the Applicant, but to avoid confusion she will be referred to as 'the Respondent' throughout this Decision.

3. The Applicants have also applied for the appointment of a manager over the Property pursuant to section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act").

4. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The Applicants appeared in person, Miss Bland being the main spokesperson. The Respondent was represented by Mr H Warwick of Counsel.

The background

6. The property which is the subject of this application comprises 3 connected blocks of flats above a row of commercial units. There are 13 residential flats in total, and these applications have been made by the leaseholders of 8 of them, with another leaseholder having provided a letter of support. The owner of each flat is obliged under the relevant lease to pay one-twelfth (or 8.34% or 8.4%) of the total service charge, except for Flats 12B and 12C, the owners of which each bears 4.2% of the service charge.

7. The tribunal inspected the property before the hearing in the presence of both parties.

8. Each of the Applicants holds a long lease of his/her individual flat which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the leases and will be referred to below, where appropriate.

Preliminary point

9. The hearing lasted 3 days in total (including half a day for the inspection) and the hearing bundle was nearly 2000 pages long. In the circumstances it is not considered practical or desirable to summarise everything submitted to the tribunal for consideration and instead this Decision will just record those points which the tribunal feels are most pertinent.

The service charge issues

10. At the start of the hearing the parties identified the relevant service charge issues for determination as follows (the figures being the totals for all 13 residential flats):

2007

Major works charges	*£14,896.57*
Management fees	*£7,185.95*
Pest control	*£1,870*

2008

Contribution to sinking fund	*£6,000*
Management fees	*£5,166.24*

2009

Contribution to sinking fund	*£24,000*
Management fees	*£3,581.95*
Drainage to rear	*£258.75*

2010

Contribution to sinking fund	*£60,000*
Management fees	*£4,386.50*
Roof works	*£4,000*
Clearance at rear	*£750*
Fixing basement door	*£150*
Clearing communal rubbish	*£280*
Fixing communal lighting	*£750*
Painting internally	*£900*
Block 14/16 box gutters	*£300*

2011

Contribution to sinking fund	*£30,000*
Management fees	*£4,325.75*
Intercom charge	*£4,446*
Footpath skylights	*£300*

2012

Management fees	*£5,300.52*
Insurance premium	*£3,765.71*
Communal electricity	*£360*
Major works	*£7,807.08*

2013

Insurance premium	*£3,916.35*

Some of the service charge items in respect of the service charge years 2007, 2010 and 2012 are dealt with in this Decision as section 20ZA issues. This is because the primary challenge to those items is to the Respondent's alleged obligation – and failure – to consult with leaseholders.

The application also contained a challenge to the anticipated management fees and certain anticipated freeholder's fees for 2013.

Applicants' service charge case – brief summary

General point

11. As a general point, the Applicants argued that it was not fair for the Respondent to charge them for 100% of the cost of providing services to the property and that the tenants of the commercial units should pay a contribution towards the cost of those services which were for the benefit of the whole property.

Management fees – 2007 to 2012

12. The Applicants noted that the property was managed by the Respondent's husband, Mr Dhalliwal. This arrangement had been in place for several years and therefore constituted a qualifying long term agreement for the purposes of section 20 of the 1985 Act. The leaseholders had not been consulted in relation to this appointment and therefore the maximum amount that they could be charged was £100 per leaseholder per year. In any event, the Applicants had been unduly prejudiced by the failure to consult, as Mr Dhalliwal had no proper qualifications and had been too expensive.

13. The Applicants were unhappy with Mr Dhalliwal's pricing structure. He charged on an hourly rate basis plus a travel charge. The hourly rate basis of charge made his fees very expensive as he spent a lot of time attending the property and inspecting it. Hourly rates were also increased without prior notice.

14. The Applicants produced evidence of alternative quotations which they had obtained for managing the property. All quotes were for less than £250 per unit per year. The Applicants referred the tribunal to email correspondence that they had entered into to check that there were no hidden extra costs.

15. Mr Dhalliwal's management of the property was considered to be poor. He had failed to provide requested information, for example in relation to insurance premiums and his travel costs. He had made a number of accounting errors, such as putting lease extension enquiries, subletting issues and telephone calls to the commercial units through the residential service charge. Various problems with the building had been ignored, such as damp patches and vegetation in gutters. It was accepted that Mr Dhalliwal had done more work in those years in which major works were undertaken, but these works were approached in a flawed manner and therefore it was considered that the management fee should not have been higher in those years than in other years. The tribunal was referred to various written complaints made by leaseholders about the management of the property over the years.

Pest control - 2007

16. The Applicants' position was that these works were never done, and yet no money had been refunded.

Sinking fund – 2008 to 2011

17. The Applicants argued that the demands for contributions towards the sinking fund had been unclear and unjustified. Miss Bland referred the tribunal for example to a letter from the Respondent dated 7th February

2007 in which she stated *"I can request a sinking fund to pay for day to day running of the building and to deal with any emergencies that might occur"*. The Applicants did not feel that this approach was supported by the wording of the leases, the lease of Flat 8A for example only allowing the Lessors *"to set aside ... such sums of money as the Lessors shall reasonably require to meet such future costs as the Lessors shall reasonably expect to incur of replacing maintaining and renewing those items which the Lessors have hereby covenanted to replace maintain or renew"*, nor by the RICS Code.

18. The Applicants also stated that the Respondent told leaseholders in February 2008 that the sinking fund would be going towards 'works to the rear' but there was no explanation as to what works were necessary or proposed.

19. Miss Bland also referred to (amongst other letters) the Respondent's letter of 26th June 2009 in which she stated *"I will make use of the existing sinking fund to pay for the intercom system ... This year's sinking fund ... will be kept for the roof works and any emergency repairs"*. She submitted that monies requested on a particular basis could not be diverted for a different purpose and that leaseholders were not consulted about this decision.

20. In a letter to Miss Bland dated 11th January 2011 the Respondent stated that the money in the sinking fund paid on Miss Bland's account did "not even cover the Annual Rent", which in the Applicants' view indicated that the Respondent planned to use the sinking fund for uses other than the proposed works to the Property.

21. In written submissions the Applicants referred to the RICS Code, which states that "You should be able to justify the contributions to reserves by reference to the work required, the expected cost and when it is to be carried out". In this regard, the Applicants stated that there had been no surveyor's report accompanying the demands, no explanation of exactly what works were proposed and why, no works programme forwarded and

22. no clarity as to how much money had been collected at any point. Also, substantial funds were set aside for the carrying out of external repairs which were then not carried out, and instead the Respondent has taken a patch approach to repairs. The demands for contributions seemed to make unwarranted assumptions as to what work was needed and how much it would cost.The Applicants were also concerned that the reserve fund money was not held in a separate account. In addition, the invoices demanding sinking fund contributions had been unclear, the Applicants submitting that it has been impossible to guess what sums are required and when, and the invoices have not adequately split the funds needed over an appropriate length of time (for example £60,000 was invoiced without prior warning, to be paid within 14 days).

Drainage to rear - 2009

23. It was not fair for the Applicants to bear the whole of the cost of this work as the drains were shared with the commercial units.

Intercom - 2011

24. The old intercom was removed without warning during the decoration of the hallways in August 2007, and this meant that the residents had to try to manage without any intercom system. The Respondent claimed that the front doors could not be refurbished with the intercom panels in place and said that the intercom would be replaced once the work was completed. The Applicants stated that they could attest that the intercom was working at the time of its removal and that any issues with functionality were minor.

25. There was still no intercom in place, and this had caused problems, with the residents having had no choice but to leave the front door jammed open and this had led to homeless people sleeping rough at the bottom of the stairwell. After a number of occasions on which the door had been jammed open the lock was eventually broken and the consequential repair cost was added to the Applicant's service charges.

26. The Respondent decided to purchase – through the service charge – a new intercom system, but without adequate consultation and despite the fact that there seemed to be nothing wrong with the old system and that several leaseholders objected. In addition, the cost of the new intercom was considered by the Applicants to be unreasonably high, and Miss Bland referred the tribunal to alternative quotes which they had obtained. They had put these quotes to the Respondent who had rejected them, but the Applicants were unclear as to the basis on which the alternatives had been rejected. No explanation was given by the Respondent as to why she had decided to replace the system in spite of the objections received from leaseholders.

27. No explanation was given by the Respondent as to why she had decided to replace the system in spite of the objections received from leaseholders.

28. The Applicants also argued that the cost was more than £250 per flat and that therefore it was subject to section 20 consultation requirements and that the Respondent had not complied with these.

Skylights - 2011

29. The Respondent had put through the service charge work done to the skylights. However, the skylights are located above the basements and bring natural light into those basements. Since the Applicants have no

access to, or benefit from, the basement area, as it exclusively serves the commercial units, the cost of maintaining the skylights should not be borne by the Applicants.

Insurance premium – 2012 and 2013

30. The Applicants had found it very difficult to obtain information from the Respondent in relation to the building insurance. They had previously requested a copy of the insurance policy several times but had not received it. They had now finally received some information, although not everything that they had requested, and all references to the commercial units had been blanked out.

31. There had been an apportionment of the premium between residential and commercial units, but it was not clear what the basis of the apportionment was.

32. Miss Bland referred the tribunal to an alternative quotation obtained by the Applicants, which was on a 'like for like' basis and the Applicants had disclosed the property's claims history to the prospective insurer.

Communal electricity – 2012

33. The Applicants were concerned that the electricity charges were much higher in 2012 than in 2011. They had not received a complete set of copy invoices and were therefore unable to check for themselves why there had been such a large increase. In any event, the communal lighting had been either fully broken or partially faulty at various points during 2012 and therefore it would be reasonable to expect the charges to be lower, not higher, than previously.

Respondent's response – brief summary

Management fees – 2007 to 2012

34. The Respondent acquired the property in 1997 and the management company which was managing the property at the time was considered to be expensive. The Respondent was asked by the then leaseholders to manage the property herself, and so in 2000 her husband took over the management of the property. By a letter dated 2nd December 2001 to Miss S Cox, the then leaseholder of Flat 6A, the Respondent set out the basis on which Mr Dhalliwal would be managing the property.

35. Mr Warwick referred the tribunal to the case of *Forcelux v Sweetman (2001) EGLR 173* as authority for the principle that a charge has not been unreasonably incurred merely because a cheaper option is available.

36. As regards alternative management options, the Respondent had consistently invited the leaseholders to work with her to agree a new managing agent, and the tribunal was referred to letters dated 1st November 2003, 25th February 2007 and 7th August 2012.

37. The Respondent considered Mr Dhalliwal's fee rates to be reasonable and said that the increase was in fact notified to leaseholders, although slightly late. Fees were higher in 2007 and 2012 because of the extra work associated with the major works in those years.

38. The Respondent did not accept that the alternative quotes obtained by the Applicants were as straightforward as they had suggested in that there were a number of services which attracted an additional fee.

39. As regards the standard of management and how Mr Dhalliwal had spent the time which was being charged to leaseholders, Mr Warwick referred the tribunal to a detailed breakdown in the bundle. It was accepted that there were many visits to the property in 2007 and that this had affected the management fee, but Mr Warwick pointed out that there were fewer visits in subsequent years. It was acknowledged that there were various problems at the property, but Mr Warwick argued that some of them could not be dealt with because the Applicants were unwilling to contribute to the reserve fund.

40. Mr Warwick argued that the agreement with Mr Dhalliwal could not be a qualifying long term agreement as this concept was introduced by the Service Charges (Consultation Requirements) (England) Regulations 2003 and those regulations were not in force when the agreement was entered into.

Mr Dhalliwal's evidence

41. Mr Dhalliwal said that he always charged for 2 hours' travel between his home and the property. He conceded that he had had very limited previous property management experience and that he had only recently read the RICS Code. The tribunal put various questions to him, including regarding the state of the property, the difference between separate and combined drainage systems, how he had arrived at his charging rates, and the extent to which he had been through the section 20 consultation process in relation to qualifying works.

Pest control - 2007

42. The Respondent agreed that this work had not been carried out and that the money would be refunded.

Sinking fund 2008 to 2011

43. Mr Warwick's interpretation of the relevant lease provisions was wider than that of the Applicants. His reading of these provisions was that the Respondent could set aside such sums as she reasonably required in connection with the carrying out of any work which she covenants in the lease to carry out. He submitted that these provisions were not as restrictive as suggested by the Applicants.

44. As regards how sinking fund money must be held, Mr Warwick submitted that this money was held – as a matter of law – in a statutory trust, and that there was no legal requirement for the money to be held in a separate bank account.

45. As regards the justification for requesting contributions to the sinking fund, Mr Warwick said that the roof was clearly in a poor condition and therefore this was sufficient justification for requesting contributions in order to repair it. Mr Warwick referred the tribunal to the Respondent's letter of 25th September 2011 to all residents in which she explained the difficulties that she would face in carrying out the necessary repairs if individual leaseholders failed to make the requested contributions towards the reserve fund.

Drainage to rear - 2009

46. The Respondent did not accept that the drains were shared with the commercial units, her view being that the two drainage systems were separate.

Intercom - 2011

47. The removal of the intercom was necessary in order to carry out work on the doors. The intercom system was not replaced as a result of a lack of funding and an impasse whereby the leaseholders were not content for the Respondent to install a system purchased by her. The Respondent rejected a system proposed by leaseholders as she considered it to be too basic.

48. There was a series of problems with the existing system, and in this regard the tribunal was referred to a letter from the Respondent to Miss Bland dated 10th November 2011.

49. As regards cost, the Respondent stated that the amount being demanded was in fact only £250 per flat and that therefore the consultation requirements did not apply.

Skylights - 2011

50. The Respondent's position was that whilst some skylights illuminated the basement, others illuminated the staircases, and it was reasonable to expect the residential leaseholders to contribute towards the cost of the latter. It was accepted that the apportionment of this cost between residential leaseholders and commercial tenants had not been done scientifically but it was nevertheless considered to be reasonable.

Insurance premium – 2012 and 2013

51. The current split was 56% payable by the residential units and 44% payable by the commercial units. The reason for this apportionment was that this had been the broker's recommendation. There was no evidence that the overall premium was unreasonable.

Communal electricity - 2012

52. The Respondent stated that the property was on a fixed price contract with EDF between 2009 and 2011. Subsequently, as is considered normal practice, a standing daily charge came into force, resulting in an increase.

53. After the hearing, at the direction of the tribunal, the Respondent supplied a set of copy invoices to the Applicants, on which both parties made brief written observations.

Respondent's dispensation case – brief summary

2007 Major Works

54. These refurbishment works were considered necessary, as the property was due a refurbishment and problems had been identified with certain works carried out in 2004. The Respondent gave ample notice of her intention to carry out the works, at least since February 2006, and an indication was given of the cost per block.

55. The Respondent made it clear to leaseholders in her original letter that she was in the process of obtaining quotes and would update them, and that she would start work on one block and make it available for inspection before starting work on the other blocks.

56. Matters became delayed as interim service charge payments were withheld by various leaseholders. Only one leaseholder recommended an alternative contractor, and there were difficulties with that contractor providing a quote. Specifications were provided to those who requested them, and a works schedule was produced which

included comments on the contractor nominated by one of the leaseholders.

57. The Respondent later sent leaseholders an update and gave 7 days for substantive responses, but no substantive responses were received. Looking at the process as a whole, whilst it was accepted that the consultation requirements were not followed in their entirety – hence the application for dispensation – it was submitted that the Respondent had come quite close to complying.

58. To the extent that the section 20 consultation requirements were not followed, the Applicants suffered no prejudice, in part because leaseholders were given full information at the time. Had the work not been carried out, the condition of the property would have worsened to the detriment of leaseholders.

59. It was accepted on behalf of the Respondent that these works were not urgent.

2010 Major Works

60. This heading covers all of the items being challenged for 2010 other than the sinking fund contribution and management fees), but the Respondent's position was that only the works to the roof qualified as major works. These works were necessary and carried out in direct response to concerns expressed by leaseholders. Waiting until after a full consultation process had taken place would have caused further damage. Leaseholders were kept fully informed of the works and their cost.

61. It was accepted that these works were not emergency works, but they were still considered to be urgent. It was also accepted that the Respondent had not technically complied with the consultation requirements.

62. No prejudice was suffered by leaseholders. The works were carried out at minimal cost so as to avoid unnecessary spending. The Respondent noted that the Applicants claim that they would have opted for a better standard of work for a more reasonable cost, but in the Respondent's submission this was an untenable position as a superior standard would have cost more.

63. As regards whether the cost was reasonably incurred, the Respondent argued that she had acted on advice and that it was reasonable to have taken the advice to proceed.

2012 Major Works

64. The need for these works to the façade arose on the Diamond Jubilee weekend when there was heavy rain which caused tiling to come away. The Local Authority was poised to impose a contractor on the Respondent to carry out the work at considerable expense. The works concerned were responsive emergency works. Even if it was true that the need for the work arose out of previous poor maintenance, although the Respondent did not concede that she had been negligent, it was nevertheless an emergency situation and there was no time to consult with leaseholders.

65. The Respondent said that she did give some information to one leaseholder whom she believed or assumed was a representative of others, but otherwise she did not consult. It was submitted on her behalf that no prejudice was suffered by the Applicants as a result of this failure to consult. The works were necessary, the cost of repair would have been incurred in any event and the roof works were carried out by a contractor nominated by one of the leaseholders.

66. The cost of the works to the façade totalled £3,825, but in their application the Applicants appeared to be seeking to aggregate these works and other wholly unconnected works to other parts of the property in order to argue that these works together formed one package of major works on which consultation was required. The Respondent did not accept this argument. Mr Warwick noted the decision in *Phillips & Goddard v Francis* but submitted that the ability to aggregate works in this way is not how the law was understood at the time that the Respondent was making the relevant management decision.

67. The additional works were carried out whilst the scaffolding was in situ, thereby representing a considerable saving to leaseholders as against removing it, consulting in relation to the additional works, and erecting new scaffolding.

Applicants' response – brief summary

2007 Major Works

68. The Applicants noted that the sum specified in the Respondent's dispensation application was £10,210, which only covered the decoration and electrical works. However, the Applicants were invoiced a total of £14,896.57 for the refurbishment of the oak doors, the electrical works, the decoration of the communal hallway and the letterbox installation. Quoting the case of *Phillips and Goddard v Francis (2013) 1EGLR 47* the Applicants argued that all of these works should be aggregated for the purposes of section 20 consultation.

69. The Applicants did not consider the deficiencies in the consultation process to have been minor. There was no correspondence in which it was made clear that the Respondent was engaging in a formal statutory consultation process. The first letter contained an estimate for initial works, but there were no costings for additional proposed works. No supporting documents were provided, and no detailed specification. In relation to such figures as were provided, it was unclear whether these were total figures or per unit, and no letters prior to commencement of the works identified the proportion payable by each leaseholder.

70. There was no request for comments on the scope or necessity of the works, and no reasons given for the necessity of the works. Leaseholders were not informed that they had the right to nominate a contractor. Even when a leaseholder did nominate a contractor this information was not shared with other leaseholders. When at a later stage observations were invited, very little time was given within which to respond.

71. It was clear that cheaper options were available but no explanation was given as to why these were not chosen.

72. The Respondent's breaches of the consultation requirements caused the Applicants prejudice as they affected the cost, scope and quality of the work. The letterboxes and lighting were not of acceptable cost or quality, and the cost of some of the decoration work was unreasonable. Specifically in relation to the letterboxes, no specific model was proposed and an estimated cost was not provided. The one chosen was designed for external use and more expensive as a result, but this was a waste of money as the letterboxes were for internal use.

73. Various other comments were made in written submissions, but it is not practical to summarise all of them.

<u>2010 Major Works</u>

74. Again the Applicants referred the tribunal to the case of *Phillips and Goddard v Francis* to argue that all of these works should be aggregated for the purposes of section 20 consultation, not just the roof works.

75. The Respondent has described these works as urgent but the need for these works to be carried out was known about for some time and therefore there was no reason not to consult properly.

76. There was no notice of intention to carry out the works, no invitation to comment or nominate a contractor, no statement of estimates and no notice of reasons for awarding the contract to the chosen contractor.

The majority of leaseholders had no knowledge of the necessity, scope or cost of the works until after they occurred.

77. Leaseholders suffered prejudice as they were unable to comment on whether the whole roof should have been attended to at once, or on the lack of a guarantee for the roof works, and the poor manner in which the roof works were carried out suggests that leaseholders ended up receiving poor value for money.

78. In relation to the other works, in written submissions the Applicants have set out various reasons why they consider the cost of those works to be unreasonable.

<u>2012 Major Works</u>

79. The Applicants accepted that these were emergency works, although the works began 3 weeks after the scaffolding went up and so some consultation was possible.

80. In the Applicants' view, the works were only necessary because of previous neglect of the property, and they felt that this neglect had caused these works to be more expensive than they might otherwise have been.

81. Again the Applicants argued that all of these works should be aggregated for the purposes of section 20 consultation, not just the initial works.

82. The Applicants have also set out in their written submissions various reasons why they consider the costs to have been unreasonably incurred.

Applicants' case for appointment of manager – brief summary

83. The Applicants were extremely dissatisfied with the performance of the current managing agent and had written numerous letters of complaint to the Respondent. The Respondent had not acknowledged any failings in the current management.

84. Eventually the Respondent did engage with the Applicants in an effort to find an alternative, mutually acceptable, managing agent, but there were problems with the basis on which such managing agent would be appointed and the process stalled.

85. The case for the appointment of a manager was, briefly, unreasonable service charge demands, non-compliance with the RICS Code of Practice and breaches of obligations owed by the Respondent to

leaseholders under their leases and under landlord & tenant law. As the detailed issues are referred to in the context of the section 27A and 20ZA applications it is not necessary to repeat them here.

86. The Applicants wanted any appointment to be for at least 2 years. The proposed manager was Mr Breare of Canonbury Management.

Respondent's response – brief summary

87. The Respondent did not dispute the validity of the preliminary notice served by the Applicants prior to making their application and nor was she opposed to the appointment of a manager. However, she did feel that the application was premature, as she had been trying to agree the appointment of an alternative managing agent with the Applicants. She did not feel that the Applicants had taken all reasonable steps to try to agree an alternative managing agent.

88. The Respondent did not want any appointment by the tribunal to be open-ended and suggested an initial period of 2 years.

Cross-examination of proposed manager, Mr Breare

89. Mr Breare told the tribunal that he did not have any formal property qualifications, but he had a University degree and several years' experience. His firm took an efficient approach to property management.

90. He had not inspected the property but believed that he could quote on a discretionary basis none the less. He had read a sample lease. He struggled slightly to articulate what he would be charging beyond his basic charge of £2,600 per year and did not feel able to express a view as to how much it would cost to remedy the property's existing problems.

91. Mr Breare would chase arrears of service charge as and when necessary, and there would be an emergency contact telephone number.

92. In response to a question as to the current most pressing problems in relation to the property Mr Breare said that these appeared to be the state of the roof and the wiring, although he unable to go into significant detail on this other than to comment that the priority was to produce a detailed specification of works needed.

93. Mr Breare was unclear as to the different roles and obligations of tribunal-appointed managers and managing agents. After some discussion it emerged that the intention was not in fact for Mr Breare to manage the property himself but for his colleague to manage the

property, and unfortunately his colleague was not available to be cross-examined as to his own suitability for the appointment.

94. Despite initially thinking that Mr Breare would be a suitable manager, having heard him being questioned at the hearing she now had serious misgivings. She would not be opposed to the tribunal making an order for the appointment of a manager in principle, on the basis that the identity of the proposed manager still needed to be determined.

Tribunal's analysis and determinations

95. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

Management fees

96. On the specific issue of whether the Respondent was obliged formally to consult with leaseholders under section 20 regarding the appointment of Mr Dhalliwal, the tribunal considers that she was not obliged to do so. The evidence indicates that the agreement for Mr Dhalliwal to manage the property was entered into in 2000 or 2001, well before the coming into force of the Service Charges (Consultation Requirements) (England) Regulations 2003. Those regulations introduced the concept of 'qualifying long term agreements' in respect of which a landlord is obliged to consult leaseholders. As those regulations were not in place when the agreement was entered into, there was no section 20 obligation to consult with leaseholders prior to entering into the agreement.

97. However, on the more general points raised regarding the management charges, the tribunal – having inspected the property, read the parties' submissions, heard their oral evidence and cross-examined the current managing agent Mr Dhalliwal – has serious reservations regarding the quality of the management of the property and the level of charges.

98. The property is in a poor condition and shows many signs of neglect. The tribunal notes the Respondent's submissions that she has sometimes had difficulties in obtaining payment from some of the leaseholders, but it is not accepted that this justifies what seems to the tribunal to be very poor management over an extended period. In cross-examination, Mr Dhalliwal admitted that he had not read the RICS Code until relatively recently, that he had no property management qualifications and that he had not had any property management experience apart from looking after his own home. His understanding of the difference between separate and combined drainage systems was limited. He admitted that he was unaware of the

section 20 consultation requirements until fairly recently and that he has at no stage conducted a proper section 20 consultation process.

99. Mr Dhalliwal's charging rates were, in the tribunal's view, not sufficiently transparent and the method of charging could – and did – lead to unacceptably high rates in certain years. The practice, for example, of always charging for 2 hours' travel and of charging separately for each of several visits to the property led to unreasonably high charges in certain years. Combined with his relatively poor knowledge of property management, this made for poor value for money for leaseholders.

100. The management decisions made do not, on many occasions, seem to have been particularly logical, and the communication with leaseholders has been inconsistent. The manner in which the sinking fund has been administered has been poor (whether this down to Mr Dhalliwal or the Respondent), the intercom issue was dealt with very poorly and there were serious failings in connection with the obligation to consult in relation to major works.

101. Whilst the tribunal accepts that Mr Dhalliwal did more work in certain years and might therefore be entitled in principle to charge a higher fee in those years, the tribunal does not consider that this work was carried out very competently and therefore there was no obvious extra value to leaseholders in those years if one considers the failings that took place in relation to the major works.

102. The tribunal considers that a reasonable charge for competent management in relation to a property of this nature would be in the region of £250 to £300 per standard-sized unit. However, the tribunal considers the management to have been poor and that therefore the maximum fee payable is £150 per standard-sized unit per year for each of the years in dispute. As Flats 12B and 12C pay half the service charge of other flats their contribution is limited to £75 per year each.

Pest control 2007

103. The Respondent concedes that this sum is not payable and states that it should, and will, be refunded. Consequently, as this item is no longer disputed the tribunal does not have jurisdiction to make a determination in respect of it.

Sinking fund 2008 to 2011

104. The tribunal notes the concerns expressed by the Applicants . However, it should be noted that the legislative provisions requiring sinking fund monies to be held in a separate account are not yet in force. In addition, the tribunal does not accept that the lease provisions

relating to the sinking fund are as limited as the Applicants suggest. The leases allow sinking fund monies to be used *"to meet such future costs as the Lessors shall reasonably expect to incur of replacing maintaining and renewing those items which the Lessors have hereby covenanted to replace maintain or renew"*, and the tribunal agrees with Mr Warwick that that this would allow the Respondent to set aside such sums as she reasonably required in connection with the carrying out of any work which she covenants in the lease to carry out.

105. However, the tribunal shares the Applicants' serious concerns regarding the manner in which the sinking fund has been operated. Although there is no evidence of bad faith, in the tribunal's view, the evidence indicates that the Respondent and her managing agent failed to administer the sinking fund in a manner which was transparent or reasonable. Whilst the legislation requiring a separate account for sinking fund monies is not yet in force, the Respondent has failed to comply with section 10 of the RICS Code in that the reserve fund element of the service charge accounts are not as clear as they could and should be and the sinking fund monies are not held in a way in which they can be separately identified. The Respondent has also failed to comply with section 9.3 of the RICS Code in that the Respondent has struggled to justify or even explain the contributions requested on many occasions.

106. Correspondence from the Respondent suggests a lack of understanding as to what the reserve fund can be used for, even appearing to suggest that it could be used to fund the rent, However, more importantly still, the evidence indicates a lack of thought and a lack of planning which has led throughout the period in question to a series of knee-jerk requests for payment (backed up in some cases with wholly unrealistic deadlines and threats to charge interest) which do not seem to be accompanied with a properly-reasoned and logical analysis as to what works are required at any given point in time and how much those works should realistically cost. Coupled with the tribunal's general concerns about the standard of management referred to earlier and the concerns about the Respondent's accounting practices (although again without suggesting any bad faith), the tribunal does not feel that the Applicants could reasonably be expected to have any faith in the reasonableness of any of the demands for contributions towards the sinking fund.

107. On the basis of the evidence before it, the tribunal has no confidence in the reasonableness of any of the sums demanded by way of contribution towards the sinking fund and does not consider that there is any proper basis for substituting an alternative figure other than zero. Accordingly, the tribunal considers that the contributions towards the sinking fund in each of the years 2008 to 2011 should be disallowed in their entirety.

Drainage to rear - 2009

108. Having inspected the property and considered the parties' submissions, the tribunal considers the drainage system to be a shared system and that therefore the commercial units and the residential units have a shared benefit. However, having considered the leases, the tribunal is of the view that those leases provide for the residential leaseholders each to pay a specific percentage of the overall drainage costs, regardless of whether the commercial tenants share the benefit of repair and maintenance of the drains.

109. By way of example in respect of the above point, under the residential lease of Flat 8A the landlord covenants in clause 5(5) to (amongst other things) maintain and repair the main structure of the building including the main water tanks, main drains, gutters and rain water pipes and all mains and pipes, drains, waste water and sewage ducts as may be enjoyed or used by the tenant in common with others. The tenant covenants under the lease to pay a specific percentage of the landlord's expenditure under clause 5(5).

110. It might be arguable that this is unfair, but on a section 27A application the tribunal is not able to reduce the amount payable unless the cost was not reasonably incurred or the leases do not provide for the cost to be recoverable. Therefore, in the absence of a challenge to the reasonableness of the overall cost of the drainage works, the tribunal considers this sum to be payable in full.

Intercom - 2011

111. The tribunal has considered the conflicting accounts of the circumstances leading to the removal of the existing system and the purchasing of a new system and on balance prefers the evidence of the Applicants on this issue. The tribunal accepts on the balance of probabilities that the existing system was still functioning when it was removed and that the Respondent did not adopt a reasonable approach to its replacement, even if (which is not accepted) one was needed.

112. The Respondent has struggled to articulate in a convincing manner why alternative options proposed by leaseholders were rejected, and the tribunal considers that ultimately leaseholders were being asked to pay for an unwanted, expensive system which was not needed as the existing system did not need replacing. Therefore, the cost of the new intercom system should be disallowed in its entirety.

113. For the sake of completeness, as regards the issue of formal consultation, if – as the Respondent states – the amount being sought is £250 per flat then the formal consultation requirements do not apply to the intercom.

Skylights - 2011

114. It is arguable that the Applicants do not obtain any benefit from all or some of the skylights, although the evidence does not demonstrate to the tribunal's satisfaction that there is clearly no benefit at all to the Applicants.

115. However, in any event, the same issue arises as with the drainage costs. The Applicants do not argue that their leases restrict the amount payable by them. Instead, they merely argue that it would not be fair for them to bear the percentage specified in their leases of this cost. For the same reasons as those referred to in connection with drainage costs, the tribunal does not accept this argument in the context of a section 27A application. Therefore, although the tribunal has some sympathy with the Applicants' point about fairness, in the absence of a challenge to the reasonableness of the overall cost of the skylight works, the tribunal considers this sum to be payable in full.

Insurance premium – 2012 and 2013

116. It seems to be common ground between the parties that there should be a fair split between the residential and commercial units in relation to the building insurance premiums. The Applicants have stated that it has been difficult to obtain insurance information from the Respondent, but the nub of their case (having belatedly received some more insurance information) seems to be that they consider the apportionment between the residential and commercial units to be unreasonable and/or unclear.

117. The Respondent's case is that she took advice on the split from the insurance broker. No evidence has been brought to indicate that the broker acted in bad faith, nor that the broker's professional judgment was poor, and nor that the Respondent was not entitled to split the premiums in this way. The Applicants have provided alternative quotations, but as the tribunal established at the hearing that the challenge was not to the overall level of building insurance premiums these alternative quotations do not, in the tribunal's view, demonstrate the point that the Applicants are seeking to make. Therefore, the tribunal considers this sum to be payable in full.

Communal electricity - 2012

118. The information in relation to communal electricity has been provided in a confusing manner. It is difficult, from the information provided, despite the Applicants' comments in later written observations, to identify major errors that would have a substantial impact on the charges, but equally the tribunal considers the Respondent and/or the managing agent to be at fault in failing to provide clearer information.

Ultimately, in the tribunal's view, all it can do is to make a determination based on what it considers would be a reasonable annual electricity charge, bearing in mind the principle that a cost has not been unreasonably incurred merely because it would have been possible to supply the relevant service at a lower cost.

119. In the light of the above, although the tribunal notes the Respondent's comments regarding the expiry of the fixed term EDF contract, the tribunal considers using its expert knowledge that a reasonable annual electricity cost for the common parts of the property in 2012 in relation to a system which – on the basis of the evidence – the tribunal considers was not fully functioning would be up to £400. On the evidence presented, the tribunal is unclear whether the £360 charge referred to in the Applicants' submissions relates to the whole year or to a lesser period. Therefore, to the extent that the annual electricity cost for 2012 has exceeded £400 the tribunal limits it to £400. If the annual cost is less than £400 then it is payable in full.

Anticipated management fees and freeholder's fees - 2013

120. The application also seeks to challenge unknown costs in relation to management fees and freeholder's fees for 2013. In the absence of figures it is not possible for the tribunal to determine whether they are reasonable, and in the absence of estimated or suggested figures the tribunal is not in a position to state whether such figures would be reasonable.

121. The parties will note the tribunal's comments and determination in relation to the management fees for the years 2007 to 2012, and it may be open to the Applicants to challenge the management fees for 2013 once they have been given an actual or estimated figure. As regards the freeholder's fees, insufficient information has been provided to make a determination on this, but again it may be open to the Applicants to challenge this item once they have been given an actual or estimated figure.

Major Works – general points

122. It is considered worth reiterating that a considerable amount of material has been provided, and the tribunal will not seek to paraphrase everything that has been written and said on these issues.

123. The primary issue in submissions in relation to the major works has been the extent to which there has been consultation and (to the extent that there has not) whether the tribunal should dispense with the requirement to consult. Tangentially, the Applicants have also raised questions regarding the reasonableness of the costs themselves, but in the tribunal's view they have not done so in a very clear or detailed

manner, and some of their arguments have been raised in the context of the section 20ZA application, which is not appropriate and not fair on the Respondent. To the extent that the Applicants' application relates to the reasonableness of the charges for the major works, the tribunal considers that there is insufficient evidence to determine that these charges were unreasonably incurred.

2007 Major Works

124. The Respondent by her own admission did not comply with the consultation requirements, either fully or at all, hence the application for dispensation. This was not an emergency situation and the tribunal is persuaded by the Applicants' evidence that they suffered real prejudice as a result of the Respondent's failure to consult, in that the Applicants were prevented from fully considering and articulating possible concerns regarding the scope, cost and quality of the proposed work and of the choice of contractor. Having considered the written and oral submissions on this issue, the tribunal also accepts the Applicants' argument that the decoration and electrical works, the refurbishment of the oak doors, the electrical works, the decoration of the communal hallway and the letterbox installation were all one package of works and that therefore the consultation requirements applied to all of them. In the tribunal's view, the evidence indicates that these works were planned together as one set of works.

125. Specifically in relation to the aggregation of the works, Mr Warwick for the Respondent argues that to aggregate the works would involve applying the case of *Phillips and Goddard v Francis (2012)*, which is a case that had not been decided at the time these works were being carried out. He therefore submits that it would be unreasonable to apply the current understanding of the law to works carried out prior to that case being decided. The tribunal does not accept this point. Whilst there is perhaps a philosophical question as to what the law "is" at any one point, in the tribunal's view – particularly in the absence of any authority having been cited for Mr Warwick's submission – it is appropriate for the tribunal to apply the current understanding of the law and not to apply a different legal analysis in respect of each year according to what the parties might have understood the law to be in that year.

126. In any event, the tribunal does not accept that works can only be aggregated in this manner as a result of the understanding of the law as articulated by the High Court in *Phillips and Goddard v Francis*. It is considered to be a well-established principle that works should be grouped together for the purposes of section 20 if on a reasonable analysis of the circumstances they can properly be treated as one set of works, so as to avoid a landlord artificially separating out elements of the work so as to avoid the need to consult. The decision in *Phillips and Goddard v Francis* seems to the tribunal to go further than this, in

that it appears to be authority for the proposition that all works in a service charge year should be aggregated, regardless of whether they have any connection.

127. The failings in the consultation process were substantial, which in a sense is not surprising as the evidence indicates that the managing agent was not aware of the existence of the consultation requirements at that time. The Respondent has not sought to argue, following the Supreme Court decision in *Daejan Investments v Benson (2013) UKSC 14*, that the Applicants should be compensated in some other way for any prejudice suffered, and therefore the tribunal does not grant dispensation from the consultation requirements and considers that each Applicant's contribution to the cost of these works should be limited to £250.

2010 Major Works

128. The tribunal accepts that these works appear to have been more urgent in their nature than the 2007 works, but they do not seem – in the tribunal's view – to have constituted an emergency and the tribunal accepts the Applicants' evidence that the Respondent appeared to know about the need for these works a significant while before commencing them and therefore could have consulted at that stage.

129. Again, the tribunal accepts the Applicants' argument that the works were all one package of works and agrees that the failings in the consultation process were substantial. The Respondent argues that not much prejudice was suffered because she minimised the amount spent, but the tribunal considers this to be flawed reasoning. The Applicants have argue that the Respondent took the wrong approach and should have – in consultation with them – explored a more comprehensive solution which would have saved money in the longer term, and her failure to consult properly meant, amongst other considerations, that the Applicants were deprived of the ability properly to articulate their detailed views on the Respondent's proposals. Therefore, again, the tribunal does not grant dispensation from the consultation requirements and considers that each Applicant's contribution to the cost of these works should be limited to £250.

2012 Major Works

130. The tribunal accepts that this was an emergency situation and does not accept as relevant to the case against dispensation the Applicants' argument that the emergency might have arisen in part as a result of historic neglect. If a landlord is faced with a genuine emergency such as this one, where slates were falling off the roof and could injure residents or passers-by, it is not realistic to expect the landlord to consult before acting to avert the immediate emergency and nor,

therefore, should a landlord be financially penalised in such circumstances for failing to consult.

131. In the tribunal's view the initial response to the emergency by erecting scaffolding to address the problem of falling roof slates was a proper one and the failure to consult prior to erecting the scaffolding was reasonable in the circumstances. Therefore, the tribunal grants dispensation in relation to this element of the works.

132. However, after addressing the initial emergency, the Respondent then did not start carrying out any further works until weeks later, and yet she seemingly made no attempt to engage in a proper consultation exercise at that stage. In the tribunal's view, the presumption under section 20 is that a landlord is obliged to consult leaseholders in relation to all major works. A dispensation is possible in certain limited circumstances, and it has been recognised in previous cases that an emergency situation such as there being an imminent danger can justify giving dispensation. However, it does not at all follow that once an emergency situation has arisen any subsequent should be exempt from the need to consult even if they are considerably less urgent. In any event, if the Respondent considered the whole of the works to be emergency works she could and should have applied to the tribunal at the time for dispensation, and she could have done so immediately after addressing the initial issue relating to falling roof slates.

133. Again, the tribunal accepts the Applicants' argument that the failings in the consultation process were substantial and is persuaded by the Applicants' evidence that they suffered real prejudice as a result of the Respondent's failure to consult.

134. The Applicants again argue that all of the works should be aggregated for the purpose of calculating whether the £250 per unit threshold has been reached. On this point, the tribunal finds the Applicants' arguments less compelling than in relation to the 2007 and 2010 major works, in that it is less obvious that the initial remedial works and the subsequent decorative works, box gutter repairs, communal lighting repairs, drainage clearance, door repairs and roof repairs are all connected to the initial works and to each other. However, as mentioned above, the case of *Phillips and Goddard v Francis* is now authority for the proposition that all qualifying works in a service charge year should be aggregated, regardless of whether they have any connection, the High Court taking the view that as service charge contributions are payable annually the £250 limit should be applied to any qualifying works which take place during that year. For the reasons already given above, the tribunal does not agree with Mr Warwick that it should decline to follow a High Court decision simply on the basis that it was decided after the carrying out of the relevant works.

135. Therefore in relation to all of the 2012 major works apart from the erection of the scaffolding the tribunal does not grant dispensation from the consultation requirements and considers that each Applicant's contribution to the cost of these works should be limited to £250. The evidence indicates, in the tribunal's view, that the total cost of the 2012 major works (including the scaffolding) was £7807.08.

Appointment of manager

136. The tribunal notes that, whilst the Respondent does not accept the Applicants' criticisms of the management of the property and submits that the application for the appointment of a manager is premature, the Respondent does not oppose the appointment of a manager in principle. However, she does object to the appointment of Mr Breare as the manager.

137. For their part, the Applicants still want the tribunal to appoint a manager but now also have slight reservations about Mr Breare's suitability.

138. The tribunal has considered the supporting evidence for the application and is satisfied that the appropriate grounds exist and that it would be just and convenient to appoint a manager. There have, in the tribunal's view, been multiple management failings and Mr Dhalliwal, despite coming across as a decent man, seems to be well out of his depth. The property is in a very poor state, there does not appear to be a coherent management policy nor sufficient expertise in place realistically to develop one, and the Applicants have clearly and – in the tribunal's view – rightly lost confidence in the management of the property.

139. However, the tribunal does not feel that Mr Breare would make a suitable appointee. He has not inspected the property, does not have any property management qualifications, was unable to answer certain questions put to him by the tribunal when checking his level of knowledge and would not even have been managing the property himself. Lack of qualifications would not in and of themselves be fatal to a person's chances of being appointed as a manager, but coupled with the other problems the tribunal is not satisfied that it would be appropriate to appoint Mr Breare.

140. The tribunal therefore determines that a manager should be appointed, but with the identity of the manager – and the basis of his or her appointment – to be decided at a later stage. In the light of this decision, the tribunal therefore needs to issue further directions, which are contained in the following paragraphs under the heading "Further directions".

Further directions

141. As soon as reasonably possible both parties shall write to the tribunal and to the other party with a list of dates on which they would be unable to attend a further half day hearing in connection with the application for the appointment of a manager, such hearing to take place no earlier than 7 weeks after the date of this decision or (if later) at least 1 week after the tribunal has received the additional hearing bundles from the Applicants. On receipt of this information the tribunal shall liaise with the parties to agree a date for the hearing, although the parties should note that there may be some delay in finding an acceptable hearing date as a date needs to be found on which all three tribunal members are available.

142. Within 21 days after the date of this decision the Applicants shall notify the Respondent of the identity of their alternative proposed manager and send to the Respondent their proposed management order.

143. Within 14 days after receipt of the information contained in the above paragraph the Respondent shall write to the Applicants stating whether she agrees with the choice of an alternative manner, if she disagrees giving reasons for the disagreement, and commenting on the form of management order (and if thought appropriate providing an alternative form of management order).

144. Within 7 days after receipt of the information contained in the above paragraph the Applicants shall send to the tribunal four copies of the information required by these further directions to be sent by each party to the other party in lever arch files with each page numbered sequentially.

145. The Applicants shall ensure that the proposed manager attends the hearing so as to be cross-examined on his/her experience and any other relevant matters.

146. If at any stage the Applicants wish to withdraw their application for the appointment of a manager, whether because the parties have agreed on the identity of a new managing agent or otherwise, they shall notify the tribunal and the Respondent in writing, that application shall be treated as withdrawn and anything else required by these further directions to be done shall no longer be required to be done.

Application under s.20C and refund of fees

147. At the end of the hearing, the Applicants made an application for a refund of the fees that they had paid in respect of the section 27A

application and hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the tribunal orders the Respondent to refund any fees paid by the Applicants within 28 days of the date of this decision.

148. In the application form, the Applicants applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, in particular the fact that the Applicants have been successful on a number of substantial issues, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of her costs incurred in connection with the proceedings before the tribunal through the service charge.

149. There were no other cost applications.

Name: Judge P Korn **Date:** 23rd September 2013

[1] The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Schedule of Applicants

Rasath Liyanarachchi (Flat 8A)
John Munford and Clive Munford (Flat 8B)
Miriam Davis (Flat 10A)
Helen Rogers (Flat 12A)
Edwina Bland (Flat 12B)
Brian Martin (Flat 12C)
Victoria Alford (Flat 16A)
Nicholas Allison (Flat 16B)

Present at the hearing

Rasath Liyanarachchi (Flat 8A)
Miriam Davis (Flat 10A)
Helen Rogers (Flat 12A)
Edwina Bland (Flat 12B)
Brian Martin (Flat 12C)
Mr L McTaggart, on behalf of Victoria Alford (Flat 16A)
Nicholas Allison (Flat 16B)

Mr H Warwick, Counsel for the Respondent
Ms T Sidhu, the Respondent
Mr D Dhalliwal, husband of, and managing agent for, the Respondent

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
  (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
  (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
  (a) "costs" includes overheads, and
  (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
  (a) only to the extent that they are reasonably incurred, and
  (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

  and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 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) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) Where an application is made to a 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.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Landlord and Tenant Act 1987

Section 22

(1) Before an application for an order under section 24 is made in respect of any premises to which this Part applies by a tenant of a flat contained in those premises, a notice under this section must (subject to subsection (£)) be served by the tenant on (i) the landlord and (ii) any person (other than the landlord) by whom obligations relating to the4 management of the premises or any part of them are owed to the tenant under his tenancy.

Section 24

(1) A tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies (a) such functions in connection with the management of the property, or (b) such functions of a receiver, or both, as the tribunal thinks fit.

(2) A tribunal may only make an order under this section ... (a) where the tribunal is satisfied ... that any relevant person is in breach of any obligation owed by him to the tenant ... and that it is just and convenient to make the order in all the circumstances of the case; (ab) where the tribunal is satisfied that unreasonable service charges have been made, or are proposed or likely to be made and that it is just and convenient to make the order in all the circumstances of the case ... (ac) where the tribunal is satisfied that any relevant person has failed to comply with any relevant provision of a code of practice ... and that it is just and convenient to make the order in all the circumstances of the case, or (b) where the tribunal is satisfied that other circumstances exist which make it just and convenient for the order to be made.