RESIDENTIAL PROPERTY TRIBUNAL SERVICE
SOUTHERN RENT ASSESSMENT PANEL
LEASEHOLD VALUATION TRIBUNAL
CASE No: CHI/43UH/LDC/2009/0033

Residential Property
TRIBUNAL SERVICE

BETWEEN:-

A2 DOMINION HOUSING GROUP
Applicant

and

Leaseholders at Whitley Close Staines Middlesex TW19 7EY
Respondents

PREMISES:	Leasehold dwellings at Whitley Close Staines Middlesex TW19 7EY
Applications:	(1) Section 27A of the Landlord and Tenant Act 1985 (Service Charges) (2) Section 20ZA of the Landlord and Tenant Act 1985 (application for dispensation of consultation requirements)
TRIBUNAL:	Mr H D Lederman Mr RA Wilkey FRICS FICPD
Date of applications:	14th October 2009 and 10th February 2010
HEARING:	20th January 2010, 24th March 2010 and 4th June 2010
Representation	Linda Smyth, S Michaux, Maynard Stevenson (A2 Dominion Housing Group) Various leaseholders from Whitley Close Spencer Taylor 101 Vickers Court – Northlands Residents Association on behalf of leaseholders identified in paragraph 6 and Schedule 1 to this Decision. Mr Delaney in attendance at first 2 hearings.
Date of the Tribunal's Decision:	18th October 2010

1. The service charges payable by the Respondents under clauses 2, 3(1), 3(5) and the Sixth Schedule of the respective Leases in respect of the cost of works entailing removal of asbestos from service riser cupboard doors and replacement with wooden door and frame carried out in March 2009 including the Applicant's managements fees ("the works") are limited to £250.00 for each lessee pursuant to section 20 of the Landlord and Tenant Act 1985 ("the 1985 Act") and Regulation 6 of the Service Charges (Consultation Requirements) (England) Regulations 2003 / 1987 ("the 2003 Regulations").

2. The costs of the works were not reasonably incurred and (except as to the above £250.00 for each Lease) are not payable under sections 19 and 27A of the 1985 Act.

3. The Tribunal orders that none of the costs incurred, or to be incurred, by the Applicant in connection with proceedings before this Tribunal (including the hearings on 20th January 2010, 24th March 2010, 4th June 2010 and any written submissions following upon any of those hearings), are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by any of the Respondents or any of the lessees at Whitley Close pursuant to section 20C of the 1985 Act.

4. No application for reimbursement of hearing or application or hearing fees incurred by the Applicant was made.

Issues for Decision by the Tribunal

1. The Tribunal was asked to give an order of dispensation under the provisions of section 20ZA of the 1985 Act and under the 2003 Regulations on the ground that works to remove asbestos in service riser cupboard doors in leasehold dwellings at Whitley Close, Staines Middlesex TW19 7EY in February 2009 were urgent. The Tribunal was also asked to determine whether the cost of major works of asbestos removal and renewal of service riser cupboards ("the works") was reasonable under section 27A of the 1985 Act pursuant to a later application issued by the Applicant on 12th February 2010.

2. Very broadly "Dispensation" is another word for excusing or waiving compliance. In this case the Tribunal is asked to rule that the circumstances and nature of the asbestos work to the leaseholders' dwellings meant that it was reasonable to cut short or excuse compliance with the Consultation Requirements which Parliament has decided should apply in relation to costs incurred for major works of this kind. References to legislation are to the versions in force in February and March 2009.

The hearings and the documents produced

3. In this Decision use of the phase "Qualifying Long Term Agreement" or "QLTA" should not be taken as prejudging the issue whether any particular document fulfilled the statutory definition of that term in the 1985 Act. References to the bundle in these Reasons are where the context is appropriate to a paginated bundle produced by the Applicant on 9th April 2010. "Leaseholders" refer to the lessees of the dwellings which are the subject of these proceedings and the Respondents.

The hearing on 20th January 2010

4. The Applicant initially only sought an order for dispensation under section 20ZA of the 1985 Act. At the first hearing in January 2010, it became clear that a further application declaring that the costs of the works were payable would be made by the Applicant in due course, following the outcome of the dispensation hearing. In view of the potential for delay, duplication of evidence and cost and inconvenience to the Respondents, the Tribunal directed that if such an application was to be made, it should be heard at the same time as the Applicant's application for dispensation.

5. The first hearing of these proceedings on 20th January 2010 had to be adjourned as the witnesses who attended on behalf of the Applicant had insufficient knowledge and expertise of the circumstances leading

up to the works. The documents produced for that hearing were not in any form of numbered or paginated bundle and did not include the Qualifying Long Term Agreement relied upon. No witness statements were produced. The Applicant's representatives asserted they had believed that hearing was a directions hearing. Further directions for production of documents and statements were issued following that hearing.

Representation of Respondents and the Applicant

6. Under cover of a letter dated 2nd March 2010 from Northlands Residents Association ("NRA"), some of the Leaseholders (or former leaseholders) of Whitley Close listed in Schedule 1 to this Decision gave Spencer Taylor and the executive committee of NRA "full authority to deal with all aspects of the asbestos removal program on our Estate; this includes any legal action taken by/against A2 Dominion the negotiation of any repayment scheme if any". No objection was taken to the terms or validity of that letter of authority by the Applicant.

7. At the hearings in March and June 2010 the Applicant was represented by Mr Steve Michaud, Group Director of Leasehold Services at the Applicant appointed on 15th January 2007. Mr Michaud confirmed that he was not a Board Director of the Applicant but had 27 years experience in housing management. He had published 2 books on leasehold management the Good Practice Guide to Leasehold Management (1996) and Principles of Council Leasehold Management (2003). The Applicant was also represented by Mr Maynard Stevenson, formerly head of Planned Maintenance at the Applicant, appointed on 1st October 2008 and now head of Asset Management but not a Board Director. The Tribunal was informed and finds that neither had any additional qualifications thought to be relevant to the issues in these proceedings.

The Hearing of 24th March 2010 and documents produced

8. The next hearing took place on 24th March 2010. Before then the Applicant had produced a bundle of documents (with tabs) in purported compliance with the directions issued in January 2010. Reference will be made to that first bundle where necessary ("the first bundle"). At tab 12 of the first bundle a series of framework/partnering documents from the Applicant were produced. By letter of 19th March 2010 (sent by e-mail) the Tribunal issued the following directions about those documents:

> "The applicant is to file and serve a (complete) copy of the long term agreement which is alleged to cover the asbestos works which

are the subject of this application by 4.00 pm on 10 February 2010. The copy should be signed and dated and include all relevant appendices and schedules." See paragraph 6 of the Directions attached.

The copy of the LTA in the bundle provided appears to be incomplete. In particular there appeared to be missing:

A. clauses 1.4 and 1.5 (which may be the second page of the document);

B. The tender documentation

C. A2 Housing performance specification documents entitled "Procedure manual";

D. The operational regulations of the A2 Housing Group and the term brief (see clause 6.9);

E. The partnering terms referred to for example in clause 1.1."

9. At the hearing on 24th March 2010, Steve Michaux on behalf of the Applicant conceded that the documents produced in section 12 of the first bundle had no bearing on the works. On behalf of the Applicant he invited the Tribunal to disregard those documents entirely. That concession was preceded by an apology contained in Maynard Stevenson's letter to the Tribunal of 22nd March 2010 conceding that the documents produced previously were a partnering agreement relating to Decent Homes works (not the works). 3 volumes of unsigned and unexecuted "tender documentation" said to relate to the works were produced to the Tribunal under cover of that letter. To avoid further waste of everyone's time and resources, the Tribunal decided to proceed to hear as much evidence as it could on that day. At that stage the signed Qualifying Long Term Agreement had not been produced Maynard Stevenson's letter of 22nd March 2010 recorded as follows:

> "With regards to the signed contract this is still being formalised and is currently with our solicitors Trowers & Hamlins and is due to be completed by the end of April 2010"

10. Further directions were issued shortly after the hearing on 24th March 2010 which included the following:

"The Applicant is to file and serve upon Mr Taylor and Mr Delaney the following by 4 pm on 9th April 2010:

a. A true copy of the Letter of intent alleged to have accompanied the long term agreement under which the asbestos and associated works (which are the subject of the applications) are said to have been carried out. The copy should be signed and dated and include all relevant appendices and schedules and all documents referred to.

b. A copy of the e-mail or other written confirmation of the request from Maynard Stevenson of A2 Housing Association evidencing the request for a quotation for asbestos work from EPS

c. A copy of the asbestos register and any risk assessments relating to Whitley Close in the years 2008 and 2009.

d. A copy of relevant parts of the insurance policy affecting Whitely Close properties for the years 2008-2009 and 2009-2010 and correspondence or communications with insurers about recovery of sums for asbestos.

e. Copies of any documents or communications indicating that the Applicant has disputed that the Northlands Residents Association was not a recognised tenants association for the purpose of sections 20 or 20ZA of the Landlord and Tenant Act 1985.

f. Any written submissions which the Applicant may wish to make upon any of the said documents."

The Applicant's Bundle produced on 9th April 2010

11. The Applicant produced a bundle sent to the Tribunal under cover of its letter of 9th April 2010 which is the primary bundle of reference for this Decision and will be described as "the bundle". The bundle still did not produce a copy of the Qualifying Long Term Agreement relied upon by the Applicant. Appendix 5 produced a copy of what the Applicant called a "letter of intent". The bundle omitted some documents which had been included in the first bundle produced by the Applicant.

12. The Applicant then sent an e-mail on 4th May 2010 to the Tribunal which appeared to be objecting to the directions made previously, especially those concerning the production of the qualifying long term

agreement. The Tribunal indicated in its letter of 10th May 2010 that it would treat the e-mail of 4th May 2010 as an application to vary or discharge relevant parts of the earlier directions. It was indicated such an application would be dealt with at the next hearing.

The hearing of 4th June 2010 and documents produced

13. The next hearing took place on 4th June 2010. In the meantime, further written submissions had been received from Ms Kavangh a leaseholder formerly of 145 Whitley Close in her letter of 14th May 2010. No objection to the Tribunal considering those submissions was made by the Applicant.

14. At the hearing on 4th June 2010 for the first time and without any prior warning to the Tribunal or any of the Respondents, the Applicant produced one set of documents which (the Applicant contended) amounted to the Qualifying Long Term Agreement. The documents shown to the Tribunal at that hearing included PPC 2000 Amended 2008 Commencement Agreement, PPC 2000 amended ACA project Partnering Contract (Cyclical and Planned Improvement Works Programme for 2009/2010 for South region). These documents and the schedules contained in them were several hundred pages in length. The Applicant's case was that those documents had been signed by Andrew Evans Assistant Chief Executive of the Applicant that morning (4th June 2010) but remained to be signed by the Chief executive officer Daryl Mercer and signed by Board member of the Applicant. Those Agreements were put forward as covering the works for 2009/2010. Mr Michaux's evidence was a copy of the long term agreement had been signed by the other parties.

15. A short adjournment took place at that hearing for the Tribunal and those representing the Respondent to inspect the documents. As the documents were lengthy and complex the Tribunal took the view that adjournment might not be sufficient to meet the interests of justice particularly as the Respondents had no legal or other professional representation. The Tribunal offered the Respondents the opportunity to seek a further adjournment to another hearing. Mr Taylor on behalf of the Respondents decided not to seek such an adjournment in view of the delay in the proceedings that had occurred.

16. Nevertheless the Tribunal took the view that further written submissions were needed in order to give all parties a proper opportunity to comment on the documents produced and copies of the documents needed to be produced to the Respondents. Accordingly directions were given which included the following: "The Applicant is to file ... and serve upon Mr Taylor the following:

"a. A true copy of the contract documentation alleged to amount to the long Term Qualifying Agreement in the form in which it was produced to the Tribunal at the Hearing on 4th June 2010. The copy produced to the Tribunal was signed but undated and omitted the signature of Board member of the Applicant. The copy filed should include all relevant appendices and schedules and all documents referred to.

b. A letter or other written evidence from EPS as to the status of the letter of intent dated 2nd July 2008.

c. Copies of records relating to vandalism at Whitley Close in the years 2008 and 2009 which might have bearing on asbestos works.

d. Any written submissions which the Applicant may wish to make upon any of the said documents.

e. Any written submissions which the Applicant may wish to make upon the letter to the Residential Property Tribunal service from Ms C Kavanagh dated 14th May 2010 (4 pages in total) and whether an order for payment of costs should be made to this Respondent under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 on the ground that the hearing of the two applications made by the Applicant has been unnecessarily adjourned by the failure of the Applicant to produce timeously copies of (a) the relevant partnering and framework agreements alleged to be part of the long term qualifying agreement (b) the letter of intent dated 2nd July 2008 (c) the signed copy of the alleged qualifying long term agreement and (d) copies of potentially relevant insurance documents.

f. Any written submissions which the Applicant may wish to make upon the Service Charge Residential Management Code 1st edition paragraphs 14-19 inclusive, Forcelux v Sweetman [2001] 2 EGLR 173, and the Applicant's documents Asbestos a Guide for Residents, Leasehold Service Charge Guide 2009/2010 and repairs and RTS v Muller [2010] 1 W.L.R. 753..... insofar as any of those documents may be relevant to whether the sums claimed were reasonably incurred or whether there was a long term agreement in force in February and March 2009."

17. The application by the Applicant to vary or discharge the earlier directions was not pursued. The Tribunal took the view it had been completely overtaken by events and made the directions given at the hearing in June 2010.

18. Following those directions a bundle of documents including submissions were produced by the Applicant under cover of letter of 17th June 2010 containing 4 appendices. The copy of the Long term Qualifying Agreement produced was not the same as that produced to the tribunal the hearing on 4th June 2010. Mr Taylor of the Northlands Residents Association produced written comments on this in its letter of 26th June 2010 (received by the Tribunal on 28th June 2010).

The Northlands II Estate

19. The leasehold dwellings at Whitley Close and the 39 Respondents were specified in a spreadsheet attached to the application dated 10 02 2010. The Northlands II Estate was described as 11 two and three storey blocks containing 72 one bedroom flats largely let on long leases. These flats are the subject of these proceedings ("the flats"). In addition the Estate comprised 212 purpose built bedsits in 9 three storey blocks (Asset Management Panel Appraisal report for meeting on 6th November 2008). Mr Taylor of the NRA disputed the precise number of bedsit properties stating that there were 242 properties (written representations sent 19th April 2010). Nothing turns upon this difference between the parties. Only those lessees who held long leases with a service charge liability are Respondents to these applications. The numbers include properties numbered 88 to 164 Whitley Close. The Applicant said the Estate was built in 1973 for Airways Housing Association ("Airways"). The Tribunal so finds. That date appeared to the Tribunal to be consistent with the Leasehold documentation and method and type of construction (brick and block cavity utilitarian construction with flat roofs).

20. The Applicant's evidence was that at the relevant times in 2008/2009 the flats each had individual gas central heating with asbestos riser cupboard doors before the works carried out in February/March 2009. The Tribunal so finds. The bedsits for the periodic tenants had a communal heating and Air Extraction system.

The Lease

21. The Lease requires the Lessees to pay service charges by clauses 2 (the reddendum), 3(i) and the Sixth Schedule. Clause 3(1) also provides for payment of interest upon rent or service charges. The service charge expenditure includes the landlord's costs in any

accounting period of carrying out its obligations under clauses 5(2) and 5(3) of the Lease. By the covenants in clauses 5(2) of the Lease the Applicant covenanted to keep in repair and as and when necessary renew or rebuild the structure and exterior of the Premises and the Building including conducting Media and part of the Building not the responsibility of the Lessee. The Premises are defined (non-exhaustively) by clauses 1 and the "Particulars" of the Lease as the flat as delineated on the plan. "The Building" is defined (non-exhaustively) by clauses 1 and the Particulars of the Lease to include the buildings comprising (inter alia) 20 flats". The Conducting Media" are defined (non-exhaustively) by clauses 1 and the Particulars of the Lease to include "channels, cables pipes wires and other service installations". The evidence before the Tribunal which the Tribunal accepts (set out below) was that the asbestos doors to the riser cupboards had become damaged. The cost of removing that asbestos and any associated repair costs would fall within clause 5(2) of the Lease. Clause 5(3) of the Lease requires the Applicant as landlord to keep in repair other land and buildings and property over which the lessee is granted rights. If the riser cupboard did not fall within the flat or the buildings, the Tribunal's view is that repairs to the riser cupboard door would fall within clause 5(3), at least for the purpose of the lessee's service charge liability.

Relevant legislation

22. Sections 18–30 of the 1985 Act refer to restrictions on "Service Charges". The relevant provisions are:

> "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 ... or insurance or the landlord's cost 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.
>
> 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) of the 1985 Act provides the Tribunal with jurisdiction to determine 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.

Subsection 27A(2) of the 1985 Act provides that jurisdiction applies whether or not any payment has been made.

Section 27A(3) of the 1985 Act provides:

"An application may also be made to a leasehold valuation 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"

Section 20 of the 1985 Act provides that:

"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.

20(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.

20(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250: see article 6 of the 2003 Regulations.

Sections 20(6) and 20(7) of the 1985 Act provide as follows:

(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 of the 1985 Act in its relevant parts provides for dispensation of the consultation requirements as follows:

"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 ..... the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

20ZA (2) In section 20 and this section –

"qualifying works" means works on a building or any other premises, and

"qualifying long term agreement means [subject to prescribed provisions in the 2003 Regulations] an agreement entered into by or on behalf of the landlord.....for a term of more than twelve months."

The Inspection and the Estate

23. The Tribunal inspected the exterior of numbers 82-92 Whitley Close before the hearing on 20th January 2010. Mrs. Nixon and Ms. Smythe attended on behalf of the Applicant and Mr. Spencer on behalf of the Respondents. None of the other Respondents attended. The Applicant and Mr. Taylor agreed that the layout of the meter cupboards was for all practical purposes identical in all the long leasehold dwellings. By the date of the inspection, the works had been carried out. The Applicant's representatives unlocked and opened some sample doors to the cupboards which had been replaced. The cupboards housed meters and risers. The Tribunal noted purpose built blocks of flats apparently constructed during the early or mid 1970's to a common utilitarian design. There was a brick construction under flat roofs. Access to the flats was by means of external open staircases and landings. Each flat appeared to be a self contained unit with kitchen and bathroom. On the ground floor were bin stores and parking areas. The blocks were surrounded by landscaped areas linked by pathways.

Further definition of issues for decision by Tribunal

24. Eventually following the provision of additional documents by the Applicant, and clarification of the Applicant's position at the hearings, it became apparent there were the following issues:

a. Was there a long term qualifying agreement ("QLTA") within the meaning of section 20ZA(2) of the 1985 Act in force at the date the works were carried out or (if relevant) at some earlier date?

b. which Schedule to the 2003 Regulations applied to the works.

c. which parts of the Consultation requirements in the 2003 Regulations were complied with;

d. in particular whether Northlands Residents Association was a residents association for the purpose of compliance with the Consultation requirements in the 2003 Regulations;

e. whether it is reasonable to dispense with compliance with the parts of the Consultation requirements in the 2003 Regulations which the Tribunal might find were not complied with;

f. whether the costs of the works were reasonably incurred.

In very broad summary, if there was a QLTA in force at the date of the works, the Consultation Requirements applicable to the works provided by the 2003 Regulations were considerably less demanding for the Applicant. A separate series of requirements for consultation is set out in Schedule 3 to the 2003 Regulations if a QLTA was in force: If there was no QLTA in force, a much longer period of consultation upon the works and their cost would have been required by Schedule 4 of the 2003 Regulations. In either case, the Applicant would have been entitled to apply for those requirements to be dispensed with. One rationale behind this was that there had to be consultation about entry into the QLTA.

The relevant facts and background to the works

25. The basis for the application for dispensation from the Consultation Requirements under the 2003 Regulations was that the works to Whitley Close needed to be carried out as a matter of urgency. In order to understand that contention and to consider whether it is reasonable to grant dispensation it is necessary to consider the background to the need to carry out these works.

26. The Tribunal finds the following as facts from the documents and other evidence (including witness statements) put in evidence. The Applicant is the product of a merger of 2 Housing Associations the A2 Housing Group and Dominion Housing Group. That merger took place in October 2008. Before that, one of the predecessors to the A2 Housing Group was Airways Housing Society ("Airways").

27. It was common ground that the Lease of 88 Whitley Close, Stanwell between Airways and Arthur Sidney Seymour dated 30th June 1994 granting a term of 99 years (less 5 days) from 24th March 1975 ("the Lease") was typical of all the long leases at Whitley Close. As would be expected, the Lease was granted pursuant to the provisions of the Housing Act 1985 (as it then was) to secure tenants. For all practical purposes this means that many of the covenants have to comply with the provisions of that Act. There is a plan incorporated on to the third page of that Lease which depicts part of Whitley Close. That plan gives an indication of the layout of some of the flats on the Northlands Estate. There were parts of the Estate which were not the subject of

the works which are within this application, namely those which comprised the bedsits for periodic tenants.

28. As far back as October 2003, Airways was considering encapsulation of asbestos sheets and had served notice under section 20 of the 1985 Act in relation to "encapsulation of door panels to meter cupboards". The only surviving reference to that notice was a letter of 17th October 2003 to Mr. Smith, the then lessee of 151 Whitley Close (one of the properties whose current lessee is a Respondent to this application): see page 61.

29. On 23rd February 2004 the constitution of the Northlands Residents and Tenants Association was signed. At that stage according to the constitution, membership was open to tenants, residents and leaseholders of Airways. This constitution was put before the Tribunal as evidence of the structure of the Northlands Residents Association at the time of the works.

30. The next relevant event was an asbestos survey of a large number of sites including the Whitley Close properties which are the subject of these proceedings. That produced a written survey report ,dated October 2006 which contained recommendations about asbestos: see pages 86, 92 and 91-95. That survey was carried out by Redhill Analysts. It appeared to be common ground Redhill Analysts were independent of the landlord of the Northlands Estate. That survey made recommendations of encapsulation of asbestos which are the subject of these proceedings: see pages 96 and 108 onwards. That document was also referred to by the Applicant as the statutory Asbestos register. That is not an issue this Tribunal has to decide.

31. On 4th July 2007 A2 Housing (as it then was before the merger) sent written notice of intention to enter into a QLTA. In summary the proposal was to enter into a contract for a term of 12 years with a building maintenance company to undertake works to A2 Dominion's housing stock on its behalf and on behalf of other subsidiary companies. The proposal was that such a QLTA would provide a "co-ordinated and comprehensive service to customers, including a contact centre, computer and technical surveying services". It was said that the reason for the proposed works under the QLTA was to "maintain the housing stock in good repair and meet all statutory requirements". That notice was expressed to have been sent to its tenants under section 20 of the 1985 Act and under the 2003 Regulations (pages 5-8). The sending of such a notice was not in dispute.

32. The written tenders for these works were sent in late April 2008. There were "interviews" or "meetings" with the proposed contractors and the

management of A2 Housing and Dominion in about May 2008 according to the evidence of Steve Michaux.

33. The next event in the consultation process was a letter of 15th July 2008 (template specimen at pages 9-40) from A2 Dominion (as it then was before the merger with Airways) to all leaseholders reporting on tenders for the QLTA. That letter also mentioned the proposed merger of A2 Housing Group and Dominion Housing Group on 1st October 2008 and the proposed change of name to A2 Dominion. It was proposed the QLTA would then be with the new merged body. The QLTA in question was at that stage described as a framework agreement providing (among other things) a schedule of rates: see the letter from A2 Housing dated 11th August 2008 pages 17-19. At that stage the contractors named as the providers of cyclical programmed works were Connaught Partnerships Limited ("Connaught"), Breyer Group plc ("Breyer") and EPS Group plc ("EPS") (see page 25). Different contractors were nominated in proposals for the QLTA for call centre works and Responsive repair works. The letters dated 15th July 2008 were sent to all Whitley Close lessees: see the distribution (mail merge) list on pages 39- 40. The Applicant's evidence was these letters were accompanied or preceded by notice given in the Official Journal of the European Union. The proposed planned and cyclical maintenance contracts were for a term of 4 years. These facts were not challenged and the Tribunal had no reason to doubt the Applicant's evidence on these points.

34. The relevance of this is that the proposed asbestos works mentioned in the October 2003 letter from Airways (as it then was) were described in the evidence of Steve Michaux as cyclical repairs.

35. A relevant part of the tender documents concerning planned and cyclical works for which those contractors tendered was put in evidence by the Applicant at pages 50 – 58. That part was described as part of the "preliminaries" of Framework Agreements and Term Partnering Agreement concerned works which would or might entail interference with asbestos or any other hazardous substances. Volume Two of the Tender Documentation provided for the appointment of Consultant and the key specialists. These documents were produced by the Applicant as part of the Bundle produced on 9th April 2010. Those extracts were unsigned and undated (except for the front sheet of Volume 2 being dated January 2008). The Tribunal was not provided with a comprehensive set of tender documentation to enable it to assess whether or not these documents formed part of any Qualifying Long Term Agreement with any of the contractors. That said, the Tribunal finds those documents were part of the tender documents submitted to prospective contractors. The Tribunal was

provided with no evidence from a contractor such as EPS, that those tender documents formed part of a legal Agreement (or any Agreement) between the Applicant and any contractor for a term of more than 12 months.

The "letter of intent"

36. In the meantime, on 2nd July 2008 Baily Garner LLP Consultants acting in the procurement process on behalf of A2 Housing and Dominion, wrote notifying EPS that it had been selected to become party to the proposed framework agreement for areas including Whitley Close. That letter was expressed to be subject to contract and successful leaseholder consultation. In addition the letter was also expressed to be subject to the completion of a standstill period of 10 clear days before it could be implemented. In other words, according to that letter of intent, the selection of EPS was dependent on the outcome of consultation with leaseholders and the entry into a formal contract after the 10 day period expired assuming no legal challenge to the process. That letter assumed some importance in the discussion about whether a QLTA had been entered into. Mr Steve Michaux of A2 Dominion described that letter as "a letter of intent". For ease of reference but without prejudging the status of that letter, the Tribunal adopts that description.

37. The letter of intent purported among other things to have been sent by A2 Housing to EPS pursuant to regulation 32 of the Public Contracts Regulations 2006. The Tribunal returns to consider the effect of the letter of intent later in this Decision.

The effect of the letter of intent in relation to EPS

38. A striking omission in the documents and information provided by the Applicant was the absence of documentation to explain or clarify the passage of time between the letter of intent being sent on 2nd July 2008, the Merger on 2nd October 2008 and the execution of the documents said to amount to the Qualifying Long Term Agreement finally produced by the Applicant under cover of letter of 17th June 2010 as Appendix 4.

39. Following the hearing on 24th March 2010 the Respondents submitted that there was no long term agreement in existence at that date or at the date of the works (section 2 written submissions received 27th April 2010). The Tribunal invited the Applicant to explain the absence of a signed agreement at the hearings on 24th March 2010 and 4th June 2010. Steve Michaud's evidence at the first of those hearings was that the Applicant's solicitors Trowers & Hamlins were still negotiating the

terms of the QLTA but that repairs were being carried out pursuant to the letter of intent. That is also the gist of what is said in Mr. Stevenson's letter addressed to the Tribunal of 22nd March 2010. In response to the Tribunal's expressed concern about this gap in the Applicant's case, a copy of a letter dated 7th June 2010 apparently emanating from Marcus Cox of EPS was produced. The relevant parts of that letter read as follows:

> "Further to the letter issued by Baily Garner dated 2nd July 2008...outlining the intention of A2 Dominion Housing Group to select our organisation to become a party to the framework agreement subject to your obligations under regulation 32(i) (sic) of the Public Contracts Regulations 2006, we confirm that following the expiration of the standstill period on 14th July 2008, we carried out works in accordance with the Terms and Conditions laid out in the Tender Documentation until such time as the formal contract documents were issued"

40. The Tribunal finds that letter came from EPS. Marcus Cox appears to be the signatory on behalf of EPS to the PPC 2000 ACA Project Partnering Contract with the Applicant executed on a date at some time in about June 2010. The Tribunal has not had the benefit of live evidence from Mr Cox or any witness from EPS. Mr Cox's letter does not specify "the Terms and Conditions laid out in the Tender Documentation" which EPS regarded itself as bound by. The Tribunal considers the position if (contrary to its finding above) it was to be satisfied that the documents at pages 50-58 of the Bundle were part of the terms and conditions which the EPS were subject to until the final agreement was signed at some point in about June 2010. The Tribunal finds there is no evidence that before that agreement (at pages 50-58) was signed EPS and the Applicant had entered into an agreement for a period of more than 12 months. The Applicant's omission to produce evidence of such an agreement speaks for itself.

The Contract Award Notice

41. The Applicant produced a copy of the Contract Award Notice published in the Official Journal of the European Union filed by Dominion Housing Group and A2 Housing Group (as they then were) dated 20th August 2008 in relation to Cyclical and Programmed Works in favour of Connaught, Breyer, EPS and DW Contractors.

42. On 1st October 2008 the merger between A2 Housing and Dominion took place.

43. Shortly before 6th November 2008 Maynard Stevenson (then Head of Planned Maintenance) of the Applicant prepared a written report to the Asset management panel of the Applicant concerning the Northlands Estate concerning asbestos. The background to how that report came to be written is explained in more detail below. It suffices to say that the need for asbestos removal and associated building works to the leaseholders' flats was clearly put to the Asset Management Panel of the Applicant on 6th November 2008.

Earlier asbestos works to associated housing stock and other quotations for the works

44. The Tribunal now turns to the history of asbestos works and the need for such works to the Applicant's housing stock. Most of this emerged in the course of the hearings in March 2010 and June 2010 but some only came to light from the repairs report produced by the Applicant in section 2 of the bundle produced on 17th June 2010 (after the final hearing). That bundle was also served on the Respondents.

45. Mr. Maynard Stevenson was appointed Head of Asset Management for the Applicant in January 2010. Before that he had been appointed head of A2 Housing Group Planned Maintenance in April 2006. Mr. Stevenson was clearly an honest witness who did his best to give an account of events. Unfortunately neither he nor the Applicant's other witnesses had previously come prepared to deal with or explain many of the issues. The Tribunal did however gain the impression that he was not the person who was making decisions about the conduct of the proceedings before the Tribunal, and about disclosure of documents on behalf of the Applicant. The Tribunal reached the view that (despite its attempts to encourage the Applicant to assist in this process) some of the relevant documents were not before the Tribunal. Accordingly many of the dates given in evidence were approximate.

46. The Northlands Estate is of mixed tenure. At the relevant times some of the flats were occupied by secure tenants of the Applicant or its predecessors occupying under periodic tenancies with no or no relevant service charge liability. A separate "Decent Homes" initiative funded other than through service charges for secure tenants. There were separate arrangements and a separate 5 year plan of cyclical maintenance. For relevant purposes this concerned kitchen and bathroom renewal. The Applicant's evidence was there was a separate long term agreement between A2 Housing and other contractors relating to the "Decent Homes" work. United Homes, Breyer and EPS were principal or main contractors under this long term agreement. The Tribunal so finds. Mr Stevenson described this agreement as a

framework agreement entered into in 2006. The Tribunal (as far as it is aware) has not seen this long term agreement and expresses no view as to its status, terms or effect. Under this agreement (according to Mr Stevenson) K & K Industrial Services Limited ("KK") were the asbestos subcontractors working for EPS.

47. On 31st January 2008 there were recorded reports of broken meter cupboard doors at 98 Whitely Close. The tenant was reported as saying "thinks may contain asbestos". The Tribunal is unable to determine from the records provided what works were carried out. This appears to have been bedsit accommodation. Further reports of meter cupboards "leaking asbestos" for numbers 98, 106 and 112 Whitley Close were recorded for May and August 2008.

48. In about April 2008 works to the bedsit accommodation for secure tenants at Whitley Close and nearby addresses under the Decent Homes Initiative commenced. The bedsit accommodation had asbestos insulation fixed to the back of the riser cupboard doors and loft hatches (page 66). Some of those works were to neighbouring properties not within Whitley Close. Those "Decent Homes" works had included works entailing removal of asbestos by asbestos contractors.

49. In the course of those "Decent Homes" works it became apparent that some of the asbestos doors to the riser cupboards had become damaged. As Mr Stevenson said in his oral evidence, the condition of the asbestos was such as to cause concern. Investigation and analysis of the asbestos by those contractors or other contractors had taken place.

The Eurolag Quotation

50. At some point in September 2008 Mr Stevenson asked United House the contractors under the Decent Homes framework agreement to provide a quotation for the asbestos works to the Leaseholder's dwellings which are the subject of this application. The Tribunal so finds. This resulted in a quotation from Eurolag Group Limited (licensed asbestos contractors) ("Eurolag") dated 17th September 2008 addressed to United House for asbestos works at the leaseholders' dwellings. This quotation was only produced at the afternoon session hearing on 24th March 2010 but was referred to as the "Aspect" quotation by Mr Stevenson in his evidence on the morning of 24th March 2010. He was unable to recall the name of the contractor in the morning session.

51. Mr Stevenson accepted the Eurolag quotation offered a discount for each additional floor in a block of flats if the works were carried out on

the same day. It was common ground this quotation if accepted provided a lower cost for the works than the KK quotation ultimately accepted. Mr Stevenson rejected this quotation. In oral evidence to the Tribunal the reason he gave for that rejection was that it would have required the lessees in the entire blocks of flats at Whitley Close to have vacated whilst the works were carried out. He also doubted whether Eurolag could have carried out those works within the 8 hour period which they were promising. In paragraph 9.3 of his witness statement of 17th February 2010 his evidence was that "this quote was not taken forward as we believed it would be too difficult to manage the no access stay put policy for 8 hours for 4 flats". In his oral evidence Mr Stevenson clarified that the reference to "we" in that statement referred to his personal assessment, as he had not discussed this issue with anyone else. The reference to "no access" was Mr Stevenson explained that lessees and occupiers would have to leave the premises whilst the works were carried out. The Tribunal accepts that he took into account these factors in deciding whether to reject the Eurolag quotation as this was referred to obliquely in his report to Asset Management Panel. The Tribunal also finds that Mr Stevenson made that decision in the belief that quotation would not serve the interests of the residents.

52. Mr. Stevenson was unable to produce any written record of his deliberations or decision about this quotation apart from his comments in his report to the Asset Management Panel in his report of 6th November 2008 (page 67). He accepted that he did not discuss the Eurolag quotation or his rejection of this quotation with anyone else at A2 Housing. The highest his consultation with others in the Applicant went, was the comment in his report to the Asset Management Panel that EPS had submitted a "more robust method of removing the asbestos safely with a lesser impact on the residents".

53. The background to this quotation was that United House had used Eurolag as its contractor for the internal Decent Homes works. Mr Stevenson in his evidence questioned whether awarding Eurolag such a contract would have impacted upon other works for A2. Unfortunately the Tribunal was unable to attach great weight to this suggestion as Mr. Stevenson was unable to produce any contemporaneous evidence of what was in his mind at the date of the rejection of this quotation in about September or October 2008. This was not a factor mentioned in his report to the Asset Management Panel of the Applicant.

54. Evidence of some of the results of Eurolag's investigation was produced in the form of 2 analysis reports dated 21st October 2008 at pages 64-65. Those results confirmed the existence of amosite and chrysotile asbestos from samples taken on 17th October 2008 in

connection with the Decent Homes works and were annexed to the Asset Management Report for the meeting on 6th November 2008. Mr Stevenson very frankly admitted in the course of his evidence on 4th March 2010 the Applicant had known of the existence of asbestos in Whitley Close in about May or June 2008. This evidence was given before the record of repairs at section 2 of the bundle produced on 17th June 2010 had been disclosed.

55. Mr Stevenson's evidence was that at the time of the Eurolag quotation was produced A2 Housing and the prospective merger partner Dominion took a conscious decision to await the outcome of the merger so that both could take advantage of the less onerous provisions concerning qualifying long term agreements under section 20 of the 1985 Act. Steve Michaud's evidence about the reasoning for the delay in carrying out the works was to similar effect. Mr Stevenson also referred to the fact that at that time (that is before the merger) there were no funds available for the asbestos works. The Tribunal accepts that evidence and so finds.

56. The variety of reasons put forward by Mr. Michaud and Mr Stevenson for rejection of the Eurolag quotation and the decision not to carry out cyclical programmed asbestos works to the leaseholder's dwellings calls into question the real reason for these decisions. The Tribunal is surprised that organisations of the size of A2 and Dominion were unable to produce any contemporaneous evidence of the reasons for deferring asbestos works and to reject what on its face appears to have been a competitive quotation for the works in question. The absence of any detailed record for these decisions means that the Tribunal approaches the evidence of Mr Stevenson and Mr. Michaud about these issues with some caution.

The KK Asbestos removal quotation

57. In early September 2008 the Applicant through Mr Stevenson took steps to instruct EPS to obtain a quotation for asbestos works for the leasehold dwellings. There is reference to a meeting between Gerard Higham of KK and Mr Stevenson in the KK quotation of 15th September 2008: see section 5 of the first bundle. That quotation included a quotation of £35,280 plus VAT for asbestos removal works to 36 flats at Whitley Close but excluded builders works and main contractor's management fee. This quotation was cited virtually word for word in part of Mr Stevenson's report to the Asset Management Panel meeting on 6th November 2008. This quotation was the preferred arrangement for Mr Stevenson.

58. It is common ground that the existence and nature of the Eurolag and KK quotations were not revealed to any of the lessees or NRA/Spencer Taylor until these proceedings were commenced. Indeed the Eurolag quotation was only produced by the Applicant after a discussion of Mr Stevenson's report to the Asset Management Panel in the hearing on 24th March 2010 revealed that it existed. The Applicant's "statement of case" made no reference to the Eurolag quotation. This reticence made the Tribunal's task more difficult and lengthy than it should have been.

The sequence of the works and consultation about the works

59. The Applicant's Statement of Case says that its framework partner produced a quotation for asbestos works on 6th November 2008. The Tribunal takes this to be EPS quotation included in section 5 of the first bundle (pages 13-14 which would have included the KK quotation). This was a total of £132,659.40. It was unclear whether that figure was inclusive or exclusive of VAT. That quotation was separate from the quotation for asbestos work to the bedsit accommodation. The Applicant raised a Purchase Order on 21 November 2008 addressed to EPS for "Pilot Scheme" asbestos works to 106-112 Whitley Close which appear to have related mostly to Decent Homes works at the bedsit accommodation for periodic tenants at Whitley Close.

60. Mr. Stevenson's evidence was that his recommendations to the Asset Management Panel of the Applicant on 6th November 2008 were accepted. KK then produced a method statement for the removal of the asbestos dated 16th December 2008.

61. On 4th February 2009 Mr Higham of KK completed a written Notification to the HSE of the asbestos works on the Northlands Estate with a proposed start date of 2nd March 2009. It is worthy of note that the second part of that notification form (page 77) stated that "tenants will vacate on the day of removal".

The notice of intention to carry out works under a long term agreement

62. On 6th February 2009 the Applicant sent what was expressed to be a Notice of Intention to carry out works under a long term agreement to all leaseholders at Whitley Close in connection with removal of Asbestos from service riser cupboard doors and replacement with timber door and frame. The estimated cost of those works was expressed as £1884.03. That letter invited observations in writing

"within the consultation period which ends thirty days from the date of this notice 9th March 2009".

63. In the course of Mr Stevenson's evidence it became clear that letter was intended to amount to a Notice of Intention under paragraph 1 of Schedule 3 to the 2003 Regulations. Paragraph 1(2)(c) of that Schedule requires the Notice to contain "a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works". Mr Stevenson accepted that the figure of £1884.03 was not the estimated cost of the works. Mr Stevenson accepted the estimated cost of those works for Whitley Close was £120,521.16 (inclusive of VAT and builders works costs. This figure was taken from his report to the Asset management panel held on 6th November 2008.

64. The Applicant's letter of 6th February 2009 letter received a considerable number of written responses by letter and e-mail. Mrs Turner of 90 Whitley Close in her letter dated 8th February 2009 (bundle page 206) made a very similar point (among others) when she said:

> "My husband and I would like to see copies of the estimates and a breakdown of the actual costs that A2 Dominion received before settling on the above estimate [£1184.03 per leaseholder] there was more than one tender for the work wasn't there?
>
> We as leaseholders need this information to make an informed decision
>
> I am also concerned this matter was not raised at the last residents meeting (which we receive regular newsletters) in January 2009"

65. Ms C Kavanagh of 145 Whitley Close also asked for the name of the company that would be carrying out the work and "a total breakdown of cost" in her letter of 2nd March 2009 (page 239). Miss J Allen made a similar point questioning how the total cost of the works was made up in her letter of 4th March 2009 sent by e-mail (pages 243-244).

66. Other lessees questioned whether the figure of £1884.03 was individual cost for the work or a proportional cost to the block – see for example Miss Gaskin of 176 Whitley Close (page 220). A similar point was made by Mr Andrew Johnston of 88 Whitley Close in his letter of 27th February 2009 (page 236). He complained that "the cost [of the works] had been communicated in a very ambiguous and unclear

manner" as the figure of £1884.03 did not specify whether this was to the property block or road. Mr Johnston also asked whether a claim had been made upon insurance as he had been told by telephone by the Applicant) the work was necessary because of vandalism. Other lessees raised this issue.

67. Many lessees' responses expressed concern about cost, lack of warning or notification, excessive costs, and alternative quotations. Most of those letters are set out in section 8 of the bundle. A standard form letter date 18th February 2009 (page 222) was signed by a number of lessees which referred to alternative quotations from "Asbestos Specialists" namely Asbestos Removal Specialists and Asbetech Limited" which the Tribunal has not seen. This letter was prepared with assistance from the NRA.

68. The Applicant prepared a response which was dated 3rd March 2009 and further response of 24th March 2009 which appears to have been sent to all lessees.

69. The lessee of 118 Whitley Close Ms Alison Middleton asserts that she did not receive the letter of 6th February 2009 (bundle page 252). She did not produce any evidence that her new address was known to the Applicant in February 2009.

The Scancross quotation

70. An alternative quotation for the asbestos works was obtained by or on behalf of Mr Tierney of 151 Whitley Close dated 23rd February 2009 (page 19 section 5 of the first bundle). That was from Scancross Environmental Services Limited. It was not in issue that these were licensed asbestos contractors. This quoted solely for asbestos removal works to that flat for £1795.00 plus VAT and an additional £195.00 plus VAT for independent air testing. There was a difference of opinion between Spencer Taylor of the NRA and Mr Stevenson about whether Scancross quotation related to works to one floor, so that the price would be split between two flats or related to each flat: see the e-mail correspondence between these individuals on 15th April 2009 at pages 21-22 of section 5 of the first bundle. The quotation speaks of "work to be carried out whilst the affected two flats are vacated for a period of one working day" and is based upon approximately 30 flats. Taking the quotation as a whole the Tribunal finds the view that the quotation is for a price of £1990.00 plus VAT to be divided between 2 flats (as there are 2 flats on each landing) amounting to £995.00 per flat excluding VAT.

71. Mr Stevenson has experience in the field of procurement. Mr Taylor and the other lessees are not professionals in this field and do not have the resources available to the Applicant. The Tribunal finds it surprising that the Applicant did not take steps to clarify with Scancross what that quotation related to. The omission to do so, lends support to the Tribunal's view about the correct meaning of that quotation.

The abortive round of consultation

72. Before the letters of 6th February 2009, the Applicant wrote to some lessees on 28th January 2009 with a similar notice of intention. This is reflected in the e-mail correspondence passing between Linda Smyth and Wendy Harris, a joint owner of 156 Whitley Close (one of the Respondents) on 29th January 2009: see pages 6-7 section 5 of Applicant's first bundle. Wendy Harris complained that the Applicant's January 2009 letter did not contain notification of precisely where the work was being carried out or that it referred to the Whitley Close development. Linda Smyth promised a further letter would be sent by the Applicant. Inexplicably, the e-mail response from Linda Smyth of the Applicant also contained the following explanation of how the asbestos works came to be required:

> "This work [i.e. asbestos works] was not known about before. Due to increased vandalism the cupboards have become a health and safety issue. Most are safe but those which are damaged are not and it is the worse (sic) type of asbestos....." (author's insertion)

The Tribunal finds that explanation of the need for the asbestos works in January 2009 to be an inaccurate account of the Applicant's knowledge of the need for such works. This however is not the principal issue before the Tribunal. Nor is the Tribunal required to focus upon whether the Applicant's conduct as a whole or within the 2003 Regulations is worthy of criticism or other sanction. The issues which the Tribunal has to decide are set out separately below.

73. Mr Stevenson's evidence was that errors in the Applicant's letters of 28th January 2009 were discovered before the letters were sent to all lessees. The Applicant did not rely upon that first round of consultation and conceded (through Mr Stevenson) that the letters were not sent to most lessees.

The commencement of the works

74. Mr Stevenson's evidence on 24th March 2010 was that 3 telephone calls had been made to the HSE about the works after the Applicant's had sent the Notice of intention on 6th February 2009. Mr Stevenson's understanding was that complaint had been made of the poor and a dangerous condition of some of the asbestos service doors. That was also his evidence in paragraph 9.1 of his witness statement at 17th February 2010 (pages 60-61 of the bundle).

75. The Applicant's case is that the HSE advised the Applicant to commence the works before the expiry of the consultation period set out in the letter of 6th February 2009. Some lessees received letters from EPS and KK dated *25th February 2009* saying that asbestos works would commence on 3rd March 2009: (see page 258 – the e-mail from Mrs Turner of 26th February 2009 referring to such a letter). The Tribunal has not been shown the letters from EPS/KK. It is common ground and the Tribunal finds the asbestos works commenced on or about 3rd March 2009 and were completed on or about 24th March 2009. It is common ground that the consultation period requested was foreshortened.

Advice from and discussions with the HSE

76. Despite this issue being at the heart of the basis for seeking dispensation, no independent evidence of the advice given by the HSE was produced by the Applicant. It is also remarkable that no record of the information given to the HSE by the Applicant was produced. Mr Stevenson's evidence was that the HSE visited and approved the Applicants' approach to the asbestos works and were satisfied with the approach: see paragraph 9.2 of his statement of February 2010.

77. The Applicant sent a letter of 3rd March 2009 to all lessees saying as follows on this subject: "I write further to my letter of 6th February 2009 and advice received from the Health and Safety Executive (HSE). It has been found necessary to start work on the electric/gas cupboards with immediate effect" (bundle page 262). Later in that letter under the heading "Why is the work starting before 9th March 2009?" it was said "The HSE Code states that as the electrics/gas cupboards are in constant use, they are classified as an immediate risk regardless of whether any physical damage has occurred to them". A copy of the Code relied upon was not produced. As one of the lessees commented in her letter, if this was the applicable Guidance the asbestos cupboards would have been classified by the HSE as an "immediate risk" long before the works were carried out, certainly by September 2008, if not earlier.

78. A similar account was given on behalf of the Applicant in Linda Smyth's e-mail of 5th March 2009 to Mrs Emma Turner (page 254 Bundle) where she said "Following the advice received from the Health and Safety Executive it has been necessary to start the work with immediate effect".

79. This reason for shortening the consultation period was slightly different from that given by Mr Stevenson in his evidence, namely the complaint of the dangerous condition of the asbestos by anonymous residents.

80. Further light is shed on what occurred in this period by an e-mail dated 15th February 2009 from Gerard Higham of KK to Marcus Cox of EPS (copied to Mr Stevenson) about the asbestos works to be found at section 5 page 20 of the first bundle. In that e-mail Mr Higham of the asbestos contractors said as follows "Further to my site meeting with Colin, please find detailed below our proposed schedule for Phase [the asbestos works stating (sic) on 2nd March [2009]" (author's insertions). This indicates to the Tribunal that as early as 15th February 2009, shortening of the consultation period was being seriously contemplated.

81. Despite the Tribunal's misgivings about this issue and the apparently conflicting pieces of information given by the Applicant at the time, the Tribunal finds on the balance of probabilities that the Applicant *believed* that the effect of the HSE advice was that it had to start the asbestos works on 3rd March 2009.

82. The Applicant has not persuaded the Tribunal of the precise content of the advice given by the HSE in relation to the works or when that advice was given. The Applicant's omission to produce any records about information provided to the HSE or as to the HSE's view as to the effect of its code of practice or guidance means the Tribunal is unable to be satisfied that the Applicant's evidence about this issue is accurate. The Tribunal bears in mind that the Applicant (or its employees) had been sloppy and inaccurate in providing information about the works given in its e-mail of 29th January 2009. The Tribunal was unimpressed by the Applicant's reticence in the provision of documents and information relating to the asbestos works even after the Tribunal's directions to that effect had been issued. The Tribunal also heard evidence from Mr Stevenson and Mr Michaud about these issues. Although the honesty of either witness is not in issue, the Tribunal is far from satisfied that it has been given the full picture about communications between the Applicant and the HSE or the reason for the early start of the works.

Reasons for conclusions

83. The Tribunal turns to consider how its findings of fact impacted upon the issues.

Issue no 1. Was there a qualifying long term agreement ("QLTA") within the meaning of section 20ZA(2) of the 1985 Act in force at the date the works were carried out or at some earlier date?

84. Until the hearing on 4th June 2010, the Applicant was unable to produce a document which could be described as the QLTA. The letter of intent is expressed to be "Subject to contract" as well as subject to successful leaseholder consultation. It was prepared by an experienced construction professional who was also a member of the Royal Institution of Chartered Surveyors a member of Baily Garner. The Tribunal finds the Applicant and Baily Garner would have understood that "subject to contract" ordinarily means a party does not intend to be bound or to enter into legal relations with the recipient of such a letter or document.

85. This approach is reflected in the following sentence of the first page (47 of the bundle) of that letter of intent:

> "These organisations [A2 Housing Group and Dominion Housing Group] are merging in October 2008 and as such the framework agreement which is intended to be awarded is subject to this letter will be awarded to you by the new organisation. In the interim and subject to this letter A2 Housing Group will issue preliminary documents to you to cover any work which you may carry out" [insertions added]

And in paragraph 2.2:

> "Subject to... no judicial interruption, A2 Group intends to accept your Tender and conclude the framework agreement with you."

86. The only "preliminary documents" shown to the Tribunal in relation to the asbestos works is the Purchase Order dated 04 03 2009 addressed to EPS: see the Bundle page 70. That contained the following narrative:

> "For the replacement of Asbestos Riser cupboard doors in Timber manufacture off site and decorated once fitted. All as per your quote £63,763.20

> For the safe removal of asbestos service riser cupboards under controlled conditions at Whitley Close Stanwell... All as per your quote £38,808.00

The only quotation which the Tribunal has seen which might relate to that work was that provided by EPS dated 6th November 2008 (first bundle section 5 pages 13-14).

The EPS letter of 17th June 2010

87. Neither of those documents made any express reference to the tender documents or the framework agreement. Marcus Cox of EPS has said in his letter of 7th June 2010 in relation to the letter of intent that "following the expiration of the standstill period on 14th July 2008 we carried out works in accordance with the Terms and Conditions laid out in the Tender documentation until such time as the formal contract documents were issued". The only evidence the Tribunal has seen as to the meaning of "the tender documentation" is contained in the document described as the Long Term Qualifying Agreement provided to the Tribunal under cover of the Applicant's letter of 17th June 2010. The final part of that document contains what is described as a "Tender return" priced schedules apparently prepared by EPS. Yet further towards the end of that (unpaginated) document is the "Form of tender" also described as "Tender submission" which contains illegible signatures of individuals described as Chief estimator and a Director on behalf of EPS dated 25th February 2008.

88. The Tribunal was not provided with the benefit of a witness statement from Marcus Cox of EPS. The Applicant omitted to provide the Tribunal with any details of the discussions, correspondence or reasons for the delay in formalising the agreement produced for the first time on 4th June 2010. The Tribunal does not read that letter from EPS as saying that there was a framework agreement or other long term agreement in force before the date when "formal contract documents were issued". The Tribunal reads the EPS letter as saying that such works as were carried out were upon terms that incorporated applicable terms and conditions of the Tender documentation.

89. Nor does the Tribunal read that letter from EPS as saying that EPS (or the Applicant) had agreed to waive the subject to contract condition. There is no other evidence of such a waiver: compare *RTS v Muller* [2010] 1 WLR 753 at paragraph 55.

90. The Applicant's case about this issue is summarised in the (unsigned and undated) witness statement of Steve Michaud in section 1 of the bundle. There he said:

> "The situation at the time of the works was that the cyclical works contracts had not been signed but A2 Dominion had served a letter of Intent..... on the successful contractors and has been working with the appointed contractors under the Terms of the Contract documents set out at Appendix 6"

Appendix 6 of the bundle contains print outs of excerpts from Volume One of documents described as Framework Agreements and Term Partnering Agreements. The excerpts are sections under the heading Preliminaries and the sub heading "Asbestos and Hazardous Materials and processes" (page 50). The excerpt at pages 54-58 of the bundle is a part of a framework Agreement provided as Volume Two of the A2 Dominion Planned Cyclical Works Framework Agreement provide to the Tribunal at the hearing in March 2010.

91. The most this documentation shows (or possibly shows as the Tribunal has not seen all of the relevant contractual documentation) is that EPS carried out the asbestos works upon terms that might have included some of the terms of the framework agreements. The omission to provide details of the correspondence communications or reasons for the delay in signing the documentation until 4th June 2010 (whether in witness statement form or in evidence), gives rise to the inescapable conclusion that the terms of the partially executed framework agreement produced on 4th June 2010 were not finally agreed until a date shortly before that date. Yet again the Tribunal is left with the distinct impression that was not provided with the full picture of events by the Applicant on this issue.

92. The fact that the works were carried out by EPS by reference to tender documentation by reference to the letter of intent does not necessarily mean that there was a contract or a binding agreement with EPS upon the terms of that tender documentation: *RTS v Muller* [2010] 1 WLR 753 at paragraph 47.

93. Support for the conclusion that the agreement was not in force in February or March 2009 is provided by Maynard Stevenson's letter of 22nd March 2010 recorded as follows:

> "With regards to the signed contract this is still being formalised and is currently with our solicitors Trowers & Hamlins and is due to be completed by the end of April 2010"

94. Further support for that conclusion is provided by the form of the document described by the Applicant as the Long Term Qualifying Agreement in section 4 of the bundle produced on 17th June 2010. The front sheet of that agreement bears a gap where the date should have been inserted apart from the year 2010. The signatures and seal of the Applicant bear a manuscript entry on page 16 which appears to read 264/10 possibly indicating that the seal was placed on that form in 2010. The front sheet of that part of that document entitled "Strategic brief" bears the date May 2010.

95. The Tribunal notes that none of the parties sought to argue that the date of the contract award notice or the notification under regulation 32 of the 2006 Regulations amounted to evidence of entry into a Qualifying Long term Agreement.

96. The question is whether there was a long term agreement which was entered into by the Applicant for a term of more than 12 months in force in February/March 2009 within section 20ZA(2) of the 1985 Act. The document described by the Applicant as the Qualifying Long Term Agreement in section 4 of the bundle produced on 17th June 2010 does not clearly express the date from which it was intended to commence, let alone the term for which it was due to last. The Applicant failed to establish those facts from other evidence it adduced. The Tribunal concludes that the Applicant has failed to establish that there was a binding agreement in force in February or March 2009.

97. The Tribunal is also unpersuaded there was an agreement for more than 12 months which had been "entered into" as at February 2009, even if that agreement was not a written or binding agreement. In particular the Tribunal is unpersuaded that the Letter of Intent amounts to or evidences an agreement for a term of 12 months or more, which was entered into in July 2008.

98. It is unclear whether the Applicant was seeking to argue that the Qualifying Long Term Agreement in section 4 of the bundle produced on 17th June 2010 had retrospective effect in the sense that it embraced works carried out before that date. If that was the intention, the copy of the agreement produced to the Tribunal did not say so explicitly, although some of the schedules referred to works carried out in 2009. Even if that Qualifying Long Term Agreement was intended to have that effect at the date of execution, the Tribunal is not satisfied that agreement was in force in February 2009, or in force for a period of 12 months or more at that time.

Issue number 2 - Which Schedule to the 2003 Regulations applied to the works?

99. All parties accepted that the works were qualifying works to which section 20 of the 1985 Act and the 2003 Regulations applied.

100. If, contrary to the Tribunal's finding above there was a qualifying long term agreement with EPS enabling the use of KK for the works in February or March 2009, the relevant consultation requirements are set out in Schedule 3 to the 2003 Regulations: see regulation 7(1) to the 2003 Regulations. If the framework agreement tendered for by EPS was in force in February 2009 and part of a long term agreement, the works would have been the subject to and fallen within the provisions of the Qualifying Long Term Agreement. Schedule 3 provides for considerably shortened and abridged consultation requirements, presumably to take account of the fact that there has been consultation about the terms of the Qualifying Long Term agreement. The Consultation Requirements are considered below.

101. If the Tribunal's conclusion that there was no qualifying long term agreement in force in February or March 2009 holds good, the relevant Consultation Requirements are those in part 2 of Schedule 4 of the 2003 Regulations: see regulation 7(4) to the 2003 Regulations. The Applicant accepted that the works were qualifying works where no separate public notice had to be given.

Issue No 3 Compliance with the Consultation Requirements

102. If, contrary to the Tribunal's earlier findings, a qualifying long term agreement embraced the works in February or March 2009, the material Consultation Requirements in paragraph 1 of Schedule 3 were as follows:

> "1.—(1) The landlord shall give notice in writing of his intention to carry out qualifying works–
>
> (a) to each tenant; and
> (b) where a recognised tenants' association represents some or all of the tenants, to the association.
>
> (2) The notice shall–
> (a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;
> (b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;
(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;
(e) specify–
(i) the address to which such observations may be sent;
(ii) that they must be delivered within the relevant period; and
(iii) the date on which the relevant period ends"

"relevant period", in relation to a notice, means the period of 30 days beginning with the date of the notice: article 2(1) of the 2003 Regulations.

In addition paragraphs 2 of Schedule 2 to the 2003 Regulations requires:

"2.—(1) Where a notice under paragraph 1 specifies a place and hours for inspection–

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.
(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description."

Paragraphs 3 and 4 of Schedule 3 to the 2003 Regulations provide:

"3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations
4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations."

103. Applying its finding of facts above, if there was a qualifying long term agreement in force, the Tribunal concludes the Applicant completely failed to adhere to the requirement that the Notice of Intention should contain a statement of the total amount of the expenditure estimated

by the landlord as likely to be incurred by the Applicant on and in connection with the proposed works.

104. In addition the Applicant substantially failed to have regard to the lessees' observations about costs, alternative quotations and provision of information. The letters from the Applicant in response of 3rd March and 24th March 2009 provided hardly any additional information about cost or alternative quotations or alternative methods. The start date for the works of 3rd March 2009 was being arranged as early as 15th February 2009. Even if the necessity for the actual work could not be avoided, the Tribunal is unpersuaded that the Applicant paid any significant regard to the Respondents' observations about costs. No evidence of meetings or communications to consider the impact or purport of those observations was adduced by the Applicant. The second page of Mr Michaud's witness statement in the bundle (of 19th April 2010) makes it clear that the Applicant addressed safety concerns and approached the matter on the basis that it was sufficient that the Applicant expressed its intention to take the issue of the cost to the Leasehold Valuation Tribunal.

105. Mr Stevenson's witness statement (appendix 7) similarly reflects his evidence to the effect that he approached the issue as one where the Respondents lessees were complaining about the need for the works and their costs for each lessee. There is no evidence that he or anyone else at the Applicant took any steps to reconsider whether the works could have been carried out upon a more economic basis. This is not entirely academic as the Tribunal finds the terms of the Qualifying Long Term Agreement (had it in been in force at the time) were sufficiently flexible to enable the Applicant to negotiate with EPS and KK. For example and non-exhaustively the "Strategic Brief" part of the QLTA contained provisions requiring EPS to use benchmarking to demonstrate that best value and optimum value was being obtained when using preferred specialists: see paragraph 6.4 of that Agreement produced in June 2010. Mr. Stevenson had this issue in mind as his evidence was that he regarded the Eurolag quotation as a "benchmark". The Tribunal finds that the Applicant paid hardly any regard to the observations of the lessees about costs. Had the Applicant done so, it would have at least revisited the issue of cost of the works in some way. The Applicant's responses to the observations confirm that no attempt was made to do so within the consultation period. The decision to reduce the Applicant's management charge in respect of the works referred to below appears to have been made more as an attempt to placate the Respondents' complaints about costs after that period expired. The Tribunal does not see that decision as evidence that any real regard was paid to the observations about the cost of the asbestos works themselves.

106. No evidence of steps taken to pay regard to those observations was produced by or on behalf of the Applicant.

107. The Tribunal finds that the Applicant's failure to even consider the Respondent lessees' requests for more information and alternative quotations to engage with the requests for further information about the total costs is evidence that no or hardly any regard was paid to the lessee's concerns about costs and the total costs. The Tribunal recognises that asbestos repairs may sometimes be an emotive issue because of the hazardous nature of the substance and that some of this process might need to be managed so as to retain the confidence of lessees and contractors. The Tribunal also accepts that communications with the HSE led the Applicant to believe that some works were urgent towards the end of February 2009. However the Tribunal is far from satisfied that it was reasonable in all the circumstances for the Applicant to reach that belief or that it was reasonable to dispense with these consultation requirements at an earlier stage before the belief was formed, or later.

108. In the absence of evidence that the correct address of Ms Middleton was known to the Applicant the Tribunal is not satisfied that the fact that the letter of 6th February 2009 did not reach her was a breach of the requirements in paragraph 1 of Schedule 3 to the 2003 Regulations, if they were applicable.

109. The failure to send a notice of intention to the NRA was also a non-compliance with paragraph 1 of Schedule 3 to the 2003 Regulations, if a qualifying long term agreement was in force.

Was Northlands Residents Association a recognised tenants Association for the purposes of the 2003 Regulations?

110. This issue arose very late into the proceedings on 24th March 2010 almost in passing. In the course of submissions Mr Michaud for the very first time disputed that the NRA were a recognised tenants association within the meaning of the 2003 Regulations. This dispute came as a surprise to the Tribunal and the Respondents, as the Applicant had designated the NRA as the recognised tenants association in the application for dispensation dated 16 10 2009 and the application for a decision about the payability of the costs of the work issued subsequently. The disputes had not been foreshadowed in any of the correspondence or documents produced by the Applicant.

111. Indeed, to his credit Mr Stevenson of the Applicant had engaged in an e-mail discussion with Spencer Taylor of the NRA of the Scancross

quotation on the footing that he had a legitimate interest in the matter in April 2009. As Mr Stevenson knew Mr Taylor was not a lessee of Whitley Close or a Respondent, his only interest can have been as a representative of the NRA.

112. When the Applicant's previous position on this issue was put to Mr Michaud he was driven to saying there was a distinction between recognition of the NRA for some purposes and for the purposes of the 2003 Regulations. He drew attention to the passages in an earlier edition of Aldridge's Leasehold Law (May 2004 Release 72) which pointed out that recognition could be given by a notice by the landlord to the secretary of the Association or by a certificate under section 29 of the 1985 Act.

113. Mr Michaud's position was confirmed in his statement served in section 1 of the bundle produced on 19th April 2010. He conceded that "All residents including the Secretary of the [NRA] received copies of the s20 Consultation notices in relation to the framework agreement". It is difficult to see how this can square with Mr. Michaud's comment that the letter of recognition of Airways recognising the NRA was only a recognition for the purpose of funding and involvement but not a specific application for the purposes of section 29".

114. Mr Taylor on behalf of the NRA provided a copy of the NRA constitution which had been signed by a variety of individuals including Sally Watkins a member of the Airways management team on 23rd February 2004. That document was entitled with the name of Airways. The Tribunal is satisfied that her name on that document amounted to a notice in writing given by the landlord to the secretary of the association for the purpose of section 29 of the 1985 Act.

115. Mr Taylor of the NRA (once alerted to the issue) contacted Tessa Bird the Community Involvement Coordinator at the Applicant by e-mail of 1st April 2010 whether the NRA was a recognised tenants association. She confirmed later the same day by e-mail that the NRA was a recognised tenants association: see attachments to written submissions from NRA received on 27th April 2010.

116. The Tribunal is particularly influenced the Applicant's treatment of the NRA as a recognised tenants association for the purposes of the section 20 process concerning the proposed qualifying long term agreement in 2007 and 2008. This process appears to have been carried out with some deliberation and consideration by the Applicant. Had it been the Applicant's position in 2007/2008 that the NRA was only recognised for some purposes but not others, the Tribunal would have expected there to be some evidence of the Applicant

communicating its position about the qualification or terms of recognition of the NRA. The Applicant's omission to adduce any contemporaneous evidence of the limited nature of the recognition and the omission of its position this issue from any of the Applicant's statements of case or correspondence, means that the Tribunal is unable to accept Mr Michaud's understanding of the nature of the recognition given by the Applicant of the NRA.

117. It appeared to be Mr. Michaud's position that the Applicant had not given a formal notice to the NRA under section 29 of the 1985 Act. The Applicant had not adduced copies of its correspondence (including e-mail correspondence) with the NRA over the relevant periods since 2007. The Tribunal's view was that the Applicant had treated its predecessor's signature upon the Constitution as such a document a notice. Accordingly the Tribunal finds that the NRA was a recognised tenants association.

Dispensation from Consultation Requirements if a Qualifying Long Term Agreement was in force

118. The Tribunal considers dispensation if (contrary to its finding above) there was a Qualifying Long Term Agreement in force at the time of the works. The Applicant's failures to comply with the Consultation requirements in Schedule 3 of the 2003 can be summarised as follows:

a. a failure to provide a Notice of Intention containing a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred on and in connection with the proposed works.

b. a failure to have regard to the lessees' observations about costs, alternative quotations and provision of information.

c. a failure to serve a notice of intention upon the NRA as the recognised tenants association;

d. the failure to give the full 30 days' notice before starting the works.

Principles applicable to the grant of an order of dispensation

119. The issue for the Tribunal under s.20ZA(1) of the 1985 Act is whether it is "satisfied that it is reasonable to dispense with the requirements" of consultation.

120. The current approach to this issue was explained by the President of the Lands Tribunal and N J Rose FRICS in their joint judgment in *London Borough of Camden v Leaseholders of 37 Flats at 30-40 Grafton Way* (LRX/198/2006) Lands Tribunal (11 April 2008), in the closely related context of an application to dispense with ordinary qualifying works consultation under part 2 schedule 4 of the 2003 Regulations:

> *"32. Any process of consultation consists of giving information, inviting observations and taking those observations into account, and this is what paragraphs 1 to 6 make provision for. Information has to be given to tenants at three stages – when there is an intention to carry out works, when estimates have been obtained and when a contract has been entered into. Observations from tenants are to be invited at the first two stages. Those observations must be taken into account, and the landlord's response to them must be given. This is the scheme of the provisions, which are designed to protect the interests of tenants; and* ***whether it is reasonable to dispense with any particular requirements in an individual case must be considered in relation to the scheme of the provisions and their purpose.***
>
> *33. The principal consideration for the purpose of any decision on retrospective dispensation must, in our judgment, be whether any significant prejudice has been suffered by a tenant as a consequence of the landlord's failure to comply with the requirement or requirements in question. An omission may not prejudice a tenant if it is small, or if, through material made available in another context and the opportunity to comment on it, it is rendered insignificant. Whether an omission does cause significant prejudice needs to be considered in all the circumstances.* ***If significant prejudice has been caused we cannot see that it could ever be appropriate to grant dispensation.*** *..."* (emphasis added)

121. This approach was approved by Lord Justice Carnwarth and Mr Rose sitting as the Upper Tribunal (Lands Chamber) in *Daejan v Benson* [2009] UKUT 233 (LC), (27 November 2009 at paragraph [**40**]). The Upper Tribunal held the Leasehold Valuation 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" (paragraph [**43**]). Also, in paragraph [**43**] it was explained:

"... 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, as happened in Grafton."

122. The Tribunal finds this approach is applicable to all parts of the 2003 Regulations not simply Schedule 4. The Applicant did not seek to argue to the contrary. The Tribunal bears in mind that the issue is not whether the Applicant should be punished or receive a sanction for any non-compliance with the consultation requirements: see *Eltham Properties Ltd v Kenny* (December 3, 2007) (Lands Tr). The reasonableness of dispensation is to be judged in the light of the purpose for which the consultation requirements were imposed.

123. If contrary to the Tribunal's findings there was a QLTA in force in February 2009, the Tribunal finds the Respondents suffered significant and irremediable prejudice as a result of the Applicant's failure to provide a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred in connection with the proposed works. This failure to comply with the whole of an important part of Schedule 4 completely undermined the Respondent's ability to make constructive observations upon the cost of the works and the method by which they were carried out.

124. At the time the Notice of Intention was sent on 6th February 2009, there was no immediacy or urgency which could explain or justify this omission. The need for the works had been known about since at least September 2008 probably earlier. This was the second attempt at issuing a Notice of Intention as the first attempt had been aborted through failures to provide a Notice which complied with the requirements of Schedule 4 to the 2003 Regulations.

125. It is clear that many of the Respondents would have been interested in obtaining their own quotations for the works. They were handicapped in their ability to do so as no individual lessee knew (and were not informed when they asked for that information) of the total costs. The Scancross quotation shows that the Respondents attempted to obtain alternative quotations. The correspondence with Mr Stevenson about that quotation reveals the Respondents or NRA on their behalf could not effectively make observations about that quotation and the KK quotation because they did not know the value of the quotation they were trying to better or equal. Mr. Stevenson's objection to the cost or price of the Scancross quotation in April 2009 shows that the Respondents were unable to effectively debate the validity of their

quotation. Mr Stevenson had access to the total costs of the works but the Respondents did not.

126. This is not an academic issue. It is apparent from the Eurolag quotation that a cheaper method of carrying out the same works was available. Had the Respondents been given a sufficient opportunity to have access to the total cost of the works they might have been in a position to make observations upon such a method. It is also apparent from the Respondents' observations that some were elderly and with limited or low incomes and would have been keen to consider any steps which would have reduced the costs of the works to them.

127. The Applicant's failure to pay regard to the observations which were made by the Respondents meant that they did not provide the information required or engage in a process which enabled meaningful consultation to take place (in the sense of exchanging information to enable a reasoned debate to take place). This caused the Respondents significant prejudice as they were unable to discover that a cheaper method of work was available and to investigate whether at least some of the works to the flats could have been carried out by the lessees leaving their accommodation for at least a day, as the Eurolag quotation envisaged.

128. The Applicant did not seek to argue that the discovery of vandalism or leaking or broken asbestos in February 2009 justified the Applicant's failure to provide a statement of the total amount of the expenditure estimated as likely to be incurred in connection with the proposed works, or its failure to have regard to the observations tendered by the Respondents.

129. The Applicant was a comparatively large organisation, fully aware of its obligations under the 2003 Regulations and with significant financial and other resources. The Applicant had consciously tried to arrange its affairs so that the less onerous provisions of Schedule 3 to the Regulations applied rather than Schedule 4. Mr. Michaud explained to the Tribunal that he had provided written guidance to others in the section 20 consultation process. He had detailed professional knowledge of the provisions of the Regulations. If a Qualifying Long Term Agreement had been in force, the Tribunal would not have considered it reasonable to grant dispensation for the Applicant's failure to provide a statement of the total amount of the expenditure estimated as likely to be incurred or its failure to have regard to the observations received by the Respondent lessees.

130. The Tribunal is not persuaded the failure to consult the NRA itself caused any significant prejudice, as it is apparent that the NRA

provided standard letters to enable many lessees to make their objections. The Tribunal infers that the NRA was actually involved in the process of making observations in response to the proposed works. Given the paucity of the information and shortness of time available the NRA appears to have performed reasonably well in that process.

131. The Tribunal is not persuaded that the shortening of the period by about one week, so that works started on 3rd March 2009 caused the Respondent lessees any significant prejudice. The other failures to comply with consultation requirements were the cause of the significant prejudice to the Respondents.

Dispensation from Consultation Requirements if no Qualifying Long Term Agreement was in force

132. The Tribunal turns to consider whether any of the Consultation Requirements in the 2003 Regulations should be dispensed on the basis of its finding that that no Qualifying Long Term Agreement was in force at the time of the works.

133. It was common ground the proposed asbestos works were qualifying works within the meaning of section 20ZA and the 2003 Regulations. Accordingly, the relevant consultation requirements are those set out in part 2 of Schedule 4 to the 2003 Regulations (see paragraph 7(4)(b) of the Regulations). Those consultation requirements are summarised below.

134. In outline, the Applicant was required to take the following steps under part 2 of Schedule 4 to the 2003 Regulations:

(a) to give a notice of intention to carry out the works, describing them in general terms, and inviting observations (paragraphs 1 to 3);

(b) to obtain estimates, and provide a "paragraph (b) statement" setting out the amount of at least two of the estimates; and a summary of any observations received, and the Applicant's response; and invite further observations (paragraphs 4 and 5); and

(c) following entering into a contract for the works, serve a notice of the reasons for doing so (paragraph 6).

135. The protection that Parliament decided to give to leaseholders in relation to qualifying works and this consultation process provides for two separate stages at which the lessees' observations must be invited.

136. The Tribunal finds many of the Respondents would have been very interested in obtaining their own quotations for the works. The Scancross quotation clearly shows that the Respondents were interested in such course and would have engaged with such a process had they been given the opportunity. The NRA and Mr Taylor would have assisted in that process whether or not the NRA were formally entitled to be consulted under part 2 of Schedule 4 of the 2003 Regulations. Mr. Stevenson's evidence was that he regarded the Eurolag quotation as a benchmark for the KK quotation. Having heard Mr Stevenson give evidence, the Tribunal finds he would have provided that quotation (or some similar quotation) as an estimate under the consultation process under Schedule 4 to the 2003 Regulations had he been aware that the Applicant was required to do so. Mr Stevenson was a professional who was content to debate his decisions rationally and dispassionately.

137. The nearly complete failure of the Applicant to comply with the requirements in Schedule 4 to the 2003 Regulations meant the Respondents were severely prejudiced in the process of attempting to obtain alternative quotations and in effectively making observations about the KK quotation. The Respondents were given insufficient time and information to enable alternative quotations to be prepared or for their views to be considered and taken into account. The Respondents also did not have the benefit of considering the Applicant's response to their observations so that they could argue that the method proposed for the execution of the works was inappropriate or could be reconsidered on cost or other grounds. This is of significance as for example had they been aware in sufficient time of the perceived uncertainty about the costs of the Scancross quotation, the precise cost could have been clarified with that contractor during the consultation process, rather than been the subject of speculation in e-mail correspondence after the works had been completed.

138. In the Tribunal's view it is not a sufficient response on this issue for the Applicant to say (as it appears to be saying) that it always believed there was a QLTA in force. That appeared to be the gist of Mr Michaud's evidence. The Tribunal is unable to accept that as a ground for dispensation. The reasonableness of that belief has not been tested or evaluated against the background of the negotiations and discussions which the Applicant was undertaking with EPS and others. It is apparent from Mr Stevenson's evidence that the Applicant was in

receipt of legal advice from Trowers and Hamlins solicitors with considerable experience in the social housing field and in these kinds of agreements. Those solicitors had been involved in preparing the framework agreements concerning the Decent Homes work for the bedsit accommodation. No evidence was adduced as to the solicitors' perspective on these issues. Whilst the Tribunal appreciates that whilst some of the information they might have given might have been the subject of legal professional or other privilege, this was not put forward by the Applicant as a reason for not disclosing any of the relevant details of the negotiations or information leading up to the signing of the QLTA in February 2009 or at any later date.

139. As the Tribunal was not informed of the reason for the delay in the execution of the Qualifying Long Term Agreement until about June 2010, the Tribunal is not in a position to infer that as a matter of fact the Applicant believed that such a QLTA was in force. The EPS letter dated 7th June 2010 does not provide much support for the contention that there were reasonable grounds for such a belief. If that belief had been based upon reasonable grounds, the Tribunal infers it would have seen evidence to support that belief in the context of a framework agreement with EPS and others concerning many millions of pounds of works over a long period. The negotiation process and any delay in the execution would have been closely documented. The Applicant's omission to provide evidence about this process despite the Tribunal's expressed concerns leaves the Tribunal with considerable doubt as to what actually occurred.

140. In the circumstances the Tribunal is not satisfied that it was reasonable to dispense with the consultation requirements of Schedule 4 on the ground that the Mr Michaud and other senior executives at the Applicant believed that there was a QLTA in force.

141. Further the Tribunal is not satisfied that it was reasonable to dispense with the consultation requirements of Schedule 4 because it had believed the HSE required the works to take place before the end of the Consultation process in Schedule 3. The Applicant has failed to satisfy the Tribunal as to the advice given by the HSE. Even if (contrary to the Tribunal's finding) the HSE had given advice at some point in February 2009 which required the work to be carried out immediately with full knowledge of the circumstances, the Tribunal would not have considered it reasonable to dispense with the Consultation Requirements. The need for works had been known of since at least the middle of September 2008. The Applicant or its predecessors had plenty of opportunity to take advice internally or externally as to the Consultation Requirements and to address the

possibility that vandalism might occur, as similar issues had been reported in the past.

142. The Tribunal is wholly unpersuaded that the occurrence of a report of vandalism and the HSE's response to such vandalism in February 2009 makes it reasonable for the Applicant's earlier failures to apply the Consultation Requirements to be dispensed with.

143. For the reasons set out above, even if the QLTA had been in force, the Applicant failed to comply with the requirements that applied under Schedule 3 and caused the Respondents significant prejudice. Non-exhaustively, the Tribunal finds the Eurolag quotation is evidence that a cheaper method of carrying out the same works could have been obtained by the Respondents. Had the Respondents been given a sufficient opportunity they might have been in a position to make observations upon such a method.

144. In addition, the Applicant's failure to comply with part 2 of Schedule 4 to the 2003 Regulations meant the Respondents were prejudiced because they did not know the real cost of the works they were trying to better or equal when they were seeking alternative estimates. Mr. Stevenson's objections to the cost or price of the Scancross quotation in April 2009 shows that the Respondents were unable to effectively debate the validity of their quotation, because only Mr. Stevenson and the Applicant had access to the total costs of the works. The Respondents did not have access to that information.

The Reasonableness of the cost of the works

145. The Tribunal turns to consider whether the costs of the work were reasonably incurred under section 19 of the 1985 Act. This issue is entirely separate from compliance with the Consultation Requirements. The costs incurred can be broken down into three parts. (1) KK's costs; (2) EPS's supervision costs as main contractor; and (3) The Applicant's management costs. If the costs do not satisfy the tests of payability or reasonableness in sections 27A and 19 of the 1985 Act they are not payable, or some of the relevant costs are not payable irrespective of compliance with Consultation Requirements.

Reasonableness of Costs of asbestos works

146. The first issue considered in large part above was whether KK's costs were reasonably incurred. This entails consideration of two separate questions. Firstly whether the Applicant's actions were appropriate in accordance with the provisions of the Lease, the RICS code and the 1985 Act. Secondly whether the amount charged was reasonable in

the light of that evidence: see *Forcelux v Sweetman* [2001] 2 EGLR 173. The Tribunal bears in mind that the RICS Service Charge Management Code (First edition) is expressed not to apply to Registered Social Landlords. However Mr Michaux accepted in his evidence to the Tribunal that the Code represented a distillation of good practice in relation to service charges and repairs. He also accepted that the provision of the Code provided some guidance to the Tribunal as a means of measuring or assessing the reasonableness of service charge items such as management charges by enabling comparison to be made with good practice in the private sector. The Applicant did not submit that there was any reason of principle of practice why the Tribunal should not take this approach in the circumstances of this case.

147. The Tribunal accepts that the cost of the asbestos removal works and the associated costs of rebuilding the riser cupboards were works within the Applicant's repairing obligations in clause 5(2) of the Lease. The Tribunal also finds the reasonable costs of those works were chargeable to individual lessees as service charges with paragraph 1 of the Sixth Schedule to the Lease.

148. The Tribunal is not persuaded that the costs incurred by paying KK for asbestos works in accordance with its quotation were reasonably incurred. It is not persuaded these costs were a reasonable sum to pay for the asbestos removal costs. The Eurolag quotation suggests that further discounts on the price for those works were available had different methods of removing the asbestos been considered. On 4th June 2010, Mr Stevenson accepted that had the Eurolag quotation been accepted, the cost to each property held by the Respondents would have been reduced by a sum in the region of £250.00, before management costs were taken into account. The Tribunal does not need to go as far as to say that the Eurolag quotation was cheaper or satisfactory. The Tribunal finds that the Applicant failed to take steps to investigate whether it was feasible to require lessees, given sufficient notice, to absent themselves from blocks of the flats so that a contractor (whether Eurolag or some other contractor) could have completed the removal works quicker and more economically.

149. Mr Taylor on behalf of the Respondents suggested in cross examination of Mr Stevenson on 24th March 2010 that other contractors such as Connaught (one of the existing framework contractors), could have been approached for a quotation for the asbestos and associated building works. The gist of Mr Stevenson's response to this was that he had no business relationship with Connaught and that he wished to improve and "embed" a relationship with EPS as a nominated framework partner under the QLTA. The

Tribunal understands this approach which would have been consistent with his understanding of the QLTA, had such an agreement been in force in February 2009 or earlier. However the Tribunal's reading of the "Strategic Brief" (paragraph 64) and the QLTA that was eventually produced in evidence was that a contractor such as EPS was required to demonstrate benchmarking. In the circumstances EPS could hardly complain if a quotation or estimate had been obtained from another contractor which might have shown a cheaper method of carrying out the works. The Tribunal concludes that the failure to obtain quotations or estimates from other contractors to test the market price for the works, and the failure to use the Eurolag quotation as a basis for exploring a reduction in price with EPS means that the Tribunal is not satisfied these costs were reasonably incurred.

150. However in the absence of other quotations, the best that the Tribunal is able to do is to say that the cost of the asbestos works to reach of the Respondents would have been reduced by £250.00. Correspondingly the costs charged by EPS (the managing contractor) and the Applicant, and the VAT on all of these costs would have been reduced as they charged by percentages. Doing the best it can from evidence given at the Tribunal by Mr. Stevenson about the cost of the works the Tribunal calculates that the reasonable cost for the asbestos removal work (excluding the associated building works) would have been in the region of £600.00 per Flat, and that the total costs including building works, main contractor's fees, Applicant's management fees (as reduced in accordance with the Tribunal's decision) and VAT for each Respondent would have been in the region of £1250.00 for each property. This is necessarily an estimate based upon the differing calculations discussed in the course of the hearing and the Tribunal's assessment of what adequate negotiation with the various contractors could have achieved on the price of the works.

The Applicant's management charges for asbestos and associated works

151. The second issue considered in the course of the hearings was the management charge in respect of the works charged by the Applicant. Initially a 15% management charge was proposed: see the report to the Asset Management Panel in November 2008 at page 68. This was later reduced to 10% in the light of the responses received to consultation. The Tribunal finds that a charge for the Applicant's management costs may be made under clause 1(1)(h) of the Sixth Schedule to the Lease, subject to the statutory test of whether that cost was reasonably incurred or the services were of a reasonable standard. The reasonableness of such a fee had to be considered against the background of flat management fee of £205 per annum

charged in that service charge year by the Applicant for each of the lessees for other services. The Tribunal put to the Applicant the analogy of the RICS Service Charge Management Code (1st edition) which generally speaking discouraged the calculation of management fees based upon a percentage, as a disincentive to reduce costs. Ultimately it is the total figure which is of significance, not necessarily the method of calculation. Mr Michaux's evidence on this issue (which the Tribunal accepts) was that the Applicant's management fee charged to each of the Respondents for the asbestos works was £142.00.

152. The Tribunal finds that given its finding that the Consultation Requirements of the 2003 Regulations were not complied with in respect of the works in the circumstances a 10% fee for management charges for the asbestos works cannot be justified. The management of these works was carried out in a manner which did not comply with the Applicant's statutory obligations or at a cost which the Tribunal has found to have been reasonably incurred. The Tribunal takes into account its finding in relation to the Applicant's poor administration of the possibility of insurance claims set out below. The management services provided by the Applicant were not to a reasonable standard. It is always difficult to assess the residual value of management services in such circumstances. Doing the best it can, the Tribunal values those services at 5% of the costs of the works had they been carried out at reasonable cost - a figure of £71.00 for each lease.

153. The issue then arose as to whether it was reasonable to base the Applicant's management fee calculated as a percentage of the works upon the VAT element of the cost of those works charged by EPS and then charge VAT on the Applicant's fees. That appeared to be the basis of the calculation of the Applicant's management charge: see the report to the Asset Management Panel in November 2008 at page 68. The Applicant conceded at the hearing on 24th March 2010 that such a method of calculation would not be reasonable and agreed to modify its charge so as to only charge 10% on the pre-VAT element of the EPS contractor's costs. The Tribunal finds that such an approach is reasonable and must apply to its finding of 5%.

Availability of insurance cover to meet the cost of the works

154. A third issue about the reasonableness of the cost was the extent to which any of the cost of the works could be recovered from the insurance policy covering the properties. This was of relevance as it was the Applicant's case that the need for works to some of the properties had been brought about by vandalism. This issue was raised by Mrs. Kavanagh in her letter to the Applicant of 2nd March 2009 (page 238 of the bundle). The Applicant said that it was "awaiting

clarification" from its insurers as to "whether these works would be covered" in its letter of 3rd March 2009 to all lessees (page 263 of the bundle). The Tribunal was surprised to discover that this did not appear to have been followed up by the Applicant. Following the hearing on 24th March 2010 when this issue was raised, the Applicant produced a series of e-mails passing between Mark Gilbert the Group Insurance manager of the Applicant and its insurers Zurich in April 2010 at section 11 of the bundle. Those e-mails suggest that the gist of the insurance cover was made clear to the NRA in about April 2009. The Applicant was unable to produce any of the e-mails said to have been sent to the NRA at that time.

155. These e-mails assert that the Applicant believed it made a claim in respect of the asbestos works in 2009. However neither the Applicant nor the insurer was able to find any evidence that a claim was made. Unsurprisingly the insurers disputed liability on the footing that the asbestos works were necessitated by wear and tear or "upgrade" as it was put in the Applicant's e-mail of 01 04 2010 (page 308) . It was also pointed out that there was a £5,000 excess for each unit. Steve Michaux's evidence on 4th June 2010 was that "each unit" in this context was each block of the flats.

156. The Applicant's evidence to the Tribunal was that it had reported the incidents of vandalism in respect of asbestos to the police. Steve Michaux's evidence was that the very reason for the "emergency" and the request for dispensation was the vandalism. In the context of insurance however, he seemed to think that only 3 asbestos doors were "ripped off". Mr Michaux on behalf of the Applicant said that he remained content to see if any of the lessees would benefit from a claim on the insurance policy. It also appears from the correspondence that it is open to individual lessees to make a claim on the insurance directly without the intervention of the Applicant. Unfortunately the Applicant has not produced a copy of the policy (only a summary of cover and policy leaflet) so the Tribunal is unable to express a firm view about this.

157. The Tribunal has considered this issue anxiously. Ultimately although the Applicant's response to investigating the availability of insurance and processing a claim on behalf of the Respondents issue was less than satisfactory in some respects, by itself this does not necessarily mean that the costs of the works were not reasonably incurred.

158. In the light of Mr Michaud's concession about the Applicant's willingness to continue to investigate the availability of insurance cover the Tribunal does not need to reach a final view on this issue. It remains open to the Respondents to challenge costs charged for

asbestos works and associated works on this ground should it transpire that insurance cover is available, or would have been available had a claim been processed adequately or promptly by the Applicant. Paragraph 16 of the Service Charge Management Code (1st edition) provides helpful guidance as to the standard of service expected from a landlord and managing agent in a similar context in the private sector.

Costs

159. The Applicant did not oppose the Tribunal making an order that they pay the costs of Spencer Taylor, of Northlands Residents Association under paragraph 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002 on the ground that the hearing of the two applications made by the Applicant had been unnecessarily adjourned by the failure of the Applicant to produce timeously copies of (a) the relevant partnering and framework agreements alleged to be part of the long term qualifying agreement (b) the letter of intent dated 2nd July 2008 (c) the signed copy of the alleged qualifying long term agreement and (d) copies of potentially relevant insurance documents. Those costs were assessed by consent at £300.00 to include loss of earnings taken as holiday.

160. The Applicant did not oppose the Tribunal making an order that the Respondent's costs incurred in connection with the hearings before the Tribunal on 20th January 2010, 24th March 2010, 4th June 2010 (to include any written submissions upon any of those hearings) shall not form part of service charges recoverable under the Lease from any of the Respondents, pursuant to section 20C of the 1985 Act.

Fees

161. The Applicant did not seek an order for reimbursement of its hearing and application fees.

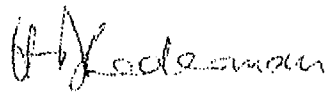
Submissions on behalf of the Respondents

162. The Tribunal has received written submissions on behalf of the Respondents which were also served upon the Applicant including those received on 3rd March 2010, those received on 27th Apil 2010 entitled "Dispensation of consultation and reasonableness of costs Response from NRA" and on 9th June 2010. The Tribunal has taken those submissions into account in reaching its decision. Where the Tribunal does not comment on each and every point or argument advanced in those submissions, it should not be thought they have not

been considered. This written decision attempts to focus upon the more significant points.

Conduct of the hearings by the Respondents

163. The Tribunal cannot leave this decision without expressing its disappointment and regret that the Applicant was unable or unwilling to produce all relevant documents and witness statements at the first or even the second hearing of these proceedings. The result has been a disorganised and disruptive presentation of the Applicant's case which does no credit to its organisation, its employees or its lessees.



Dated this 18th October 2010

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HD Lederman, (Lawyer Chairman)

Schedule 1

Names and addresses of Respondents

Asbestos & pre Builders Work		Block %	Lin Recharge	Fees 15%	Sub Total	VAT @ 15%	Total	house no	street	property type desc	tenure type desc	title	corr address	corr address 2	corr address 3	scheme id code
£10,735.20	£17,712.00															
								82	Whitley Close	Flat	Permanent	Mr K Beary				022201
								84	Whitley Close	Flat	Permanent	Mr G Hendley				022201
								86	Whitley Close	Flat	Permanent	Ms A Smith				022201
		5.00%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	88	Whitley Close	Flat	Leasehold	Mr A Johnston	88 Whitley Close Stanwell Staines TW19 7EZ			022201
		5.00%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	90	Whitley Close	Flat	Leasehold	Mr A & Mrs E Turner				022201
		5.00%	£1,424.60	£213.69	£1,633.29	£245.74	£1,884.03	92	Whitley Close	Flat	Leasehold	Mr J Moore	92 Whitley Close Stanwell Staines TW19 7EY			022201
		5.00%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	94	Whitley Close	Flat	Leasehold	Mr GS Fisher	94 Whitley Close Stanwell Staines TW19 7EY			022201
								96	Whitley Close	Flat	Permanent	Mrs M Shinners				022201
								98	Whitley Close	Flat	Permanent	Mr C Dizzel				022201
		5.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	100	Whitley Close	Flat	Leasehold	Ms J Lasdo	100 WHITLEY CLOSE STANWELL STAINES MIDDX TW19 7EY			022201
		5.50%	£1,424.50	£213.69	£1,635.29	£345.74	£1,884.03	102	Whitley Close	Flat	Leasehold	Mr CJ & Mrs AM Taylor	102 Whitley Close Stanwell Staines TW19 7EY			022201
								104	Whitley Close	Flat	Permanent	Miss S Robinson				022201
								106	Whitley Close	Flat	Permanent	Mr B Hone	108 WHITLEY CLOSE STANWELL STAINES MIDDX TW19 7EY			022201
								108	Whitley Close	Flat	Permanent	Mr I Radcliffe				022201
		5.20%	£1,424.60	£213.69	£1,635.29	£245.74	£1,884.03	110	Whitley Close	Flat	Leasehold	Mr R Smith	110 Whitley Close Stanwell Staines TW19 7EY			022201
								112	Whitley Close	Flat	Permanent	Mr J Hook & Miss K Hooper				022201
								114	Whitley Close	Flat	Permanent	Miss A Evans				022201
								116	Whitley Close	Flat	Permanent	Miss S Smith				022201
		5.00%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	118	Whitley Close	Flat	Leasehold	Ms A Maddison				022201
								120	Whitley Close	Flat	Permanent	Mr M Fleece				1958A
£4,312.06	£7,064.65															
		12.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	122	Whitley Close	Flat	Leasehold	Mrs B Oxfield	122 Whitley Close Stanwell Staines TW19 7EY			022202
								124	Whitley Close	Flat	Permanent	Mr E Zakaria				022202
		12.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,834.03	126	Whitley Close	Flat	Leasehold	Ms CE Purkiss & Mr AA Soure	126 Whitley Close Stanwell Staines TW19 7EY			022202
		12.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	128	Whitley Close	Flat	Leasehold	Ms Leonor Amaro Sancha	128 Whitley Close Stanwell Staines TW19 7EY			022202
		12.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	130	Whitley Close	Flat	Leasehold	Mrs EA Thatcher	130 Whitley Close Stanwell Staines TW19 7EY			022206
		12.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	132	Whitley Close	Flat	Leasehold	Mr S Fela	132 Whitley Close Stanwell Staines TW19 7HA			022202
		12.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	134	Whitley Close	Flat	Leasehold	Mr AK Josh	134 Whitley Close Stanwell Staines TW19 7EY			022202
		12.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	136	Whitley Close	Flat	Leasehold	Mr B Humas	136 Whitley Close Stanwell Staines TW19 7EY			
£4,312.00	£7,084.82		£3,547.60													
								138	Whitley Close	Flat	Permanent	Mr W.H Hanvers				022203
								140	Whitley Close	Flat	Permanent	Mr G Bishop	140 Whitley Close Stanwell Middlesex TW19 7EY			022203
		12.50%	£1,424.60	£213.69	£1,633.29	£245.74	£1,834.03	142	Whitley Close	Flat	Leasehold	Ms L Williams	142 Whitley Close Stanwell Staines TW19 7EY			022203
		12.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	144	Whitley Close	Flat	Leasehold	Miss N Clark				022203
		12.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	146	Whitley Close	Flat	Leasehold	Mr T Bowie	146 Whitley Close Stanwell Staines TW19 7EY			022203
		12.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	148	Whitley Close	Flat	Leasehold	Mr Ryan	148 Whitley Close Stanwell Staines TW19 7EY			022203
		12.50%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	150	Whitley Close	Flat	Leasehold	Mrs BJ Simmons	150 Whitley Close Stanwell Staines TW19 7EY			022203
		12.50%	£1,424.60	£213.66	£1,638.29	£245.74	£1,884.03	152	Whitley Close	Flat	Leasehold	Mr A R Oxford	152 Whitley Close Stanwell Staines TW19 7EY			
£2,158.80	£3,542.40															022204
		25.00%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	154	Whitley Close	Flat	Leasehold	Mrs V Xorn	154 Whitley Close Stanwell Staines TW19 7EY			022207
		25.00%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	156	Whitley Close	Flat	Leasehold	Mr A Hawkins & Mrs W Harris	82 Truman Green Avenue Virginia Water GU25 4EP			022204
		25.00%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	158	Whitley Close	Flat	Leasehold	Mr K R Mitchell	158 Whitley Close Stanwell Staines TW19 7EY			022204
								160	Whitley Close	Flat	Permanent	Mrs GM Bere				
£6,462.00	£10,602.??															
								162	Whitley Close	Flat	Permanent	Mrs G. Wares				022205
								164	Whitley Close	Flat	Permanent	Mr D Hoda				022205
								166	Whitley Close	Flat	Permanent	Miss A Antoine & Mr E Lloyd	166 Whitley Close Stanwell Staines TW19 7EY			022205
		8.33%	£1,424.03	£213.60	£1,637.63	£245.65	£1,883.28	168	Whitley Close	Flat	Leasehold	Mr K Robinson	33 Clare Road Stanwell Staines Middlesex TW19 7QQ			022205
								170	Whitley Close	Flat	Permanent	Miss P Cannard				022205
								172	Whitley Close	Flat	Permanent	Mr L C Merritt				022205
								174	Whitley Close	Flat	Permanent	Mr A H Tanner				022205
		8.33%	£1,424.03	£213.60	£1,637.63	£245.65	£1,883.28	176	Whitley Close	Flat	Leasehold	Miss M Caskin				022205
								178	Whitley Close	Flat	Permanent	Mr DG & Mrs Q Keen				022205
		8.33%	£1,424.03	£213.60	£1,633.63	£245.65	£1,883.28	180	Whitley Close	Flat	Leasehold	Miss M Phelan				022205
								182	Whitley Close	Flat	Permanent	Miss L Sebastian				022204
		8.33%	£1,424.03	£213.60	£1,637.63	£245.65	£1,883.28	184	Whitley Close	Flat	Leasehold	Miss J M Allen	184 Whitley Close Stanwell Staines TW19 7EY			
£8,624.00	£14,169.60															
		8.25%	£1,424.60	£213.69	£1,638.29	£245.74	£1,884.03	123	Whitley Close	Flat	Leasehold	Mr D A Herbert	123 Whitley Close Stanwell Staines TW19 7EY			022202
								125	Whitley Close	Flat	Permanent	Mrs F Gozzard				022206
								127	Whitley Close	Flat	Permanent	Miss N Buckland & Mr Q Simpson				022204
		6.25%	£1,424.60	£122.80	£1,638.29	£245.74	£1,884.03	129	Whitley Close	Flat	Leasehold	Mr L Delaney	129 Whitley Close Stanwell Staines TW19 7HA			022206
								131	Whitley Close	Flat	Permanent	Mrs S.E Hitchen				
								133	Whitley Close	Flat	Permanent	Mrs A Tarbet				022206
		6.25%	£1,424.60	£122.80	£1,638.29	£245.74	£1,854.03	135	Whitley Close	Flat	Leasehold	Mr D Parley	136 Whitley Close Stanwell Staines TW19 7HA			022206
								137	Whitley Close	Flat	Permanent	Mr Q Coles				022206
								139	Whitley Close	Flat	Permanent	Mrs M Mccure				
		6.25%	£1,424.60	£122.50	£1,638.29	£245.74	£1,884.03	141	Whitley Close	Flat	Leasehold	Mr E Maynard	141 Whitley Close Stanwell Staines TW19 7HA			022206
								143	Whitley Close	Flat	Permanent	Mrs G O Shaughnessy				022206
		6.25%	£1,424.60	£122.80	£1,638.29	£245.74	£1,884.03	145	Whitley Close	Flat	Leasehold	Mr PJ Gallagher & Ms CR Kavanagh	145 Whitley Close Stanwell Staines TW19 7HA			022206
		6.25%	£1,424.60	£122.80	£1,638.29	£245.74	£1,884.03	147	Whitley Close	Flat	Leasehold	Miss F Reed	147 Whitley Close Stanwell Staines TW19 7HA			022206
								149	Whitley Close	Flat	Permanent	Mr A Havison	149 Whitley Close Stanwell Staines TW19 7HA			022206
		6.25%	£1,424.60	£122.80	£1,638.29	£245.74	£1,884.03	151	Whitley Close	Flat	Leasehold	Mr K Tierney	151 Whitley Close Stanwell Staines TW19 7HA			022206
		6.25%	£1,424.60	£122.80	£1,638.29	£245.74	£1,854.03	153	Whitley Close	Flat	Leasehold	Miss V Hewitson	153 Whitley Close Stanwell Staines TW19 7HA			
£2,156.00	£3,542.40															022207
								155	Whitley Close	Flat	Permanent	Mr S Lee				022207
		25.00%	£1,424.60	£122.80	£1,638.29	£245.74	£1,854.03	157	Whitley Close	Flat	Leasehold	Mrs KC Richards	157 Whitley Close Stanwell Staines TW19 7HA			022207
		25.00%	£1,424.60	£122.80	£1,638.29	£245.74	£1,884.03	159	Whitley Close	Flat	Leasehold	Mrs D Lock	159 Whitley Close Stanwell Staines TW19 7HA			022207
		25.00%	£1,424.60	£122.80	£1,638.29	£245.74	£1,884.03	161	Whitley Close	Flat	Leasehold	Mr A J Coley	161 Whitley Close Stanwell Staines TW19 7HA			
£35,508.05	£63,762.36		£64,104.72	£7,424.67	£63,890.65	£9,582.58	£73,474.35									