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MAN/00CG/LSC/2010/0016

RESIDENTIAL PROPERTY TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL

LANDLORD & TENANT ACT 1985 SECTIONS 19, 20C & 27A.

Property : 8 Flats at Telegraph House. Sheffield. S1 2AN

Applicants: Jeanna Gater and 7 other tenants.

First Respondent: Telegraph House (Sheffield) Management Co Ltd.

Second Respondent: Wellington Real Estate Ltd.

13 December 2010.

The Tribunal's Determination:-

1. **The service charges as set out in the revised claim of Wellington Real Estate Ltd for the years ending 31 March 2006,2007, 2008,2009 and 2010, are, save for those set out in paragraphs 3 & 4 hereof, payable by Ian White and/or Telegraph House (Sheffield) Management Co Ltd.**

2. **The service charges for the same years, in the same amounts, are payable by the Applicants to Ian White/ Telegraph House (Sheffield) Management Co Ltd. in accordance with the specified percentages set out in each individual Applicants' Lease.**

3. **The amount payable in respect of the 'overcoat roof' invoice of 14/5/08, of which £2107.24 is claimed from the applicants, is limited to £1922.76.**

4. **The amount payable in respect of) the 'reproofing roofs' invoice of 29th Sept. 09, of which £6626.83 is claimed from the applicants, is limited to £2000.**

5. **None of the costs of Ian White or Telegraph House (Sheffield) Management Co Ltd. shall be regarded as relevant costs to be taken into account in determining the amount of service charge payable by the applicants.**

Application.

By an application lodged with the Tribunal on15th February 2010, Mr Gater, on behalf of his daughter, Jeanna Gater (flat 2) and seven other tenants, asked the Tribunal to determine liability for payment of service charges for Telegraph House for the years 2005 to 2010 inclusive. At the first Directions hearing this was modified to the years ended 31 March 2006 to 2010.

The application relates to the 8 flats on the 3rd and 4th floors of Telegraph House. Those flats were developed by Ian White and Telegraph House (Sheffield) Management Company Ltd. ('THMC') and let on long leases to the tenant applicants. Most of those leases were completed in late 2005 and were created out of Mr White's leasehold interest in those 2 floors, which he had held from Wellington Real Estate Limited ('WRE') since 27th August 2004.
The ground, first and second floor were occupied by commercial tenants of WRE.

At that time the application identified 10 items namely apportionments between commercial and residential users; major repairs; security and caretaking; professional fees; lack of consultation; insurance ;electricity; management fees; telephone costs and general building expenses. The position was reserved as to further matters.

Preliminary directions (attached) were given after a hearing on the 21st may 2010. Further Directions (attached) were given when the application was adjourned, part heard, on 13 September 2010, when the Tribunal also inspected the property. The hearing was concluded on 13 December 2010. In the meantime THMC had gone into liquidation and neither the liquidator nor Mr White had taken any part in these proceedings since the First directions hearing.

The Law.

In addition to the relevant case law that was drawn to the attention of the (then unrepresented) parties at the 21st May Directions hearing, we attach a schedule setting out the relevant statutory provisions.

The Leases.

The Head lease is dated 27th August 2004 and made between Wellington Real Estate Company Limited and Ian White. It is a demise of the third and fourth floors of Telegraph House for 150 years from 27th August 2004 at a peppercorn rent. The tenant covenants to also pay the Insurance Rent and the Service Charge.

The Insurance obligations of WRE are set out in Clause 5(2) of the Lease. (Full reinstatement value of the Building and plant and machinery).
By Clause 4 (2) the tenant is to pay 'a proportionate part' of the premiums 'to be determined by Landlord's Surveyor'.
'The Building' is the whole of Telegraph House, the lower floors of which are occupied by Wellington's commercial and retail tenants.

The Service Charge is, likewise, to be a 'fair proportion' 'to be determined by the Landlord's Surveyor' of the cost of the landlord providing the Services.
The Services are those set out in Part 2 of the Third Schedule to the Headlease. The tenant has specified cleaning and decorating and repairing obligations in respect of the demised premises ie. The 3rd and 4th floors now converted into the 8 flats.

Mr. White assigned his interest in the Head Lease to THMC.

The Residential Leases are all in identical form save for the specified percentage (which is not in issue) of their Insurance Rent, Maintenance Rent and Service Charge obligations.
They are all between Ian White (before assignment of the Head Lease to THMC) and each respective Applicant, for a term expiring 6 days before the Head lease expires, and reserving a yearly ground rent of, initially, £100.
The Insurance Rent is the stated specified percentage of the Insurance Rent payable to WRE under the Headlease by Mr. White, or his successor.
The Maintenance Rent is the stated specified percentage of the Service Charge payable to WRE under the Headlease by Mr. White, or his successor.
The Service Charge in the residential leases is the stated specified percentage of the 'Costs' set out in the Sixth Schedule of each lease. Those are the costs reasonably incurred in respect of the services in Part 2 of that Schedule.

The Inspection.

The Tribunal inspected Telegraph House on the morning of Monday 13 September in the presence of Mr Gator, Mr Sutherland (flat 6), Ms. Duckworth of Counsel (for WRE) and Messrs Carnin and Preston from WRE/LCP.
The eight flats are on the third and fourth floor (4 on each Floor) of the building. Each of those floors has a separate entrance off the common staircase, which incorporates the lift serving all four floors. There is a laundry with four washing machines on each floor, also accessed from the third and fourth floor landings of the common staircase. The electricity supply to the laundries, and the common parts exclusive to the residential flats, is separately metered and forms part of the service charge imposed by White/THM.
All four floors are accessed via a common entrance way, with door entry system. The residential flats have their own system, as does the firm of solicitors, Bell and Buxton who occupy part of the second floor. Some limited access (mainly for fire escape

routes) is available into the entrance hall and staircase from the retail units on the ground and first floors).
The building has the benefit of a fire detection and alarm system, external lighting and a clock tower. It is Grade II listed.

The Hearings.

The first hearing was held at the workstation, Paternoster Row, following the inspection. The same persons were in attendance.

Because of the failure of the parties, especially the first Respondent, THMC, to have fully followed the Directions of 21st May, the Tribunal had only the bundle prepared by Mr. Gator. We were informed that THMC had gone into liquidation on 1st July 2010, and the liquidator had played no further part in these proceedings.

It was apparent that the only 2 items of service charge which were claimed by White/THMC, beyond passing on the service charges levied by WRE, were cleaning (since April 2007) and the on account claim for electricity supplied exclusively to the residential common parts and laundries. On analysis, it was apparent that the Applicants did not challenge the cleaning charge. The actual, as opposed to on account, electricity charge would be capable of accurate finalisation given an effective dialogue with the supplier, Npower, and reliable meter readings.

Mr Sutherland was in a position to supply, in due course, documented details of the service charge demands issued by White/THMC, so that any issue regarding the timing of those demands could be resolved.
In those circumstances the lack of participation by White/THM/liquidator did not fatally inhibit the Tribunals determination of the issues that may be outstanding between the Applicants and the Second Respondents.

Mr Gator's bundle contained the service charge statements from WRE for years ended 31 March 2006-2009 (including the budgets, demands for on account payments and in some years a breakdown of the repairs expenditure) and for 2010 and 2011 the budgeted expenditure. We were told that the actual out turn for 2010 was now available.

Apportionment of WRE's Service Charges between Retail, Office and Residential tenants.

We heard evidence from Mr. Preston as to the nature and extent of each Schedule of expenditure and the manner of apportionment.
For the year ending 31 March 2006 this was set out in the form of 5 schedules. Schedule 1 was in respect of the cleaning of the entrance hall, stairwell and lift. It was apportioned 80% to bell and Buxton and 20% to Mr White and nil to the retail tenants. The apportionment was based on the perceived usage of those areas. *Schedule 2* was for the whole building and was apportioned between Retail, Bell & Buxton and Mr. White. With Mr. White's percentage being 19.07% based on the floor

area of each demise. The precise nature of the measurement was not known, but was probably Gross Internal Floor area.
Schedule 3 was described as the 'Office' schedule. It represented the expenditure on the common parts of the building used (almost) exclusively by Bell & Buxton and Mr. White (in effect, nowadays, the Residential tenants). It was apportioned on the basis of the floor area of each demise being 54.44% to Bell & Buxton and 45.56% to the White demise.
Schedule 4 was exclusive to Bell & Buxton and in any event fell away after March 2007.
Schedule 5 was the management cost exclusive to the retail units and represented 25% of the overall management charge with 75% being attributed to be shared between the office and residential tenants through the other schedules.

The schedule 1 cleaning only pertained until the year ended 31 march 2007, when it was taken 'in house' by Bell & Buxton. It was paid for on a basis agreed between White and Bell & Buxton. WRE did not thereafter provide or charge for the service.

We heard evidence from Mr. Gator on the issue of apportionment.
He accepted the reasonableness of the 80%/20% split in schedule 1. He contended for a similar split in respect of schedule 3, utilising perceived usage rather than square footage. Likewise he felt that usage ought also to be reflected to some degree in the Schedule 2 building expenses

Further evidence.
The Tribunal, with the assistance of those present, identified the remaining items of dispute, ordered the preparation of a Scott Schedule and adjourned the case, part heard, to 13th December. Those Directions are attached at Schedule 2 to this Determination.

The information required by those directions was available to the Tribunal at the adjourned hearing on 13th December, also held at the workstation and attended by Mr Gator for the Applicants and Mr Sutherland (flat 6) in person, Ms Duckworth of Counsel for the Second respondent, with Mr A Preston and his colleague There being no attendance by or representations from the First Respondent.

Apportionment.

The applicants' case.
The apportionment by reference to footfall/usage in Schedule 1 is accepted by the applicants. The same should be adopted for Schedule 3 and should be reflected, if not capable of precise adoption, in Schedule 2.

WRE's case.
The apportionments for the Schedules in issue have been assessed on the basis of floor area. It is precise and logical. It is 'reasonable' as an exercise of the Head Landlords surveyor's assessment under Clause 1(16) of the Head Lease. The Office tenants (Bell & Buxton) have questioned the wisdom of the 80%/20% split because, whilst they may have a larger weekday footfall, the applicants have use for 24 hours per day, 7 days per week.

The Tribunal's determination.
It is perfectly feasible for more than one method of apportionment to be reasonable. A floor area apportionment is not unreasonable, nor does it make the charges thereby payable into unreasonably incurred service charges. The benefit of precision is a major factor. Footfall and usage are less easily measured and more likely to be challenged. We note that the apportionment of liability as between the applicants themselves in respect of their individual flats appears to have been accepted, at the time of purchase and subsequently, as not unreasonable. That appears to be a floor area apportionment. The apportionments in issue do not appear to have been aired as a significant challenge until the service charges increased substantially from those anticipated at the time of purchase of the flats. At that time the apportionment would have been known if prudent enquiry had been made of the Head Lessee as part of the Flat purchasers' (or their solicitors) pre purchase consideration of the terms of the Head Lease.
We therefore do not find the apportionments adopted by WRE and passed on to the applicants by White/THMC to be unreasonable.

Insurance

The applicants' case
Compared with the premium for his own detached house, set in more than an acre of land and having a capital value considerably greater than any of the flats in Telegraph House, Mr. Gater felt that the premium of approximately £300 per flat per annum was excessive and unreasonable. The cover may include loss of commercial rental income in which the residential tenants have no interest, and for which it would be unreasonable for them to pay.

WRE's case
The premium was a proper proportion of a block policy obtained at competitive rates. The amount attributable to the flats had been discounted to take account of residential occupancy. The reinstatement value is high but reflects the listed building status of Telegraph House. See document 320 of the Hearing Bundle.

The Tribunal's determination.
The premium is reasonably incurred. It may not be the lowest possible premium, but as a block policy for a large commercial landlord of a mixed development, it is reasonably incurred. No large commissions have been taken. Proper adjustments have been made. For a flat in an iconic listed building the premium per flat is not unreasonable. It is true that the cover does include loss of commercial rental. The amount of the premium attributable to that cover is not apparent, but in our experience the amount would be very small, and would be offset by the otherwise advantageous terms of the block policy. If the amount could be identified we would be bound to say that it was not in accordance with the Lease, but we would expect the amount, when calculated through the service charge percentages to be 'de minimis'

Management Fees

The applicants' case

A percentage charge produces unfairness where single large value invoices (such as substantial roof repairs) are concerned. Even if 10% is fair it should not apply to large invoices.

WRE's case.

The Lease provides for a maximum of 10%. That has not been exceeded. Adjustments have been made on large contracts where those contract costs include an element of management.

The Tribunal's determination.

The management fee at 10% is reasonable, indeed moderate. There is a not unreasonable element of 'swings and roundabouts' in such a scheme. The adjustments made by WRE (as set out in document 321 in the Hearing Bundle) are, in our view and experience, wholly fair and reasonable and go beyond that which may have been strictly necessary. The allowance actually produces a negative management fee for WRE in some years.

The actual level of fee, when worked through the service charge calculation is not, for all but the most exceptional years, any greater than one would expect if the management charge was on a unit by unit charge per flat, rather than on a percentage basis.

Scott schedule items

We considered each of the Scott Schedule items that had been the subject of challenge or comment by the applicants. After doing so we were able to take a category by category approach rather than set out repetitive comments item by item.

We accept that the applicants purchased new flats. They had been given, by Mr White, indicative, low service charge costs. They aspired to low maintenance cost for their newly constructed flats.

The difficulty has arisen because these new flat are housed in an old building, with an ageing roof, an expensive clock tower and a lift of an age considerably greater than the flats.

Whilst it would be difficult not to have sympathy for the position in which the applicants find themselves, that position arises from the personal and commercial decisions that they made at the time of purchase rather than any unreasonableness on the part, certainly, of WRE. Mr. White and THMC have acted as little more than post boxes and have been of no recent assistance to the other parties or the Tribunal.

- Roof

The applicants' case.

A new flat should not need so much roof work so soon after construction. The work has been done in a piece meal fashion. Some of the work has been repeated. It is unfair that such major works, including the clock tower renovations, should be laid at the door of then residential tenants.

WRE's case.
Only that which has been necessary has been done. Proper attention has been paid to the leak into Mr. Sutherlands flat. Expert advice has been taken as the problems progressed. It is only with hindsight that any criticism of the programme of repairs has been aired. The roof problem affects the residential tenants the most, being occupiers of the upper floors. All tenants of the building pay a proportionate share in accordance with the Leases. The condition of the roof and the existence of the clock tower were available to be surveyed by the residential tenants at the time they bought their flats

The Tribunal's determination.
The roofing costs are not unreasonably incurred. WRE have attempted to be incremental. They have approached the matter proportionately. It may be that a complete re roofing at considerable expense, would have been the best option. This is only apparent, and not even certain, with hindsight. They have employed reputable experts to assist. They have taken their advice.
The issue is one of 'new flats in an old building'.

- Toilet

The applicants' case
The applicants have no need of this facility and in practice no effective access to it. It is locked and a key held by one of the commercial/office tenants.

WRE's case.
It is part of 'the building' as defined in the head lease and for which Mr. White, and consequently the applicants by reason of the terms of the Leases that they signed, are responsible.

The Tribunal's determination.
The Lease is clear. The WC is part of the building. It is not clear why the applicants would sign a lease giving them partial responsibility for a facility of which they had no use. It is said that they can, if they wish, have a key. It may well be that this problem is overcome by an arrangement with whoever does have regular use of the facility taking it into their demise, but that is not something we can order.

- Fire safety

The applicants' case
This is a large sum for what appears to be repetitive and even duplicated work.

WRE's case.
The three companies involved fulfil different functions (testing and reports, necessary works and conduct of fire drills). Different companies are used because that proved to be less costly, after competitive tendering, than one company doing all the work. The Regulations , especially for mixed use property are onerous. The additional fire escape work has only been undertaken to comply with Fire Regulations and the Health and Safety requirements for workmen on the premises, especially on the roof.

The Tribunal's determination.
The Tribunal analysed these costs with great care, utilising the expertise if our lay member, who is a recently retired Chief Officer of Fire and Rescue. The explanations offered at the hearing by WFE were reasonable, persuasive and in keeping with the best management practice. Some of the activities may be regarded as the acme of fire safety requirements, such as the frequency of fire drills. This may be more germane to the commercial premises than the residential property, but who would be prepared to say that the residential tenants did not have an interest in this regards as to what was going on beneath them, or risk suggesting any cheaper less effective method?

- Water testing

The applicants' case
This supply may not serve any of the flats.

WRE's case.
The water tanks are part of the 'Building' as defined. The service probably served the 3rd and 4th floors at the time of the demise to Mr.White, whatever has been done since then upon construction of the flats. The testing is compulsory as a health and safety issue.

The Tribunal's determination.
The cost is within the definitions set out in the Headlease and the residential Leases. The amount is not unreasonable. It would be imprudent not to undertake the testing.

- Asbestos

The applicants' case.
No one buying a modern flat would expect to have an asbestos problem, and it is unfair that the residential tenants are called upon to pay.

WRE's case.
Asbestos surveys are compulsory under the 2006 Regulations. They are 'living' documents that have to be updated and acted upon. The surveys, reports and works fall well within the definition of service charges for work in maintaining the building.

The Tribunal's determination.
This is very illustrative of the 'new flat in an old building' problem.
WRE have no choice under the 2006 Control of Asbestos Regulations (SI 2006 /27390, but to carry our surveys, commission reports and do the recommended work. The cost is reasonable in amount and reasonably incurred.

- Door entry and lift.

The applicants' case.
The cost and frequency of works to these items is challenged

WRE's case.
The works have been carried out only when needed in response to notification of defect, or, in the case of the lift, to comply with regular maintenance requirements.

The whole front doorway was replaced to reduce the cost of frequent door entry failures.

The Tribunal's determination.
There is no evidence to suggest the amounts are unreasonably incurred. This is a listed building. We agree that a cost of more than £1000 including vat for a new front doorway seems a lot, but any works that affect the external appearance of the building are always going to be regarded as 'specialist'. We have looked at the relevant invoices with care in respect of both the lift and the doorway and find then to be reasonable.

- Electricity

The applicants' case.
It is accepted that these, although high as estimated amounts, will be resolved by good management, which with the liquidation of THMC and the lack of cooperation from Mr. White, is likely to be taken over by WRE or one of its associated companies

WRE's case.
They agree

The Tribunal's determination.
So do the Tribunal. It is not an issue.

Section 20
This potentially applies to 2 items in the years under our consideration.
Firstly (at page 406) the 'overcoat roof' invoice of 14/5/08 of which £2107.24 is claimed from the applicants. It is accepted that here was no consultation, and there is no application to dispense with the effect of Section 20.
Accordingly the amount recoverable is limited to £1922.76 as per the schedule below.

Secondly (at page 410) the 'reproofing roofs' invoice of 29th Sept. 09 of which £6626.83 is claimed from the applicants. Even the lowest specified percentage involves a potential liability of more than £250. It is accepted that here was no consultation, and there is no application to dispense with the effect of Section 20.
Accordingly the amount recoverable is £250 X 8 flats = £2000.

The detail of these conclusions is set out on the table below.

Analysis of Qualifying Works: maximum recoverable from each leaseholder under Section 20					
	Flat	Total residential s/ch	lease percentage	Maximum contribution	Actual Contribution
Overcoat Roof Invoice dated14th May 08					
	1	2107.24	15.39	324.30	250.00
	2	2107.24	10.86	228.85	228.85
	3	2107.24	10.31	217.26	217.26
	4	2107.24	12.7	267.62	250.00
	5	2107.24	15.99	336.95	250.00
	6	2107.24	11.86	249.92	249.92
	7	2107.24	10.76	226.74	226.74
	8	2107.24	12.13	255.61	250.00
					1922.76
Reproofing roof Invoice dated 29th Sept 09					
	1	6626.83	15.39	1019.87	250.00
	2	6626.83	10.86	719.67	250.00
	3	6626.83	10.31	683.23	250.00
	4	6626.83	12.7	841.61	250.00
	5	6626.83	15.99	1059.63	250.00
	6	6626.83	11.86	785.94	250.00
	7	6626.83	10.76	713.05	250.00
	8	6626.83	12.13	803.83	250.00
					2000.00

Section 20B

It is clear from the very detailed information regarding the dates of payments of invoices by WRE and therefore the earliest dates upon which a demand can have been made of Mr. White/THMC, to pass on to the residential tenants, that none of the relevant cost have been incurred more than 18 months before a demand has been made. The Case Law is that an application to a tenant for a payment on account, as contemplated by the leases, amount to a 'demand' for these purposes. In only 2 of the service charge years was there a need for a balancing additional charge and in both of those years the demand for the additional charge was made within 18 months of the cost being incurred.

Section 20C

The application by Mr.Gater is not opposed by Mr. White /THMC. There is no application by Mr. White in respect of the cost of WRE under the Head Lease.
No contractual nexus exists between Applicants and WRE. WRE can not claim costs against the Applicants. Only recourse for WRE is to THMC in liquidation and/ or Mr.White personally.
There is no evidence that Mr. White/THMC have passed on any detailed breakdown of the service charges to applicants. Nor have either of them apparently challenged WRE on behalf of themselves or the Applicants regarding the service charges. They have acted as a mere post box. They do not appear to have participated in the process, either before or during these proceedings. It would not be just or equitable that they should have any costs. Therefore there will be a Section 20C order in respect of all and any costs of Mr.White /THMC. There will be no Section 20C Order i in respect of any costs claimable under the head Lease by WRE from White/THMC. In the event that Mr. White, THMC, its liquidator or any subsequent assignee purports to charge those cost to the residential tenants in later service charge years, the tenants can make an appropriate application to the LVT to determine the reasonableness, or otherwise, of such a course of action.

Martin J Simpson
Chairman

SCHEDULE I
The Directions of 21 May 2010.

Upon hearing

Mr G Gater [for his daughter and all 8 tenants and in the presence of her (flat 2) and Messrs Robertson (1), Nichol(3), Marcer (4), Darker (5), and Sutherland(6).]

And Mr I White as sole Director of the First Respondent.

And Mr. P Siddal [with Mr. A Preston] for the Second Respondent

It is Recorded that:

- Mr Gater has authority to act for all 8 tenants and service upon him is good service upon them all.
- All parties accept that, for the purpose of these proceedings, there has been a valid assignment of Mr White's interest and liabilities, under the Head lease and the individual Leases of each flat, to Telegraph House (Sheffield) Management Co Ltd.("THM"), which is therefore the correct Respondent.

- The decided cases of *Heron Maple House v Central Estates Limited [2002]1 EGLR 35.* and *Oakfern Properties Ltd. v Ruddy [2006] EWCA Civ 1389.*, were drawn to the attention of the parties in general, and to Wellington Real Estate Ltd.("WRE") , the Second Respondent in particular.

- The likelihood that any pre- purchase representations as to the level of service charges would not be determinative of the Tribunals findings was drawn to the attention of the parties in general, and Mr Gator in particular.

- The application is in respect of Service Charges for the year ended 31st March 2006 and each subsequent year to date.

- The general nature and extent of the Tribunals procedures and statutory jurisdiction in respect of Sections 19, 20, 20ZA, 20B, 20C, and 27A Landlord & Tenant Act1985 were, without proffering advice, explained to the parties.

It is Ordered that:

1. WRE shall by 4pm. on 4th June 2010 serve upon the Applicants and THM a copy of the Head Lease and all Service Charge demands and accounts, the computation of those charges (indicating under which schedule or provision of the Head Lease they are claimed) and the invoices in support, for each year in issue.

2. WRE shall by 4pm. on 4th June serve a copy of the Head Lease on the Tribunal.

3. THM shall by 4th June 2010 serve upon the Applicants and WRE and all Service Charge demands and accounts (both from WRE to it, or Mr White, and from it, or Mr. White, to the Applicants), the computation of those charges (indicating under which schedule or provision of the Leases to the Applicants they are claimed and identifying the percentage due from each flat) and the invoices in support, for each year in issue, together with a spread sheet showing the year on year position with amounts demanded (including demands for on account or budgeted amounts), amounts in fact expended, and any carry forward.

4. The Applicants shall by 4pm. on 18th June 2010 serve on THM and WRE a statement in response, to include copies of any documents or correspondence upon which they rely. This shall stand as the Applicants case.

5. THM and WRE shall by 4pm. on 16th July 2010 serve on each other and upon the Applicants, their statements in response to the Applicants' case, which shall stand as the case of the respective Respondents.

6. The parties shall on or before 30th July 2010 arrange a 'round table meeting' to narrow the issues and to settle what may be settled. All 3 parties shall by 6th August 2010 sign and file with the Tribunal a joint statement of the outcome (but not the process or content of the discussions) of that meeting.

7. The Applicants shall by 4pm. on 20th August serve on THM and WRE and the Tribunal (in quadruplicate) a bundle of documents, which has been agreed between the parties (in respect of which all parties are expected to fully cooperate) to include the Application and specimen residential Lease, the Head Lease, the parties statement, every document upon which any party relies in respect of any item still in issue, the year on year schedule of service charges and the annual breakdown of service charges and service charge accounts.

8. No party having identified a need for expert evidence, no party has permission to call expert evidence.

9. The hearing will take place during the week commencing 13th September 2010 with a time estimate of 2 days. The precise date and venue will be notified shortly by the Tribunal to the parties.

10. The applicant shall pay the Hearing fee of £150 no later than 14 days before the Hearing date.

11. No documents or letters are to be sent to the Tribunal unless also sent to the other parties and clearly so marked on each document or letter.

12. The parties have liberty to so apply in writing for any further or consequential Directions to facilitate the just and expeditious disposal of this case.

NON COMPLIANCE WITH THE TRIBUNAL'S DIRECTIONS MAY RESULT IN PREJUDICE TO A PARTY'S CASE. IN THE CASE OF AN APPLICANT NON-CMPLIANCE COULD RESULT IN THE DISMASSAL OF THE APPLICATIONIN ACCORDANCE WITH REGULATION 11 OF THE LEASEHOLD VALUATIONTRIBUNALS (ENGLAND) REGULATIONS 2003

SCHEDULE 2

The Directions of 13th September 2010.

Upon hearing Mr Gator for the Applicants and Mr Sutherland (flat 6) in person, Ms Duckworth of Counsel for the Second respondent, there being no attendance by or representations from the First Respondent and upon considering the evidence of Messrs. Gator, Sutherland, Preston and Carnin.

IT IS ORDERED THAT:-

1. Wellington do, by 11th October 2010, serve, preferably electronically, on Mr. Gator and the Tribunal, a Scott Schedule in five columns setting out or providing for, as the case may be,

    - In the first column, each item of expenditure on a schedule by schedule, year by year basis of the items currently understood to be challenged by the Applicants.
    - In the second column, the amount set out in the service charge demands as claimed by Wellington.
    - In the third column, the amount, adjusted if it be the case, for which Wellington now contends.
    - In the fourth column, an indication as to acceptance or challenge by the applicants, and a brief narrative indication of the basis of challenge, if any.
    - In the fifth column, the amount for which the Applicants contend.

2. It is recorded that the items indicated by Mr. Gator at the hearing on 13th September to be in issue are
    - For 2006, General repairs, consultation thereon, Section 20B, Roads and Drains and Management Fees. Insurance
    - For 2007, General Repairs, consultation thereon, Site Clearance, Management Charges and cross referencing the change from Schedules 1,2,3 etc to A,B C etc. Insurance
    - For 2008, Roads and Drains, General Repairs, Site Clearance, Management Fees and other Professional Fees, Section 20B. Insurance
    - For 2009 General repairs, consultation thereon, Roads and Drains, other Professional Fees, Management Charges, Electricity (£5000) and Fire Precautions (£2500) Insurance
    - For 2010, the whole. Insurance.
    - For 2011, the whole. Insurance.

3. In the event that, upon reflection, following the hearing on 13th September, Mr Gator wished to add any further items to be challenged he shall inform Wellington of the same by 4pm on 30th September 2010.

4. Wellington do by 11th October 1020 serve on Mr. Gator copies of all invoices in support of each item of expenditure included in the Scott Schedule.

5. The Applicants do by 22nd October 2010, serve, preferably electronically, on Wellington and the Tribunal their response in the fourth and fifth columns.

6. Mr. Sutherland do by 22October 2010 serve on Wellington and the Tribunal (in quadruplicate) copies of the demands received from White/THM.

7. The Parties do by 3rd December 2010 hold a round table meeting to narrow the issues and investigate the potential for settlement, and report the outcome, but not the content thereof, to the Tribunal.

8. The parties are to file by 4pm on Friday 3rd December 2010 with the Tribunal an agreed Hearing Bundle in quadruplicate.

9. The Hearing be adjourned to 10.00am on Monday 13th December 2010.

NON COMPLIANCE WITH THE TRIBUNAL'S DIRECTIONS MAY RESULT IN PREJUDICE TO A PARTY'S CASE. IN THE CASE OF AN APPLICANT NON-CMPLIANCE COULD RESULT IN THE DISMASSAL OF THE APPLICATIONIN ACCORDANCE WITH REGULATION 11 OF THE LEASEHOLD VALUATIONTRIBUNALS (ENGLAND) REGULATIONS 2003

SCHEDULE 3

Landlord & Tenant Act 1985

19 Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

20 **Limitation of service charges: consultation requirements**

(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.

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

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

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

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

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

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

20B **Limitation of service charges: time limit on making demands**
(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

20C Limitation of service charges: costs of proceedings

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

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

(3) An application may also be made to 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.