9091

HM Courts & Tribunals Service

LEASEHOLD VALUATION TRIBUNAL

Sections 19, 20, 20ZA, 27A and 20C of the Landlord and Tenant Act 1985 (as amended) ("the Act")

Case Numbers:	**CHI/21UD/LSC/2013/0008 and CHI/21UD/LDC/2013/0023**
Property:	**41 Church Road, St Leonards, East Sussex TN37 6HB**
Applicants:	**Neil Mark Brennan-Wright Felicity Carus Richard Bogdon Furman Gary and Jennifer Town**
Respondent:	**Peter Campbell**
Appearances for Applicants:	**Mr S Paxi-Cato, Counsel**
Appearances for Respondent:	**Mr Campbell**
Date of hearing:	**15 May 2013**
Tribunal:	**Ms E Morrison LLB JD (Lawyer Chair) Mr R A Wilkey FRICS (Surveyor Member) Mr T W Sennett MA MCIEH (Professional Member)**
Date of the Tribunal's Decision:	**23 May 2013**

The Applications

1. By an application dated 11 January 2013 the Applicant leaseholders applied under section 27A (and 19) of the Act for a determination of their liability to pay service charges for service charge years 2009-10 to 2012-13. By an application dated 15 April 2013 the Respondent freeholder made an application for dispensation under section 20ZA of the Act.

2. The Tribunal also had before it an application under s 20C of the Act that the Respondent's costs of these proceedings should not be recoverable through future service charges.

Summary of Decision

3. The service charges recoverable by the Respondent are as follows:

Year	£	(includes management fee of) £	Payment dates
2009-10	**2361.25**	236.25	29.9.10 and 25.3.11
2010-11	**5671.28**	3.90	29.9.11 and 25.3.12
2011-12	**598.27**	3.22	29.9.12 and 25.3.13
2012-13	**625.26**	4.07	29.9.13 and 25.3.14

4. The Respondent is granted dispensation from the consultation requirements provided for by section 20 of the Act insofar as those requirements apply to the works comprised in the above service charges. The dispensation is on terms, as explained in the decision.

5. An order is made under s 20C of the Act.

The Inspection

6. The Tribunal inspected the subject property on the morning of the hearing. Also in attendance were Mr Town, Mr Brennan-Wright, Mr Paxi-Cato, Mr Harrison (an agent for Ms Carus) and Mr Campbell. The property comprises a substantial end of terrace house which was built over 100 years ago. The main building is on four floors plus rooms at roof level and there is a three storey rear addition. It occupies a sloping plot in an established residential area comprising mainly buildings of similar age and type, many converted into flats. The property is arranged as five flats but there was limited access to the interior. It is believed that Mr. Campbell occupies two unconnected rooms on the first floor which originally formed part of one of the flats. As a generalisation, the legal and physical internal arrangement is somewhat complex.

7. The Tribunal inspected the exterior of the building from ground level, the interior common areas and part of the interior of the ground floor flat. Various aspects were pointed out by the parties present and particular note was made of the following:

- The flank wall of the main building defines the site boundary. There is an open car park adjacent to this wall and it is separated by a path which is not part of the freehold title. Although this strip of land is not owned by the subject property, the freeholder has carried out work thereto, including removal of trees and repairs to the drains and steps.

- Inspection of the main roof from ground level is very limited. There are several upstands clad with interlocking concrete tiles and they incorporate dormer windows. There appears to be an open channel (box gulley) at the perimeter of the main roof.

- Rendering to part of several elevations at rear has been removed and brickwork beneath is exposed.

- An external concrete landing and steps down to the basement level have recently been constructed at the front of the building.

- The public ways are very basic but broadly in serviceable condition. The floors and staircase were carpeted and the carpets were renewed by Mr. Town. There are signs of condensation/damp staining to several of the external walls. The ceiling plaster on the top landing has been renewed.

- There is a small room off the top common landing and, although it is not connected, Mr. Campbell advised that it is part of the second floor flat.

- Mr Campbell advised that, when he purchased the freehold, there was no separate electricity supply for the common parts. The consumer units are boxed in on the ground floor common hall and attention was drawn to a new supply that had been installed together with a recent light fitted above the gas meters at basement level.

- Various works have been carried out to the interior of the flats, mainly to replace or strengthen rotten and defective supporting timbers. It was not possible to establish precisely what has been done as the relevant areas have generally been covered or made good. A former door in the external wall of the rear bedroom of the ground floor flat has been replaced with a window and work was carried out in connection with the removal of a chimney breast in this room. There were no visible signs that any timber supports or joists have been replaced but the Tribunal noted that the floor and ceiling levels in the ground floor rear bedroom had been altered.

Background Information as to the Parties and the Property

8. The Basement, Ground floor and Top Floor flats are held on long leases. The First and Second floor flats have separate freehold titles. There is a third freehold title relating to the leasehold flats.

9. Mr Brennan-Wright is the former leaseholder of the Ground floor flat. Mr and Mrs Town purchased the flat in September 2010 and are the current leaseholders.

10. Ms Carus is the leaseholder of the Basement flat.

11. Mr Furman is the former leaseholder of the Top floor flat. Mr and Mrs Town purchased the flat in October 2012 and are the current leaseholders.

12. Mr Campbell purchased the freehold of the First floor flat in May 2004. He then purchased the freehold relating to the leasehold flats in April 2009. The previous freeholder had become ill and had failed to carry out necessary repairs. This led to the Council serving Notices under the Housing Act 2004 in 2006-07, and carrying out some remedial works, for which Mr Campbell was engaged as the Council's contractor.

13. A Mr Winterburn is the freehold owner of the Second floor flat. He is not a party to these proceedings.

The Lease

14. The Tribunal had before it a copy of the lease for the Ground floor flat and was told that leases for the Basement and Top floor flats were in similar form. The lease is dated 14 September 1989 and is for a term of 125 years from 25 March 1989 at a yearly ground rent of £100 for the first 25 years and rising thereafter.

15. The relevant provisions in the lease may be summarised as follows:

    (a) The lessee is responsible for the repair of the demised premises, which are defined so as to include the ceilings and floors and windows but so as to exclude any of the main timbers or joists of the building.

    (b) The lessor is responsible for insuring the building and for the repair and renewal of the main structure, rainwater pipes, drains and common areas.

    (c) The lessee covenants to pay a rateable proportion of the lessor's costs as set out in the Fourth Schedule (the service charges). As well as the specified repairing and insurance costs, the lessor is entitled to add 15% to these costs "for administration" if he does not employ a managing agent. The lessor may also charge for repairs which he carries out himself.

    (d) The service charge year runs to each 25th March. The lessee's contribution is payable on 29 September and 25 March "the payment on the twenty ninth September being made half of the total contribution due for the whole year ending the previous twenty fifth March and the payment due on the twenty fifth March being the balance of the contribution due for the whole year commencing the previous twenty fifth March".

16. The word "commencing" in the final line of the clause relating to time for payment of the service charges is clearly an error, as the resultant meaning is nonsensical. All parties agreed that this word should read "ending". Where there are obvious mistakes in a written document, it may be construed in its corrected form: *Chartbook Ltd v Persimmon Homes Ltd* [2009] UKHL 38. Thus service charges are paid by the lessee up to 24 months in arrears. There is no provision in the lease for

on account payments. The lessor is therefore obliged to fund all costs in the first instance.

Preliminary Matters

16. It is agreed that each leaseholder is liable to contribute 20% towards the service charges.

17. Mr Campbell has never prepared annual expenditure accounts relating to the service charges. Demands have been issued on an ad hoc basis without regard to the provisions in the lease as to payment dates. The demands are somewhat confusing, sometimes carrying forward sums from earlier demands, and it is not always clear to which service charge year the various costs relate.

18. Many of the repair works comprised in the disputed service charges were carried out by Mr Campbell himself. He told the Tribunal that he is a builder and a qualified electrician. From time to time, he issued invoices to himself as the freeholder in respect of his work. On at least one occasion the lessees were asked to pay costs before an invoice had been generated. As it was not clear from the face of the invoices when the work was actually carried out, he was asked to clarify the appropriate date(s) (which were not challenged by the Applicants), and the Tribunal has allocated costs to the appropriate service charge year accordingly. Although Mr Campbell's invoices included his costs for materials and, in some cases, for services from others, he produced no documentation for any of this expenditure.

19. Mr Campbell told the Tribunal that he has no designated bank account for service charge monies. He uses his personal bank account. He did not appear to be aware of the fiduciary duties relating to service charge monies (Landlord and Tenant Act 1987 sections 42-42B).

Representation and Evidence at the Hearing

20. The Applicants were represented by Mr Paxi-Cato of Counsel, instructed by Butters Davis Grey LLP, Solicitors. A Statement of Case with supporting Bundle of documents and witness statements from each Applicant had been filed in accordance with the Directions and these were referred to at the hearing. Mr Brennan-Wright and Mr Town gave some oral evidence to supplement their witness statements.

21. Mr Campbell presented his own case. He had filed a Statement of Case and some documents in accordance with the Directions as well as making his own application under section 20ZA.

The Law and Jurisdiction

22. The tribunal has power under section 27A of the Act to decide about all aspects of liability to pay service charges and can interpret the lease where necessary to resolve disputes or uncertainties. The tribunal can decide by whom, to whom, how much and when a service charge is payable.

23. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard.

24. By section 20 and regulations made thereunder, where there are qualifying works or the lessor enters into a qualifying long term agreement, there are limits on the amount recoverable from each lessee by way of service charge unless the consultation requirements have been either complied with, or dispensed with by the Tribunal. In the absence of any required consultation, the limit on recovery is £250.00 per lessee in respect of qualifying works, and £100.00 per lessee in each accounting period in respect of long term agreements. As regards qualifying works, the recent High Court decision of *Phillips v Francis*[2012] EWHC 3650 (Ch) has interpreted the financial limit as applying not to each set of works, as had been the previous practice, but as applying to all qualifying works carried out in each service charge contribution period.

25. A lessor may ask a tribunal for a determination to dispense with all or any of the consultation requirements and the tribunal may make the determination if it satisfied that it is reasonable to dispense with the requirements (section 20ZA). The Supreme Court has recently given guidance on how the tribunal should approach the exercise of this discretion: *Daejan Investment Limited v Benson et al* [2013] UKSC 14. The tribunal should focus on the extent, if any, to which the lessee has been prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the lessor to comply with the regulations. No distinction should be drawn between serious or minor failings save in relation to the prejudice caused. Dispensation may be granted on terms. Lessees must show a credible case on prejudice, and what they would have said if the consultation requirements had been met, but their arguments will be viewed sympathetically, and once a credible case for prejudice is shown, it will be for the lessor to rebut it.

26. Under section 20C a tenant may apply for an order that all or any of the costs incurred in connection with proceedings before a leasehold valuation tribunal 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.

Service Charge Year 26.3.09 – 25.03.10

Insurance

27. The Applicants challenged the demand for £550.00 annual premium, on the basis that there was no supporting invoice, or comparative quotes showing that the amount was reasonable. Mr Campbell told the Tribunal that on acquiring the freehold in April 2009, he had first tried to get a quote online and then approached brokers, who had found the policy taken out. He had estimated the rebuilding cost, for which cover had been obtained, himself. The figure of £550.00 was for the whole building and the leaseholders only paid 20% each.

28. Although no invoice was produced, the amount demanded is consistent with later years, for which there is some supporting paperwork. Although neither side produced any alternative quotes, there was no prima facie evidence that the sum charged was unreasonable, and based on the Tribunal's own knowledge and experience, the amount appears in line with market norms for the level of cover. Accordingly the Tribunal finds that the sum of **£550.00** is reasonable and payable.

Tree Removal

29. The Applicants challenged a charge of £350.00 for removal of trees by a third party. There was a supporting invoice (undated) but it was contended that there should have been consultation before the work was done, and that if the trees were not on the property itself, it was unclear that Mr Campbell could pass these on via the service charge.

30. Mr Campbell conceded that the trees had been removed from the strip of land adjacent to the north/flank side of the building, which was owned by a third party. He submitted that unless the trees had been removed it would have been difficult to obtain insurance for the building as required by the lease.

31. The Fourth Schedule of the lease sets out the costs and expenses which may be recovered through the service charge. There is no provision which could be interpreted as covering the cost of works on trees on the property, let alone trees wholly on neighbouring land, and accordingly this charge is disallowed.

Common parts electricity installation

32. Mr Campbell had charged £450.00 inc. materials for installing a new consumer unit, reconnecting the stairwell lighting to this and replacing an outside light and cable. He said the work was required because previously the lighting was supplied through the ground floor flat (where the former freeholder had lived). The new flat-owner Mr Brennan-Wright was renovating the flat and disconnected the supply to the common parts. Mr Campbell had undertaken the work himself as a qualified electrician and had generated the required Test Certificate (although it was not produced). The cost of £450.00 probably represented two days labour plus parts.

33. The Applicants disputed the cost, and said there was no evidence to show that the work was necessary or the amount reasonable. Mr Brennan-Wright stated that previously, the lighting sometimes worked, sometimes not. He didn't know if the lighting had previously come off the ground floor flat supply and said he had not disconnected anything.

34. The Tribunal saw the consumer unit during the inspection. Mr Campbell's explanation about why the work was needed made sense and it was clear from Mr Brennan-Wright's evidence generally that he had little knowledge about building matters and had not done the renovation work in his flat himself. Accordingly Mr Campbell's evidence on the appropriateness of the work is accepted. Although there were no comparative quotes, the Tribunal's view, based on its own knowledge and experience, was that the amount charged was reasonable. This view was put to the Applicants during the hearing, they were given a chance to

comment, and it was not challenged. The Tribunal determines that the sum of **£450.00** is reasonable and payable.

Temporary Box Gulley repair

35. The charge of **£150.00** was challenged on the basis that there was no evidence to show that the work was needed, or done to a reasonable standard. Mr Town, who purchased the Top floor flat in 2012, had had to carry out further repairs at his own expense, and said this indicated the repair had not been done properly in 2009.

36. Mr Campbell explained that the problem arose where the old box gulley joined a new section which had been replaced as part of earlier works required by the Council. The 2009 repair was specified as 'temporary' as he knew it wouldn't last but it was needed to prevent water ingress. A permanent repair would require full scaffolding.

37. The Tribunal accepts Mr Campbell's explanation as there is no evidence to the contrary and finds the modest amount charged is reasonable.

Removal of render, brickwork repairs and associated scaffolding

38. Repair costs of £685.00 and scaffolding costs of £290.00 were disputed. These costs related to outside works at the rear of the property at ground/first floor level. They were invoiced by Mr Campbell, and there were no supporting receipts. The Applicants said there had been no section 20 consultation and it was impossible to know if the costs were fair. Mr Brennan-Wright accepted that Mr Campbell had told him that a drain had become blocked and there was water damage, so that new pipe-work was needed and render would have to be removed.

39. Mr Campbell conceded that there had been no consultation. He said the work was urgent due to water penetration into the Basement flat, caused by problems with the rear rain and waste water pipe-work which had been incorrectly installed and the hopper head was leaking. A tower scaffold was erected, the pipe-work renewed, render hacked off, brickwork repaired, and new concrete lintels installed to replace rotten wooden lintels on ground floor windows to the side of rear addition. The costs of £685.00 covered labour and materials. The render was not reinstated, to give time for the brickwork to dry out. The water penetration problem had been remedied by the work.

40. The Tribunal saw the work done during the inspection. There was no reason to doubt that it was required. Again, although there were no comparative quotes, the Tribunal's view, based on its own knowledge and experience, was that the amount charged was reasonable (indeed modest). This view was put to the Applicants during the hearing, they were given a chance to comment, and it was not challenged. Accordingly, subject to the issue of consultation (see below) it determines that the sum of **£975.00** is payable.

Section 20 Issues

41. The effect of the above determinations is that, subject to section 20 considerations, the total amount payable for qualifying works in this year is £1575.00. This equates to £315.00 per leaseholder i.e. £65.00 over the £250.00 limit.

42. Mr Campbell seeks dispensation under section 20ZA on two bases: (a) urgency and (b) pre *Phillips v Francis* there would have been no requirement to consult on these works as no single set of works resulted in a charge of more than £250.00 per leaseholder.

43. The argument based on urgency is rejected. The only specific evidence related to the repairs at the rear, but Mr Campbell then admitted he did the work over a period of months, which is inconsistent with true urgency. However it is right that before the recent decision of *Phillips v Francis*, the accepted view was that consultation was not required unless a particular set of works would cost a leaseholder more than £250.00. The works in 2009-10 were all carried out as separate projects and none alone exceeded the limit. The Applicants have not made out a case on prejudice for this year as there is no evidence whatsoever that consultation would have affected the scope or cost of the works. But even if prejudice had been established (and this issue is considered in more detail as regards the subsequent year), the Tribunal would still find it reasonable to grant dispensation given the state of the law as it was generally understood at the time these works were carried out. Therefore the amount allowed for the qualifying works remains at £1575.00.

Service Charge Year 26.3.10 -25.03.11

Insurance

44. The Applicants made the same challenge as for the previous year, with the additional point that the policy schedule refers to a premium of £525.00, as compared with the charge of £550.00. Mr Campbell said the additional £25.00 was the broker's fee. There is no reason to doubt this and, for the same reasons as for the previous year, the cost of **£550.00** is allowed.

Electricity

45. The charge of **£26.04** for common parts electricity was not in dispute.

Replacement of Interior Lintels

46. Mr Campbell has charged £125.00 for replacing a lintel in the ground floor flat and has also charged the same amount which he paid to Ms Carus to reimburse her for the cost of replacing the lintel directly below in the Basement flat. Mr Campbell said the lintels were rotten and that replacing these was a structural matter for which the freeholder was responsible under the lease and the cost of which could be passed on via the service charge.

47. The Applicants noted there was no direct evidence that Mr Campbell had paid Ms Carus £125.00 and said there should have been consultation. They did not know if the cost was fair.

48. In her witness statement, Ms Carus does not dispute the payment of £125.00. During the inspection the Tribunal was shown the area of work in the ground floor flat. Neither Mr Brennan-Wright or Mr Town deny the work was done or was needed so there is no basis to doubt what Mr Campbell says. Again the cost appears reasonable, and subject to the issue of consultation (see below) it is determined that the sum of **£300.00** is payable

Replacement of Bressemer

49. This job is covered by three separate invoices. One for £1250.00 is Mr Campbell's charge for his work and materials. One is from Tribrach Associates, structural engineers, for their work in inspecting and providing structural calculations for the work, and is for £411.25. The third is an associated Building Control fee of £135.71 paid to the Council. The total cost is therefore £1796.96. The work involved the removal of a rotten wooden bressemer over the back bay window of the ground floor flat and replacement with a new steel beam.

50. The Applicants pointed to lack of consultation under section 20; no other estimates had been obtained and there was therefore doubt that the cost was reasonable. The need for the work itself was not disputed, but the necessity for a structural report was queried.

51. Mr Campbell accepted that he had not consulted under section 20. He had originally demanded £1760.25 for his own work but later reduced this to £1250.00, thinking this would avoid problems under section 20. He needed the expert calculations to get the right dimensions for the beam and loading, before carrying out the work. He had spent 5 solid days with help of an assistant. He had also strengthened the floor, but had not charged for this.

52. Again there is the problem of no comparative quotes, but the Tribunal cannot close its eyes to the obvious: Mr Campbell's charges are clearly reasonable, given what was done. It is also clear that structural work of this type requires expert calculations and Tribrach's fee, which includes VAT, is in line with what one would expect for this type of job. Subject to the issue of consultation, it is determined that the overall charge of **£1796.96** is payable.

Reinstate drain/rainwater

53. In her witness statement Ms Carus alleged this work was necessitated by Mr Campbell's negligent plumbing in the back addition. The need for the work had been identified by the Council in 2007 and nothing had been done until 2010. Mr Campbell alone should be responsible for putting right the damage he had caused.

54. Mr Campbell referred to his invoice and explained the work was at the side of the building, and had nothing to do with the back addition. The new pipe-work had been pointed out during the inspection. The work was needed as previously there

was no drainage collection for rainwater; it just drained against the building, the drainage having been altered by the previous freeholder.

55. As the new pipe-work is away from the back addition, Ms Carus's point cannot be correct. The Tribunal is satisfied that the work was reasonably required. While it is the case that some of this work must have been carried out on the strip of land that is outside the title, it was part and parcel of the work on the side of the building itself. Maintenance of the rainwater and drains is a service charge under the lease and the Tribunal finds that the cost is reasonable. Subject to the issue of consultation, it is determined that the charge of **£600.00** is payable.

Basement landing

56. The cost of £835.00 was disputed solely on the basis of lack of consultation under section 20. This is dealt with below. Subject to the issue of consultation, it is determined that the charge of **£835. 00** is payable.

Repairs to Back Addition

57. Mr Campbell has invoiced £1250.00 for works to the interior of the back addition at ground floor level. All agreed these works were carried out while the flat was being renovated under Mr Brennan-Wright's ownership. Mr Brennan-Wright explained that he had verbally agreed with Mr Campbell to sell him the ground floor room in the back addition, which Mr Campbell would then incorporate into his own flat. Mr Campbell carried out substantial works on the back addition room, but the sale never took place. Mr Campbell had billed him for some of the work and put £1250.00 of other work onto the service charge. Mr Brennan-Wright mentioned works on windows/doors and did not think these were structural. The charge was also disputed on the ground of lack of consultation.

58. Mr Campbell accepted he had done work in the back addition that would not be service charge work, but said that the invoiced works were all covered by his obligations under the lease. The invoice lists the works done in some detail.

59. In this instance, the Tribunal could not see evidence of the work done during the inspection as the room has been made good. However much, if not all, of the work described in the invoice appears to be covered by the lease. The description of the work shows the room was stripped back to its brickwork, which was repaired. Mr Brennan-Wright, who owned the room at the time, did not dispute that the work as described was done. Again the overall cost of £1250.00 is instructive. Given the amount of work which must have been done, even if some of it is not chargeable, the Tribunal is satisfied that the chargeable element would be worth £1250.00 including materials. Accordingly, subject to the issue of consultation, it is determined that the charge of **£1250. 00** is payable.

Further steel work

60. There are charges of £45.00 for supply of steel (material only – no labour) and £264.38 for a further structural report from Tribrach. This relates to additional work on the ground floor rear bay structure, the need for which only became apparent during work on the bressemer replacement. The sole challenge to this was under

section 20. Accordingly, subject to the issue of consultation, it is determined that the charge of **£309.38** is payable.

Costs generally

61. A feature of this case is that the freeholder has done repair work himself without getting quotes or estimates from other contractors. This has opened the door for the Applicants to challenge those costs. Neither side chose to produce retrospective estimates from third parties. In such cases, the Tribunal has to do the best it can, applying a "robust common-sense approach": *Country Trade Limited v Marcus Noakes and Others* [2011] UKUT 407 (LC). As an expert tribunal, an LVT may use its knowledge and experience to test, and if necessary to reject, evidence that is before it. It must not reach a conclusion on the basis of evidence that has not been exposed to the parties for comment. The Tribunal's conclusion is that, notwithstanding the lack of market-place estimates for the works, the amounts charged by Mr Campbell are modest and cannot be described as other than reasonable. The Tribunal's view on this was put to the parties for comment during the hearing. The Applicants did not challenge this view, but reiterated their objections based on section 20, to which we now turn.

Section 20 issues

62. The Applicants' case is that there has been a failure to consult under section 20 and so the charges for all qualifying works in this year should be limited to £250.00 per leaseholder. On the issue of prejudice, it was said that leaseholders were not kept informed, they didn't know what work was being done, and (at least in respect of the back addition) the works could not now be seen in order to check what/how much was actually done. Originally Mr Campbell had told the leaseholders he intended to carry out a large body of repairs, but as he didn't have the money he had limited the work in a way that he thought would avoid section 20. As works were being done piecemeal, this might have increased the overall cost. Mr Town told the Tribunal that he would have preferred to pay one lump sum and get all the work done at once. If consulted he would have asked for alternative estimates. None of the other Applicants put forward any specific evidence of prejudice.

63. Mr Campbell accepted that he had not consulted under section 20. He thought he had avoided the need to do so by limiting each invoice to a maximum of £1250.00. He said that before he became freeholder he had done works with everyone's agreement and each flat paying $1/5^{th}$, and he thought this agreement was still in place. All the works pre-dated Mr Town's purchase so he wouldn't have been consulted anyway. No-one had the money to do the works in one hit.

64. In this year, even under the pre *Phillips v Francis* state of understanding of the law, Mr Campbell should have consulted with regard to the job of replacing the bressemer because the overall cost of this set of works exceeded £1250.00. Mr Campbell's tactic of limiting any one invoice to £1250.00 did not avoid this requirement. His charges for the back addition appear to have been arrived at with the same aim in mind i.e. he deliberately sought to avoid any formal consultation. The Tribunal has borne this in mind in reaching its decision on consultation. In accordance with *Daejan Investment Limited v Benson et al* [2013] UKSC 14 the Tribunal must focus on prejudice. The works charged for are on different parts of the building and of a varying nature and there is no evidence to suggest that doing

them together would have saved money. The Tribunal's view on the level of costs has already been explained. There is no cogent evidence that the Applicants are being asked to pay for inappropriate work, or more work than was actually done, or are being charged inappropriate amounts. Any prejudice would therefore seem to be entirely speculative. The Tribunal determines that it is reasonable to grant dispensation but only on condition that the 15% management/administration fee that would otherwise be charged on these costs should not be payable. Waiver of this fee will adequately compensate the Applicants for any possible prejudice and is reasonable bearing in mind (a) Mr Campbell's deliberate policy of seeking to avoid section 20 consultation and (b) his failure to keep proper records of time and money spent (c) his overall lack of management and administration in relation to the works..

Service Charge Year 26.3.11 -25.03.12

Insurance

65. The Applicants made the same challenge as for the first year. For the same reasons as already stated, the cost of **£573.55** is allowed.

Electricity

66. The charge of **£21.50** for common parts electricity was not in dispute

Service Charge Year 26.3.12 -25.03.13

Insurance

67. The Applicants made the same challenge as for the first year. For the same reasons as already stated, the cost of **£591.04** is allowed.

Electricity

68. The charge of **£27.15 for** common parts electricity was not in dispute

It should be noted that the service charges for this year are not yet due for payment, and must be demanded in compliance with the lease and section 21B of the Act.

Management Fee

69. Under the lease, Mr Campbell may charge 15% of service charge costs for "administration" if he does not employ managing agents. Mr Campbell told the Tribunal he has not raised the fee on the insurance costs. The Tribunal has disallowed the fee on the qualifying works in 2010-11. Thus the only costs which attract the fee are the works of £1575.00 in 2009-10, and the electricity charges in the three subsequent years. The sums allowed are, year by year, £236.25, £3.90, £3.22 and £4.07.

Section 20C Application

70. In deciding whether to make an order under section 20C a Tribunal must consider what is just and equitable in the circumstances. The circumstances include the conduct of the parties and the outcome of the proceedings. Mr Paxi-Cato for the Applicants submitted that Mr Campbell had brought this case on himself by failing to comply with his legal obligations, failing to produce supporting documents, and keeping the leaseholders in ignorance. Mr Campbell made no submissions on section 20C.

71. Although Mr Campbell has been largely successful, the Tribunal accepts that Applicants' argument that he has brought this application on himself. There is certainly no reason why the Applicants should bear any costs in regard to the application for dispensation and as regards the other issues, Mr Campbell's failure to comply with the lease as regards demands and the lack of information and documentation gave the Applicants reason to query many of the charges. The Tribunal therefore determines it is just and equitable for an order to be made that to such extent as they may otherwise be recoverable, the Respondent's costs, if any, in connection with these 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 Applicants .

Concluding Remarks

72. It is plain that 41 Church Road is a building that will require further repair work, possibly substantial in nature. Mr Campbell needs to ensure he is familiar with the requirements of the lease and the legal framework in which he is required to operate, especially if he does not engage outside managing agents. Although the provisions of the lease as regards the collection of service charges and the legal structure of the building pose practical difficulties, these cannot serve as an excuse for avoiding either repairing obligations or requirements to consult. There is statutory provision for the variation of leases in certain circumstances. It is also essential that Mr Campbell immediately rectifies his non-compliance with the law relating to service charge monies and ensures that all funds are held in a separate designated trust account.

Signed

E Morrison

Chairman

Dated - 23 May 2013