LRX/90/2006

LANDS TRIBUNAL ACT 1949

LANDLORD AND TENANT – service charges – limitation of charges – whether the relevant requirements for obtaining two estimates for the works had been complied with – whether the tenant was properly notified that relevant costs had been incurred in accordance with time limit on making demands – appeal dismissed – Landlord and Tenant Act 1985 ss 20(4) and 20B

IN THE MATTER OF AN APPEAL FROM A DECISION OF THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT ASSESSMENT PANEL

BETWEEN **LONDON BOROUGH OF ISLINGTON** **Appellant**

and

LUCY SHEHATA ABDEL-MALEK **Respondent**

Re: 14 Brancaster House,
Corsica Street
London N5 1JH

Before: A J Trott FRICS

Sitting at Procession House, 110 New Bridge Street, London EC4V 6JL
on 16 July 2007

Ranjit Bhose, instructed by the Director of Corporate Resources and Solicitor to the Council, for the Appellant
Matthew Hutchings, instructed by Islington Legal Advice Centre, for the Respondent

The following cases are referred to in this decision:

London Borough of Haringey v Ball and Others (6 December 2004, unreported)
Richmond Housing Partnership v Smith (Lands Tribunal LRX/10/2005)
Gilje v Charlgove Securities [2004] 1 All ER 91

The following case was referred to in argument:

Assicurazioni Generali SpA v Arab Insurance Group [2003] 1 WLR 577

DECISION

Introduction

1. This is an appeal by the London Borough of Islington (the appellant) against the decision of the Leasehold Valuation Tribunal for the London Rent Assessment Panel dated 20 April 2006 upon an application made by Ms Lucy Shehata Abdel-Malek of 14 Brancaster House, Corsica Street, London N5 1JH (the respondent). The appeal relates to the LVT's decision that the appellant did not follow the correct procedure under section 20(3) of the Landlord and Tenant Act 1985 and that it had not shown that the relevant costs had been incurred at the date of service of a notice under section 20B of that Act.

2. Permission to appeal was granted by the LVT on 20 June 2006 without statement of the grounds. By order of this Tribunal dated 20 November 2006 it was directed that the appeal be heard by way of review.

3. Mr Ranjit Bhose of counsel appeared for the appellant and Mr Matthew Hutchings of counsel appeared for the respondent.

Facts

4. I derive the facts in this case from an agreed statement of facts prepared by counsel and from the decision of the LVT, as supplemented and amplified by reference to documents in the trial bundle before the LVT.

5. The appeal property was let by the appellant to the respondent under a lease dated 13 November 1989 for a term of 125 years from 29 September 1989. Clause 5(1) and (2) of the lease provided for a service charge consisting of expenses related solely to the demised premises and a proportion of the expenses and outgoings incurred or to be incurred by the appellant in relation to the Building (Brancaster House) and the Estate (its grounds). The third schedule of the lease gave further details of the recoverable expenditure.

6. In 2002 the appellant proposed to carry out cyclical repairs, enhancements and window replacement at four different blocks: Brancaster House, Blair Close, Northampton Park and 1-64 Seaforth Crescent. In November 2002 the appellant prepared a specification of works covering all four blocks with the intention of letting a single contract for the works. The specification gave details of the works to be done to each block together with a collection and summary.

7. The specification and an accompanying form of tender were sent to six contractors on 24 January 2003. On 24 February 2003 five tenders were received of which that from Allenbuild Limited was the lowest in the sum of £556,000 in respect of the work to all four blocks.

8. On 9 April 2003 the appellant sent a notice to the respondent purportedly under section 20 of the 1985 Act. The notice described the proposed works to Brancaster House for which the respondent would have to pay a contribution estimated to be £10,128.24. The notice was accompanied by two pages of the completed tender from each contractor that submitted a bid. In each case this gave the total amount of the tender for all four blocks but did not give separate figures for the individual blocks. However, in respect of the tender from Allenbuild Limited only there was a summary of the tender for each block. The total for Brancaster House was stated as £236,325.58. The respondent did not respond to the section 20 notice within the statutory period of consultation which ended on 10 May 2003.

9. On a date unknown after 14 May 2003 the appellant accepted Allenbuild Limited's tender. Works under the contract (but not necessarily to Brancaster House) commenced on 28 July 2003. In her witness statement to the LVT the respondent said that the works (to Brancaster House) were carried out in about September 2003.

10. Under the contract for the works stage payments to Allenbuild Limited were approved as follows:

17 September 2003:	£ 45,575
14 October 2003:	£109,690
27 November 2003:	£ 75,049

11. On 28 November 2003 the appellant wrote to the respondent under the heading:

> "Re: Estimated Major Works Invoice – Ext Reps/Redecs & Window Renwl
>
> Property: 14 Brancaster House, Corsica Street, London N5 1JH"

The letter stated:

> "Please find enclosed an estimated invoice for the above works. This figure is based on the information contained in the section 20 Notice issued earlier this year.
>
> We are not saying that the contract has finished yet. There will be an inspection at the end of the contract period and a further inspection at the end of the defects liability period. Any outstanding repairs or defective workmanship will be remedied at these stages. ....
>
> The final account, based on the actual work undertaken, will be produced once the defects liability period ends. ...."

The invoice attached to the letter described the major works and referred to total costs of £236,325.58 and to the respondent's costs of £10,128.24. These are the same costs that were referred to in the earlier section 20 notice and accompanying documents.

12. Practical completion of the works (in total) took place on 2 May 2004 and the defects liability period ended on 1 May 2005. Stage payments continued to be approved until 13 July 2004. It was accepted by the parties before the LVT that the appellant had not made any demand to the respondent for the payment of the cost of the works.

13. The respondent was a tenant who was not represented by a recognised tenants' association.

14. The parties agreed that the LVT had heard the case in respect of the section 20 notice by reference to the wording of the Landlord and Tenant Act 1985 as originally drafted and not by reference to the amendments thereto introduced by the Landlord and Tenant Act 1987. It was further agreed that the LVT should have considered the issue of the section 20 notice by reference to the 1987 Act amendments.

The LVT's decision

15. The LVT made the following finding about the section 20 notice:

> "11. The Tribunal having considered the submissions and the arguments are not satisfied that the respondents [the appellant] have sufficiently discharged their duties in providing at least two estimates within the section 20 notice as required by section 20(3). The forms of tender do not provide any detailed breakdown of the costs for each building involved in the process. Whilst the respondent has provided a breakdown for the successful contractor, the applicant would have had no way of assessing the other tenders in relation to her building or estate. Therefore these tenders do not in our view comprise proper estimates as required by section 20(3)(a). Thus we determine that the correct procedure has not been followed as required by the Act. Therefore the respondents are limited only to those costs as are recoverable under section 20(2) of the Landlord and Tenant Act 1985, as amended."

16. Having reached this conclusion about the section 20 notice the LVT stated that the issue of the section 20B notice:

> "12. ... effectively falls away. However for the purposes of completeness we have considered the submissions.
>
> 13. Mr Hutchings, on behalf of the applicant [the respondent], states that the section 20B notice dated 28 November 2003 did not state how much had been incurred by the respondents at the relevant date but merely restated the figures given in the original section 20 notice of April 2003. He states that for the notice to be valid it should have shown the costs incurred at the date of the section 20B notice.
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> 14. Mr Inskip, for the respondents, submitted that the purpose of a section 20B notice is to warn any tenant of the total costs recoverable and so that they are sufficiently warned of those costs subsequent to the original section 20 notice. He

accepted that the Council could not actually show how much had been incurred in relation to Brancaster House at the date of service of the section 20B notice."

The LVT then made the following finding:

> "15. The Tribunal having reviewed the submissions on this point does not consider that the respondents have shown the relevant costs as stated in the section 20B notice of 28 November 2003 had been incurred at that date. Therefore we find that the section 20B notice is invalid and unenforceable".

Statutory provisions

17. The relevant statutory provisions are contained in the Landlord and Tenant Act 1985 as amended by the Landlord and Tenant Act 1987:

> "20(1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified in subsection (3), the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been either –
>
> (a) complied with, or
>
> (b) dispensed with by the court in accordance with subsection (9);
>
> and the amount payable shall be limited accordingly.
>
> (2) In subsection (1) 'qualifying works', in relation to a service charge, means works (whether on a building or on any other premises) to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge.
>
> (3) The limit is whichever is the greater of –
>
> (a) £25, or such other amount as may be prescribed by order of the Secretary of State, multiplied by the number of dwellings let to the tenants concerned; or
>
> (b) £500, or such other amount as may be so prescribed.
>
> (4) The relevant requirements in relation to such of the tenants concerned as are not represented by a recognised tenants' association are –
>
> (a) At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.
>
> (b) A notice accompanied by a copy of the estimates shall be given to each of those tenants or shall be displayed in one or more places where it is likely to come to the notice of all those tenants.
>
> (c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and the

address in the United Kingdom of the person to whom the observations may be sent and the date by which they are to be received.

(d) The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b).

(e) The landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.

....

(8) In this section 'the tenants concerned' means all the landlord's tenants who may be required under the terms of their leases to contribute to the cost of the works in question by the payment of service charges."

18. The LVT mistakenly considered the issue of the section 20 notice in the context of the wording of the 1985 Act as originally drafted. That wording differed from the 1987 Act in the following main respects insofar as they relate to this appeal:

(1) The 1985 Act referred to 'works on a building' and not to 'qualifying works' as defined in the 1987 Act.

(2) The 1987 Act introduced the 'relevant requirements' and distinguished these in relation to such of the tenants concerned as are and are not represented by a recognised tenants' association.

(3) The definition of the 'the tenants concerned' was changed under the 1987 Act.

19. Section 20B of the 1985 Act states:

"20B(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."

Section 20 notice: the case for the appellant

20. Mr Bhose submitted that the issue before this Tribunal was whether the LVT had erred in law in its conclusion that the appellant's letter dated 9 April 2003 did not comply with the requirements of section 20(4) of the Landlord and Tenant Act 1985, as amended.

21. There was no definition of the word 'estimate' in the 1985 Act and nor was there anything in that Act that provided that an estimate must contain any prescribed information, or follow any set form. Mr Bhose submitted that an estimate for the purposes of section 20 was an expression of opinion as a result of approximate calculation based on probability. It could vary from a detailed costing of a specification to a simple figure. In support of his submissions Mr Bhose referred to the decision of the Central London County Court in *London Borough of Haringey v Ball and Others* (6 December 2004, unreported). He submitted that the judgment of His Honour Judge Cooke, which contained a detailed analysis of section 20, provided good guidance to this Tribunal. That judgment stated:

> "34. .... importantly it is to be noted that there is no statutory prescribed form of [section 20] notice, all the statute says is what the notice must contain. So the notice may in fact take any number of forms, from an informal letter to something that might look very like a legal document.
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> ...
>
> 36. ....
>
> (b) On its face it requires estimates to the exclusion of any other process. The virtue of tenders, as Mr Brock rightly submitted, is that they are rigorous as a process and they produce a fixed price. Estimates are just what their name suggests, an estimate of what it **may** cost not what it will; they need no detail, they can be on half of the back of an envelope, much less need they be linked to a specification. … Arguably though it may be said that a tender necessarily contains within it an estimate of a rigorous kind."

22. Agents and landlords used section 20 as a practical tool and it was therefore important to focus upon the substance of its requirements rather than the detail. As His Honour Judge Cooke continued:

> "37. I turn next to consider (in the light of all this) how one ought to approach the construction of the section. It must of course be borne in mind that this is meant to be a practical tool and not a ritual dance. .... It seems to me to be sensible, bearing in mind as I do that it is a working tool for ordinary landlords that where the substance of the requirement can be and has been complied with the Court ought to lean more to a purposive approach than a literal one. The object after all is to tell tenants what the Act says they are entitled to know and some flexibility about the exact meaning in particular cases may be appropriate."

23. The appellant sent copies of part of the five tenders received to the respondent with the section 20 notice. The tenders all contained a financial estimate (in money terms) for carrying out the works as described in the notice. These estimates were the figures at which the tenderers were prepared to contract with the appellant and were properly to be regarded as estimates for the purpose of section 20. The LVT had been wrong to place a gloss on the statutory requirements by saying that the forms of tender were not proper estimates because they did not contain a detailed breakdown of the costs for each building involved in the process. It was commonplace and unexceptional for landlords to let contracts for works to a

number of buildings in order to achieve economies of scale and there was nothing in section 20 that required the appellant to provide additional information about individual block costs as concluded by the LVT. Mr Bhose noted that the appellant's section 20 notice had gone beyond the statutory requirements in two respects. Firstly, it had contained a breakdown of Allenbuild Limited's bid that showed the separate costs for Brancaster House and, secondly, it offered the respondent the opportunity to inspect the specification of the works upon which the bids were based. Mr Bhose concluded that the appellant had complied with the requirements of section 20(4) and that the LVT had erred in law and had been wrong in its decision on this issue.

Section 20 Notice: the case for the respondent

24. Mr Hutchings submitted that copies of the estimates that the appellant had in fact obtained must be served with the section 20 notice. Those estimates, as a minimum requirement, must contain a statement of the cost of the qualifying works in order to enable the tenant to compare and make observations on them.

25. Mr Hutchings did not dispute that an estimate could be either detailed or simple. But in order to comply with section 20(4)(a) the appellant had to obtain at least two estimates and under section 20(4)(b) a copy of the estimates had to be given to the respondent or displayed as required by that section. The five tenderers had completed section C of the specification prepared by the appellant and had given details of the cost of the works for each of the four blocks. Mr Hutchings, as a matter of ordinary language, accepted each such tender to be an estimate obtained. But copies of these estimates did not accompany the section 20 notice and therefore the appellant had not complied with the requirements of that section. There was nothing in the wording of section 20(4)(b) to require the landlord to share with the tenant less than the full information that was contained in the estimate that it had actually obtained.

26. In support of his argument Mr Hutchings referred to the case of *Richmond Housing Partnership v Smith* (Lands Tribunal LRX/10/2005) in which His Honour Michael Rich QC said in connection with section 20(4):

> "6. .... In my judgment it is clear that the reference to 'estimates' is a reference to a document, capable of being copied....
>
> 7. That 'copy' means a copy of the actual document is apparent from a comparison of the provisions of subsection (4) with the requirements of subsection (5), which apply when the tenants concerned are represented by a recognised tenants' association. In such case paragraph (b) makes the same requirement as to the obtaining of two estimates as is found in paragraph (4)(a). In such case, however, paragraph (c) requires that
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> 'A copy of each of the estimates shall be given to the secretary of the association.'
>
> The provision as to the notice to be served on the tenants themselves, however, then requires only that it 'shall … (ii) summarise the estimates'. It seems to me to be impossible, in the face of such contrasting provision, to construe the requirement to

serve a copy of the estimates, as being satisfied by merely incorporating into the notice what at its best might be described as a summary of them.

8. Mr. Gallagher asks me to apply a purposive construction to the paragraph and submits that to construe it strictly would 'impose an unnecessary and empty formality to attach estimates as separate pieces of paper'. In my view the apparent purpose of the provision that such estimates must either be served on the residents' association, where there is one, or upon the affected tenants or displayed, where there is not such an association, is to provide evidence from a copy of a signed document that the estimates required to be obtained, have in fact been obtained."

27. The appellant had no objection to the use of large contracts that covered more than one block but the purpose of section 20 had not been fulfilled unless the estimated cost of the qualifying works had been identified. The qualifying works in this case meant the works proposed to Brancaster House. Mr Hutchings submitted that, relying upon the natural order of section 20, the reference to 'the works' in section 20(4)(a) must be to the qualifying works as defined in section 20(2). The section should be interpreted purposively. He argued that the purpose of the section was one of consultation. Unless the respondent received meaningful information about the cost of the qualifying works then she would not be able to compare, and make observations on, the costs estimated by rival contractors in respect of the works to which she was being asked to contribute. Section 20(4)(c) provided that the notice should invite such observations on the works and the estimates and could not be achieved unless the landlord provided an estimate that contained, as a minimum, a statement of the estimated cost of the qualifying works. This interpretation was not to place a gloss upon the statute nor to read in formal requirements, but to ensure that the basic level of information necessary to achieve the apparent statutory purpose was provided. Where a landlord obtained estimates for a large contract, involving several blocks, then an estimate of the cost for each block must be provided. The fact that to do so might be administratively inconvenient to the landlord was not to the point.

28. Mr Hutchings submitted that the appellant's case was that, in the light of the LVT's finding that the respondent "had no way of assessing the other tenders in relation to her building or estate", Parliament did not intend that a tenant was to be given sufficient information to make a meaningful comparison between, or observations on, the estimates. He concluded that this was wrong and that the LVT had not erred in law in finding so.

Section 20 notice: conclusions

29. In my opinion the expression "the works" in section 20(4)(a) of the 1985 Act refers to the qualifying works. Under section 20(1) it is the relevant costs incurred on the carrying out of any qualifying works that fall to be considered by reference to compliance with the relevant requirements. Section 20(4) sets out the relevant requirements in relation to such of the tenants concerned as are not represented by a recognised tenants' association. The expression "the tenants concerned" is defined under section 20(8) as meaning "all the landlord's tenants who may be required under the terms of their leases to contribute to the costs of the works in question by the payment of service charges". I consider that "the works in question" mean the

qualifying works since the tenants concerned are not required to contribute to the cost of any other works. The qualifying works in this appeal mean the works on Brancaster House to the cost of which the respondent may be required under the terms of her lease to contribute by way of a service charge.

30. It was therefore incumbent upon the appellant to provide to the respondent copies of all of the estimates that it had obtained for the works to Brancaster House. It failed to do so. The appellant only provided details of the successful tenderer's bid in respect of such works and did so by means of its own summary rather than by copying the estimate (tender) itself. The Act requires, as His Honour Michael Rich QC said in *Richmond Housing Partnership v Smith*, that the landlord should copy the actual estimates obtained and not provide a summary of them. The respondent, however, did not take what Mr Hutchings described as this technical point against the appellant, despite this Tribunal's guidance on the issue. However, the respondent noted in her witness statement to the LVT that the grand total of Allenbuild Limited's bid for the works to all four blocks shown in the appellant's summary differed from the amount shown on the copy of that company's form of tender which also accompanied the section 20 notice. The former was £621,976.35 and the latter £556,000. The appellant did not explain this apparent discrepancy, which was due to the inclusion of professional fees in the former figure, until the respondent received a letter from Homes for Islington Limited (the provider of the professional services concerned) dated 17 March 2005. This lack of clarity about the cost estimates reinforces the concerns of the Tribunal that actual copies of estimates, rather than summaries, should be provided.

31. In response to a question from the Tribunal Mr Bhose conceded that, upon his argument, the section 20 notice would have been properly served even if the appellant had not given a breakdown of Allenbuild Limited's estimated costs of the works to Brancaster House but instead had provided an overall figure for the total estimated costs of the works to all the blocks similar to those provided by the appellant in respect of the other four tenderers. In view of my reasoning above I consider that this argument is flawed. It produces an unjust result and would not achieve a meaningful consultation. I accept Mr Hutchings' submission that the purpose of section 20 is to give a tenant sufficient information by way of copy estimates to be able to compare, and make observations on, the estimates for those works for which he is liable to contribute by way of a service charge. Such information is required in respect of all, and not just the lowest, of the estimates that the landlord obtains and it is not relevant to this appeal that to provide the same would be contrary to the appellant's policy and would cause it administrative difficulty.

32. The LVT considered this issue by reference to section 20(3) of the 1985 Act as originally drafted. The amendments introduced under the 1987 Act are described in paragraph 18 above. However, having considered the arguments in the context of the amended legislation I conclude that the appellant failed to meet the requirements of section 20(4) of the Act and I therefore dismiss the appeal on this issue.

Section 20B: the case for the appellant

33. Mr Bhose submitted that section 20B should be considered purposively. The purpose of the section was to ensure that a tenant was not faced with a bill without proper notice and without an adequate opportunity to budget for the expense. However, the section was potentially draconian for the landlord for two reasons. Firstly, the section imposed a short statutory limitation (18 months). Secondly, unlike a section 20 notice, the 1985 Act made no provision for dispensation where section 20B had not been complied with. It was necessary, therefore, to ensure that section 20B was interpreted sensibly, fairly and pragmatically. In support of these submissions Mr Bhose referred to the judgment of Etherton J in *Gilje v Charlgove Securities* [2004] 1 All ER 91 at paragraph 27:

> "...the policy behind section 20B of the Act is that the tenant should not be faced with a bill for expenditure, of which he or she was not sufficiently warned to set aside provision. It is not directed at preventing the lessor from recovering any expenditure on matters, and to the extent, of which there was adequate prior notice...."

34. Mr Bhose also relied upon the observations on section 20B of His Honour Judge Cooke in *London Borough of Haringey v Ball and Others* at paragraph 94:

> "...I have in mind also that (i) this group of sections (which nowhere give a statutory form of notice) are plainly meant to be used not by equity draftsman but by people such as managing agents in their day to day work, (ii) that the plain object is that the tenants are to be told that the costs have been incurred and that they will be asked to pay later, (iii) that the section actually says nothing about the amount of the costs, (iv) that the tenants will already have had (absent dispensation under section 20(9)) a section 20 notice, so that detailed identification of the works is not really necessary. Furthermore in practical terms there will be cases where the figures have not yet been finalised (at its most crude and obvious there may be litigation with the contractor) so a requirement to put in the exact figure which may be inevitable would completely bar recovery."

He concluded that:

> "95. …In my judgment any notice claimed to be under section 20B must be examined on the basis of the question whether it does or does not (in its factual content) fairly notify the tenant of the matters of which section 20B requires him to be notified. It must always of course be a good thing (though not essential) that the notice does in fact say (as these notices do) that it is a notice under the section. ...."

35. Mr Bhose submitted that the main reason why a landlord would need to serve a section 20B notice was where it was *not possible* to calculate the actual service charge ultimately to be demanded, for instance in the case of a phased contract with staged payments or where there was a contractual dispute. He found it extremely hard to see how, if the LVT's decision was

correct, a landlord might protect itself in any case where it was not in a position to calculate the actual costs within the 18 months limitation period.

36. Mr Bhose considered the definition of 'relevant costs' under section 18(2) of the 1985 Act and submitted that three types of costs were included:

(i) Costs incurred

(ii) Costs to be incurred

(iii) Estimated costs to be incurred.

The expression "to be incurred" required certainty and meant that those costs would be, rather than may be, incurred. This led Mr Bhose to consider when costs are incurred for the purposes of section 20B. He submitted that where, as in this appeal, there was a contract that provided for staged payments to be made after certification, the costs were incurred after each such payment was certified. The costs to be incurred were the total costs specified in the contract and as each stage payment was certified the costs to be incurred reduced and the costs incurred increased.

37. The appellant had argued that section 20B(2) only operated when costs had been incurred. Mr Bhose considered this interpretation to be far too narrow and one that was not contemplated by the Act. The use of the expression "relevant costs" in the section indicated that a wider interpretation was required, namely one which included costs to be incurred as provided for by section 18(2). The appellant was entitled to serve a section 20B(2) notice once the contract for the works had been signed and there were costs to be incurred. The fact that before the LVT the appellant could not show what costs had been incurred on Brancaster House at the time the section 20B(2) notice was served on 28 November 2003 was immaterial. Even if no costs had been so incurred at that time the appellant was still entitled to serve the section 20B(2) notice since they were costs to be incurred under the contract. Mr Bhose considered that this interpretation meant that the parties did not have to worry about additional costs (and therefore additional notices) as and when they were incurred. It was not necessary to be constantly considering how much had been spent on each block at any one moment. This approach was certain and clear and not, as Mr Hutchings had suggested, unfriendly to landlords. If this was not the case then the result was exceptionally unfair to the appellant. The respondent knew that the totality of the works had not been completed at the date the section 20B(2) notice was served but knew also that she would have to pay just over £10,000 once the contract had been satisfactorily completed. Mr Bhose contended that even if the Tribunal accepted the respondent's case that the section 20B(2) notice could properly be served only once costs had been incurred it was not the case that nothing was payable since the appellant was entitled to recover in respect of the works actually done by the date such a notice had in fact been served.

38. Mr Bhose submitted that the LVT's conclusion that the appellant had not shown that the relevant costs as stated in the section 20B(2) notice had been incurred at the date of service had overlooked the respondent's acknowledgement in her witness statement that the works (to Brancaster House) were carried out "in about September 2003". He believed this to be a

serious error and submitted that the LVT was likely to have come to a different conclusion had this point been considered.

39. Given the above factors Mr Bhose concluded that the section 20B(2) notice had fairly notified the respondent of the requisite matters. It was sent after the section 20(4) notice, once the works had been substantially completed, but before the final account had been prepared. It notified the respondent that the contribution was £10,128.24 which implied that the contract was coming in on budget. The respondent was fully aware of the maximum final amount she would have to pay and was therefore able to budget accordingly. This conclusion was consistent with the statutory purpose, common sense and fairness.

Section 20B: the case for the respondent

40. Mr Hutchings agreed with Mr Bhose's definitions of costs incurred and of costs to be incurred in the context of a phased contract with staged payments. However, he submitted that the wording of section 20B referred only to relevant costs that were or had been incurred. It did not refer to costs to be incurred. In this respect it differed from section 18(2) of the 1985 Act. The 18 months limitation period was not triggered until the landlord had actually incurred costs. This construction gave rise to none of the problems for landlords suggested by Mr Bhose. The appellant only needed to wait until it had actually incurred the costs of the works to Brancaster House before serving the section 20B(2) notice in respect of them. The 18 months limitation period did not start until then. If further costs were properly incurred then another notice or demand could have been served within 18 months of those costs having been incurred. Mr Hutchings disputed Mr Bhose's submission that a section 20B(2) notice could be served in respect of costs to be incurred. There was nothing in section 20B to support this interpretation, which, if correct, gave no clarity about the trigger event for serving a notice.

41. The LVT had found on the facts that the appellant had not shown that the relevant costs as stated in the section 20B(2) notice in November 2003 had been incurred at that date. Mr Hutchings submitted that it was entitled to make that finding. The appellant's letter dated 28 November 2003 was expressly said to be an estimated invoice that was "based upon the information contained in the section 20 notice issued earlier this year." It did not, as a matter of construction, inform the respondent that the costs referred to "had been incurred". The wording of section 20B(2) required the landlord to notify the tenant in writing after the relevant costs were incurred that those costs had been incurred. The appellant could not properly notify the respondent that costs had been incurred when they had not. Therefore the appellant's letter of 28 November 2003 was not a proper notice under section 20B(2). There was no need, as submitted by Mr Bhose, to specify how much is yet to be incurred. To do so, without stating the costs that had been incurred, did not satisfy the requirements of that section. To enable the respondent to budget for her contribution to the relevant costs the appellant needed to notify her of the actual liability rather than the liability that was contingent upon Allenbuild Limited undertaking the qualifying works.

Section 20B: conclusions

42. The notification required under section 20B(2) is in respect of costs that have been incurred and not costs that are to be incurred. The wording of the section appears to me to be clear and unambiguous. Mr Bhose submitted that reference to "relevant costs" in this section means that costs that are to be incurred are also contemplated given the definition of that expression under section 18(2) of the 1985 Act. I do not accept this argument. The use of the passive past tense in section 20B limits the relevant costs to those costs that have been incurred. The 18 months limitation period contained in this section does not apply to any part of the relevant costs that are yet to be incurred. I agree with Mr Hutchings that Mr Bhose's concerns that a landlord cannot protect himself where he is unable to calculate the actual costs within the 18 month limitation period are unfounded.

43. The issue that consequently falls to be determined is whether the appellant satisfied the notification requirements of section 20B(2) in respect of relevant costs that had been incurred and to which the respondent was required to contribute under the terms of her lease. This requires the appellant to prove two things in order to show that the LVT reached a wrong decision. Firstly, that such relevant costs had been incurred by the date of the notice and, secondly, that the notice itself stated this to be the case.

44. In addressing these issues the difficulty faced by the respondent is the lack of evidence about what costs were incurred, and when, in respect of Brancaster House. Whilst its letter to the respondent dated 28 November 2003 refers specifically to that property it is not stated to be a notice under section 20B(2) and refers to an estimate of costs both in the letter itself and the attached "estimated invoice". The appellant did not refer to, or analyse, any costs that had been incurred under the contract by that time. It provided no new information to that already provided to the respondent in the appellant's section 20 notice dated 9 April 2003. Indeed at the LVT hearing Mr Inskip, for the appellant, conceded that the appellant could not show what costs had been incurred on Brancaster House as at the date the section 20B(2) notice was served.

45. Mr Bhose submitted that section 20B does not require the amount of the costs to be specified and he relied for support upon the judgment of His Honour Judge Cooke in *London Borough of Haringey v Ball and Others* that the section actually says nothing about the amount of the costs. But I agree with Mr Hutchings that this interpretation when taken in context would be contrary to the purpose of the section, as determined by Etherton J in *Gilje v Charlgrove Securities*, to give warning of a bill for expenditure and to enable the tenant to set aside provision to meet it. A tenant will be unable to budget for known (incurred) expenditure unless the amount of the costs incurred is identified in the section 20B(2) notice. It is not sufficient to rely upon the estimates contained in the section 20 notice since these are estimated costs to be incurred rather than costs incurred.

46. The LVT's determination that the appellant had failed to show that costs had been incurred at the date of the section 20B(2) notice relied upon Mr Inskip's concession as described above. However, there were three other pieces of evidence before it that are not

referred to in its decision. Firstly, the appellant had made three stage payments by 28 November 2003, amounting to £230,314 or approximately 36% of the total contract sum. These payments are not broken down between the four blocks and therefore it is not possible to say how much, if any, relates to Brancaster House. Nevertheless these payments prove that costs had been incurred under the contract by the time that the section 20B(2) notice was served. Secondly, there is the witness statement of the respondent. She says that "The works were carried out in about September 2003". From the context of that comment I am satisfied that she is referring to the works at Brancaster House. The witness statement goes on to say that "During the works, the site office was based at Brancaster House; although works to Brancaster House were completed some two months before works at other estates, the site office at Brancaster House remained in operation." From this comment, and the fact that the works to Brancaster House formed the largest part of the works to the four blocks at approximately 37% of the total cost, I infer that the works to Brancaster House were probably (but not certainly) undertaken early in the works programme. Thirdly, the appellant's section 20B(2) notice says that "We are not saying that the contract has finished yet." I infer from this that the contract been implemented in respect of Brancaster House at that time.

47. I conclude from the evidence that it was probable that costs had been incurred on Brancaster House by the 28 November 2003. I further conclude that the respondent was aware of this and that she had sufficient information before her following the service of the section 20B(2) notice to budget and provide for her estimated contribution to the service charge. But these conclusions do not vitiate the LVT's decision that the appellant had not shown that the costs *as stated in that notice* had been incurred at that date. The costs that the appellant referred to in its notice were the estimated costs to be incurred, these having been identified after the tender process. The section 20B(2) notice merely repeated this information which had been included previously in the appellant's section 20 notice. But this did not satisfy the particular requirement of section 20B to identify the costs that had been incurred. I think it probable that the appellant could have identified such costs at that time but it failed to do so and the LVT did not err in law by saying so. I therefore dismiss the appeal on this issue.

Dated 7 August 2007

A J Trott FRICS