9610

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00BA/LSC/2013/0726**
Property	:	**FLAT 2, PRINCESS COURT, 41 CHURCH ROAD, MITCHAM, SURREY CR4 3BF**
Applicant	:	**39-41 CHURCH ROAD MANAGEMENT CO LTD**
Representative	:	**PDC LEGAL SOLICITORS**
Respondent	:	**(TYICA) JOAN RILEY**
Representative	:	**MONTAS SOLICITORS**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge and administration charge**
Tribunal Members	:	**MS L SMITH (LEGAL CHAIR)** **MR S MASON BSc FRICS FCIArb** **MS S WILBY**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR** **10 February 2014**
Date of Decision	:	**26 February 2014**

DECISION

Decisions of the Tribunal

(1) The Tribunal finds that the sum of £2000 has been properly demanded under the Lease.

(2) The Tribunal finds that the Applicant is not precluded by s20B Landlord and Tenant Act 1985 from demanding now the balance of the £2000 over and above the Respondent's share of the service charge as determined below.

(3) The Tribunal determines that the service charge demands and administration charges complied with s48 Landlord and Tenant Act 1987 and The Service Charge and Administration Charge Regulations 2007.

(4) The Tribunal determines that there was no consultation under s20 Landlord and Tenant Act 1987 in relation to qualifying works or QLTA. The Tribunal gives dispensation in relation to the qualifying works but not in relation to the QLTA and therefore finds that the Respondent's share of the qualifying works (which is £438.49) is reasonable and payable but that the Respondent's share of the management charge under the QLTA (which is £148.11) should be reduced to £100, subject to reasonableness (see next issue).

(5) The Tribunal determines that the sum of £784.25 is payable by the Respondent in respect of the service charges for the year 2010-2011.

(6) The Tribunal determines that the sum of £80 is payable and reasonable in relation to administration charges.

(7) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 so that the landlord's costs of the Tribunal proceedings may be passed to the lessees through any service charge

(8) The Tribunal determines that the Respondent shall pay the Applicant £190 within 28 days of this Decision, in respect of the reimbursement of the Tribunal fees paid by the Applicant

(9) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Croydon County Court.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the

Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant in respect of the service charge year 2010-11.

2. Proceedings were originally issued in the Northampton County Court under claim no. 2YJ16626. Default judgment was obtained against the Respondent on 10 July 2012 but that was set aside by the Croydon County Court (following transfer) on 22 March 2013. At that hearing, the Applicant was also permitted to change its name on the claim to 39-41 Church Road Management Co Ltd. The claim was transferred to this Tribunal, by order of District Judge Mills on 9 October 2013.

3. The relevant legal provisions are set out in Appendix 1 to this decision.

The hearing

4. The Applicant was represented by Mr Glenister of Counsel at the hearing and by Mr McDonagh (one of the Applicant's Directors) and Mrs Birchmore (the Managing Agent). The Respondent was represented by Mr Harris of Counsel and also appeared in person.

5. Before the hearing, the Applicant supplied a lever arch file of documents including a statement of case and witness statement from Mr McDonagh. The Respondent claimed that her solicitors (who were not present at the hearing) had not received that bundle and she and her Counsel were given 45 minutes at the start of the hearing to read the bundle.

6. It is noted that neither party attended the CMC on 14 November 2013 although the Applicant's solicitors had suggested directions by letter as the Tribunal had indicated that it might hold the CMC by telephone (which it did not do due to the Respondent's solicitor failing to respond). The Respondent and her solicitors had also completely failed to comply with any of the directions set out in the order of 14 November 2013. Mr Harris provided the Tribunal at the hearing with an opening note which raised a number of legal issues which the Tribunal agreed to deal with notwithstanding the failure to comply with directions since the Applicant was legally represented and the issues were flagged up although not developed in the County Court Defence. The Respondent was also given considerable latitude during the hearing to give evidence none of which had been provided in writing before the hearing. The reason for this was because it was brought to the Tribunal's attention at the outset of the hearing that there had in fact been another application in relation to the same property involving the same parties at which written evidence had been produced so that the Applicant would not be taken by surprise by the evidence (application number LON/00BA/LSC/2013/0499). There has as yet been no decision in that application which relates to a different service charge year. The Tribunal was unable to access the office copy of the Respondent's

bundle for that hearing since, apparently, on that occasion also the Respondent produced the bundle late (on the morning of the hearing). The Respondent had apparently been informed by her solicitor that she could rely on the written evidence produced on that occasion at this hearing. If that were so, the Tribunal would have expected the courtesy of a letter from the solicitors to that effect and producing the evidence rather than the complete failure to engage. The Tribunal considers the conduct of both the Respondent and her solicitors to be extremely disrespectful and unhelpful and they should not expect that the Tribunal will be as accommodating to them if they behave in this manner on any future occasion.

7. The Tribunal also notes that, whilst the Applicant did comply with some of the directions made on 14 November, the bundle produced did not include the invoices supporting its case. Whilst the Tribunal has some sympathy for the position in which the Applicant was placed by the Respondent's failures to comply and to identify what was at dispute, the number of items in the service charge year in question were relatively few and it would not have been an enormous task to provide those documents.

The background

8. The property which is the subject of this application ("the Property") is a ground floor flat in a building which was constructed in 2004/5. The building is in two connected parts. The first part, Princess Lodge, consists of 6 flats over 3 floors. The second part, Princess Court, is also comprised of 6 flats over 3 floors. For each part, there is a front door with a hall and stairs leading to the 3 floors. There is an underground car park with 12 spaces – one for each flat. The statement of Mr McDonagh gives some background to this development. The building was not properly completed and work was sub-standard. Furthermore, the freeholder (who seems to have disappeared without trace) never properly formed the management company which was supposed to include the freeholder and the 12 individual leaseholders. As a result the management company was struck off the register on 21 November 2006.

9. In November 2008, a company called Diamond Managing Agents Ltd ("Diamond") notified that they were managing agents appointed by a company called 39 Church Road Management Ltd (it appears that this was a new company set up by the freeholder). Diamond sought to recover service charges dating back to 2005. A number of the leaseholders who were naturally concerned by the freeholder seeking to recover service charges whilst making no effort to maintain or repair (and possibly even insure) the building set up a temporary management group. An application was made to the Tribunal (LON/00BA/LSC/2009/108) to determine the reasonableness of the service charges for the years 2006, 2007, 2008 and 2009. Following

the decision in that case, which determined what service charges were to be paid to Diamond, an application was made by some of the leaseholders to Companies House and the Applicant company was incorporated on 27 May 2010 under the name 39-41 Church Road Management Co Ltd.

10. Neither party requested an inspection of the Property and the Tribunal did not consider that one was necessary, nor would it have been proportionate to the issues in dispute.

11. The Respondent holds a long lease of the Property ("the Lease") which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease are set out in Appendix 2 and referred to below, where appropriate.

The issues

12. From the opening note provided by Mr Harris for the Respondent the relevant issues for determination were as follows:

    (i) Whether the service charges for 2010-11 had been properly demanded in accordance with the Lease

    (ii) Whether s20B Landlord and Tenant Act 1985 prevented recovery of the service charge for 2010-11 (assuming that the service charge for that year had not been properly demanded)

    (iii) Whether the service charge demands complied with s48 Landlord and Tenant Act 1987 and The Service Charge and Administration Charge Regulations 2007.

    (iv) Whether there had been compliance with the consultation requirements of s20 Landlord and Tenant Act 1985 in relation to works and a qualifying long-term agreement and if not whether consultation should be dispensed with.

    (v) Whether the Applicant was entitled to demand administration charges

13. In light of the lateness of the Respondent's case, the Tribunal reversed the order of submissions so that Mr Harris could develop those submissions and Mr Glenister could respond to them. Having heard evidence and submissions from the parties and considered all of the

documents provided, the Tribunal has made determinations on the various issues as follows.

Whether the service charge was demanded in accordance with the Lease

14. The Respondent asserted that there had been no compliance with the Lease in relation to demands. What had been sent to the Respondent by the Applicant were invoices each for £500 totalling £2000 and the accounts for the year in question.

The Tribunal's decision

15. The Tribunal finds that the sum of £2000 has been properly demanded under the Lease.

Reasons for the Tribunal's decision

16. The Lease (which incidentally appears to relate to Flat 1 and not Flat 2) provides for service charges to be paid on 1 January and 1 July in each year "*or such other date or dates as the Company shall decide*". The Company is defined as "*39 Church Road Management Company Ltd*". However, it is clear that the Applicant has succeeded to that company and the Lease has to be read in that context. The Company's financial year is also defined by the Lease as 1 January to 31 December "*or such other annual period as the Company may in its absolute discretion from time to time determine as being that period in respect of which the accounts of the Company shall be made up*". It appears that the Applicant company, having been incorporated, has a financial year now of 1 June to 31 May in each year and it appears that the Applicant is now adopting that period as being the service charge year, which is permitted by the Lease as being the period for which the accounts are drawn up.

17. The service charge is defined as "*all expenses incurred by the Company for or incidental to observing and performing the Building Services and the Apartment Services*". The Lease provides that the amount of the service charge is ascertained and certified by the Service Charge Certificate. The Service Charge Certificate is defined as being "*a statement in such form as the Company or the Company's agents deem appropriate*" signed by an accountant, auditor or managing agent and which should contain "*a summary of the expenses and outgoings incurred by the Company during the Company's financial year to which it relates together with a summary of the relevant details of figures forming the basis of the relevant head or heads of the Apartments Service Charge and the Building Service Charge*". The Service Charge Certificate is said to be conclusive evidence of the matters which it purports to certify. "*As soon as practicable after the*

signature" of the certificate, the Company is to provide an account of the service charge percentage payable by the lessee, giving credit for interim payments. Any overpayment is re-credited to the lessee's liability for the following year. In relation to any underpayment, the Company can request a further contribution – "*such request shall state the contributions received from all lessees for that Company's Financial Year including the Lessee and will contain a summary of the expenses and outgoings incurred and likely to be incurred during the Company's Financial Year*". The request should state the contribution required from the lessee and is payable within 21 days from the request.

18. The Respondent's service charge percentage is 8.33%. The Lease provides for the lessee to pay the Service Charge in accordance with the service charge covenants contained in the sixth schedule. That schedule requires the Respondent to pay the sums demanded "*on account of the Service Charge percentage*" half-yearly in advance on the payment dates (ie 1 January and 1 July) or otherwise 21 days from any other demand (as above).

19. The demands which are the subject of this application are for the periods 1 July – 30 September 2010, 1 October – 31 December 2010, 1 January - 31 March 2011 and 1 April – 30 June 2011, each in the sum of £500 together totalling £2000. Mr McDonagh explained that this was the annual sum which had been agreed to be required from each of the leaseholders at the inaugural AGM of the Applicant company. The Service Charge Certificate in relation to 2010-11 was signed by the accountant on 16 April 2012. Mr McDonagh gave evidence to the effect that the Service Charge Certificate and accounts would have been sent to the Respondent shortly after the signature of the Certificate.

20. The Respondent's principal complaint was that she had not received any demands at all. She asserted in evidence that the tenants who live in the Property had given evidence at the hearing of the other application that they had not received any notices or demands from the Applicant. The agent managing the Property was also said to have asserted on that occasion that he had not received any demands (and made a statement in the County Court to that effect). In this regard, the Tribunal notes that it appears to be a common complaint by this Respondent that she does not receive documents. It was so asserted in relation to the County Court proceedings which are the subject of this transfer although it appears that those proceedings were correctly addressed to her at the Property and that the County Court indicated on 19 October 2012 that the claim form had been returned marked "not known at the address given". The Tribunal does not have sufficient evidence before it to determine this factual issue. However, it does not need to since the Lease helpfully provides that any notice or other document to be given under the Lease is served if given by first class post or personal service at the address in the Lease (ie the Property) unless a different address is notified in writing. The Respondent was asked when she had given an alternative address to the Applicant for

correspondence and responded that this was at the time of the hearing when the judgment was set aside. This was in March 2013 and therefore some considerable time after the demands in question. Accordingly, the Tribunal decides that the demands were properly given under the Lease whether or not the Respondent received them.

21. Mr Harris submitted though that the demands sent were not service charge demands under the Lease as they did not require payment of a proportion of the expenses incurred by the Applicant but were just demands for £500 per quarter (which quarter days were not in any event the payment dates under the Lease). Mr Glenister submitted that these were service charge demands as the Respondent had also been provided with the Service Charge Certificate for the year in question. The accountant's certificate for the year in dispute provides the following report of factual findings:-

"(a) With respect to item 1 we found the figures in the statement of account to have been extracted correctly from the accounting records

(b) With respect to item 2 we found that those entries in the accounting records what we checked were supported by receipts, other documentation or evidence that we inspected

(c) With respect to item 3 we found that all service charge monies for the property were held in a designated account with Barclays Bank and the balance reconciled to the fund balance show on page five of the statement of account"

22. The service charge expenditure for the year 1 June 2010-31 May 2011 showed total expenditure of £13188 against total income of £22000 Much was made by Mr Harris in cross examination of Mr McDonagh that this would suggest that there was excess money from this service charge year of nearly £10,000. This was answered in part by the fact that not all leaseholders have paid their service charge so the income was not as stated. Further, Mr McDonagh explained that he and other leaseholders who had been involved in setting up the Applicant company had put their own money into the service charge fund to enable priority works to be carried out and it was therefore still the case that monies received were insufficient to do the works needed to put the building into repair.

23. Mr Harris also raised during cross-examination of Mrs Birchmore that the Lease distinguished between "*Apartment Services*" and "*Building Services*" and submitted that it was intended by the definition of Service Charge Certificate that this should be split into different heads of Apartments Service Charge and Building Service Charge and submitted that this was yet further evidence that service charge demands were not being properly made under the provisions of the Lease. The Tribunal does not read that definition in the way in which

Mr Harris submits not least because there is a degree of overlap between the items described as "*Apartment Services*" and "*Building Services*". In the view of the Tribunal, all that is required is that the summary of expenses is given under the different headings which it is.

24. As was stated by the High Court in LB Brent v Shulem B Association Ltd [2011] EWHC 1663 (Ch) "*What the authorities show is that the form and content of the demand depends upon the wording of the contractual or statutory provision in question and, critically, on the perceived purpose of that provision*". This enabled the Judge in that case to form his own view based on the demand itself and the provisions in the lease as to the validity of the demand.

25. In this case, the Lease provides for interim payments to be demanded in advance on account of service charges. The Lease provides that the service charge year should equate to the Company's Financial Year. The variation of the service charge year to 1 June to 31 May in each year consistently with the financial year of the Applicant company is therefore permitted by the Lease. The Service Charge Payment Dates specified as being 1 January and 1 July on each year are also capable of being varied "*as the Company shall decide*". The fact that the service charge was demanded quarterly is therefore also not inconsistent with the Lease. The invoices which were sent out during the service charge year were demands for amounts on account of the service charge which is permitted by paragraph 2.1 of the Sixth Schedule. Accordingly, the Tribunal determines that they are demands in accordance with the Lease.

26. Mr Harris complains that if this were permitted then it would mean that the Applicant would be permitted to continue to issue invoices quarterly for a fixed payment without ever having to reconcile the monies received with actual expenditure. The Tribunal disagrees. Following the signing off of the Service Charge Certificate, the Applicant should have issued a balancing demand for 2010-11 requesting further expenditure if such were needed for anticipated expenditure or re-crediting the balance to the Respondent. As things currently stand, therefore, the service charge which the Respondent is due to pay is 8.33% of the expenditure for 2010-11 which, subject to the other determinations below, equates to £1098.56. Accordingly, until she is served with a proper demand for the balance remaining between the £2000 demanded and the £1098.56 shown in the Service Charge Certificate, that balance should be re-credited to reduce her liability.

Whether s20B Landlord and Tenant Act 1985 prevented recovery of the service charge for 2010-11 (assuming that the service charge for that year had not been properly demanded)

27. Mr Harris submitted that if the Respondent were right about the service charge demands not complying with the Lease, the Applicant

could not now demand those sums as a result of s20B Landlord and Tenant Act 1985. In light of the Tribunal's finding in relation to the first issue, this is now relevant only to the balance between the £2000 demanded and the £1098.56, being the Respondent's contribution to the expenditure shown in the Service Charge Certificate.

The Tribunal's decision

28. The Tribunal determines that s20B does not prevent the Applicant from now demanding the balance of the service charge for 2010-11.

Reasons for the Tribunal's decision

29. The Tribunal suggested to Mr Harris at the outset of his submissions that if it were minded to decide that the demands had not been properly made then it would need persuading that s20B(2) did not permit the Applicant to now demand the sums claimed. Mr Glenister adopted that approach and argued that the invoices complied with s20B(2). Mr Harris's response was that they could not do so since those made no reference to what costs were incurred but were simply demands for a set amount of money with no reference to the service charges incurred.

30. Section 20B(2) requires that the tenant be notified in writing that the relevant costs were incurred and that he would subsequently be required to contribute to those costs under the terms of the lease by payment of a service charge. In the view of the Tribunal, taking the invoices and the service charge certificate and accounts together, this would have been a sufficient notice in writing that costs had been incurred and that monies were being demanded under the Lease in relation to those costs as service charges, had it determined the first issue against the Applicant.

31. Having determined the first issue in the Applicant's favour, the Tribunal does not strictly need to decide whether any further demand would comply with s20B. In case the Applicant is minded to demand further monies from the Respondent rather than to re-credit any balance against the Respondent's liability, the Tribunal observes that the situation here where valid demands have been given which exceed the expenditure, any balancing demand for the remainder would not need to comply with s20B (see Paddington Walk Management Ltd v The Governors of the Peabody Trust [2009]). The fact that, unlike the the Defendant in that case, the Respondent has not actually paid the on account demands does not affect the principle stated in that case.

Whether the service charge demands complied with s48 Landlord and Tenant Act 1987 and The Service Charge and Administration Charge Regulations 2007.

32. The focus of the Respondent's challenge in this regard was that the Summary of Tenant's Rights and Obligations was not served with the relevant invoices particularly those which related to the administration charges.

The Tribunal's decision

33. The Tribunal determines that the service charge demands and administration charges complied with s48 Landlord and Tenant Act 1987 and The Service Charge and Administration Charge Regulations 2007.

Reasons for the Tribunal's decision

34. The Tribunal received evidence from Mrs Birchmore in relation to this issue which showed that the summary of rights and obligations was in fact included with both the service charge invoices and the demands for administration charges. The Tribunal notes in any event that, even had there not been compliance, this would only mean that payment was not due until there had been a further demand complying with those sections.

Whether there had been compliance with the consultation requirements of s20 Landlord and Tenant Act 1985 in relation to works and a qualifying long-term agreement and if not whether consultation should be dispensed with.

35. The Respondent's challenge in this regard in the opening statement was quite vague amounting to a bald assertion that "to the extent that service charges claimed are in respect of works" there had been no consultation and it would not be reasonable to dispense with that consultation. During the hearing, the issue broadened to challenge non-compliance with the consultation regime in relation to the management agreement between the Applicant and its managing agents which was for a 3 year term and therefore a qualifying long term agreement ("QLTA").

The Tribunal's decision

36. The Tribunal determines that there was no consultation under s20 Landlord and Tenant Act 1987 in relation to qualifying works or QLTA. The Tribunal gives dispensation in relation to the qualifying works but not in relation to the QLTA and therefore finds that the Respondent's share of the qualifying works (which is £438.49) is reasonable and payable but that the Respondent's share of the management charge under the QLTA (which is £148.11) should be reduced to £100, subject to reasonableness (see next issue).

Reasons for the Tribunal's decision

37. The income and expenditure account for the service charge year in question includes the following items which would fall within the definition of "qualifying works" in section 20 (in accordance with the Court of Appeal's reasoning in Philips v Francis [2012] EWHC 3650 (Ch) on which Mr Harris appeared to rely):-

Repairs and renewals	860
Electrical remedials	1350
Roof repairs	1793
Water pump	1261

Those amounts total £5264. That amounts to £438.49 due from the Respondent. It was common ground that there had been no consultation complying with s20. For that reason, Mr Glenister made an application on the Applicant's behalf under s20ZA for dispensation based on the urgent need for repairs – in part based on the danger caused by the disrepair of the roof and the need to repair the water pump to avoid the underground car park flooding (as set out in Mr McDonagh's evidence). Mr Harris objected to that application on the basis that there had been a complete failure to comply by the Applicant and not simply a minor technical breach of the consultation requirements.

38. The issue in relation to the QLTA arose during the hearing when the Applicant referred to the management agreement between it and its managing agent which was not included in the bundle but which it was common ground was for a period of 3 years and accordingly was a QLTA. The amount stated in the accounts for the year 2010-11 for management fees is £1778 for which the Respondent's share is £148.11. Again, Mr Glenister made an application for dispensation based on the fact that in 2010 it had been an urgent need for the leaseholders involved in setting up the Applicant company to get the building in repair and properly managed. Mr Harris objected to that application for the same reasons as above.

39. Following Daejan Investments Ltd v Benson and others [2013] UKSC 14, the issue is not the extent of any failure to consult but the seriousness of any prejudice to the tenant. In relation to the repairs, it was not disputed by the Respondent that work needed to be done to the building in which the Property is situated and the Tribunal accepts Mr McDonagh's evidence in that regard and gives dispensation under s20ZA in relation to the qualifying works totalling £5264 (subject to issues of reasonableness – see below) of which the Respondent's share

is £438.49. In relation to the QLTA though, whilst accepting Mr McDonagh's evidence that it was necessary to enter into the agreement swiftly following incorporation of the Applicant company and that 12 companies had been considered before the Applicant entered into the QLTA, that does not explain why the Applicant considered it necessary to enter into an agreement for more than 12 months nor why there was an urgency which excused the failure to consult, particularly where it appeared from Mr McDonagh's evidence that most of the repair works were being managed directly by the leaseholders running the Applicant company. The Respondent when she gave evidence said that she had spoken to Diamond (who it will be recalled were the managing agent appointed by the company set up by the absentee freeholder) and they had said that they could manage the building for less – around £1000 – although it appeared on further questioning that this was not a like for like service. However, it does appear that there is some prejudice to the Respondent and other lessees from not being consulted about the QLTA. Accordingly, the amount which can be claimed in relation to the management fees is reduced to £100.

Reasonableness of the service charge as contained in the Service Charge Certificate for the service charge year 2010-11

40. The total amount of the expenditure in the service charge year 2010-11 is £13188 made up as follows:-

Light and heat	£1953
Post and stationery	£139
Management fees	£1778
Repairs and renewals	£860
Electrical and remedials	£1350
Household and cleaning	£378
Roof repairs	£1793
Water pump	£1261
Accountancy	£480
Legal fees	£3196
Total	£13188

Mr Harris challenged the reasonableness of all items on the basis that they were not evidenced by invoices. He made the point that on the hearing of the previous application, the Tribunal had given the Applicant permission to send invoices to the Tribunal after the hearing due to its failure to provide those invoices in the bundle for the hearing so that the Applicant should have been fully aware of the need to produce those invoices for this hearing.

The Tribunal's decision

41. The Tribunal determines that the amount payable by the Respondent for service charges in the year 2010-2011 is £784.25 (including the qualifying works and QLTA referred to above).

Reasons for the Tribunal's decision

42. The Tribunal heard evidence from Mr McDonagh in relation to all items and he was cross-examined at some length by Mr Harris about those items. Mrs Birchmore was also able to obtain in the course of the hearing the invoices to support the electrical remedial works of £1350.

43. Mr McDonagh explained that when he acquired his flat as a buy to let investment the building had been in substantial disrepair as the building quality was very poor. There was no maintenance in the early years for the reasons set out above in the background section. At the time when the Applicant company was incorporated there was therefore a dire need to get the building sorted. The tiles from the roof were falling into the road. There were problems with the underground car park due to the pumps not working. There had been a cockroach infestation. The communal electricity was switched off as bills had not been paid and only reinstated following an agreement with the utility company to defer repayment. The Applicant had received a report from a structural engineer which set out an order of priorities and what would deteriorate if left. He and a number of other leaseholders had put in their own money to ensure that urgent works could be carried out.

44. In relation to light and heat claimed as £1953, Mr McDonagh explained that this was to staircases, landings and halls. There were also lights leading to the car park as well as power to the communal entry system (videophone entry). There were storage heaters on each landing and in each hallway, which have subsequently been removed, and 4 electronic gates (3 pedestrian and 1 car). The Respondent's share amounts to £162.69.

45. In relation to post and stationery in the sum of £139, this related to items sent out by Mortimers (the managing agent). Mr McDonagh and Mrs Birchmore confirmed that this charge was not included in the

management fee under the QLTA. The Respondent's share amounts to £11.58.

46. The management fee of £1778 was calculated on the basis of 12 flats at a fixed fee plus VAT. The Tribunal considers that the charge per flat on that basis (less than £150 per flat) is within the realms of what is reasonable. However, for the reasons set out at paragraphs 38 and 39 above, due to the failure to consult the Respondent's share is reduced to £100.

47. In relation to the electrical remedials, the Tribunal was provided with the invoices which set out the works carried out. The figure claimed of £1350 is not unreasonable given the level of work carried out. The Respondent's share is £112.46.

48. In relation to repairs, Mr McDonagh explained that there had been physical damage to the gates to the building which had required repair, clearing drains and dealing with the cockroach infestation (although Mr McDonagh did indicate that this had been paid directly by money from the directors and some of the leaseholders had paid for their own flats). The amount of £860 (of which the Respondent's share is £71.64) did not appear excessive. This item generated much discussion as the Respondent was aggrieved that she had never had keys to the gates to the car park. It was agreed that she was obviously entitled to a set for her or her tenant to access her car parking space and she should speak with the managing agent to obtain a key fob (which should have been provided to her when she acquired the Property by her vendor).

49. In relation to roofing repairs, the figure claimed of £1793 was to clip tiles back into place and remove overhanging tiles. The figure is not unreasonable and not high for an item of this nature. The Respondent's share is £149.36.

50. In relation to household and cleaning in the sum of £378, Mr McDonagh gave evidence that this was for cleaning once per fortnight and involved cleaning and dusting of hallways. The cleaners also notify if any lights are out of order and replace bulbs if that is all that is required. The cleaners attend for 2 hours per visit. There are 3 floors in each of 2 blocks. The Respondent's share is £31.49.

51. In relation to the water pump cost of £1261 (of which the Respondent's share is £105.04), this was to pay for a temporary solution to get the pump working. The holding tank in the car park when the flats were built was not of the right specification and collapsed when water was pumped out of it thereby restricting the pump so that it did not work. The pipework was modified and an emergency pump was installed which had to be used manually. The Applicant had hoped that it might be possible to recover the money from the NHBC but they had rejected

the claim on the basis that it was as a result of defective building work but was not affecting the accommodation.

52. In relation to accountancy fees of £480 (of which the Respondent's share is £39.99), the accountants were instructed by the managing agent. The accounts were in the bundle and showed what work had been carried out.

53. In relation to legal fees of £3196 (of which the Respondent's share is £266.23), this related to the previous Tribunal determination and the incorporation of the Applicant company. The Tribunal notes that a s20c order was made by the previous Tribunal and that accordingly the Applicant cannot recover this via the service charge. Since there is no breakdown between what was incurred in the Tribunal proceedings and what for the incorporation of the company, the Tribunal disallows this item.

54. The Respondent gave oral evidence. She was unable to give direct evidence of what works had been carried out in the building as she did not live there and did not visit that often. She gave evidence that her partner visited 2-3 times per week for reasons which were not clear and said that if works were being carried out – including such mundane things as cleaning – he would have told her. There was no written statement from her partner nor did he attend the hearing (although it was explained that this was because he had to look after their child who is sick). The Tribunal did not gain much assistance from the Respondent's evidence as she clearly has little direct involvement with the Property and even if it is the case that her partner would report what was going on at the Property when he visited, he did not live there either and would not therefore know whether, for example, cleaning took place unless he happened to be there when the work was carried out.

55. Whilst accepting Mr Harris' point that the Applicant should have produced the invoices to support what were quite a small number of items, it ill behoves the Respondent or her representatives to complain of lack of information about the Applicant's case when she and her representatives have completely ignored all directions and failed to provide any evidence or statement of case. Further, the Tribunal notes that the accountants' certificate states that the items were supported by documents. Accordingly, the Tribunal allows all items in full except for the management charge (reduced to £100) and legal fees which have been disallowed in full for the reasons given. Accordingly, the Tribunal determines that the share of the service charge expenditure for 2010-11 which is payable by the Respondent and reasonable is £784.25 (unless and until further monies are properly demanded by the Applicant in relation to future expense).

Whether the Applicant is entitled to claim administration charges

56. No challenge was made to these charges by the Respondent in Mr Harris' opening statement. However, since these charges form part of the claim referred to the Tribunal by the County Court, the Tribunal considers that it is incumbent on it to determine whether the amounts are payable and reasonable.

The Tribunal's decision

57. The Tribunal determines that the sum of £80 is payable and reasonable in relation to administration charges.

Reasons for the Tribunal's decision

58. Mrs Birchmore gave evidence as to the amounts claimed as administration charges of £20 and £60. The first of these charges was for issuing a final demand indicating that service charges had not been paid. The second was for referral to the debt collection agency. She confirmed that the work was not covered by the management fee as it was considered unfair to bill all leaseholders for the default of one leaseholder.

59. There was no substantial challenge to these charges. The Tribunal considers that the Lease includes provision to claim these charges under both paragraphs 1.3 and 2.2 of the Sixth Schedule. The amounts are not unreasonable in amount. Accordingly, the Tribunal determines that the total sum of £80 is payable and reasonable.

Application under s.20C and refund of fees

60. At the end of the hearing, the Applicant made an application for a refund of the fees that it had paid in respect of the application/ hearing[1]. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal orders the Respondent to refund any fees paid by the Applicant within 28 days of the date of this decision.

61. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal declines to make an order under section 20C so that the Applicant can, if it so wishes, pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

The next steps

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

62. The Tribunal has no jurisdiction over county court costs. This matter should now be returned to the Croydon County Court.

Name: L Smith **Date:** 26 February 2014

Appendix 1

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

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

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

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

and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to 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.

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

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

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
(a) complied with in relation to the works or agreement, or
(b) dispensed with in relation to the works or agreement by (or on appeal from) 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.

Section 20ZA

(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section-
"qualifying works" means work on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement-
(a) If it is an agreement of a description prescribed by the regulations,or
(b) In any circumstances so prescribed.

(4) In section 20 and this section "consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord-

(a) To provide details of proposed works or agreements to tenants or the recognized tenants' association representing them,

(b) To obtain estimates for proposed works or agreements,

(c) To invite tenants or the recognized tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) To have regard to observations made by tenants or the recognized tenants' association in relation to proposed works or agreements and estimates, and

(e) To give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section-

(a) May make provision generally or only in relation to specific cases, and

(b) May make different provision for different purpose

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment of late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subjection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Section 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 20C

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

(2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
- (aa) in the case of proceedings before a residential property Tribunal, to that Tribunal;
- (b) in the case of proceedings before a residential property Tribunal, to the Tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property Tribunal;
- (c) in the case of proceedings before the Upper Tribunal, to the Tribunal;
- (d) in the case of arbitration proceedings, to the arbitral Tribunal or, if the application is made after the proceedings are concluded, to a county court.

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

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
   (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
   (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
   (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
   (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
   (a) specified in his lease, nor
   (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 4

(1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub- paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an adminisration charge under this paragraph, any provisions of the lease relating to non-payment of late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Schedule 11, paragraph 5

(1) An application may be made to a leasehold valuation Tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation Tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Appendix 2
Relevant Lease Clauses

This Lease is made the 26th day of July 2005
Between:
(1) HI-DRA CONSULTANTS LIMITED whose registered office is at 70 Hayes Lane, Kenley, Surrey, CR8 5JQ ("the Lessor")
(2) 39 CHURCH ROAD MANAGEMENT COMPANY LIMITED (Registered in England No. 5447276) whose registered office is situate at 70 Hayes Lane, Kenley, Surrey CR8 5JQ ("the Company") and
(3) GENEVIEVE DOROTHY NAKATOSI SSENTOOGO of 29 Brisbane Avenue, South Wimbledon, London SW19 3AF ("the Lessee")

1. Definitions

1.1 In this Lease and the Schedules hereto the following words and expressions shall where the context so admits or requires be deemed to have the following meanings:

"Apartment"	the Apartment constructed as part of the Building shown edged red on the Plan as is more particularly described in Part 1 of the First Schedule postally to be known as Flat [1], Princess Court, 41 Church Road, Mitcham, Surrey CR4 3EB
"Apartments Services"	the obligations of the Company in respect of the Building set out in the Fourth Schedule Part V
"Apartments"	the apartments constructed upon the Building
"Building"	the freehold land and buildings at 39-41 Church Road, Mitcham, Surrey CR4 3EB registered at HM Land Registry with title absolute under Title Nos. TGL123200 and SGL601304
"Building Services"	the obligations of the Company in respect of the Building set out in the Fourth Schedule Part IV
"Common Parts"	those parts of the Building used in common with the Lessor and the owners and occupiers of other apartments in the Building.
"Company's Financial Year"	the period from the 1st day of January to the 31st day of December of the same year or such other annual period as the Company may in its absolute discretion from time to time determine as being that period in respect of which the accounts of the Company shall be made up

"Company's obligations"	the obligations of the Company set out in the Fourth Schedule to this Lease
"Internal Common Parts"	the entrances stairways halls corridors and other internal areas providing access to or egress from the Apartments but not forming part of the Apartments including the Refuse Storage Area the Electric Meter Cupboards and the Cycle Storage Area and shown shaded grey on the Plan
"Lessee's Covenants"	the covenants set out in the Third Schedule
"Lessor's Covenants"	the obligation of the Lessor set out in Eighth Schedule hereto
"Main Structures"	the main structures as defined in the Second Schedule hereto
"Management Fees"	the fee payable to the Lessor or the Lessor's Managing Agents for performing the Company's Obligations being a reasonable fee which would be payable to managing agents of repute
"Parking Space"	that part of the underground parking area edged red on the Plan
"Refuse Storage Areas"	that part of the Internal Common Parts designated for the storage of refuse
"Rent and Service Charge Covenants"	the Lessee's covenants set out in the Sixth Schedule
"Services"	the Building Services and the Apartment Services
"Service Charge"	means all expenses incurred by the Company for or incidental to observing and performing the Building Services and the Apartment Services
"Service Charge Certificate"	a statement in such form as the Company or the Company's agents deem appropriate signed by the Company's auditors accountants or managing agents (at the discretion of the Company) acting as experts and not as arbitrators annually and as soon after the end of the Company's Financial Year as may be practicable containing a summary of the expenses and outgoings incurred by the Company during the Company's financial year to which it relates together with a summary of the relevant details of figures forming the basis of the relevant head or heads of the Apartment Service Charge and the Building Service Charge.
"Service Charge Payment Dates"	the 1st January and the 1st July in each year or such other date or dates as the Company shall decide
"Service Charge Percentage"	the relevant percentage of the Service Charge applicable to the Apartments

"Transmission Media"	the drains sewers pumping station watercourses gutters downpipes water mains or pipes the electric telephone and telecommunication cables wires circuits and conduits and the other cables wires mains or pipes situated or laid or to be situated or laid in through over or under any part or parts of the Building as the context shall require
"Utility Services"	gas water soil surface water telephone television and telecommunications (if any) as the context shall require

Lessee's Covenants
The Lessee covenants with the Lessor the Company and with the other Apartment Lessees to observe and perform the Lessee Covenants the Assignment Covenants and the Rent and Service Charge Covenants

Company's Covenants
The Company hereby covenants with the Lessee and the Lessor that it will observe and perform the Company's Obligations

Lessor's Covenants
The Lessor so as to bind the persons for the time being entitled to the reversion expectant on the term hereby created but not so as to render the Lessor personally liable for any breach arising after having transferred the Building and the Lessor's interest in the Building hereby covenants with ech of the Lessee and the Company to observe and perform the Lessor's Covenants

Company Membership
The Lessee shall by virtue of the grant or assignment of this lease to the Lessee be deemed to have applied to become a member of the Company

Delegation
The Lessor and the Company shall be entitled to employ and engage or to delegate any of their respective obligations and or powers to such managing agents servants agents Company's contractors solicitors surveyors and accountants as they consider necessary or desirable from time to time for the performance of their obligations hereunder or for the exercise of any of their powers contained in the leases of any of the Apartments

The First Schedule above referred to
Part I
The Apartment

The Apartment shall comprise the tiling and floor coverings on the floors the windows window frames glass in the windows all doors door frames and glass in the doors (if any) plaster on the ceilings and walls and all Transmission Media and any installations of whatsoever kind solely serving the Apartment but not necessarily within the Apartment but excepting first the airspace and strata above and below the Apartment and second those parts of the Main

Structures which surround lie within and/or support the Apartment thirdly the Balconies

The Second Schedule above referred to
The Main Structures

1. The exterior walls and the foundations and roofs of the Building the internal load bearing walls and the floor and ceiling joists beams or slabs of all the Apartments including the structure of any of the Balconies

2. Boundary walls fences and gates

3. The Common Parts and the windows window frames glass in the windows doors doorframes plaster on the ceiling and walls of the Common Parts

4. The Transmission Media of every kind within the Building which is common to more than one Apartment and/or the Common Parts or the Internal Common Parts or exclusive to the Common Parts or the Internal Common Parts

5. All other parts of the Buildings which do not form part of Apartments demised or intended to be demised to individual Lessees other than the interior of the Internal Common Parts and the Meter Cupboards

The Third Schedule above referred to
Lessee Covenants

1. To pay the Rent and Service Charge in accordance with the Rent and Service Charge covenants contained in the Sixth Schedule

.....

26. Not to assign underlet part with or licence or share the occupation of the Apartment other than in accordance with the Assignment and Underletting covenants

.....

28. In the event of the Lessee not being resident in the Apartment for a continuous period in excess of three calendar months to notify the Company or its managing agents in writing the name and address of a suitable agent in England being a surveyor solicitor accountant or other person responsible for the compliance on behalf of the Lessee with the Lesse's covenants contained in this Lease

The Fourth Schedule above referred to
Part I

Service Charge	**Proportion Payable**	8.33%

Part II
Service Charge

1. The Service Charge shall include:-

1.1 the proportion of the management and administration fees of the Company which relate to the observance and performance of the provisions of the Services

1.2 all fees and costs in respect of all certificates and of accounts kept and audits made which relate to the observance and performance of the provisions of the Services in particular the cost of preparing the Company's Financial Statements

1.3 if applicable the proportion of the proper fees of any Managing Agents employed by the Company which relate to the observance and performance of the provisions of the Services

1.4 the cost of employing staff for the performance of the duties and services of the Company in connection with the observance and performance of the Services and all other incidental expenditure in relation to such employment .....

1.5 the bank charges and the cost of interest and overdrawings in respect of any separate bank account(s) maintained by the Company for the receipt of the relevant service charge payments and the payment (including payment in advance of the receipt of the appropriate contributions from the lessees of the Apartments) of any monies in pursuance of the Company's obligations to perform the Services

1.6 any Value Added Tax or any other similar taxes levied or charged and paid in respect of the above mentioned heads of expenditure or otherwise in connection with the provision of the Services.

2. The Company shall be at liberty to review any additional costs and expenses referred to in this part of the Lease and to add thereto any items of expenditure charge depreciation or other allowance or provision for future anticipated expenditure on or replacement of any installation equipment plant or apparatus or the rental value of any part of the Building used in connection with the provision of the Services not previously included therein and from and after the relevant date of such review such additional items of expenditure charge depreciation allowance provision for future additional expenditure or value shall be included in the calculation of the Service Charge and for all the purposes of this Lease.

....

4. It is hereby agreed that the intention of the Lessor the Company and the Lessee in relation to the Service Charge is that all costs expenses and other liabilities which are incurred by the Company shall be the subject of reimbursement recoupment or indemnity by the lessees of the Apartments and the Lessor so that no residual liability for any such costs expenses or liabilities shall fall upon the Company.

.....

Part III
Company's Financial Statements

1. The amount of the Service Charge shall be ascertained and certified by the Service Charge Certificate

2. A copy of the Service Charge Certificate for each Company's Financial Year shall be supplied by the Company to the Lessee on written request and without charge to the Lessee

3. The Service Charge Certificate shall be conclusive evidence for the purposes hereof of the matters which it purports to certify

4. As soon as practicable after the Service Charge Certificate the Company shall furnish to the Lessee an account of the Service Charge Percentage payable by the Lessee for the Company's Financial Year in question due credit being given for all interim payments made by the Lessee in respect of the said Company's Financial Year

5. Any amount which may have been overpaid by the Lessee in respect of the Service Charge by way of interim payment shall be credited against the liability of the Lessee to payment of the proportion of the Service Charge payable by the Lessee for the following year

6. If the Service Charge for any Company's Financial Year exceeds or is likely to exceed the funds held by or on behalf of the Company in respect of the Service Charge then the Company shall make a written request to the Lessee for a further contribution and such request shall state the contributions received from all lessees for that Company's Financial Year including the Lessee and will contain a summary of the expenses and outgoings incurred and likely to be incurred by the Company during the Company's Financial Year for the Service Charge and shall state the contribution required from the Lessee which shall be paid by or on behalf of the Lessee to the Company within 21 days of the date of such written request.

Part IV
Company Service Charge Covenants
Building Services

The Company will:-

1. Keep the Main Structures properly repaired supported reconstructed renewed maintained and cleansed

2. Keep the exterior of the Building and the exterior stonework brickwork and curtain walling and exterior tiles faiences glazed bricks and other washable surfaces washed down

3. Pay all existing and future rates taxes assessments and outgoings now or hereafter imposed on or payable in respect of the Common Parts including but without prejudice to the generality of the foregoing all accounts for private sector organisations and companies and all electricity accounts and all other like service accounts relating to the Common Parts

4. Pay all costs for any communal supply of electricity and water to the Common Parts (if any) and to maintain any such communal supply and the distribution pipes or wires within the Common Parts so as to ensure that the Common Parts have the ability to receive such a supply

5. Keep in good and substantial repair and condition and wherever necessary to re-build and reinstate the Transmission Media serving the Building or any part thereof except such as are maintained at the public expense or for the sole supply to one Apartment or the Internal Common Parts

6. Keep the Common Parts maintained and (where beyond economic repair) renewed

7. Keep the Common Parts neat and tidy

.....

9. Keep the Building insured with the Insurers through such agency as the Lessor may nominate from time to time in the full reinstatement value of the Building from loss or damage by the Insured Risks and against third party risks and Property Owner's liability as shall from time to time be appropriate.....

Part V
Company's Service Charge Covenants
Apartment Services

1. Keep the Apartment properly supported sheltered covered and protected by the Main Structures

2. Pay all existing and future rates taxes assessments insurance premiums and outgoings now or hereafter imposed on or payable in respect of the Internal Common Parts including but without prejudice to the generality of the foregoing all accounts for private sector organisations and companies and all electricity accounts and all other like service accounts save for those relating to any one of the Apartments

3. Pay all costs for any communal supply of electricity and water to the Internal Common Parts (if any) and to maintain any such communal supply and the distribution pipes or wires within the Buildings so as to ensure that each Apartment has the ability to receive such a supply

4. Keep in good and substantial repair and condition and wherever necessary to re-build and reinstate the Transmission Media exclusively serving the Internal Common Parts or any part thereof except such as are maintained at the public expense or for the sole supply to one Apartment

5. Clean light equip furnish and carpet from time to time the Internal Common Parts and clean the windows and glass of the Internal Common Parts

6. Operate inspect maintain alter repair clean renew and replace plant and machinery serving the Internal Common Parts

.....

The Fifth Schedule above referred to
Assignment and Underletting Covenants

1. The Lessee further covenants with the Lessor and as a separate covenant with the Company that the Tenant will:-

.....

1.5 Not to underlet or licence the occupation of the Apartment unless the Lessee shall first notify the Company of the names of the underlessee or licencees as the case may be and deliver to the Company a copy of such Underlease or licence

.....

The Sixth Schedule above referred to
Rent and Service Charge Covenants

1. The Lessee hereby covenants with the Lessor and as separate covenants severally with the lessees of the other Apartments to pay on demand or to the order of the Lessor without any deductions or set off the following amounts:-

.....

1.3 all the costs and expenses that the Lessor may incur by reason of any breach of the Lessee's covenants in this Lease whether or not proceedings are commenced in the court or any appropriate tribunal and in particular but without prejudice to the generality of the foregoing to pay the costs and expenses (including solicitor's costs and surveyor's fees)incurred by the Lessor in connection with any notice served under Section 146 or 147 of the Law of Property Act 1925 notwithstanding that forfeiture is avoided otherwise than by relief granted by the Court

2. The Lessee hereby covenants with the Lessor the Company and as separate covenants severally with the lessees of the other Apartments to pay on demand or to the order of the Company without any deductions or set off the following amounts:-

2.1 such sum as is demanded by the Company on account of the Service Charge Percentage by half yearly instalments in advance of the Service Charge Payment Dates or otherwise within 21 days of the date of any demand made by or on behalf of the Company

2.2 All expenses the Company may incur in collecting the Service Charge Percentage payable by the Lessee (together with Interest thereon and on all proportions of Service Charge which are in arrears and unpaid for more than twenty one days after the same shall become due and payable hereunder) or enforcing any obligation of the Lessee whether or not proceedings are taken and whatever the outcome of any such proceedings.

The Ninth Schedule above referred to

Provisos

....

8. Notices

8.1 Any notice or document to be given or sent hereunder shall be in writing and shall be served by personal delivery or by sending it through the post in a first class registered Royal Mail prepaid letter or by facsimile transmission

8.2 In the case of the Lessor or the Company such service shall be at its address given above and in the case of the Lessee at the address given above or in either case to such other person and at such address as either party shall notify in writing to the other from time to time

8.3 Any such notice or document served

8.3.1 by post shall be deemed to have been served at the expiration of three days (inclusive of the day of posting) after the letter containing the same is posted

8.3.2 in person shall be deemed to have been served at the time and date it is handed to the addressee

.....

8.4 In proving such service it shall be sufficient to prove (as the case may be) that delivery was made in person by way of a Statutory Declaration or that the envelope containing such notice or document was properly addressed and posted as a prepaid first class Royal Mail registered letter.....