10303

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference:	LON/00BG/LSC/2012/0146
Property:	Leasehold flats on the Barkantine and Kingsbridge Estates on the Isle of Dogs, London E 14
Applicant:	One Housing Group
Representative:	Judge and Priestley, solicitors
Respondents:	Leaseholders of flats on the Barkantine and Kingsbridge Estates
Representatives:	In person
Type of application:	For the determination of the leaseholders' liability to pay service charges for external works to the blocks
Date heard:	14, 17, 18, 19, 24, 25 and 26 March, 29 April and 8 May 2014 Subsequent written submissions
Appearances:	Ranjit Bhose QC, instructed by Judge and Priestley, solicitors, for the applicant Ian Kingham (29 Spinnaker House) in person Antony Lane (78 Bowsprit Point) in person Colin Hammond (46 Montcalm House), Olga Venzhyna (48 Montcalm House), and Peter Kristoffersson (49 Montcalm House) representing themselves and the leaseholders of Flats 1, 22, 26, 28, 43 and 53 Montcalm House

	David Wright representing himself and the leaseholders of a number of flats on the Barkantine Estate
Tribunal members:	Margaret Wilson Dallas Banfield FRICS Laurelie Walter
Date of decision:	1 September 2014

DECISION

Introduction

1. This is an application by One Housing Group, a housing association, under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine the liability of the respondent leaseholders to pay service charges in respect of external works to a large number of blocks of flats in four estates on the Isle of Dogs in east London. The original respondents to the application were the leaseholders of all 773 of the flats in the four estates held on long leases. But at the date of this decision the great majority had settled their disputes and some had taken no active part in the dispute at any stage. Those leaseholders who remain active respondents at the date of the decision we will call "the tenants".

2. A number of preliminary issues common to the works to many of the blocks were determined by our decision dated 30 January 2013 made after a 12 day hearing on the Isle of Dogs. The landlord's application for dispensation with the statutory consultation requirements was determined by our decision dated 9 March 2013. By decisions dated 24 October 2013 and 18 June 2014, made on the basis of written representations, the Tribunal determined the service charge liability in respect of the major works of the tenants who at those dates had not settled their disputes but who appeared not to have taken, or not to wish to take, an active part in the proceedings. In the course of the present hearing many leaseholders of flats in a number of blocks on the Barkantine Estate, represented by David Wright, the tenant of 65 Bowsprit Point, settled their disputes. This determination relates to the liability to pay service charges for external works only of the few tenants who are active respondents who have not settled their disputes with the landlord, namely Ian and Jane Kingham, the tenants of 29 Spinnaker House; Anthony Lane, the tenant of 78 Bowsprit Point; Mr A Shohid, Mr S Arora, Mr N Edwards, Mr J Cuthbert, Mr J W Munro, Colin Hammond, Olga Venzhyna, Peter Kristoffersson and Mr C Jones, the tenants of Flats 1, 22, 26, 28, 43, 46, 48, 49 and 53 Montcalm House respectively; and Raju Miah and Mrs S Hague, the tenants of Flat 44a Montrose House.

3. On 12 March and in the morning of 13 March 2014, accompanied by the parties and/or their representatives, we inspected the then relevant blocks on the Barkantine Estate, and in the afternoon of 13 March we inspected Montcalm House and, briefly, Montrose House, on the Kingsbridge Estate. At the hearing on 14, 17, 18, 19, 24, 25 and 26 March, 29 April and 8 May the landlord was represented by Ranjit Bhose QC, instructed by Judge and Priestley, solicitors, who called Steven Bull BSc MRICS, a chartered building surveyor formerly employed by Baily Garner LLP, the landlord's consultant in respect of the works, Stuart Wigley, head of quantity surveying at Baily Garner, Geoffrey James, one of the two independent clerks of works, employed at the time by Hickton but now partly retired, and Matthew Saye, the landlord's Assistant Director, to give evidence. The hearing relating to flats in blocks on the Barkantine Estate the tenants of which were represented

by Mr Wright began on 14 March and continued on 17 March. Mr Wright then reached agreement with the landlord on behalf of himself and those whom he represented. The hearing relating to 29 Spinnaker House took place on 18 March and part of 19 March, its joint tenant, Ian Kingham, appearing in person. The hearing relating to Mr Lane's flat continued, intermittently, on 18, 19 and 26 March, Mr Lane appearing in person. The hearing in respect of Montcalm House and Montrose House began on 24 March and continued on 25 March, 29 April and 8 May. At that hearing Mr Hammond, Ms Venzhyna and Mr Kristoffersson appeared on behalf of the active tenants of flats in Montcalm House. Mr Miah and Mrs Hague, the tenants of 44a Montrose House, had made written representations before the hearing in which they indicated that they challenged some of the costs of the works to the block but they did not appear at the inspection or hearing. With our permission and the landlord's consent, Mr Lane and the leaseholders of the flats in Montcalm House submitted written closing submissions after the hearing.

4. The landlord provided two hearing bundles for each block, and we were also referred to some of the 23 bundles of documents prepared for the preliminary hearing. We refer in this decision to the bundles prepared for each block for the purpose of the present hearing as 1 or 2, followed by the page reference (for example 1/1). We refer to the bundles prepared for the preliminary hearing as "main bundle 1/1" and so on. References to the lines in the relevant Scott Schedules are given in square brackets.

An outline of the facts

5. The factual background to the dispute is set out in our decision dated 30 January 2013 given in respect of preliminary issues and we will summarise it only briefly in the present decision.

6. The landlord owns four estates on the Isle of Dogs, the Barkantine, Samuda, St John's and Kingsbridge Estates. The estates were transferred to the landlord's predecessor housing association, Toynbee Island Homes ("Toynbee"), by the London Borough of Tower Hamlets in 2005. Toynbee later merged with the landlord. Together the estates comprise some 70 purpose-built blocks of flats of different types and built at different dates, containing nearly 2000 flats in all. Many of the flats are occupied by weekly tenants of the landlord but a large proportion of them are held on long leases originally granted under the right to buy scheme and now held by the original purchasers or their successors in title. The leases held by the tenants whose disputes are before us are essentially in common form and we have already decided in our decision dated 30 January 2013 that the costs of the works are in principle, subject to their reasonableness, recoverable under the leases.

7. The works which are the subject of the dispute were carried out by Mulalley Limited to blocks in all four estates under a JCT Design and Build contract made on 14 October 2009. Mulalley took possession of the site on that day and the works on all the blocks were completed, subject to a defects liability period, in or about late 2010. The consultation process with the leaseholders

was contentious and its adequacy was considered in our preliminary decision. The use of a Design and Build contract rather than the more traditional form of contract based on the landlord's specification and drawings, the use of one contract for all the external works to all four estates, and the decision to award the contract to Mulalley, which was not the lowest tenderer, were also contentious, and all those issues we considered in our previous decision. It was with some misgivings, which we expressed in our decision, that we decided that it was premature at that preliminary stage to conclude that the landlord's choice of contractor and type of contract were outside the range of reasonable decisions.

The statutory framework

8. By section 27A of the Act an application may be made to the Tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A *service charge* is defined by section 18(1) as *an amount payable by the 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.* Relevant costs are defined by section 18(2) and (3). By 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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard, and the amount payable shall be limited accordingly.* By section 19(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 of subsequent charges or otherwise.*

The issues: matters of general application

General approach

9. Mr Bhose submitted that we must decide whether costs were reasonably incurred in the context that this is a social landlord with obligations to diverse tenants and leaseholders and the owner of large estates, entitled to undertake works with the object of minimising future repair costs; that the landlord was entitled to seek to obtain economies of scale by packaging together works on nearby estates; and that assignees of the original right to buy leases could not obtain better rights than the original leaseholders. He also submitted that, when we considered whether particular costs were reasonably incurred, we should bear in mind the breadth of the landlord's covenant in clause 5.5.(o) of the lease *to do or cause to be done all such works installations acts matters and things as in the absolute discretion of the lessors may be considered*

necessary or advisable for the proper management maintenance safety amenity or administration of the building. We accept those submissions.

The evidence

10. The landlord's evidence in relation to the standard and cost of the works and the need to carry them out was given by Mr Bull, Mr Wigley and Mr James. Mr Bull had prepared the employer's requirements which were incorporated in the contract but he was unable to produce his notes or any other record of the inspection which he said he had carried out for the purpose of doing so. Neither he nor Mr Wigley personally supervised the works, which were supervised by a Mr Philip Cantlay of Baily Garner who did not give evidence. Unaccountably, no witness from Gibbs Dench Associates ("GDA"), the electrical and mechanical engineers who specified the electrical and mechanical works, was called to give evidence, although the need to carry out the electrical and mechanical works which they had specified was known to be a major issue. Mr James, one of the two clerks of works, gave helpful and in our view honest evidence of what he saw, and produced some of his daily diary records and monthly reports, but he was unable to comment on the need to carry out the works or whether particular items had been reasonably priced by the contractor, neither of which questions was within his province. Furthermore our impression from his evidence is that he did not always fully appreciate the effect of the Design and Build contract under which the contractor was required to achieve a high standard of work for a fixed price. In his oral evidence in relation to the works to Bowsprit Point, he said, in respect of the mechanical works: "I would invariably accept the advice of the sub-contractor, Hertel. He was extremely knowledgeable and not motivated to do as much as possible to get as much money [as possible]". Asked by the Tribunal whether the contractor might sometimes have been motivated to do as little as possible, he declined to comment. At a later stage in his evidence he said, in answer to questions relating to Montcalm House, and to his credit, that, with hindsight, "knowing now that [the contract] was fixed price I think I should have been tougher on the contractor or subcontractor".

11. Neither the landlord nor the tenants provided independent expert evidence, although Mr Bull, Mr Wigley and Mr Kingham in particular had relevant expertise. Obviously independent expert evidence would have assisted us, but we appreciate that both parties, and particularly the tenants, were under cost constraints and we have weighed the evidence from both sides in the light of our own knowledge and experience as we are entitled and bound to do.

Our approach to factual issues relating to the standard of the works

12. Mr Bhose submitted that the landlord's system of ensuring compliance with the contractual employer's requirements could give us confidence that there was compliance in that Mr James would not have signed off individual elements and the landlord would not have accepted handover if the works were not of the required standard. We entirely accept that there was a system

in place which should in principle have ensured compliance with the contract, but that is so in virtually every case we ever hear where the works are of high value, and we are entitled in this case, as in all cases, to weigh all the evidence when we decide whether the works were of an adequate standard. We of course bear in mind that the works were carried out some three or four years ago and that we should not necessarily infer from the fact that some elements may have appeared in poor condition at our inspection that they were carried out to an inadequate standard.

13. Mr Bhose conceded that no system is completely fool-proof, and that if there were any items of work in respect of which we were driven to conclude that no work at all was undertaken we could decide that the landlord was not entitled to charge any sum for those items. He also conceded that if we were satisfied that, overall, the quality of works to an individual element fell below a reasonable standard we could make a percentage reduction to the price charged. He was not however prepared to concede that, if the contractor had priced an item on the basis that much work was required but, in the event, very little was done so that the price for that item appeared wholly excessive, we could reduce the allowable cost of that item. We do not agree with that submission. We accept in principle that, in this as in all large contracts, if some items were marginally over-priced and others marginally under-priced so that the pluses and minuses were broadly in balance it would be wrong in principle to disallow or reduce the recoverable cost of the over-priced items while ignoring the under-priced items, because it is the bottom line figure which really matters. But we are satisfied that, if we conclude that some, but very little, work was done in respect of some items and that significant over-pricing for those items was not counter-balanced by under-pricing of other items, it is open to us to reduce the sum allowable for the over-priced items to an appropriate extent, while bearing in mind any under-pricing elsewhere. We certainly do not consider that we are precluded by the nature of the contract from reducing the excessive costs of items we regard as over-priced, nor do we consider that the competitive tendering process inevitably ensured that the costs were reasonable in amount. As we discuss later in this decision, there were many items of work to which the contractor had attributed a high fixed price but in the event did relatively little or nothing in respect of the items, and, according to the evidence we were given, only two where the contractor may have "caught a cold" as Mr James put it. It is our view, based on the evidence as a whole, that over-pricing was not balanced by under-pricing.

Disclosure

14. Before the contract was made many leaseholders questioned the need to carry out some of the works and, even before the date of this application in July 2012, a number of them made it very clear to the landlord and to the Tribunal that they wished the landlord to produce all the reports, surveys and specifications which it had obtained for the purpose of its decision to carry out the works. In directions made as long ago as 14 February 2012 in anticipation of the application the Tribunal ordered the landlord to produce such documents. It was known that a condition survey was carried out by Baily

Garner prior to the stock transfer, but that seems to have been mainly a desk exercise and not based on a full survey, and possibly not on any survey, of the blocks. The condition survey was updated by Mr Bull of Baily Garner in 2008 after he had inspected the blocks, but no notes or photographs of his findings at the inspection were made available and we were told that they could not be found. When the estates were transferred by Tower Hamlets to the landlord's predecessor housing association the relevant guarantees and other documents relating to the blocks which ought to have been in the possession of Tower Hamlets were not handed over to Toynbee. Their absence was due, according to what Tower Hamlets' officers told Toynbee's officers, relayed to us by Mr Saye, either to a fire or possibly a flood in Tower Hamlets' offices. A number of tenants suggested at the preliminary hearing that at any rate some of the works were carried out not because they needed to be done but because of the absence of guarantees which had probably been given but had disappeared. And, indeed, we were given evidence at the preliminary hearing that the absence of guarantees was a major concern of the landlord and a factor in its decision to carry out some of the works. A number of specialists, including GDA, surveyed the blocks for the purpose of the preparation of the employer's requirements, but, although their recommendations were included in the employer's requirements, none of their survey notes or photographs were produced by the landlord prior to the hearing and we were told that such records could not be found. Mulalley was required by clause 1.18.2 of the contract to maintain a photographic record of the progress of the works for the client's records" (3/18) but no such survey was produced to the respondents or to us.

15. In the morning of 25 March 2014, the second day of the hearing relating to Montcalm House, in the course of the cross-examination of Mr Bull by the tenants of Montcalm House in which they challenged the need to carry out works to the mechanical installations in the block, Mr Bull said that he had been told that a survey of the mechanical installations in a number of blocks had been carried out by GDA in 2008 for the purpose of the preparation of the employer's requirements and that a report of that survey, which had not been previously disclosed, "would be with Baily Garner or the landlord". He said that the survey took the form of a spreadsheet for each block prepared by Trevor Dench of GDA, and photographs. That afternoon Mr Bhose said that he had just been instructed that Baily Garner had in November 2013 supplied the landlord with spreadsheets relating to the mechanical installations in a number of blocks and a CD of "countless" photographs of the mechanical installations in various blocks. The tenants of Montcalm House were understandably very displeased, as we were, that possibly relevant documents had been found so late in the day. They asked us to exclude them and to conclude that, as the landlord had not provided any evidence to establish the need to carry out any of the mechanical and electrical works to Montcalm House, we should conclude that no such works had been necessary. We were unable to commit ourselves to reaching such a conclusion, and we decided to give the landlord the opportunity to supply the remaining active respondents with the documents it had found to enable those respondents to decide, having read them, whether to agree to or oppose their admission in evidence.

16. The landlord duly supplied the documents to the active respondents. Having seen the documents, the tenants of Montcalm House and Mr Kingham decided not to oppose their admission, and Mr Kingham sent written submissions as to their effect. Mr Lane attended the hearing on 29 April and said that he did not oppose their admission in evidence. Mr Miah and Mrs Hague did not make any comments in respect of the admission of the documents. In fact, the documents were of very limited use because the photographs did not identify the blocks they depicted and the spreadsheets we saw were brief and uninformative. Nonetheless, they should have been disclosed at a much earlier stage.

17. The landlord's disclosure has been, in our view, in some respects unsatisfactory. It is a landlord's obligation to keep records for six, and in some cases twelve, years (see the Service Charges Residential Management Code, second edition, paragraph 3.19). Regardless of the Code we would expect any landlord who carries out major works for which leaseholders will be expected to pay by means of service charges to keep in an accessible form every report and other record it has obtained for the purpose of its decision to carry out the works so that they can be shown to the leaseholders and produced to the Tribunal if the costs are called into question. Moreover in the present case the landlord has known since before it entered into the contract that it was unpopular with some of the leaseholders and might well be contentious, and we find it extraordinary that it and Baily Garner were unable to produce more records relating to the condition of the blocks before the works were carried out. The late production of some information from GDA, limited in scope as it was, has led us, and no doubt the tenants, to wonder what else of relevance could have been produced if the landlord and Baily Garner had more energetically set about the task of complying with the tenants' requests and the Tribunal's directions for disclosure or whether, as many leaseholders have suggested, the landlord did not obtain the reports and surveys we would normally expect to see before embarking on this expensive programme of works. Insofar as in this decision we make findings adverse to the landlord about the justification for any of the works, it and its agent, Baily Garner, have only themselves to blame for not producing in good time all the information that they either have, once had, or ought to have obtained for the purpose of the decision to carry out the external works.

The absence of guarantees

18. We would expect a landlord to maintain a proper record of guarantees and other documents relevant to the fabric of the building. Because of Tower Hamlets' failure to do so the landlord's predecessor found itself unable to be satisfied as to what, if any, guarantees were in place. At the preliminary hearing Mr Saye gave evidence, which we accept, that Toynbee had done its best to obtain from Tower Hamlets the guarantees and other documents which Tower Hamlets should have kept in relation to the fabric of the buildings but had been fobbed off with unconvincing excuses. If any of the external works which are the subject of the present dispute were carried out not because of the physical state of the building concerned but wholly or partly because of the absence of documents or guarantees, or if we find that any of

the costs in dispute would have been significantly less if the legally required documents had been in the landlord's possession, it is our view that any costs of carrying out such works would not be reasonably incurred and would not be payable by the tenants. By analogy with the reasoning of Judge Rich QC in *Continental Property Ventures Inc v White* [2006] 1 EGLR 85 we consider that the leaseholders are entitled to set off against service charges they would otherwise be liable to pay such costs as were occasioned by the negligence of the landlord or of its predecessors.

Design and Build

19. Much argument was addressed to us at the preliminary hearing about the landlord's decision, taken on Baily Garner's advice, to use a Design and Build contract for the external refurbishment of the blocks rather than the more traditional type of contract based on the landlord's specification and drawings. It was the landlord's case that most of the costs covered by the contract were obtained through a competitive OJEU-compliant tender process, that each contractor would have priced each element of the price competitively, and that if the contractor priced an item too high it would not have been awarded the "very large and attractive" contract, as Mr Bull described it, and that we ought therefore to conclude that the prices of every component of the works were not unreasonably high, provided that the standard of the works was satisfactory. Mr Wigley gave evidence that Design and Build contracts were the usual form of procurement, even for refurbishment, in the social housing sector. Many of the tenants at the preliminary hearing argued, on the other hand, although, understandably, without the benefit of independent expert evidence, that the use of a Design and Build contract was unsuitable and unreasonable and had substantially increased the costs of the works. Mr Bhose emphasised that Mulalley was a major contractor and the landlord's framework contractor, with its future relationship with the landlord to protect, and that it had as much interest, if not more, than the landlord in ensuring that its sub-contractors delivered on quality.

20. We concluded that at that preliminary stage we could not say that the decision to use a Design and Build contract, made on professional advice, was outside the range of reasonable decisions, and we do not resile from that. But, in the light of the evidence given to us at the present hearing, we have become increasingly convinced that the use of a Design and Build contract to refurbish these existing buildings has tended to increase the overall costs of the works without producing any discernible benefit to the landlord or leaseholders.

21. Under a Design and Build contract all items of work which can be measured in advance are given fixed prices by the contractor, who, in principle, takes the risk that more work than it anticipated before it entered into the contract needs to be done. Under such a contract the contractor also takes responsibility for the quality of the work. By section 16 of the contractual employer's requirements in the present case (for example Spinnaker 1/239), provisional quantities were provided by Baily Garner only for contractors' guidance when tendering, and *the contractor will be required to undertake all necessary repairs as defined within the respective*

employer's requirements sections. The contractor should therefore undertake all necessary surveys and investigations at tender stage to price the works accordingly, and will not be entitled to additional monies as a result of additional repairs over and above the provisional quantities stated.

22. We were told by Mr Wigley, mainly at the preliminary hearing, that a Design and Build contract has two main advantages for the employer. The main advantage, he said, is certainty of price, and the other advantage is that the contractor takes responsibility for the quality of the works. However, in the present case neither of these objects was achieved. Certainty of price was not achieved. The contract price of £16,889,012 included over £2,700,000 for environmental works to the grounds of the estates which were subsequently excluded from the contract and charged separately (and which are the subject of a separate dispute). The eventual cost of the external works was £15,384,503. While that is reasonably close to the contract price, there were very many omissions and "employer's instructions", or variations, of the sort that the Design and Build contract was to a great extent intended, as we understand it, to avoid. Mr Bhose said that the use of a Design and Build contract did not exclude employer's instructions which could be issued when a "change" in the contract was required. "Change" for that purpose is defined in clause 5.1 of the contract (main bundle 6/246) as:

> *A change in the employer's requirements ... which makes necessary the alteration or modification of the design, quality or quantity of the works, otherwise than such as may be reasonably necessary for the purposes of rectification pursuant to clause 3.13 including: 1. the addition, omission or substitution of any work; 2. the alteration of the kind or standard of any of the materials or goods to be used in the works; 3. the removal from the site of any work executed or site materials, other than work, materials or goods which are not in accordance with this contract ...*

23. It is our impression from all the evidence that this provision has been interpreted too loosely in a number of respects in the implementation of the present contract and that the contractor has been permitted to make a number of additional charges for works which should have been at its risk. We will identify such charges in the course of the decision.

24. Nor do we accept that in the event there proved to be a benefit to the landlord from the other alleged advantage of a Design and Build contract, namely that the contractor takes responsibility for the quality of the works. Clause 2.1.18 of the Employer's Requirements provides (main bundle 3/44) that:

> *workmanship is to be of a high standard throughout, particularly with regard to the accuracy of dimensions, lines, planes, levels and everything necessary to ensure that the standard of finish which is hereby demanded by this contract is achieved and, where applicable, is to comply with the relevant British Standard Specifications and British Standard Code of Practice current at the date of contract.*

Clause 2.2 is concerned with *functional standards* which include, in detail the minimum requirements for durability, finish and guarantees.

The landlord did not leave the contractor to assume responsibility for achieving those standards. It engaged, at considerable expense, not only Baily Garner, the contractual employer's agent, but also Hicktons, who provided two clerks of works.

25. Although we accept that any prudent landlord would wish to oversee the quality of the works carried out by its contractor, and we do not criticise the decision to employ independent clerks of works, it is hard to see how the alleged advantage of the contractor's vaunted responsibility for the quality of the workmanship which was required *to be of a high standard throughout* was other than the duty the contractor would have had under the traditional form of contract, and certainly it did not justify any additional costs which flowed from the form of contract which was used.

26. Mr Bhose submitted that we were bound to be satisfied that all elements of the contract had been keenly priced because it was a sought-after contract, but, having heard the evidence, we have concluded that the Design and Build contract which does not, in our view, necessarily provide the contractor with the incentive to do more than a modest amount of work for the fixed price which has been set at the outset, was not a form of contract which produced the best value for the client and for the leaseholders in this case.

The choice of contractor

27. A question arose at the preliminary hearing as to whether the landlord's decision, taken on Baily Garner's advice, to contract with Mulalley rather than another tenderer whose quoted price was some £1 million less than that quoted by Mulalley, was unreasonable. We decided that the decision was not unreasonable. We do not resile from that view, and we have not based our findings in this decision on the assumption that Mulalley was an unwise choice of contractor.

Earlier section 20 notices

28. At the preliminary hearing our attention was drawn by the tenants of flats in Montcalm House to section 20 notices given to the leaseholders of flats in that block in May 2008 in anticipation of almost identical works to those carried out under the present external works contract but where the estimated cost was about one quarter of the estimated cost in the section 20 notices for the present contract. It has now been explained that the earlier notices contained arithmetical and other errors and we accept that the landlord acted reasonably in withdrawing those notices and that the previous section 20 notices issued to the tenants of Montcalm House and other blocks are irrelevant to the present disputes.

Consultants' fees

29. These fees included the fees of Baily Garner. Many leaseholders submitted at the preliminary hearing that Baily Garner had been engaged as the landlord's consultant under a qualifying long term agreement ("QLTA") within the meaning of the Service Charges (Consultation Requirements) (England) Regulations 2003 upon which the leaseholders should have been, but were not, consulted. While the landlord did not admit that its agreement with Baily Garner was a QLTA, it conceded at the preliminary hearing that the charges for Baily Garner should be capped at £100 for each leaseholder for each year of Baily Garner's work in respect of the contract. At the present hearing Mr Saye confirmed that no leaseholder would be asked to pay more than £100 in total in respect of Baily Garner's fees charged in respect of the external works, whether or not Baily Garner's work in connection with the contract spanned more than one year. The consultants' fees listed in the Scott Schedules include the whole of Baily Garner's fees but the landlord has undertaken to ensure that the amount payable by each leaseholder will be adjusted in accordance with its agreement to limit the recoverable fees.

The arrangement of this decision

30. The costs of the works to each block and a summary of the parties' cases in respect of each item of cost are set out in Scott Schedules for each block. In the present decision we will deal in narrative form with all the items of work carried out to Spinnaker House, Bowsprit Point, Montcalm House and Montrose House which were listed in the Scott Schedules. Some of the disputed costs were conceded by the landlord or by the tenants.

29 Spinnaker House

Introduction

31. Barkantine Estate comprises 26 blocks of flats, one of them Spinnaker House, a six storey block of 42 flats, each on two floors, built in the 1970s. It has a flat roof and one lift. There is a single staircase leading to all floors with internal corridors leading to the individual flats. Some flats have private balconies and there are two communal walkways with metal railings and glazed panels along the whole length of the rear of the block at third and fifth floor level, mainly for escape purposes. There are small private gardens to the front and rear of the block.

32. The works carried out to Spinnaker House under the contract included repairs to the flat roof and the windows, concrete testing and repairs, the application of a new covering to the asphalt surface of the balconies, redecoration of the exterior and of the internal common parts, new flooring on the internal common parts and the provision of an integrated reception system ("IRS"). According to the final account (1/297), the total costs referable to the block were:

Under the contract

builders' works, including scaffold:	£209,976.10
electrical works:	£37,470.94
mechanical works:	£255.36
Employer's instructions	£41,280.29
Omissions	*£52,215.29*

In addition, according to the schedule of total actual costs of works to the block (1/119), the costs also included:

preliminaries:	£32,154.13
consultants:	£19,479.73
management:	£8067.65
Total:	*£296,468.90*

Of this, Mr and Mrs Kingham were asked to pay £6985.20. The amount charged to them and to every leaseholder was based on rateable value.

33. Mr Kingham took issue with every item of work with the exception of the below ground drainage works (£2127.28) [21]. The landlord conceded that no charge should be made for providing a scaffold to install a mansafe system (£2314) [23], and that the cost of works to the garages (£2155 and £1319.70) [27] and [28], should not have been charged to the leaseholders.

34. Mr Bull did his best to help us but the scope and value of his evidence was necessarily limited by the fact that he had not personally supervised the works and, although he had inspected the blocks for the purpose of preparing the employer's requirements, the notes of his inspection could not be found. He inspected Spinnaker House for the purpose of the present hearing in October and again in November 2013.

35. Mr James also did his best to help us, and although we found him an honest and fair witness, the value and scope of his evidence was also limited for the reasons we have given above.

36. Mr Kingham is now mainly retired but he was formerly Technical Director of London Underground. He is a Fellow of the Institute of Mechanical Engineers and a Fellow of the Institute of Engineering Technology. His qualifications include a degree in mechanical engineering and an MBA. He sits on the board of two management companies of privately owned blocks of flats. Although he did not formally represent them he said, and we accept, that he had the support of the leaseholders of six other flats in Spinnaker House. He does not, and did not at the time when the works were carried out, live in the flat but sub-lets it. He was an impressive witness with a great deal

of relevant expertise although he was not, and did not claim to be, independent.

37. Mr Kingham said that Spinnaker House was in very good order before the works were carried out; it had no deficiencies which could not be remedied by routine maintenance and did not need to be part of any programme of major works. He said that the block, and the whole of the Barkantine Estate, had been the subject of a major refurbishment carried out between 1998 and 2000 at a cost to him, as a leaseholder, of about £25,000. He said that the landlord had not produced any physical condition surveys sufficient to justify the need for further major works and that the "Stock Profile - Decent Homes Performance" (which seems to be similar to the later "Stock Condition Overview, version 2" dated January 2009 relating to Spinnaker House in main bundle 2/192) appeared to be a desk-top exercise and no more than a statistical tool to plan, in outline, overall long-term spending profiles based on records. He said, correctly, that the *photographic schedule of condition of the general and communal areas for the client's records* which the contract required the contractor to prepare before the works began had not been provided to the tenants and that although annex 19 of the landlord's initial statement of case, a "progress update", referred to a "survey by others" and a "review/approval by Baily Garner" and "confirm scope of works by Baily Garner", no documents had been provided to show the results of any of those activities. He submitted that proper surveys should have been carried out at an early stage by a professional body independent of the contractor. He said the leases required the landlord to consider each block individually and that in the case of Spinnaker House it had not done so. He said that he had consistently asked the landlord for the evidence upon which it had based its decision to include Spinnaker House in the programme of major works but had been repeatedly and curtly rebuffed. He had in April 2010 made an application to a leasehold valuation tribunal under section 27A of the Act raising issues as to the adequacy of the landlord's statutory consultation with the leaseholders, the need to scaffold the block for the purpose of a survey, and the liability of leaseholders of Spinnaker House to contribute to the cost of works to other parts of the estate. He put in evidence the tribunal's decision in respect of that application which is dated 27 October 2010 (1/72), made after an oral hearing and an inspection. He also produced a photographic survey of many elements of the block which he had carried out prior to the works which are the subject of this dispute (1/153 - 161).

The roof (fixed price: £8054.74) [1]

38. Mr Bull gave evidence. He said that he could not recall the covering of the roof prior to the works. He said that an intrusive survey had been carried out on the main flat roof "to establish its construction" from which it had been established that the roof, which had been replaced in the 1998 refurbishment works, was in good condition but in need of small localised repairs, and the decision was taken to apply a coat of solar reflective paint to it. He said that, like most of the works, the roof works were a fixed cost item and not subject to re-measurement by the contractor; he said that it was for the contractor to identify the extent of the repairs required to the roof and the contractor's

proposals would be "verified" by Mr Cantlay or by the clerk of works. He said that when the works had been carried out they would have been inspected either by Mr Cantlay or by the clerk of works. He said that he had not been able to find any clerk of works' or other reports to confirm the extent of the roof repairs which were actually carried out. Mr James said that he had inspected the roof with the site manager before the repairs were carried out and had observed that it was in fairly good order but had some cracks. He agreed that if the documents one would normally expect had been provided by Tower Hamlets to the landlord they would have included any guarantees in respect of the new roof covering installed in 1998.

39. Mr Kingham said that the roof had been in excellent condition and needed very little work (photographs at 1/153). He accepted that there were slight cracks which needed attention and said that in his opinion the necessary minor repairs should have cost not more than £200. He did not consider that a further solar coating was required because the coating which had been applied in 1998 was, he said, inherently solar-reflective and was designed to retain its properties even when worn.

40. We accept Mr Kingham's evidence. The landlord has produced no evidence to refute his assertion, supported by photographs taken at the time, that the roof needed only very minor repairs and we accept his evidence that such repairs should have cost no more than £200. Based on the evidence we have we have concluded that the cost of £8054.74 was wholly excessive and we allow £200.

Mansafe system (employer's instruction: £3156.69) [2]

41. The decision to install the system was made on 30 September 2010, at the time when or shortly after the roof repairs were carried out. Because of the late decision to install the system the contractors charged an additional £2314 for two additional weeks of scaffold hire for the purpose of the installation, but Mr Bhose conceded at the hearing that the cost of the additional scaffold hire had not been reasonably incurred for the obvious reason that if the decision had been taken in good time the cost of additional scaffold hire would have been unnecessary. Mr Bull said that the mansafe system was installed to provide safe working for maintenance purposes in the future. He had not carried out a risk assessment and had not raised the order himself and so could not comment on its timing.

42. Mr Kingham said that the provision of a mansafe system had not been consulted upon, that it was unnecessary because the maintenance points on the roof were more than three metres from the perimeter of the roof, and that there should have been a risk assessment to justify the work.

43. On balance we are satisfied that the provision of a mansafe system was a sensible investment for the landlord to make with a view to future savings, although clearly it was not essential at the time because the minor repairs to the roof were carried out without it. We have no evidence that the cost was excessive and we allow it in full.

Repointing (fixed price: £420) [3]

44. Mr Bull said that he had inspected the block from the ground before the employer's requirements were developed and he recalled that he had seen isolated areas where repointing was required. He had not supervised the work but had seen at his inspection in October 2013 that there were areas where repointing appeared to have been carried out. Mr James said that while the repointing was not in his opinion urgently required it was carried out where it was necessary.

45. Mr Kingham said that he had no idea how much pointing was done and where it was done. He said that the pointing had been in good condition before the works (his photographs are at 1/154) and he considered it to be most unlikely that any repointing would have been carried out if the block had not been scaffolded, but that he had no reason to disagree with the cost of £420, assuming that it was reasonable to do the pointing at all.

46. We accept Mr Kingham's evidence that no repointing was urgently required and the work would not have been carried out at all if the scaffold had not been in place. Because, as will be discussed later in this decision, we have found, on balance, that it was not unreasonable to scaffold the block we have concluded that it was reasonable to attend to whatever minor repointing was required and we accept, as Mr Kingham accepted, that £420 was likely to have been a reasonable cost.

Brickwork repairs (fixed cost: £500) [4]

47. Mr Bull said that he had observed small areas of defective brickwork and he had recorded an approximate area to be replaced in his survey notes, which were not available. He said that when he inspected the block in October 2013 he was unable to locate any areas of brickwork which had been replaced. Mr James said there were a number of spalled bricks on one elevation of the block which had been replaced but he agreed that the work had not been urgently required.

48. Mr Kingham said that the brickwork had previously been in very good condition as his photographic survey showed, and had not required attention. He complained about the absence of a survey or photographs to support the need to carry out the work and said that, as with the repointing, the work was clearly not urgent and would not have been carried out if the scaffold had not been in place, but he agreed that, if the work was done at all, the cost of £500 was not unreasonable. He referred to the previous tribunal decision (1/80) in which the tribunal noted that at its inspection on 26 August 2010 that "the brickwork was generally in good condition but the tribunal noticed some small areas where repointing would be necessary"

49. We accept the evidence of Mr James and Mr Kingham that the work was not urgent and we are satisfied that it would not have been carried out at all if the scaffold had not been in place for other reasons, but, since it was in place,

we consider that it was reasonable to attend to any defective brickwork and we accept, on balance, that this cost was reasonably incurred.

Concrete repairs: (employer's instruction: £1648.71) [6]

50. A provisional sum of £20,000 allowed for concrete repair, testing and overcoating was omitted and replaced by measured items: hammer testing (£263.95), cover meter survey (£322.87) and jet washing - 283.17 sq m (£1061.89) (see 1/348). No repairs were found to be necessary.

51. Mr Bull said that he had been supplied with no records showing if or when concrete testing had been carried out in the past and that he therefore considered it prudent for all exposed concrete surfaces to be tested, because, if defects had been discovered later, a scaffold or other form of access tower would have been required to rectify them. He agreed that the concrete had showed no visible signs of distress. Mr James said that he did not know where the 283.17 sq m of concrete could have been and he could not recall jet washing being carried out although he confirmed that the concrete was hammer tested. Mr Bhose agreed that 283.17 sq m could be an error because the area of concrete on Spinnaker House appeared to be less than that.

52. Mr Kingham said that the concrete had been perfectly sound and had not required cleaning and that such work as was done was entirely pointless.

53. From our inspection there appeared to be very little concrete on the exterior surface of the block and possibly not as much as 283.17 sq m. The evidence suggests to us that the main, but not the only reason for such work as was carried out was the absence of proper records. We are not satisfied that any jet washing was carried out. It is a messy procedure which Mr James would in our view have recorded or remembered if it was done. On balance we conclude that it was reasonable to carry out hammer testing while the scaffold was up. It was generally agreed that the testing of 283.17 sq m may have been incorrect, but we do not have the material to re-calculate the area. We had no evidence as to the need for a cover meter survey. On balance we accept that it was reasonable to check the condition of the concrete while the scaffold was up, and that it would have been prudent to do so even if the appropriate guarantees had been available. We therefore disallow the cost of jet washing and allow the balance of £586.82.

Overhaul existing double glazed window units (fixed price: £990) [8]

54. Mr Bull said that as part of his survey of the block he inspected a number of windows and was satisfied from what he saw that most of them required overhauling and/or the replacement of components. Mr James said that letters were put through the doors of the flats and the occupants were asked to contact the resident liaison officer to make an appointment for the windows of their flats to be inspected. He said that two follow-up letters were sent if necessary and that the resident liaison officers were available to be seen at

most times to make appointments for the inspection of windows from within the flats.

55. Mr Kingham said that he had not received any letters on the subject although the landlord knew his home address, and that his tenants were concerned about the poor state of the windows in the flat and he considered that they would have told him or contacted the resident liaison officer if they had been notified as Mr James described. He said that the windows of his flat had needed repair and he was aggrieved that the necessary work to them had not been carried out.

56. Schedules of repairs carried out to the windows of Spinnaker House are at 2/489-515). It is clear that repairs were carried out to the windows of a number of flats and we see no reason to suppose that Mr Kingham's flat was deliberately excluded, although we accept that its windows were not repaired and that Mr Kingham was not notified of the landlord's wish to inspect his windows. We cannot be sure, on the evidence, that his tenants were not so notified. We accept that £990 is not an excessive price for the work which was carried out, the extent of which is supported by the schedules of repairs, and we allow this item in full.

Redecorate all previously painted external surfaces (fixed price: £6746.39) [10]

57. Mr Bull said when he prepared the employer's instructions he noted the previously painted surfaces which had required redecoration and that they included boundary railings/fences, gates, balustrades, doors, handrails and soffits, although he could not produce his notes. He said that during his inspection in October 2013 he concluded that the boundary metal fencing had not been painted for some considerable time and was in poor condition but that the other painted surfaces had been decorated and were in reasonable decorative condition given the time which had elapsed since the work was done. He said that the metal surrounds of the glazing panels along the front of the escape walkways appeared from his inspection to have been properly painted. Mr James said that the external railings were not painted because Mulalley concluded that they were part of the environmental works which were to be carried out under a separate contract. Asked what should have been decorated, he said the edge of the roof beam which runs along the rear edge of the roof, the steel supports of the escape balconies (although he did not recall their being painted), the soffits of some but not all of the private balconies, the soffits of the external walkways, and pipes, all of which would have been brushed down, primed and coated with two coats of Metalshield. There appears to be no reference to this work in the clerks of works' daily sheets.

58. Mr Kingham said that some painting was done but its cost was wholly excessive and the work done ought not to have taken no more than one day at a painter's daily rate of £125. He said that he believed that the edge of the roof was made of plastic and had not been painted.

59. We were unable to obtain access to the two escape walkways but we were able to see both of them from ground floor level and one of them more closely from a landing. We could see that the paint on the metal frames of the glazing panels of the walkways was peeling very badly and, although we of course bore in mind the lapse of time since the contract was performed, we concluded that the metal frames of the glazing panels of the walkways had either not been re-painted during the works or that, if they had been re-painted, the work had been so badly done as to be valueless. We were satisfied that the boundary railings were omitted and not charged for. We were unable to judge whether the roof beam had been painted or whether it was made of plastic and not painted for that reason. On the basis of our inspection we conclude that one third of the work was for external metal work (excluding the boundary railings) which should have been but was not done and we disallow one third of the cost, namely £2248.80, and allow the balance.

Redecorate all previously painted internal common parts (fixed price: £8278.62) [11]

60. Mr Bull said that he could not recall the condition of the internal communal walls before the works were carried out. Mr Kingham said he accepted that the stairwells had needed painting but not the corridors.

61. The leasehold valuation tribunal which made the previous determination recorded in paragraph 16 of its decision (1/80) that, on the basis of its inspection on 26 August 2010, the internal common areas "required repainting in parts so that it was probably worth doing the entire area". We see no reason to disagree with that assessment and we are satisfied that the cost was reasonably incurred.

New floor coverings to communal parts (fixed price: £16,009.60) [12]

62. In the Scott Schedule [12] the landlord's case in respect of the flooring begins "stock condition report 2009 indicates vinyl floor is nearing end of serviceable life and recommended replacement within 5 years (2013)". However it is accepted that the floor covering which was in place in 2009 was not vinyl but Freudenberg rubber flooring which was laid in the course of the 1998 refurbishment. Mr Bull said in his written statement (1/249) that he was not aware of the life-cycle of Freudenberg rubber flooring but that communal floor coverings would typically have a life cycle expectancy of 35 years. He continued: "Photographs of the flooring in its original condition have been provided. These do not show any evidence of significant defect, the condition of the flooring generally appears to be slightly worn with some minor surface imperfections. I would however not have specified the replacement of the floor coverings unless it was evident that this was approaching the end of its life expectancy."

63. Mr Kingham said that it was within his knowledge that Freudenberg rubber flooring is an excellent and hardwearing product which was laid in airports and other areas where heavy use was expected and that its

replacement with what he considered to be greatly inferior vinyl, with inferior fire, wet slip and wear properties, was nothing short of vandalism for which the leaseholders should be compensated because its serviceable life would be much less than that of the flooring it replaced. He produced a report (1/174), addressed to Mulalley, from Hunter's, a firm of consultants which Mulalley had employed to review the employer's requirements and make recommendations to Mulalley as to the work which would be required to Spinnaker House to enable Mulalley to give the performance guarantees which the landlord required. Hunter's observations in this report on the floorings of Spinnaker House were: "existing non-slip communal flooring fair. Allowance only required for repairs in areas". Baily Garner's comments on the recommendation (also at 1/174) were "the durability standards state minimum life expectance of 10 years - liability will remain with Mulalleys on the existing coverings during this period therefore if the coverings are not replaced. MCL [Mulalley] also to confirm type of repair proposed". In paragraph 16 of its decision dated 27 October 2010 the tribunal recorded that on their inspection the members had observed that "the existing floor coverings were in good condition in corridors but poor in the entrance and on the stairs so that again some work was required". Mr Kingham said that he believed that at the date of that tribunal's inspection the entrance hall flooring had been replaced with a resin finish although there is no other evidence to that effect. Mr James was not able to offer an opinion about whether the flooring had required replacement.

64. In the course of our inspection of other blocks which are no longer the subject of a dispute we saw examples of Freudenberg flooring similar to that which was formerly laid in the common parts of Spinnaker House. We are quite satisfied that the rubber flooring which was in place in Spinnaker House before the works was a superior product to the vinyl with which, in Spinnaker House, it was replaced. It appears to us on all the evidence we have been given (and notably the report from Hunters to Mulalley) that, although it was worn in places, the rubber flooring in Spinnaker House did not need wholesale replacement and could easily and much more cheaply have been repaired. It was not disputed that Freudenberg flooring is still available. Moreover, if at some date in the future the flooring needed to be replaced it could have been replaced as a discrete item without the need for a scaffold or other substantial on-costs. We observed that the vinyl flooring which had been put down was already wearing badly, with several missing stair nosings, and was badly scuffed in places. It is our view that the Freudenberg flooring, if repaired, would probably have outlasted what has replaced it. We conclude that the only reason for the replacement of the flooring rather than its repair was so that Mulalley could give performance guarantees. Bearing in mind that the cost to the landlord and to the leaseholders may well, in the end, be greater than it would have been if the previous flooring not been replaced with an inferior product, we see no reason to make an allowance for the hypothetical cost of repair to the previous flooring and we disallow this item in full.

High pressure clean of existing floor/stair surfaces (fixed price: £1160) [13]

65. Paragraph 9.1 of the employer's requirements (main bundle 3/371) provided for "cleaning all concrete floor stairwell surfaces"). Mr Bull said that he understood this item to relate to the cleaning of "exposed screeded concrete stair surfaces" of which at his inspection in November 2013 he observed only one short flight of stairs leading from the top floor to the roof. Mr James said that it was decided not to carry out a high pressure clean because it would cause too much mess and the stairs were simply mopped with a brush and detergent. Mr Kingham submitted that such work should not attract any cost because exactly the same work was included in the routine service contract the cost of which was also charged through the service charges.

66. It is clear that the specified work was not carried out and nothing more than routine cleaning was performed for which leaseholders in any event paid through service charges. We regard this cost as unjustified and disallow it.

Repairs to asphalt coverings of balcony and deck access (fixed price: £342.50) [14]

67. Mr Bull said that he did not inspect the asphalt coverings of the private balconies and walkways when he prepared the employer's requirements and the price was based on assumptions. Mr James said that there were repairs to the asphalt roof covering but he did not mention the balcony and deck access in his written statement and in his oral evidence he said that he did not recall whether repairs to the asphalt were required. Mr Kingham maintained that no such asphalt repairs were carried out and that the improvement of the falls to prevent ponding, which had been required, was omitted.

68. No evidence has been presented to us that any repairs were carried out to the asphalt coverings of the balcony and deck access and we are not satisfied that any such repairs were performed. We disallow this item.

Application of anti-slip coatings to balcony coverings (fixed price: £3983.12) [15]

69. Mr Bull said that the coatings were intended to supply new water-proofing protection as well as non-slip properties. He said that he believed that the previous asphalt coverings did not have anti-slip properties, although he could not recall them. Mr James agreed that the surfaces still suffered from ponding because of the falls and that, if the ponding was not addressed, the non-slip surface would be ineffective, but, he said, no works to improve the falls had been requested and such work would have been very expensive.

70. Mr Kingham said that the previous covering was bitumen with a sand finish and was not slippery unless poorly drained. He said that neither the previous nor the new asphalt covering was laid to falls, and that the previous tribunal decision had recorded, correctly, (1/80) that "the escape balcony had

significant ponding and required some work to address this". At our inspection we saw clear evidence of ponding.
71. We are satisfied that if this work had been carried out only to produce a non-slip finish it would have been unnecessary and ineffective if the ponding problem was not addressed and cured, as it was not. Mr James said, and we agree, that it would have been better to address the problem of the poor falls but that that would have been expensive. We accept however that the coating had some value in that it provided additional waterproofing and as such, and on balance, we allow the cost as reasonably incurred.

Renew/repair hopper outlets: (fixed price: £300) [16]

72. Mr Bull said that the hopper outlets in the bin store were in reasonable condition but that it was likely that they would have required general overhaul, including lubrication and replacement of any defective mechanisms. The works were specified for every bin store of every block included in the contract. There is no record of such work in the clerks of works' notes. Mr Kingham said that in the absence of any evidence he did not believe that any such work was carried out.

73. We agree with Mr Bull that it is likely that a heavily used mechanism such as the hopper outlets would have needed some overhaul and on balance we allow this small item.

General repairs to bin store area (fixed price: £2650) [18]

74. The work to the bin store comprised over-tiling the existing wall tiles with new tiles and installing a metal strip to absorb the impact of the bins. The metal impact strips were not included in the employer's requirements (main bundle 3/223), nor were they the subject of any employer's instruction that we have seen. Mr James agreed that the previous tiles had been in reasonable condition. Mr Kingham provided photographs of the bin store before the works were carried out (1/159). He said that the wall tiles previously in place had been high-impact and only four of them had been broken and they could easily have been replaced. He said that the new tiles were of bathroom tile quality and were inferior to the old tiles and unsuitable for the purpose, which was why the metal impact strip had been necessary. He said that it would have cost no more than £150 to replace the broken tiles and that the leaseholders were entitled to compensation because the new tiles were significantly inferior to the old.

75. We agree with Mr Kingham that the new tiles were inadequate. At our inspection of Montcalm House in which the same tiles were applied we saw pieces of broken new tiling on the floor of the bin store and we could see that they were flimsy and not suitable for the heavy wear to be expected in a bin store for housing heavy paladin bins. We accept the evidence of Mr Kingham, supported by the evidence of Mr James, that the old tiles had been in reasonable condition and could have been repaired. We disallow this item in full. The new tiles are, we are satisfied, inferior to the old, and of no value to

the landlord or the leaseholders. We allow only £150 for the repairs which should have been carried out as Mr Kingham suggested
Below ground drainage works (employer's instruction: £3437.44) [21]

76. This is accepted.

Full height scaffolding (fixed price: £29,829) [22]

77. Mr Bull said that a full scaffold was necessary to comply with the employer's requirements, in particular those relating to concrete repairs, window overhaul, redecoration and "new services" which we take to be mainly a reference to the IRS. Mr James said that, in his opinion, even if the IRS had not been installed a full scaffold would have been necessary and a tower or cherry-picker would have been impracticable because of soft ground surrounding the block. Mr Kingham said that no useful work had been carried out from the scaffold and that a tower could have been used for any brickwork or other repairs which were necessary. He said that the works which required a scaffold were carried out only because the scaffold was in place and submitted that nothing should be allowed for the scaffold.

78. We accept Mr Kingham's submission that if Spinnaker House had not been part of the major works programme there was nothing requiring a scaffold which was so urgent that it could not have been left for the time being. We also accept that, with the exception of the IRS, the value of the necessary works which required a scaffold was not great by comparison with the cost of the scaffold. But mainly, but not only, because we have concluded, on a narrow balance, that it was reasonable to install the IRS, we have also concluded that it was reasonable and necessary to scaffold the building. We accept that the use of a tower or cherry-picker would not have been feasible and, on balance, we accept that this cost was reasonably incurred. There was no evidence to suggest that, if a full scaffold was necessary, the charge for it was excessive.

Scaffold to roof mansafe (employer's instruction: £2314) [23]

79. The landlord conceded that if the mansafe had been instructed when it should have been this cost would not have been incurred and conceded that the cost was not reasonably incurred.

External fabric - repair to existing metal/timber surfaces: (fixed price: £2100) [25]

80. Mr Bull said that without his original survey notes he could not say to which components this charge referred. He said he had not seen any relevant clerks of works' reports or reports from the contractor and that during his inspection in October 2013 there was no evidence of any such repairs to the front boundary railings. Mr James gave no evidence on the subject.

81. Mr Kingham submitted that in the absence of any evidence of what these repairs comprised the item should be disallowed in full. We agree.

Asbestos removal (fixed price: £4114) [26]

82. The employer's requirements relating to asbestos removal are included in main bundle 4/347 and are the subject of employer's instruction 2 (1/330). None of this cost appears to relate to asbestos surveys carried out by Asbestos Consultants to the Environment Ltd (2/151) which were charged separately. Neither Mr Bull nor Mr James could give evidence on this specialist subject.

83. Mr Kingham accepted that there was some value in decontaminating the electrical intake cupboard and he put a value of £2000 or thereabouts on that work.

84. We do not have evidence sufficient to persuade us that this charge is either reasonable or excessive. On balance we accept that the recommended work was done and that the cost was reasonable and reasonably incurred.

Works to garages (£2155 and £1319.70) [27 and 28]

85. The landlord conceded that these items should not have been charged to leaseholders.

External signage (fixed price: £1335.74) and additional signage (employer's instruction: £436.14) [29]

86. The fixed price work relates to the provision of new signs on the exterior of the block showing the name of the block and the present landlord's name and, in the internal common parts, the location of its facilities. In its second reply for Spinnaker House the landlord said that the purpose of changing the signage was to give the landlord's correct name because some signs referred to the landlord as Tower Hamlets. Mr Bhose submitted that the purpose was however, not merely to advertise the present landlord's name, but also because the old signs were worn and new signs were required for clarity. Mr Kingham said that there was nothing wrong with the old signs and he produced a photograph (1/160) of the painted sign over the main entrance to Spinnaker House, which did indeed look perfectly clear and adequate and did not show the former landlord's name but merely the outline of a sailing barque.

87. On balance and with misgivings it is our view that it was reasonable for the landlord to install new signs at a fixed price of £1335.74, although it was hardly a high priority. Had it been done for re-branding purposes we would have disallowed it on the ground that the old signs did not include the former landlord's name, but we are prepared to accept that some of the signs were worn. We have been given no reason why the contractor could not have provided all the necessary signs within the fixed price it quoted and we

disallow the £436.14 required by employer's instruction for which the landlord provided no justification or explanation.
Test lightning protection system and issue certificate (fixed price: £850) [31]

88. The employer's requirements for Spinnaker House include (main bundle 4/395) at 1.19 "test lightning protection system to BS 6651 and issue certificate". Photographs of part of the lightning protection system are at 1/235 and one of them shows some sort of a label dated "9.9.10". Mr Kingham said that if the lightning protection system had been tested there would be a certificate which should be in the hearing bundles. He said that if it could be shown that a certificate had been issued he would accept the charge. Mr Bhose said that the landlord could not produce a certificate. At the adjourned hearing relating to Montcalm and Montrose House on 29 April we again asked whether the certificate had been located, but it had not. Bearing in mind that we would expect the certificate to be in the landlord's possession, we are not satisfied on the evidence that the system was tested and a certificate issued and we disallow this item.

Provide integrated reception system (fixed price: £15,074.75); builder's work in connection with IRS (employer's instruction: £1890); electrical work in connection with IRS (employer's instruction: £153.82); IRS containment (employer's instruction: £5746.94); three dish IRS (employer's instruction: £2869.86); IRS multi-room system (employer's instruction: £7832.71). Total = £33,568.08 plus part of "other works" £4134.71 [32, 33, 34, 36, 37 (considered below), 38 and 39]

89. The employer's requirements relating to the IRS were prepared by GDA and are to be found at main bundle 4/499. They specified that "options shall be provided for single dish (Sky only) dual dish (Sky and Hotbird) and three dish system". On 25 May 2010 an employer's instruction was issued (1/32) for a three dish system; on 9 June 2010 (1/31) a further instruction was issued to delete IRS sockets to bedrooms and at some stage an instruction was issued (undated instruction no 7 at 1/338 and 339 which refers to an attachment dated 16 May 2010) for a "multi-room system" giving the facility to watch different channels in every room in the flat if the tenant of the flat provided suitable wiring within his flat. The previously proposed two-outlet facility appears to have included the appropriate internal wiring and sockets within each flat (1/31). The IRS provided in Spinnaker House is shared with the neighbouring Byng House in that the cabling extends over the space between the two blocks and, as far as we are aware, there are three satellite dishes serving the two blocks.

90. Mr Wigley said that the IRS was based on GDA's specification but that competitive quotations for the system were obtained. He said that it was within his knowledge that other local authorities and housing associations provided similar systems and he gave as an example Lambeth, which provided Sky Plus and Hotbird. He said that a particular benefit of an IRS was that tenants did not need to install their own satellite dishes outside their flats in breach of covenant. Mr Saye said that there was extensive consultation about

the IRS with the residents, a large number of whom wanted to keep the Sky system to which they already subscribed and very many of whom wanted the opportunity to watch television in foreign languages. He said that many of the residents were elderly and wanted a range of channels. He said that cable television was not available on the Isle of Dogs. Mr Bhose submitted that the Tribunal was required as a matter of law to bear in mind that this was a mixed-tenure development in an area where many people did not speak English as their first language and that the reasonableness of the landlord's decisions should be considered in that context, and that it was certainly not unreasonable for the landlord to have commissioned a modern IRS offering more channels than could be provided by Sky or Freeview and to offer a multi-room facility.

91. Mr Kingham said that he accepted that the landlord had a duty under the leases to ensure that the communal television aerial systems were capable of providing residents with digital multiple television channels but that Spinnaker House had a relatively new Master Antenna Television ("MATV") system which was replaced during the major refurbishment in about 2000. He said that the MATV system (in respect of which he provided information at 1/170 - 173) had provided good quality digital television with 99 Freeview channels to every flat in the block and all that was required was the re-tuning of the residents' televisions to receive digital television. He said that the new system had been provided to a specification the landlord had obtained without proper consultation with the leaseholders and that it provided no benefit to the residents, even those whose systems were connected and worked, which his did not. Even if, he said, the provision of a new IRS was justified, which in his opinion it was not, the cost of the system was excessive and a reasonable system should not have cost more than £275 per outlet. He said that in his opinion it was reasonable for residents to install their own satellite dishes on their own balconies if they wished.

92. On balance we have concluded that it was not unreasonable for the landlord to provide an IRS and for a social landlord to provide a three dish system in an area where many languages are spoken. While we accept that, to obtain digital television, all that was required was re-tuning, that would not have achieved the object of multi-language television. Nor do we accept that it would have been reasonable to allow individual tenants to install their own satellite dishes on the exterior of the block. Left to ourselves we might have said that a two-room outlet would have been adequate for most people and would have been a more reasonable option than a multi-room system, but, since the cost of the multi-room system which was installed was less than the originally proposed two-room capability (although only, we assume, because it did not include wiring within the flats), we conclude that the cost of the multi-room system was reasonably incurred. Generally speaking, while we harbour suspicions that a system meeting the landlord's requirements could have been provided more cheaply than it was, we do not have firm evidence upon which to reduce the cost. On 1 April 2014, after he had concluded his oral evidence, Mr Kingham invited us to take into account some information he had obtained from the internet which, he said, suggested that the cost of the system installed by the landlord was excessive, but we declined to admit evidence about it on the ground that it was submitted too late.

Other works: (fixed price: £4134.71) [37]

93. This item comprises the apportionment to Spinnaker House of a number of costs which are set out in main bundle 4/138. They are *surveys and investigations, working drawings, record drawings and operating and maintenance instructions, client demonstrations, any additional item the tenderer considers necessary to complete the works: containment for item 10 [internal trunking for IRS cables] and a provisional sum for undefined works.*

94. Mr Kingham considered that all or most of these items formed part of the cost of the IRS which he disputed in principle. Since we have decided that the installation of the IRS was not unreasonable we see no reason to disallow these costs.

General electric testing and inspection (employer's instruction: £179.42) [35]

95. Mr Kingham submitted that this charge was for routine maintenance which was covered by an annual charge. We accept that such testing is a requirement and we accept that the testing would have to be carried out. Whether or not it was a routine item it would have to be paid for and we accept the reasonableness of the charge.

Attendance of BT engineer for lift line (employer's instruction: £228.54) [40]

96. The landlord produced no evidence to support this charge. An employer's instruction dated 1 August 2011, some three months after the final account (1/345), shows a charge of £228. The heading is "replace damaged glass bricks" but the text says "Attendances upon BT engineer for installing new lift line as per attached email". The email was not provided. Mr Kingham suggested that the BT line for the lift was unnecessary because a GSM ("Global System for Mobile") system was also provided at a cost of £946.36 (employer's instruction 8 at 1/343), but that seems to be incorrect because, on Mr Bull's evidence, the GSM was provided as a temporary measure until the BT line was provided.

97. We accept Mr Bull's evidence that this work was necessary and we consider the charge to be reasonable.

Lightning protection works (employer's instruction: £702.14) [41]

98. The instruction is at 1/353. It is dated 1 August 2011, nearly a year after the date of a test tag shown in the photographs at 1/430 - 432 and, again, some three months after the final certificate, and reads "carry out lightning protection certificate as per attached estimate". The estimate is not attached. The landlord said in the Scott Schedule that this charge was for "bonding roof

plant to air termination network, to enable certification of lighting [sic] system - as detailed in lightning certificate information. Site inspection confirmed lightning installation present and labelled following completion of major works. See photos attached". The only relevant photographs appear to be at 1/430 to 432 and show a label near the base of the system and the lightning conductor up the side of the building. There is no photograph showing the bonding of the system with the roof plant and no information was provided to us to support the charge.

99. Mr Kingham said that if the Tribunal could be satisfied that this work was done, the charge was reasonable but that the landlord had provided no evidence that anything was done in the way of bonding the lightning protection system to the roof plant.

100. While the evidence to support this charge is unsatisfactory we have concluded that the work was necessary and, on the balance of probabilities, carried out. We have no reason to suppose that its cost was unreasonable.

Provide thermal insulation to existing mains cold water rising pipework (fixed price: £255.36) [42]

101. In the Scott Schedule the landlord said that the GDA condition report recommended that the incoming water main be insulated. The employer's requirements relating to Spinnaker House include a GDA quotation (main bundle 4/350) to "provide thermal insulation to existing mains cold water rising pipework in accordance with section 5/4 of the specification". Mr Kingham asked Mr James where the insulation was to which Mr James said "nothing comes to mind".

102. Mr Kingham said that there was no history of freezing in 55 years and no evidence of any kind that the work had been carried out.

103. Despite the landlord's flimsy evidence, on balance we accept that this work was likely to have been done and that the charge for it was not unreasonable.

Lifts (estimated cost £89,339.84, actual cost £95,567.75) [44]

104. Chapman Bathurst, the lift specialists who provided a report on all the lifts on the estate, said in a report dated 20 February 2009 that the previous lift in Spinnaker House was installed by Bennie in 1973 (although in his opening Mr Bhose said that Spinnaker House was built in 1977). We are content to assume that the lift was original to the block and was installed at some point in the 1970s. Chapman Bathurst recommended a provisional sum of £15,000 for "new car sling and new interior" and (2/ at 240, 244 and 268), the full refurbishment of the other parts of the existing lift, some of which, it said, did not meet current regulations and parts of which had exceeded their expected life. Mr Bull said that he inferred that the Chapman Bathurst report (2/at 268) suggested that the existing car would be retained and refurbished

which the provisional sum of £15,000 appeared to cover. Having received the Chapman Bathurst report Mulalley tendered the lift sub-contract and instructed Precision Lift Services Ltd to carry out the works at a fixed price but with a provisional sum for the refurbishment of the car interior. The lift handover was on 12 July 2010 (certificate at 2/388). The final account at 1/301 shows lift costs of £75,742.09 and, at 1/302, employer's instructions to a value of £3576.28 for maintenance, £11,666.66 for car interior refurbishment and £3636.36 for builder's work. Mr Bull said that he was unclear as to the extent of builder's work associated with the works to the lift and whether such works were included in the original tender.

105. Mr Kingham said that the lift had been in satisfactory condition before the works, as the six-monthly statutory inspection reports (examples at 1/164 - 169) showed. He agreed that there was some value in a new lift but he did not believe that "the trigger point" had been reached. He submitted that the charge of £3576.28 involved potential double-counting because the leaseholders had already contributed to a three year maintenance contract as part of the annual service charge. He also suggested that there might be double counting on the refurbishment of the lift car because the £75,752.09 should have covered it. He said that it unnecessary to refurbish the lift as part of a large project because of the overheads which it attracted.

106. We are satisfied that it was not unreasonable to replace the lift which on any view was over 40 years old and did not comply with current requirements. We accept Mr Bhose's submission that the question of double-counting of the charge of £3576.28 will arise only if a separate charge is made for maintaining the lift, as to which there is no evidence and which is not before us. In relation to the possible double-counting of the cost of refurbishment of the lift car, the landlord submitted further written representations at our request after the hearing. Having read them we are satisfied that there was no double-counting in this respect. The quoted price of £75,742 excluded the refurbishment of the lift car, which was, we are satisfied, charged separately in the sum of £11,666.66 rather than the £15,000 which was originally allowed.

Block preliminary costs (fixed price: £32,154.13) [45]

107. The preliminaries are listed in main bundle 3/from 6. They include such matters as public meetings, dealing with residents, site overheads, health and safety and insurance and they amount in all to £785,192.14. That sum equates to some 12.98% of the contract sum for builder's works and electrical and mechanical works. The cost of preliminaries was sub-divided according to works carried out to that particular estate (see, for example main bundle 4/123 for the Barkantine Estate and, for comparison, 4/125A for the Kingsbridge Estate) and the total at which the landlord thus arrived in respect of the whole of the Barkantine Estate is at main bundle 4/120 and is £513,382.50. That sum was then apportioned to each block and then to each leaseholder on a rateable value basis. Mr Bull said that it was legally required that in a large contract such as this the contractor must comply with various regulatory requirements and the preliminary costs were inevitable.

108. Mr Kingham did not challenge the costs comprised within the preliminaries but he submitted that the preliminaries charged to each block should relate to the works reasonably carried out to that block and should not be apportioned on the basis of rateable value. He challenged the need to carry out any major works to Spinnaker House. He also submitted that no preliminaries should be charged in relation to the new lift in Spinnaker House because the lift could have been replaced at any time and not as part of the major works and that, as a matter of fact, the lift installer did not use the facilities provided as part of the site preliminaries.

109. We accept that it was not unreasonable to include Spinnaker House in the large contract which will inevitably attract overheads which would not be necessary in a much smaller contract, and we reject the suggestion that Spinnaker House should have been excluded altogether from this contract. It was some ten years since the previous refurbishment of blocks in the Barkantine Estate and the blocks would have been due for at least cyclical maintenance and redecoration in 2010. We accept that none of the works have been shown to have been urgently required but, as Mr Bhose submitted, a landlord does not have to wait until repairs are urgently required before carrying out cyclical works. Mr Kingham invited us to reject the method of apportionment and reduce the overall amount for preliminaries if we made reductions to the costs which the landlord could recover because we found that some works were unnecessary or over-priced. We accept that the cost of preliminaries is in itself reasonable. On balance we reject Mr Kingham's submission that the lift works should be disregarded in the attribution of the cost of preliminaries because we accept that it was reasonable to replace the lift in Spinnaker House at the same time as the other works to avoid further disruption and we accept that rateable value is a not unreasonable basis for apportioning them. We have considered the merits of allowing preliminaries as a proportion of the other costs of the external works which have found to have been reasonably incurred but have rejected such an approach because the costs of the preliminaries themselves were actual costs which were not challenged and which appear to be not unreasonable.

Consultants (£19,479.73) [50]

110. A list of consultants' fees in respect of the whole contract is at 1/293. They are:

Active Fire Management (fire risk work)	£18,751.88
Baily Garner (consultancy services)	£453,117.25
Carter Clack (structural engineers)	£2179
Devonshires, solicitors (OJEU compliance)	£2334.25
Gibbs Dench Associates (M & E engineers)	£36,275.90
Hickton (clerk of works)	£192,501.61
MAND (lift consultant)	£25,542.11
STATS (structural engineering surveys)	£21,620.69
Tetra Consulting (asbestos consultant)	£32,869.46
Total	£785,192.14

111. Recovery of the fees of Baily Garner is capped at £100 per leaseholder which, Mr Bhose said, is approximately half what a typical leaseholder would have paid if the fees had not been capped.

112. The fees were apportioned exclusively on the basis of rateable value and not according to the works done either to the estate or to the block in question

113. Mr Kingham said that these fees should have been apportioned on the basis of the work carried out to Spinnaker House and not on the basis of rateable value. In response to a question which we asked of him and the landlord after the hearing that there was no evidence of any work carried out by STATS to Spinnaker House.

114. Mr Kingham did not challenge the cost of consultants.

115. We have no material on the basis of which we could conclude that it was not reasonable to apportion the consultants' fees according to rateable value. Unlike Montcalm House, considered later in this decision, there is no suggestion that the expertise of a particular consultant was obviously irrelevant to Spinnaker House, and in our view it was reasonable to apportion the fees of all the consultants according to rateable value, and to have done otherwise would have been a complicated and no doubt costly and disproportionate exercise.

Management (£8067.65) [51]

116. Mr Saye said that this charge was for the landlord's additional costs associated with delivery of the major work scheme and that it related to additional staff recruited because of the major works but not the cost of staff or premises already in place. He said that the costs were then expressed as a percentage of the expenditure and rounded to 3% which was applied to the cost of the works to each block, which in the case of Spinnaker House equated to £8067.65.

117. Mr Kingham said that, since no major works were reasonably required to Spinnaker House, no additional charges for management should have been made. He also said that the standard of management had been poor in that the landlord either did not answer questions at all or failed to answer them promptly and courteously.

118. We accept that the landlord incurred additional costs in connection with the management of the works and that 3% is below the norm for such management. While we accept that there are criticisms which can be made of the way in which the landlord answered questions from Mr Kingham, particularly in the early stages, we accept that 3% is in the circumstances a reasonable percentage to apply to those costs which we find to have been reasonably incurred.

78 Bowsprit Point

Introduction

119. Bowsprit Point is one of four virtually identical 22 storey blocks on the Barkantine Estate. It comprises 82 flats and was built in about 1968. It has a pitched roof which was installed in place of the original flat roof in works carried out in about 1998 and it has two lifts.

120. The works carried out to Bowsprit Point under the contract included the replacement of the lifts, repairs to the pitched roof, rainwater goods, windows, floor coverings and cold water services, redecoration of the exterior and of the internal common areas and the provision of an IRS. According to the final account (1/177), the total costs referable to the block were:

Under the contract

builders' works, including scaffold:	£274,736.19
electrical works:	£76,002.37
mechanical works:	£28,833.78
employer's instructions	£61,787.42
omissions	*£33,433*

In addition, according to the schedule of total actual costs of works to the block the costs, as given in the Scott Schedule, also included:

preliminaries:	£53,288.71
consultants:	£32,283.56
management:	£14,525.92
Total:	*£508,024.95*

The total figure in the Scott Schedule is £531,006.79 but this contains a few errors and also includes sums conceded by the landlord.

121. As with all the blocks the amount charged to Mr Lane is based on the proportionate rateable value of his flat to the rateable value of all the flats in the block.

122. Mr Lane gave evidence himself but he also adopted the written evidence of Jamie Thomas, the leaseholder of Flat 80 Bowsprit Point, who has, since he provided it, settled his disputes with the landlord. Mr Thomas's evidence is at main bundle 11/213 -299.

Roof repairs employer's instruction: £12,105.20) [2]

123. The landlord does not seek to recover for this item. Mr Lane submitted that it was significant and suspicious that the landlord had sought to recover such a large sum in the first place, but we did not explore the reasons for the charge and do not propose to make any adverse finding against the landlord in relation to it.

Annual mansafe safety test (£424) [3]

124. Mr Lane said that he would accept this provided the landlord produced a certificate to confirm that the test was carried out. The landlord's case was that the test was carried out, but, in the inexplicable absence of a certificate, which the landlord was given an opportunity to produce but did not, we reject this charge. We are satisfied that if the test was indeed carried out a certificate should and would have been given and should be in the landlord's possession.

Repair and flush through rainwater goods (fixed price: £3362) [4]

125. Mr Bull said that the prices of this and the following items had been transposed and that the price for this item was intended to be £123, a cost which related to repair and flushing through external rainwater goods. Mr Lane said that the only external rainwater good were the short rainwater pipes over the front entrance porch and the cost of works to them should have been no more than £50.

126. We accept that the prices have been transposed as Mr Bull suggested and that £123 is a reasonable price for repair and flushing through external rainwater goods.

Flush through internal rainwater outlets (fixed price: £123) [5]

127. We accept that this cost was transposed with the previous item and was intended to be £3362. Mr James said that this work involved flushing the four internal rainwater pipes in each corner of the building, access to which was via inspection chambers at ground floor level and he confirmed that the work was carried out. Mr Lane doubted whether the work was done at all because he did not think it would be feasible to flush through the very long pipes from the ground floor. We accept Mr James's evidence that the work was done and we accept that the price was reasonable.

De-scaling internal rainwater pipes (employer's instruction: £4800) [6]

128. The landlord conceded that this cost was not reasonably incurred although Mr Bhose said that the concession was unjustified. However, in the light of Mr James's evidence that he believed that de-scaling would not have been necessary and that he could not recall it having been done, we consider that the concession was entirely justified.

Brick repairs generally (fixed price: £650) [7]

129. Mr James said that he marked up all damaged bricks on the block and that between 50 and 60 needed to be replaced, which was more than Mulalley had quoted for and that Mulalley had "caught a cold" (his words) on this item. He said that Mulalley had difficulty in matching the colour of the existing bricks but had done its best. Mr Lane agreed that some bricks had been replaced and suggested that the reasonable cost should have been £150 for one day's work. We accept Mr James's evidence and determine that £650 is not unreasonable and was one of the very few items the cost of which may have been on the low side.

Render repairs (fixed price: £900) [9]

130. Mr James said that this cost related to soffits in the entrance lobby and to concrete steps and consisted of "one or two patches at low level and where signage had been removed". Mr Lane said that any such repairs would be only of small areas and suggested a price of £200 plus materials.

131. This price may have been on the high side for the work actually done but on balance we accept it as part of the swings and roundabouts of a Design and Build contract and allow the item in full.

Overhaul existing double-glazed windows (£1935) [10]

132. Mr Lane accepted this charge.

Redecorate all previously painted external surfaces (fixed price: £8987.56) [12]

133. Mr James said that the landlord had required rather less work under this head than he would normally have considered usual in that the employer's requirements had not provided for stripping back to bare metal which in his view would have been sensible. He considered that the works had met the employer's requirements, such as they were, and that all the materials were used according to the manufacturers' instructions except that calcium plumbate primer was specified and that such primer was found to be unnecessary and was not applied because Dulux Metalshield needed no primer and "produced a high-build finish".

134. Mr Lane said that the cost was far too high by comparison with the cost of painting the interior (see next item) and suggested that a more reasonable figure would be £4500.

135. We are not satisfied that the cost was excessive, and on balance we accept this cost.

Redecorate all previously painted communal parts (fixed price: £15,551) [13]

136. Mr James said that the cost included re-varnishing previously varnished areas and painting cupboard doors. Mr Lane accepted this cost, save that he was concerned about mess on the window cills and floor of the twentieth floor where some paint had been spilt. We accept that the minor damage of which Mr Lane complained did occur but we satisfied that it did not justify any reduction in the cost.

New floor coverings to communal parts (fixed price: £11,798.16) [14]

137. Mr Lane accepted the cost provided the new flooring was guaranteed. We assume that the flooring was guaranteed by Mulalley as the employer's requirements specified and accept this cost as reasonably incurred.

High pressure clean of existing floor/stair surfaces (fixed price: £1400) [15]

138. Mr James said that a high pressure clean was not carried out to avoid damage to the decorations but that the floors and stairs were "washed" before and after the works. Mr Lane was prepared to agree £400 for this item we accept that as a reasonable one in the circumstances.

Additional flooring to lobby (employer's instruction: £450.50) [16]

139. We were told that a resident of a flat on the fourteenth floor objected to the colour of the flooring laid on that floor and that an employer's instruction was issued to change the flooring in the lobby on the fourteenth floor to that of a different colour. Mr James said that the decision to do so was controversial and we are not surprised. Mr Lane said that the instruction was given because the original consultation was inadequate but we prefer to say that it was nothing short of absurd to lay different flooring, at the landlord's expense, because of the views of one resident and we disallow this item as unreasonably incurred.

Repairs to asphalt coverings to balcony and deck access (fixed price: £700) [17]

140. In the Scott Schedule the landlord's case includes that "employer's requirements allowed for repairs to the existing balconies on the top floor of block". No-one was able to identify any work carried out under this head and Mr James said not only that he was not aware of any repairs to the high level balconies but also that he would have been aware of any such repairs if they had been carried out because they would have required a "hot work permit", although he said, on reflection overnight, that the item might have related to repairs to the roof of the entrance porch. We were given no evidence of any asphalt repairs to any private balconies. Indeed we inspected the balcony of Flat 81 on the top floor and were quite satisfied that no asphalt repairs to it had been carried out although they were, in our view, required. We do not

accept that the description of this item is apt to include repairs to the roof of the porch. We are not persuaded that any repairs were carried out to Bowsprit Point under this head and we reject this cost.

Renew/repair hopper outlets (fixed price: £1250) [18]

141. On each of the 22 floors of the block there is a lobby housing a rubbish chute and in each of them there is a hopper outlet which Mr James said was checked but he could not recall any repairs being required or carried out. He said that they were all clean and in good working order and could have been checked in less than an hour. He said that such checking was carried out as part of day-to-day maintenance so no additional charge for it should have been made.

142. There is no evidence that the renewal or repair of the hopper outlets was required, but we accept that the overhaul of the heavily used hopper outlets would have been required and we allow this cost as we did in respect of the same item in Spinnaker House.

General repairs to bin store area (fixed price: £3000) [20]

143. This item is accepted.

Below ground drainage works (employer's instruction: £1993.72) [23]

144. This item is accepted.

Full height scaffolding/towers (fixed price: £13,744) [24]

145. It is accepted that no full height scaffold was erected. Mr James said that an "easily transportable mobile tower" was used for low level (namely below 9 metres) work and that was the only scaffold which was used for the works to Bowsprit Pont. He said that he did not know whether the tower was hired or owned by the contractor, that the tower was "always on site" and was made of aluminium and, once erected, easily moved from one location to another because it was light-weight and had wheels. He said that the electrical sub-contractor which installed the IRS had its own mobile tower the cost of which is included in the costs of the IRS. Mr Bull agreed that £13,744 was "high" for a mobile tower.

146. Mr Lane said that this cost was wholly excessive and suggested at the hearing that £500 would be a reasonable cost.

147. We made our own enquiries and put to Mr Bhose at the hearing that it appeared to be possible to hire a 9.3 metre scaffolding tower for about £218 per week plus VAT. We also asked the landlord to comment further on the alternative cost of hiring a low level scaffold tower in written representations

after the hearing. It submitted that it was not open to us to substitute our own figure for that in the fixed price figure but preferred not to comment on the hire cost we had put to Mr Bhose, save to say that it would be reasonable for the landlord to have the scaffold tower in place for the entire period of the works to Bowsprit Point, which was 25 weeks. Mr Lane said that he accepted that £218 per week would be a reasonable charge but that only two weeks' hire at that rate should be allowed.

148. We accept that the use of a mobile low level scaffold tower was reasonable and proportionate but we regard its cost of £13,744 as wholly excessive. Having indicated our preliminary views to the landlord at the hearing and having given it the opportunity to comment on the alternative cost we put to Mr Bhose, we are satisfied that it is open to us to reduce the sum allowed and charged for scaffolding the block and that £218 per week plus VAT is an appropriate amount to allow. We accept that it is reasonable to allow 25 weeks' hire and therefore allow £5450 plus VAT at the appropriate rate.

External fabric: repair to existing metal/timber surfaces (fixed price: £900) [25]

149. Mr Bull said that the condition overview report (2/167-172) referred to existing metal/timber surfaces as timber canopy and metal handrails and balustrades and he said that these components required decoration but that there was no reference to any need for repair. Mr James said that he thought the item included the decoration of black timber panels covering gas pipes up to ground floor level and the decoration of the bin store hinges. Mr Lane said that the timber panels were badly decorated but not repaired and he relied on photographs taken by Mr Thomas at main bundle 11/223. He did not accept that any repairs were carried out to metalwork.

150. At our inspection we observed that the panels covering the gas pipes were warped and that the hinges on the bin stores were rusty and distorted. We conclude that if the work was done at all, which it probably was, it was done to a very poor standard, and we disallow the cost altogether.

Rainwater goods to communal areas (fixed price: £210) [26]

151. Mr Bull said that that he understood that the cost was for the replacement of defective brackets, realigning gutters and providing gutter guards to the canopy over the main entrance and Mr James said much the same. Mr Lane said that little or nothing had been done and there was no evidence of what was done.

152. We accept that work was done and we accept this charge.

Asbestos removal (fixed price: £2519) [27]

153. The landlord obtained a report from Asbestos Consultants to the Environment Ltd dated November/December 2008 (2/97 ff) on the presence of asbestos in Bowsprit Point. The report made recommendations as to the management and removal of the asbestos and the work was carried out by Tetra Consulting as sub-contractors to Mulalley. Mr Lane, relying on Mr Thomas's written evidence, questioned why the cost of managing the asbestos in Bowsprit Point was significantly higher than the equivalent cost in the other high rise blocks and Mr Bull said that that was because there was more asbestos in Bowsprit Point. The way the work was instructed was by means of a fixed price which was omitted and then included as an identical amount by way of employer's instructions for each block (1/256).

154. We have no grounds for rejecting this item. We are satisfied that it was not charged twice and that the works were done, and that they involved the management of some and the removal of other asbestos in the block. It is true that the previous landlord also apparently obtained an asbestos report in 1998 which should have been but was not provided to the present landlord's predecessors, but we cannot be satisfied that the need to carry out these works would have been less if the earlier report had been provided, as it should have been.

External signage (fixed price: £896.02) [28]

155. Mr Bull said that this item related to signs both on the exterior of the block and in the internal common parts. Mr Lane said that the previous internal signs were perfectly adequate, unlike the new ones which omitted the two top floor flats. He also said, adopting Mr Thomas's evidence, which included photographs (main bundle 11/224), that the external signs previously in place had been perfectly clear and adequate and the new ones were an unnecessary re-branding exercise and particularly inapt because they gave the name of the landlord as Island Homes when it was now One Housing Group.

156. On balance we allow this item for the reasons we have given in relation to Spinnaker House.

Upgrade main earthing and equipotential bonding in accordance with EDF (fixed price: £233.70) [29]

157. This item, together with all the other electrical items, is derived from a specification by GDA which, so far as it relates to Bowsprit Point, is at main bundle 4/from 390. Mr Lane put to Mr Bull that the block was re-wired in 1998 and that there should be no need to upgrade these components so soon afterwards, to which Mr Bull answered that he could only rely on the GDA report. While we accept that there are gaps in the landlord's evidence as to the need to carry out the electrical works we are, on balance and with misgivings, satisfied that GDA, who are specialists, would not have specified the works if

they were not required and we have no material on the basis of which we could disallow the costs.

Replace landlord's old metal clad cut out in liaison with EDF (fixed price: £223.85) [30]

158. The landlord conceded that no charge should be made for this item.

Replace VIR tails in liaison with EDF (fixed price: £520.38) [31]

159. The landlord conceded that no charge should be made for this item.

Service and test central emergency lighting inverter system (fixed price: £2671.31) [32]

160. Mr Lane disputed this item on the ground that there was a contract for maintenance of the lighting already in place and he produced an invoice dated 31 December 2010 from Chameleon Ltd for servicing the emergency lighting system in Bowsprit Point in the quarter from 1 October to 31 December 2012. Mr Bull agreed that such work would normally be expected to be covered by a maintenance contract but said that he had not seen such a contract.

161. Mr Bhose said that the contract with Chameleon commenced on 1 October 2010 and therefore post-dated the contract with Mulalley. We accept Mr Bhose's submission that duplication would only arise if the Chameleon invoice was charged to the service charge account but we have no evidence that that was done and in any event that was not an issue in the present dispute. We allow this item in full.

Replace any defective slave emergency luminaires and lamps (fixed price: £1000) [33]

162. We would expect this item also be covered by the maintenance contract and we disallow it.

Provide emergency lighting to plantrooms/intakes (fixed price: £869.78) [34]

163. Mr Saye said that the figure of £23,851.61 given in the Scott Schedule was an error and should have been £869.78 which is the figure in the final account. Mr James produced his daily diary sheet at 2/51 which said "emergency lighting to Bowsprit ongoing". We accept this item as likely to have been incurred and reasonably so.

Replace external and ground floor lighting (fixed price £2195) [35]

164. Mr Lane did not believe that this work had been carried out, but Mr James said that the cost related to the bulkhead lights above the entrances and did not include the projecting lights on the front face of the building shown in one of Mr Thomas's photographs. At 2/416 there is a minor electrical installation works certificate from Switch for the replacement of "various" ground floor lights at Bowsprit Point which we regard as adequate evidence to support this charge, and we allow it as reasonably incurred.

Provide mechanical services wiring to new/upgraded plant (fixed price: £104.80) [36]

165. Mr Lane said that any new wiring should be supported be a test certificate and Mr Bull agreed and added that it should be in the landlord's files. We agree with that and as no test certificate was produced we disallow the item.

Test lightning protection system (employer's instruction: £950) [37]

166. Mr Lane accepted this item.

Provide integrated reception system (fixed price £26,530.55); builder's work in connection with IRS (fixed price: £2460); electrical work in connection with IRS (fixed price: £307.64); IRS containment (fixed price: £11,220.23); three dish IRS (employer's instruction: £5603.06); IRS multi-room system (employer's instruction: £14,227.38). Total £60,348.86 plus part of "other works", £8072.54 [38, 39, 40, 42, 44,(considered below) 45 and 46]

167. Mr Lane did not challenge the reasonableness of the decision to install a three dish IRS with multi-room capacity but he challenged the cost and also, in particular, the charge for containment. We apply our general conclusions in respect of the IRS in Spinnaker House to the installation in Bowsprit Point. So far as containment is concerned, Mr Bull said in his oral evidence that the cost of £26,530.55 covered "cabling and infrastructure" and it was agreed that the £11,220.23 allowed for containment related to external metal trunking for the wires which was not provided to the external wires at Bowsprit Point or at the other high rise blocks. Instead, the wires were bunched together because, as we understand it, metal trunking would have required a full scaffold.

168. Since no containment was provided for the IRS cables in Bowsprit Point we see no justification for the charge of £11,220.23 for providing it. We accept Mr Bull's evidence that the cost of cabling was included in the item "provide integrated reception system" and we consider that the minimal cost of bunching it would have been included in that cost of £26,530.55. We reject the cost of £11,220.23 for containment because none was provided.

General electrical testing and inspection (employer's instruction: £209.60) [41]

169. Mr Lane said that he would accept the item if a certificate was produced. We disallow the item because no certificate was produced. Such a certificate, if it existed should, we are satisfied, be in the landlord's possession. Without a certificate any inspection was in our view without value.

Lightning protection (employer's instruction: £213.56) [47]

170. The landlord conceded that this was not payable.

Other works (fixed price: £8072.54) [44]

171. These are electrical works specified by GDA. As with Spinnaker House we have no material on which to disallow these items.

Replace existing valves to mains cold water service to break tanks (employer's requirement: £2013.32) [48]

172. This was specified by GDA and included in the employer's requirements (see main bundle 4/372). No reports or other information were produced to support the need to do the work.

173. The break tanks are in the basement of the block and it was clear at our inspection, and not disputed by the landlord, that the wheel valves serving those tanks had not been replaced. However it was obvious that a non-return valve near the door of the tank room at ceiling height was fairly new (see photographs at 1/366a and 1/366b and c) and had almost certainly been fairly recently replaced. In our view the charge must have been for that item. Mr Lane, who was present at the inspection, accepted that a valve had been replaced and we have no material upon which to conclude that the work was unnecessary or the price excessive and we determine that this cost was reasonably incurred.

Replace rising boosted cold water service to cold water storage tanks (employer's requirement: £10,137.65) [49]

174. The cold water storage tanks of the block are in the roof space. Mr James said that incoming water was pumped up to the roof, feeding potable water to the flats on the way. The relevant employer's requirement is at main bundle 4/372. The specification at main bundle 4/427 ff required the replacement of the whole or part of the mains cold water services and boosted cold water services in each block where such services "have exceeded their useful economic life". The specification did not mention the storage tanks within the roof space, although the equivalent specification for most of the other blocks

did mention them. The condition overview report (2/170) said "the incoming rising water mains are located within riser ducts running up within the flats". The schedule produced by the landlord during the course of the hearing said, generally of the Barkantine Estate, "all pipes galvanised steel approximately 35 years and approaching end of life". It was apparent from our inspection that at least one of the storage tanks had had some work carried out to it but we were provided with no evidence that the cold water service to the tanks had been replaced.

175. Mr Bull said that he believed that Island Homes had been having "big problems" with the pumps. He agreed in cross-examination that it would have been "impossible" to replace the rising main without entering the individual flats. Mr James said that he had no recollection of the work being carried out and in cross-examination by Mr Wright as to the need to replace the cold water services, which Mr Wright understood to have been replaced in 1998/2000, Mr James said that it was not his place to question the need to carry out works and "they could have been left in my opinion".

176. Like Mr Bull, Mr Lane said that he did not believe that the work could have been done without entering individual flats because the rising main went through each flat. He said that no-one had entered his flat, nor, as far as he was aware, any other flat in Bowsprit Point, for the purpose of carrying out the works. He said that the tanks were not replaced, and were not charged for.

177. In further written submissions made with our permission to deal with additional documents produced by the landlord following our directions dated 31 March 2014 Mr Lane said that it was not reasonable for the landlord to rely in connection with Bowsprit Point on a report from Hertel as to the previous condition of the cold water tanks and pipework in the high rise blocks because the report was said to relate only to Topmast Point, or on a report from Paul Betts of Baily Garner (said to be dated 9 February 2011 but clearly in error because it contains a reference to an inspection on 15 February) because it was brief and too generalised. He also made the point that whereas Mr James's daily diary sheet (2/45) referred to the handover of Bowsprit Point being on Friday 18 February 2011, Mr Betts's report suggested that no work to pipes and tanks had been so much as started at the date of his report. Mr Lane also said if any work at all had been required to the cold water and drainage services of Bowsprit Point it would have been carried out during the major refurbishment in 1998.

178. All the evidence we were given suggests that no work was carried out under this head. At our inspection we were shown no evidence that any such work was done. The landlord knew that the tenants disputed that the work was done and, if it had been done, it could very easily have proved it.

179. The only relevant requirement in the specification was to replace the rising service to the storage tanks, and not to replace the tanks. This was a major piece of work which would have taken many days to do. It is accepted that, to do it, access would have been required to the flats, and neither Mr James nor Mr Lane could recall the flats having been entered for the purpose. We believe that Mr James and Mr Lane would have remembered it if it had

been done and, on the evidence, we are satisfied that the work was not done and we disallow the cost in full.

Remove redundant cold water service to sprinklers in bins store (employer's requirement £139.26) [50]

180. Mr James said that the redundant sprinklers were not removed but the sprinkler heads were removed and capped off, as was required (see main bundle 4/372). Mr Lane said that the pipework should have been removed, but we accept that what was done complied with the employer's requirements and we regard the charge as reasonable.

Replace existing cold water down service pipework and thermal insulation (employer's requirement: £16,112.54) [51]

181. The relevant employer's requirement is at main bundle 4/372 ff and GDA's specification is at 4/428 ff. The evidential position is exactly the same as with the rising cold water services. Mr Bull said that, as with the rising services, access to the flats would have been required to replace the down services if they were within the flats and without such access it would have been "impossible" to carry out the works.

182. For the reasons given in relation to the rising services, we are satisfied that the work was not done and we disallow the item in full.

Replace existing local extractor fan serving concierge (employer's requirement: £431.01) [52]

183. Mr Lane accepted that the work was done but considered the price excessive. There is a photograph of the fan in Mr Thomas's written evidence (main bundle 11/160). We agree that the price seems high for such a small job which could not possibly have taken more than an hour or two, but we do not have the material to determine a different cost and on balance we allow this item.

Lifts: (included in contract but not fixed price : £213,780.45, including an employer's instruction to a value of £19,451) [54]

184. There are two lifts in Bowsprit Point, both original to the block. Chapman Bathurst's performance specification relating to the lifts in all blocks is at 2/201 and the specification relating to Bowsprit Point is at 2/256 - 258. The priced specification for Bowsprit Point is at main bundle 4/154. The total price there shown for lift replacement in the block is £179,904.17. The fixed price for the lifts is based on the Chapman Bathurst specification and is shown in the Scott Schedule as £202,439.57 and there is also an employer's instruction for lift equipment, including a motor in each lift, in the sum of

£19,451 (1/262 - 264). A breakdown of the total cost included in the final account is at 1/183, the highlighted figures relating to Bowsprit Point.

185. The need to replace the lifts was not challenged and no evidence was put before us to show that the cost was excessive although Mr Lane questioned the employer's instruction for additional works including works which had already been priced and he produced an invoice dated 31 March 2011 from Precision Lifts for £1944 for replacing the compensating ropes. He complained about the floor finish and the reduced space because of the new control panel which had been installed. He asked for guarantees and said that he could not understand why the replacement motor had not been included within the original specification. He suggested a reduction of 25%.

186. There is no dispute that the lifts needed to be replaced and we do not have the material on which to reduce the allowable cost.

Preliminaries (£53,288.71) [55]

187. Mr Lane submitted that all these costs were unjustified. He said that major works were not required to Bowsprit Point and that the only significant works carried out were to the lift and painting. He said that the amount of work done did not warrant preliminaries, the lift contractors "just turned up from time to time", that each concierge point had a lavatory and first aid was available at the housing office. For the reasons we gave in relation to Spinnaker House, we allow these costs.

Consultants (£32,283.56) [60]

188. Mr Lane submitted that Hickton's price was too high and that the fees of STATS were wholly excessive for what he regarded as a minimal amount of work. In his written submissions he said that there was poor supervision and control.

189. We accept these fees as reasonably incurred for the reasons we gave in relation to Spinnaker House.

Management (£14,525.92) [61]

190. Mr Lane submitted that the standard of the landlord's management had been very poor but he accepted that 3% was a reasonable percentage, provided it was limited to 3% of the reasonable costs of the works. For the reasons given in relation to Spinnaker House, we allow 3% of those costs we find to have been reasonably incurred.

1, 22, 26, 28, 43, 46, 48, 49 and 53 Montcalm House

191. Montcalm House on the Kingsbridge Estate is a five storey block of 55 flats built in about 1937. It has communal external walkways at first floor level and above, a pitched roof, two communal staircases, and no lift.

192. The works carried out to Montcalm House under the contract included repairs to the pitched roof, concrete repairs, overhauling and renewing windows, the application of anti-slip coatings to the balcony coverings, drainage repairs, electrical works, the installation of an IRS, replacing the cold water rising mains, storage tanks and cold water down service and foul drainage and the redecoration of the exterior and of the internal common areas. The works were completed in March 2011. According to the final account (1/597), the total costs of the works was £356,644.41, comprising:

Under the contract	
builders' works, including scaffold:	£151,368.85
electrical works:	£108,269.35
mechanical works:	£66,344.66
Employer's instructions	£92,722.14
Omissions	*£62,060.59*

In addition, the costs of works to the block the costs also included (the figures taken from the Scott Schedule):

preliminaries:	£69,225.65
consultants:	£16,293.38
management:	£12,776.10
Total:	*£454,939.53*

General

193. Montcalm House and Montrose House are old brick buildings, different in age and type from the other blocks with which we are concerned. It is in relation to them that Mr James's apparent misunderstanding of the nature of a Design and Build contract, which requires the provision by the contractor of a "high standard" of work for a fixed price, has had the greatest effect and it was in relation to Montcalm House that he very fairly said that with hindsight "knowing now that [the contract] was fixed price I think I should have been tougher on the contractor or subcontractor". It is particularly in relation to Montcalm House that we are disappointed with the quality of the evidence which the landlord chose to put before us as to the need to carry out the works.

194. The tenants of flats in Montcalm House did a great deal of work on their case and their written final submissions in particular were not only comprehensive and persuasive but a model of clarity and concision. For understandable reasons of cost they did not obtain experts' reports. We do not criticise them for this. Experts' reports and evidence can be very expensive and, as the tenants said at the hearing, they expected the landlord to provide the reports and specifications to justify the work and, they said, if those had been provided they might well not have challenged the need to carry out at least some of the works.

195. At the conclusion of the hearing Mr Bhose submitted written closing submissions relating to the block and after the conclusion of the hearing the tenants also made written closing submissions with the landlord's consent.

Repairs to pitched roof coverings (fixed price: £1500) [1]

196. The employer's requirements contain at main bundle 3/103 a general requirement that

> *all repairs to flat and pitched roof coverings should be sufficient to ensure that the life expectancy of that roof for a minimum remaining period of five years*

197. At main bundle 3/105 there is a general requirement in respect of repairs to pitched roof coverings in all blocks to *use a cherry picker for high level access to identify the scope and location of repairs.*

198. At main bundle 3/494 there are specific employer's requirements as to the roof of Montcalm House, which include:

> *all necessary repointing to the chimney stacks, repair any defective flaunchings and repair or renew defective/missing pots/cowls*

199. The tenants said that the contractor did not use a cherry picker to survey the roof before it entered into the contract and there is no evidence to the contrary.

200. Mr Hammond, whose flat is on the top floor, said that the ceiling of his flat was damp before the repairs were carried out and there was no improvement as a result of the works. We inspected the ceiling of his flat, which appeared to be damp.

201. Mr James said in his witness statement that "all the identified work was carried out. It is often the case that the works cannot clearly be seen from the ground or balcony level ...". In his oral evidence he said that he had inspected the roof from the perimeter scaffolding "many times", that from the scaffold all he could see was the perimeter of the roof, and that the roof above Mr Hammond's flat could not be seen.

202. In April 2013, in response to the persistent damp above Mr Hammond's flat, the landlord instructed John Rowan and Partners, building consultants,

to inspect the roof and prepare a report, which Mr Hammond produced (1/513 ff). The inspection was carried out with the benefit of a cherry picker and the writer of the report observed "a number of tiles were found cracked or slipped". He observed "aquapol" or similar coatings applied "from previous maintenance attendance" which seemed to indicate that "someone has tried to tackle some water ingress issues" and that "the condition of the chimney stack is poor and requires thorough re-pointing. The flashings have recently been partially replaced which has not been chased into the brickwork. Rainwater can easily permeate from the masonry and seep to the floors below and into the flats". The report's summary was that the chimney breast and the surrounding waterproofing elements "would benefit from a complete overhaul" for which the writer provided an estimated budget of £14,000 plus VAT.

203. The tenants said that the work carried out by Mulalley was valueless and that nothing should be allowed for it. Indeed they asked for damages for disrepair. They particularly criticised the performance of Mr James who, they said, showed a lack of understanding of his role, misunderstood the nature and effect of the Design and Build contract, and gave instructions to Baily Garner and to the subcontractors which was beyond his remit.

204. Mulalley was contractually bound to inspect the roof from a cherry picker and to quote for works sufficient to ensure a life expectancy of five years. It seems clear that it did not inspect the roof with a cherry picker and that the £1500 fixed price was inadequate for the works which were required to the very old roof of Montcalm House. It is equally clear that some, but nothing like enough, works were carried out to the roof. We are not able to say that the works done were valueless, but it seems clear that they were not sufficient to ensure a life expectancy of five years and that at any rate some of the defects were simply not addressed during the works, and there is no dispute that a substantial sum is required to rectify faults which should have been rectified at the time of the contract.

205. In our view £1500 was probably a fair price for what was done to the roof, although nothing like enough work was specified. We accordingly allow it as reasonably incurred. The Rowan report suggests, although its findings are not conclusive, that the defects which it described had existed at the date when Mulalley carried out the works, and Mr Hammond's evidence supports that. The works now required, will, according to the Rowan report, call for a scaffold tower and will accordingly be more expensive than they would have been if they had been done when the previous works were carried out. Although the liability to pay the cost of the works now required is not before us, it is hard, at the present time, to see why the leaseholders should be liable to pay at any rate the whole cost of those works.

Renew all rainwater goods (fixed price: £6018.80,[3] but omission of partial rainwater goods: £3197) [4]

206. The employer's requirements provided for all rainwater goods to be renewed for a fixed priced but, according to Mr Bull's written statement, upon closer inspection from the scaffold the guttering was found to be serviceable (Mr James's daily diary (2/119) recommends the omission of replacing the gutters and downpipes "as the existing refurbished will give a further 15 years use") and it was agreed that isolated repairs would be sufficient to meet the employer's requirements and a variation order for them (employer's instruction 11) was made.

207. The tenants said that 75% of the amount charged should be disallowed because the specified work had not been done, and they referred to a note prepared by Mr Hammond of a meeting on 12 September 2011 regarding damp penetration to Flats 46 and 50, which recorded Dean Chandler of Mulalley as saying that "the leak was coming from the rainwater drainage pipe and that Island Homes didn't want any of that touched during the major works".

208. As in so many other instances, we would have been greatly helped by better evidence from the landlord. We have absolutely no evidence as to the quantity of work carried out. Obviously something was done - at 2/108 there is a diary entry from Mr James dated 31 January 2011 which reads "Attend Montcalm House to snag the gutter and downpipe works. No defects noted. Signed off as complete" - but we have no idea whether the work took an hour, a day, a week or a month. There is a photograph of a gutter in Montcalm House at 2/156 and of a rainwater downpipe at 1/169, both of which appear to be in reasonable condition, and that is all. On balance, and with misgivings, and bearing in mind that the tenants have not argued that the work was substandard but simply that the work quoted for was not done, we allow the cost as reasonably incurred.

Repointing (fixed price: £1536) [5]

209. The general employer's requirements at 3/114 ff specify that the contractor must "carry out a suitable assessment of the exposed brickwork and pointing to establish the full extent of defects and repairs necessary" and "cut out and renew all defective brickwork and defective areas of pointing". The specific requirements for Montcalm House at main bundle 3/495 provide "allow a provisional quantity of 37 sq m for repointing to external walls in areas n/e 0.5 sq m."

210. Mr Bull said that the work was supervised by Philip Cantlay and the extent of the repairs was agreed by the clerk of works, Mr James. He said that the photographs shown at 1/214 - 222 showed that some repointing had been done although some defective areas appeared to remain. Mr Bull suggested that the defects could have arisen since the works were carried out.

211. Mr James agreed that the quality of the pointing in Montcalm House had been "pretty poor" and that he had accepted it "with reservations". He confirmed that he had marked out the areas to be repointed.

212. The tenants' case was that the quality of the repointing was so poor that it did not justify any cost.

213. From our inspection we concluded that the standard of pointing was appalling. We bear in mind, as Mr Bhose invited us to do, that the work was carried out more than four years ago, but we would expect pointing to last longer than that. The pointing which seems to have been carried out has not only not lasted for a reasonable time but has been carried out without any skill or finesse whatsoever and certainly to nowhere approaching the standard required by the employer's requirements. It has added no value at all. We disallow the whole amount.

Brick repairs generally (fixed price: £1710) [6]

214. The general employer's requirements in relation to brick repairs are set out under the previous head. The specific requirements for Montcalm House are at main bundle 3/495 and specify a provisional quantity of 77 bricks to be cut out and replaced, but we consider that if the provisional quantity is an underestimate the contractor must, under the contract, nevertheless replace whatever is necessary. A defective brick is defined by 4.1.2 at main bundle 3/116.

215. The tenants did not dispute that bricks had been replaced but asserted that the works had not been carried out to a reasonable standard, in particular as to colour matching, and they submitted that the cost should be disallowed in full. They asserted that at a meeting with them Mr James had said, in relation to the brickwork and other works, "you get what you pay for" but he denied it and we are not prepared to assume that he said it.

216. It was obvious at the inspection that a number of bricks had been replaced and we saw no significant areas of defective brickwork. We are satisfied that this cost was reasonably incurred.

Concrete repairs and associated works (employer's instruction: £16,685.85 - a provisional sum of £38,000 for concrete testing and repair was omitted) [7 & 8]

217. Mr Bull said that all the concrete repairs were carried out, mainly to the soffits but also to the stairs, in accordance with employer's instruction no 9 (2/14) which required "specialist testing to all exposed concrete and rendered surfaces" in accordance with section 5 of the employer's requirements. A schedule of repairs to be carried out is at 2/15 ff. The cost also included jet-washing of the stairs for which £1410.83 was allowed. Mr Bull said that the repairs were carried out by Renacon, an approved subcontractor, in accordance with the Sika repair system and that a 10 year warranty was obtained (2/488). He said that one would not now expect to be able to see where the repairs had been carried out.

218. The tenants said that the work had been carried out to a very low standard and that only 25% of the cost should be allowed. They showed us a short video of water dripping through the overhang of the roof outside Flats 52 and 53 and they said that it dripped for "hours" after rain, giving rise to rust-coloured stains round the affected area. They said that stains previously present had been painted over but had reappeared. The landlord acknowledged that there was rust staining in the area. At the inspection the tenants showed us unsightly repairs to the grey concrete steps which had been carried out in pink. The landlord said that no work had been carried out to the area shown in the video, and Mr James said that he would not have passed pink repairs to a grey concrete staircase and that that repair must have been carried out later than the works in dispute.

219. Section 5.2.2 of the employer's requirements (main bundle 3/123) provides: *The employer shall seek a thorough concrete and render repair programme on all relevant external components to eliminate the necessity for a further concrete repair programme for ten years following completion of the works. The contractor will be required to undertake all necessary repairs that will maintain and preserve exposed concrete and rendered surfaces for this time period within reasonable expectation.* We are not satisfied that this requirement was met in the area outside Flats 52 and 53, although clearly some work was done. We are inclined to accept that Mr James would not have passed pink repairs to a grey staircase.

220. The warranty appears to us to be of little value because it guarantees only the works carried out and not the general standard which the employer's requirements stipulated. Moreover there is an excess of £1300 for each claim under the guarantee. However, save for the area outside Flats 52 and 53, we accept that most of the necessary work was carried out and, doing the best we can, we deduct £1000 from the sum claimed for this item to reflect the failure to meet the required standard to the concrete outside Flats 52 and 53. If the landlord had provided us with "marked-up drawings to a scale suitable to identify all the repairs carried out" as required by section 5.4.10 of the employer's requirements it would have helped us to reach a more emphatic conclusion on the issue.

Renew external doors (not front entrance doors) (fixed price: £800) [9]

221. The tenants agreed this item.

Renew windows with UPVC (fixed price: £2517.57) [10]

222. There was an employer's requirement to replace seven windows in three flats, Flats 11, 14 and 21. The tenants did not dispute this cost but they said that the cost should have covered the provision of eleven further windows in the same flats which were the subject of the employer's instructions, considered in paragraphs 223 - 225 below. Subject to that, this cost is not disputed.

Overhaul existing double-glazed window units (fixed price: £1350) [11]

223. The tenants said that the standard of overhaul was poor and they referred to photographs at 1/403 - 405. The landlord disputed that assertion and produced a number of forms signed by grateful tenants who were satisfied by the quality of the repairs to their windows. We accept that the cost was reasonable.

Install double glazed windows (employer's instruction: £3046.98) [12]

224. The tenants asserted that these further windows should have been covered by the employer's requirements.

225. Section 6.1.2 of the employer's requirements (3/137) said that "Proposed elevation drawings had been prepared. Window schedules of each type are listed on the drawings." The employer's requirements (at 3/494) provided that the contractor must replace such windows as were listed on the drawings. However section 6.2.1 (at 3/138) provides: "the contractor should be aware that window drawings and schedules have been produced on information and access made available at the time of survey" and at 6.2.2 the requirements provided "the contractor shall therefore be required to verify the elevation drawings and window schedules and bring to the employer's agent [sic] attention any discrepancies or inaccuracies with the proposed windows, such as old windows/doors not listed for replacement, inaccurate quantities etc."

226. Given that under the employer's requirements there is no obligation on the contractor to leave all windows in good repair, we have concluded that the further windows were properly the subject of an employer's instruction, and we allow this additional cost.

Redecorate all previously decorated painted external surfaces (fixed price: £7832.67) [14]and redecorate all previously decorated communal parts (fixed price: £4002.09) [15]

227. These items relate to rainwater goods, walls, soffits and railings and were treated together at the hearing. The general employer's requirements (main bundle 3/44) provided, as we have said, that "workmanship is to be of a high standard throughout" and at main bundle 3/56, which relates to previously painted internal communal areas, there is a requirement for thorough cleaning before the work, removing all defective coatings, rubbing down and making good cracks in plaster. The requirements included the ICI standard specification in relation to metal surfaces, and provide "remove all surface contamination, scrape back to a firm edge all areas of damaged paint coatings".

228. Mr Bull said that the redecoration would not have been accepted if the clerk of works had not been satisfied with the standard. He said that when he inspected the block on 25 November 2013 he found the condition of the

previously painted surfaces to be reasonable but he said that it should be borne in mind that the surfaces would have deteriorated during the time which had elapsed since the work was done.

229. Mr James said that he had observed the painting of bare metal pipes without a zinc phosphate primer having been first applied and that that where he had observed that he had made the painters do the work again to the correct standard. He said that there would be new workers for every different set of painting works and that unless he was present when a particular category of works began he would not necessarily know whether metal had been primed but that he would accept the word of Dean Chandler, the site manager. He said that he was satisfied that in March 2011 the painting of metal met the employer's requirements but in his opinion the surface preparation was inadequate because, in accordance with the employer's instructions, only loose paint was to be removed and not, as he considered would have been preferable, stripped back to bare metal. He also criticised the employer's requirements relating to the painting of plaster coated walls but said that, in the end, the landlord had accepted that the works met the employer's requirements. He said that the previous plaster surfaces were "extremely dirty, with old fixtures and fittings, lumps of plaster etc".

230. The tenants submitted photographs showing the standard of decoration (1/254 - 261). They said that the standard of these works was so poor that the cost should be completely disallowed. They said that they had observed the painters painting over dirty walls and even painting over walls without first brushing the surfaces clean. They claimed that the works were a waste of materials and labour, that the durability requirements had not been met and they said that the internal common parts were, at the time of the hearing, being repainted because the work had not been properly carried out in the first place.

231. We accept that time has gone by since the works were initially carried out. We have been given no evidence from the landlord as to why the common parts are being re-decorated and, if they are, the reasons for that, and we disregard the tenants' evidence on the point. However, at our inspection we saw numerous examples of poor workmanship including uneven surfaces and signs of obvious failure to rub down before painting. We regard the quality of the redecoration of the plaster surfaces as very poor, making all reasonable allowance for the time which has elapsed since the work was done. We are satisfied that gutters had been painted over dirt (see, for example, the tenants' photograph at 1/260) and we are satisfied the tenants' photograph accurately records the poor standard of workmanship which we saw for ourselves.

232. We agree with the tenants that the work was of a very poor standard. In our view it did not meet the employer's requirements which required work of a high standard. It provided no benefit whatsoever and we disallow this item in full.

High pressure clean of existing floor/stair surfaces (fixed price: £700) [16]

233. Mr James agreed that a high pressure clean was not carried out because, he said, the decision was taken at the site that it would be too intrusive to do so. He said that the stairs and floors were cleaned at least three times using "chemicals". The tenants submitted that the cost should be disallowed because the work was not done or, alternatively, that its cost was included in an amount of £1410.83 paid as part of an employer's instruction (2/15) for additional concrete repairs and associated works.

234. We are not satisfied that the cleaning which was carried out was equivalent to the specified work. The tenants suggested a 50% reduction which we consider to be fair.

Repairs to asphalt coverings of balconies (fixed price: £513.73) [17]

235. Mr James said that he had no idea how many repairs had been carried out to the asphalt coverings but he produced his daily diary sheet (2/103) which referred to checking defects to asphalt coverings to balconies at Montcalm House. The tenants said that the repairs were of poor quality and were "vandalism, not repair" and sought a 100% reduction. They said that, at a drop-in session with Mulalley on 25 August 2011 when Ms Venzhyna complained about poor workmanship on the asphalt coverings, Mulalley assured the landlord that no repairs had been carried out.

236. We accept that some repairs were carried out and, bearing in mind the low value of this item, we accept on balance that they had a value of £513.73.

Application of anti-slip coatings to balcony coverings (fixed price: £12,655.50) [18]

237. The employer's requirements relating to the coatings (main bundle 3/489) provided for a new "waterproofing non-slip coating" with a "fifteen year (minimum) manufacturer's guarantee".

238. Mr James said that the main purpose of the coating was to provide anti-slip properties and the water-proofing properties was a by-product. He said that the work included scarifying and filling dips but that pre-existing ponding was not dealt with. He said that ponding could have been dealt with but would have posed great difficulties because it would have been necessary to close each corridor for two to three days, or alternatively the work would have had to be done in two halves which have introduced a joint down the centre with no certainty that the falls would be improved. Mr Bull said that a guarantee was in place and that the sub-contractor should be called to inspect cracks in the coating which the tenants had photographed.

239. The tenants produced photographs of the coating before and after the works (1/401, 407 and 408). They said that the coating applied as part of the

works was of poor quality and that there were minor cracks outside Flats 46, 47 and 48 and elsewhere which would permit water to penetrate which was likely to damage the building. They said that the application of the coating was too thick and had reduced the size of the drainage channels and that they had not seen any guarantee, although they would not take issue if any guarantee was for ten rather than fifteen years. Mr Bhose said that the landlord would provide a copy of the guarantee but it did not do so and we infer that no guarantee was provided by Euroguard, the sub-contractor. However we assume that the twenty year guarantee provided by Mulalley would cover the work. The tenants invited us to disallow the cost in full.

240. At our inspection we observed that the drainage channel was hardly visible but in our opinion the coating was on the whole of an apparently reasonable standard although there appeared to be a very few isolated areas where the surface was cracked which was not what we would expect given the time since the work was carried out. We have no evidence that the cracks are causing damage to the fabric of the block but we can well accept that they will do so in due course. Given Mulalley's guarantee we would expect any damage caused to the building by flaws in the coatings of the balconies to be rectified at no cost to the leaseholders but we accept that the work was carried out to a broadly acceptable standard and that the cost was reasonable.

Renew/repair hopper outlets (fixed price: £750) [19]

241. The tenants accepted this item.

General repairs to bin store areas (fixed price: £6880) [20]

242. The evidence was that the walls of the three bin stores in Montcalm House had been previously finished in painted render and had been tiled as part of the works and a metal rubbing strip had been installed. The landlord produced photographs of bin stores in Montcalm House (2/147 - 150 and 161 - 162).

243. The tenants said that the charge was too high and offered £2000, or 30% of the cost, on the basis that the metal rubbing strip was a good idea but that the required high quality and 10 year life of the tiles (3/46) had not been achieved and some of the tiles were already damaged.

244. It seems likely that a metal rubbing strip was previously in place (see photograph at 2/160) although arguably it was in the wrong place. As with Spinnaker House (see paragraph 75 above), we regard the quality of the tiles, one of which we observed to be broken, and the general standard of tiling (see, for example, 2/163) as poor. To some extent the work was of more value than at Spinnaker House which had reasonably adequate tiles in place before, but on the whole we regard the charge as excessive. We allow one half of the amount claimed, namely £3440, as representing fair value for the work.

Drainage: undertake CCTV survey and repairs as identified (fixed price: £7550) [21]

245. We have a copy of a CCTV survey carried out in 2006 by Rydon Construction Ltd (1/287) and incorporated in the employer's requirements which identified defects in various drainage pipes between manholes and stacks. The tenants agreed this item.

Additional CCTV and drainage works (employer's instruction: £6768.31) [22]

246. This item is described in the employer's instruction 12 dated 16 May 2011 (2/24) as "to carry out repairs, to overhaul and repair access covers" which, we were told, were the grilles which provided drainage to the balconies. It does not refer to any element of CCTV. The instruction refers to Montrose House and also to Montcalm House but we accept that it is meant to refer only to Montcalm House. The CCTV survey carried out in 2006 by Rydon identified defects in various drainage pipes between manholes and stacks. The report, the main purpose of which was to discover the amount of build-up of encrustations within the pipes, appears to relate also to access covers because it identifies defects in the line between the access points and the stacks.

247. The tenants did not deny that the work was done but asserted that it should have been included as an employer's requirement and they said that they had not been given a reason for the works.

248. The evidence on this item is unclear and unsatisfactory. Mr Bull said that he understood that Rydon organised a survey (1/275 `and 287) upon which the employer's requirements were based. The only issue raised by the tenants was whether the outlet replacement should have been included in the contract sum rather than be the subject of an employer's instruction. It is clear that Mr James believed that the Rydon report identified the work to be done.

249. In our view the tenants are correct on the issue they raised. The Rydon survey was available to the contractor and the rectification of the defects which it identified should have been included in the employer's requirements and in the fixed price. Mr Bhose said that it was for the tenants to show that Mulalley had a pre-existing responsibility under the contract and that the landlord was not acting reasonably in concluding otherwise, but that burden, if it exists, may be discharged on the balance of probabilities and in our view the tenants have discharged it. We accordingly disallow this item in full.

Full height scaffolding (fixed price: £42,062) [23]

250. Mr James said that a full scaffold was required for window overhaul, IRS, painting gutters and downpipes, brickwork repairs and re-pointing.

251. The tenants suggested that the value of the works was such that the cost of the scaffold was disproportionate. They suggested that the reasonable cost would have been £20,160 but they provided no evidence in support. We are satisfied that a full scaffold was necessary and we have no satisfactory evidence that the cost was excessive. We allow it in full.

Scaffold hire (employer's instruction: £20,160) [24]

252. This sum is for an extra eight weeks' scaffold hire incurred because house martins were found to be nesting in the eaves of the block. Mr James said that when the scaffold was two thirds up he and the contractor were informed by a "bird officer" (Mr Bhose said that this person was an officer of Nature England) that the scaffolding could not proceed further until the house martins which had nested in the eaves had hatched their eggs and the young birds were fledged. He said that when the scaffolders started to erect the scaffold "we could see the existing nests between the brickwork and the soffits" but were unaware that the nests were in use, or what species of bird it was, or that they were protected, and that the birds did not fly away until September and in the meantime no high level works could be done.

253. The tenants said that the scaffold was a fixed price item and that, indeed, when they complained to the landlord's project officer, Alice Trail, about the length of time the scaffold was in place she told them that they need not worry because the scaffold was fixed price. They also said that on any view £20,160, half the fixed price, was an absurdly high amount for eight weeks' hire when the cost of erecting and dismantling it was already allowed for. They invited us to disallow the cost in full.

254. We regard this charge as totally unjustified. We would expect a major contractor with access to any number of consultants to be aware of protected species the presence of which might be an obstacle to the works. Mulalley and Baily Garner knew or ought to have known that there were nests under the eaves on the block because they were visible from the ground. That should have put the contractor or its scaffolding subcontractor on notice of the problem and the erection of the scaffold should, if the relevant official had required it, have been delayed until the birds had gone. It is common knowledge that house martins, swallows and swifts nest under eaves and that they are all fully protected under the Countryside Act 1981 and there was more than a risk, indeed, we would say, a positive certainty, given the hostility with which the whole contract was met, that someone would alert the" bird officer" of the presence of a protected species, just as had happened in respect of peregrine falcons at Kelson House on the Samuda Estate. We therefore disallow the whole cost.

External fabric - repair to existing metal/timber surfaces (fixed price: £3000) [25]

255. The relevant employer's requirement is at 1/385 and provides *undertake all necessary repairs to existing timber and metal surfaces in accordance with section 4 [of the general employer's requirements].*

256. Mr Bull said (1/469) that in his original survey he "would have noted the condition of existing timber and metal components and whether any areas of repair were required. The condition overview report [1/368] does confirm that the previously painted external components required redecoration."

257. The tenants said that the landlord had been asked to provide evidence of the work done under this head but had provided no such evidence. They said that the landlord in its reply for the block had said that the item included repairs to *boundary and timber gates, railings, fencing, external shed, stores and other buildings,* but Montcalm House had no boundary and timber gates, fencing, external sheds, stores or other buildings and the only conceivable item giving rise to this charge could have been the repair of the communal staircase metal railings, which had been in good condition and were only repainted. They suggested that 25% of the sum charged was reasonable.

258. At paragraph 5.3 of the condition overview report on Montcalm House (3.370) it is said that the doorframes of the doors to the stores are in poor condition and require renewal, and paragraph 6.7 (3/371) of the condition overview report describes the metal bars of balustrades set into openings in the brickwork as in poor condition. In our view, based on the evidence we were given, any repairs to the doors or doorframes to bin stores probably fall within general repairs to bin store area (line 20 on the Scott Schedule). Bearing in mind that decoration is supposed to include preparation, the tenants' evidence that nothing within this category was replaced, and the absence of any evidence to the contrary, we accept the tenants' proposal and allow 25% of this cost, namely £750.

Renew defective missing sections of asphalt on corbelled b[rick] work (fixed price: £500) [26]

259. This item relates to projecting lines of brickwork along the façade of the block. Mr Bull said in his written statement that there was an asphalt covering on the corbelled brickwork and that some was missing or defective, and in his oral evidence he said that the feature was repaired with a sand and cement fillet which was considered to be an acceptable alternative. The tenants asked for the item to be disallowed on the ground that the site of the repairs had not been identified.

260. We accept Mr Bull's evidence that some work was done, although it is not clear to which projecting band of brickwork. There is a photograph at 2/169 which shows some mortar repairs to a projecting band of brickwork which may or may not be the work referred to. On balance we allow this cost in full.

Asbestos removal (fixed price: £66) [28]

261. This is accepted

Installation of letterboxes (employer's instruction: £6471.30) [29]

262. The cost was for 55 letterboxes for each of the doors to the flats, each costing £111, plus 6% overheads and profit. The employer's instruction is at 2/13. The front doors are the responsibility of individual leaseholders but safety considerations are, we are satisfied, the landlord's responsibility under the leases. Mr Bull suggested that the new letterboxes were legally required. Mr James said in his oral evidence that an employee of the London Fire Brigade walked round the block to establish whether the flat entrance doors needed to be fire-rated and advised that they did not, but recommended that the letterboxes on the doors of the flats should be replaced to make them vandal-proof. An email dated 23 July 2010 from Colin Cross, a fire safety inspecting officer (Montrose House additional documents file, page 5) includes "I would recommend the fire resisting letterboxes if you experience problems with arson". There was no evidence before us that arson was a problem at Montcalm House.

263. The tenants said that the work was unnecessary and that the new letterboxes were of a different size from the old, leaving visible unsightly screw holes, and the workmanship was very poor (photographs at 1/280 and 281). They said that some leaseholders had refused to have new letterboxes fitted and no action had been taken to compel them to do so. They submitted that the item should be disallowed in full, or alternatively that the allowable cost for work of a good standard would be £58.54 per flat for installation plus £16.88 for each letterbox but that £40 per letterbox would be a fair figure given the poor standard of the work.

264. It is clear that the new letterboxes were not required by any of the Fire Regulations and that the Fire Officer suggested replacing them only if arson was a problem, and there is no evidence that it was. However, while we have sympathy for the tenants' argument that the replacement of the letterboxes was unnecessary, we are satisfied it was within the range of reasonable decisions for a social landlord to take, particularly in respect of a block without controlled access such as Montcalm House. But the standard of the work was very poor, as we were satisfied from our inspection, and we allow one half of the cost, namely £3270.60, to reflect the poor standard

External signage (fixed price: £3490.47) [30]

265. The landlord's case under this head is the same as for Spinnaker House and Bowsprit Point. The tenants' case, however, differs in that they made specific complaints as to the standard of the new signs. They said that the employer's requirements as to signage (main bundle 3/46) specified the required size and provided that all signs were to be screen printed aluminium

with graffiti coating. In the event, they said, the sizes of the internal directional signs were not in accordance with the specification and they were not of screen printed aluminium and not anti-graffiti coated. They said that the lettering was printed on an ultra-thin self-adhesive laminate sheets which were very easy to vandalise, and had indeed been vandalised, and that the item should be disallowed altogether.

266. Mr Saye said that the signs were as specified and that if some of them had been vandalised that was not the fault of the landlord.

267. We have already decided that new signage was reasonably required in other blocks to reflect the change of landlord. We were provided with no technical evidence as to the composition of the new signs in Montcalm House and are not satisfied that they were of inadequate quality, and we do not regard the facts that they exceeded the size specified in the employer's requirements or that some of the signs in Montcalm House have been vandalised as reasons for a reducing the allowable cost. On balance we allow this item in full.

Upgrade main earthing and equipotential bonding (fixed price: £701.10); replace landlord's distribution boards and cable tails (fixed price: £2749.20); replace laterals and risers including Ryefield board (fixed price: £28,260.79); replace landlord's internal lighting and small power (fixed price: £18,733.69); replace external lighting (fixed price: £11,974.21) [31, 32, 33, 34, 35 and 36]

268. These electrical items were specified by GDA (1/188), whose specification for Montcalm House stipulated "complete upgrade required". The landlord's witnesses could not offer technical evidence as to the need to carry out any of the electrical works, as to which we received no expert evidence from anyone. Mr Bhose referred us to GDA's schedule of October 2004 for Montcalm House (1/450) which included "electrical intake equipment - year 1- 5 high priority and urgent". Mr Wigley said that he had been informed that the mains were some 40 - 50 years' old but we had no direct evidence that he was correct.

269. The tenants did not accept that the landlord had established that the wiring was indeed 40 - 50 years' old and they asked for these items to be disallowed in full. They said that they had looked through a riser on one of the common staircases and they produced a photograph (attached to a witness statement from Mr Kristofferson) of what they considered to be a red PVC coated electrical wire which, they understood, would not have been used before the mid 1960s. They said, correctly, that the condition survey had been made without an internal inspection, which accords with paras 2.1 and 2.2 of that report. A report from Switch, the electrical subcontractor, at 2/291, mentions only an external inspection, and the GDA survey was based on a visual inspection only, without any opening up of trunking, which was, the tenants submitted, insufficient to establish the need to carry out the works. They said that there had been no inspection of the electrical wiring within the

flats, and that the landlord had acted unreasonably by not questioning GDA's unsubstantiated conclusions. They said that the relevant Electrical Regulations recommended that a routine inspection of electrical installations should be carried out every year and that a full Electrical Installation Condition Report should be prepared every five years. They said that the Residential Landlords Association advised that five years should be the maximum interval between such tests, and that a Fire Risk Assessment carried out in March 2009 (2/226) had said that the *fixed electrical supplies to the building should be tested in accordance with BS 7671. It could not be confirmed at the time of inspection if this is being done. Records should be maintained.* They said that without the required records and reports, none of which had been produced, and without an intrusive survey which would have established whether the work was needed, the landlord had not established that the work carried out was necessary. They said that they had had discussions with periodic tenants who had said that the flats were rewired in about 1994 and they submitted that an electrician would not have connected new wiring to old mains.

270. The lack of evidence from the landlord on this issue is unfortunate. It would have been so easy for it to have produced the periodic inspection reports if they existed, and we have already commented on the unexplained lack of evidence from GDA. We can well understand the tenants' dissatisfaction with the state of the evidence, which we share. Nevertheless we have come to the conclusion that the landlord has established, on the balance of probabilities, that these works were necessary. Even if the tenants have proved that some wiring was covered in PVC rather than rubber, as to which we are not entirely satisfied, that would not demonstrate only that some of the wiring was more recent than the 1960s, in which case replacement in 2010 might well not be unreasonable. And even if the tenanted flats were rewired in the 1990s, which, although we have no direct evidence, may well have happened, it does not prove that the installations to which the tenants' supplies were connected were replaced at that time because we do not share the tenants' confidence that an electrician would not connect new wiring to an old main. On balance and with misgivings we have come to the conclusion that the risks of fire associated with old wiring are such that the decision to replace the mains supply was not unreasonable and we allow these items in full.

271. The tenants complained that the contract required the contractor to remove all redundant cabling [Main bundle 3/159], which had not been done. In that they are correct, but as the cost of removing the redundant cabling would have been minimal, and since the redundant cables are encased in trunking and do not affect the appearance of the building, we make no deduction in this regard.

New lateral mains (employer's instruction: £23,899.29) and box in consumer containment units (employer's instruction: £400) [47 and 49]

272. The relevant employers' instructions are at 2/12. They are based on a survey from Switch dated 14 May 2010 (2/291) which stated that several flats in a number of blocks (not, incidentally, including Montcalm House) were supplied by the same cable from a single Ryefield board and recommended that new Ryefield boards should be installed in those blocks to provide a separate connection to each flat (see, especially, 2/294). Mr James confirmed that the same work had been carried out in Montcalm House and for the same reasons. He said that in his opinion it had been necessary to box in the consumer containment units with fireproof enclosures inside the flats. He said that in the original layout one cable served four flats and if work was required to the electrical installations serving one flat, four flats had to be disconnected, which was inconvenient.

273. The tenants submitted that it was clear from the Stock Condition Overview carried out in January 2009 that the landlord's main electrical supply entered a number of flats and that, if the landlord and Baily Garner had failed so to notify the contractor, the cost should not be borne by the tenants because it should have been included in the employer's requirements. They submitted that in the alternative the object of the additional work was not achieved because the work itself necessitated access to each flat.

274. We are satisfied that it was reasonable to carry out the work and, on balance, although we consider that the employer should have included this item in the original specification, it is clear that it did not and therefore there was a change within the meaning of clause 5.1 of the contract.

Provide IRS (fixed price): £16,981.03; builder's work in connection with IRS: (£2475); electrical work in connection with IRS: (£461.46); general electrical testing and inspection: £628.80: IRS containment: (£7525.76); Plus (employer's instructions) 3 dish IRS: (£3758.15); IRS multi-room system: (£9816.26);. Total for IRS £41,646.46 plus a proportion of "other works" (£5414.51) [37, 38, 39, 40, 41,42,43,44 (considered below) and 45]

275. For the same reasons as we have given in respect of Spinnaker House and Bowsprit Point we conclude that it was not unreasonable to install a three dish IRS system. The tenants suggested that the cost of the system was excessive and they referred us in their final submissions to a report prepared in 2008 for the London Borough of Southwark which, they maintained, provided support for that view. Mr Bhose submitted, and we agreed, that the material had been submitted too late, and in the interests of fairness we excluded it. We are satisfied that it has not been established that the cost of the system which was installed was excessive.

276. The tenants said that the employer's requirements provided for *removing and disposing of any existing landlord owned communal aerial systems* (main bundle 4/499) but that this had not been done. They produced photographs (2/413 - 416) which showed untidy cabling, which we also observed at our inspection. Asked to comment on the photographs, Mr James said that some of them appeared to be of old television cables which should

have been removed but that others appeared to be telephone wires and possibly not redundant.

277. In our view the failure to remove redundant television aerial cabling has left the block unsightly and neglected-looking and ought to be met by a deduction. It was work which the contractor agreed to carry out but did not. We deduct £1000 to reflect the negative effect on the appearance of the building.

Other works: £5414.51 [44]

278. We allow these costs for reasons we have given in respect of Spinnaker House and Bowsprit Point.

Reinstatement of existing dish (employer's instruction): £150 [46]

279. The instruction is at 2/11. No evidence was adduced on this item, and in the absence of a positive case from the tenants we allow the cost.

Replace existing external mains gas pipework (fixed price: £2517.49) [50]

280. The landlord concedes that this work was not done and that it will not seek to recover the cost.

Replace rising mains cold water service to cold water storage tanks (fixed price: £3306.49); replace existing cold water storage tanks within roof space and cold water down service (fixed price: £33,256.18) [51 and 52]

281. The employer's requirements under this head, based on the GDA specification, provide (main bundle 4/424 and 427 - 429) for the replacement of storage tanks and pipework as follows: where *they have exceeded their useful economic life the contractor shall replace the entire service with new pipework, valves, fittings, brackets and all ancillary items to form a complete installation.*

282. It is clear and was not disputed that the three cold water tanks in the roof space in Montcalm House were replaced. The issue was whether their replacement was necessary. The tenants did not believe that the rising mains and the cold water down services had been replaced; they asserted that neither could have been replaced because such work would have required access to the flats, which had not been sought. We were provided with photographs (2/194 - 199) which show what appears to be new pipework in the roof space, leading to and from one or more of the new tanks. We accept the tenants' submission that the pipework leading from the roof space to and

from the individual flats could not have been replaced without access to the individual flats which was not asked for or given. It is in our opinion simply not possible to replace the pipework where it passes through flats without the knowledge of the occupants of the flats. We conclude that, as with Bowsprit Point, that element of the works was not done. In our view the totality of the evidence strongly suggests that all the work was undertaken in the roof space.

283. As for the tanks, the landlord conceded that there was no direct evidence of their pre-existing state. Mr Bhose said that the evidence on the point "was not as good as he would like it to be". GDA's 2004 report (1/450) said "tank room not accessible at time of survey", and Baily Garner's Stock Condition Overview of 2009 (main bundle 2/210) said that the condition of the pipework and tank was "unknown". Mr Bhose invited us, however, to conclude that, in the absence of any evidence from the tenants of any works having been done to the tanks in previous years, the cost of replacing them and the associated pipework must have been reasonably incurred.

284. We do not consider that it was for the tenants, not entitled to access the roof space, to demonstrate the pre-existing state of the tanks, but, in spite of the absence of concrete evidence from the landlord we accept on balance that the tanks were likely to have been old and that it was not unreasonable to replace them. Whether or not they were due for replacement at the time, their replacement is likely to be of benefit in the long term.

285. We have found it difficult to decide whether any deduction falls to be made because, as we are satisfied, no work was carried out to the cold water services other than in the roof space, because we do not have a breakdown of the costs. On balance we have come to the conclusion that we should not make such a deduction because we have no material on which to do so. It is clear that a significant amount of work was done and, while its value may be less than the quoted sum, bearing in mind that the contractor has taken responsibility for the cold water services for years to come, we, on balance, accept these costs as reasonably incurred.

Replace external foul drainage pipework (fixed price: £27,264.50) [53]

286. This was the replacement of eleven vertical soil stacks from ground to eaves level. They were included in the employer's requirements and Mr James referred us to photographs (for example 2/140 - 143) showing the extent of the corrosion from which the soil stacks were suffering.

287. The tenants said that the need to replace the pipes rather than repair them was not established and that their repair was all that was included in the contract.

288. We are satisfied from the photographs and from Mr James's evidence that the work was necessary and that it was done. We have no material upon the basis of which we could conclude that the price was excessive.

Preliminaries (£69,225.65) [55]

289. For the reasons we have given in connection with Spinnaker House and Bowsprit Point we allow these in full.

Consultants' fees (£16,293.38) [69]

290. The overall fees include £25,542 for MAND, lift consultants, but there are no lifts in Montcalm House. Mr Bhose said that it was not unreasonable to aggregate the fees for all the consultants and to allocate them on the basis of rateable value and he said that the fees of MAND attributable to Montcalm House were only £530, resulting in an average contribution of £9.64 from each leaseholder. We have concluded that it is so unfair to charge leaseholders of flats in blocks with no lift any sum for lift consultants and so easy to exclude such costs that no reasonable landlord would have passed any part of MAND's fees to the leaseholders of Montcalm House and that the share attributable to Montcalm House, small as it is, should be disallowed. In other respects we allow the fees, subject to the adjustment in respect of Baily Garner's fees to which Mr Saye agreed (see paragraph 29 above).

Management fees (£12,776.10) [70]

291. We allow these fees at 3% of the costs reasonably incurred for the reasons given in relation to the other blocks.

44a Montrose House

292. Montrose House on the Kingsbridge Estate is, like Montcalm House, a five storey block of 55 flats built in the 1930s. It has communal external walkways at first floor level and above and a pitched roof. There are three communal staircases, and no lifts.

293. The works carried out to Montrose House under the contract were very similar to those carried out to Montcalm House. The Scott Schedule relating to Montrose House contains a major difference from the Schedule relating to Montcalm House in that £46,500.25 is shown as having been charged for emergency lighting [33], but Mr Bhose explained, and we accept, that this was an error in the Scott Schedule, that the cost was not in the final account and was not passed to the leaseholders. According to the final account (from 1/58), the total costs referable to the block were:

Under the contract

builders' works, including scaffold:	£135,663.53
electrical works:	£107,117.94

mechanical works:	£65,977.38
Employer's instructions	£85,843.88
Omissions	*£59,906.39*

In addition, the costs of works to the block the costs also included:

preliminaries:	£65,550.16
consultants:	£15,428.29
management:	£13,402.40
Total:	*£429,077.19*

294. Unlike the tenants of flats in Montcalm House, who put enormous effort into the preparation and presentation of their case, the leaseholders of 49a Montrose House did no more than complete the Scott Schedule relating to the block. In relation to most of the issues they simply said: "please show reasonableness" or words to that effect. In relation to some issues they alleged: "this is an improvement". They did not appear at the hearing or at the inspection or submit any further information apart from their entries on the Scott Schedule.

295. Mr Bhose submitted that in the absence of a positive case from the tenants we should base our decision on the landlord's evidence, which was the only evidence before us. We accept that. In the absence of any specific representations from the tenants of Flat 49a as to the standard of the works to the block we did not fully inspect the block and we agree that in principle it is not for the Tribunal to make the tenants' case for them. That being the case, we allow in full the costs which the landlord claims to have incurred save only for those costs which the landlord has conceded or has failed to persuade us on the basis of its own evidence that a particular cost was reasonably incurred. We are satisfied that none of the costs relate to improvements or are otherwise irrecoverable under the lease.

296. The costs relating to Montrose House as they are set out in the Scott Schedule, but omitting the error in respect of emergency lighting, are as follows:

repairs to pitched roof coverings (fixed price: £1500) [1]

rainwater goods repair piping (employer's instruction: £2727) [3]

repointing (fixed price: £1036) [4]

brick repairs generally (fixed price: £1250) [5]

concrete repairs and associated works (employer's instruction: £14,558.22) [6]

renew windows with UPVC (fixed price: £1521.53) [7]

overhaul existing double-glazed window units (fixed price: £1237.50) [8]

redecorate all previously decorated painted surfaces (fixed price: £9353.47) [10]

redecorate all previously decorated communal parts (fixed price: £4002.08) [11]

high pressure clean of existing floor/stair surfaces (fixed price: £700) [12]

repairs to asphalt coverings of balconies (fixed price: £376.75) [13]

application of anti-slip coatings to balcony coverings (fixed price: £8854.93) [14]

renew/repair hopper outlets (fixed price: £750) [16]

general repairs to bin store areas (fixed price: £6880) [17]

drainage: undertake CCTV survey and repairs as identified (fixed price: £4800) [18]

additional CCTV and drainage works (employer's instruction: £8710.66) [19]

full height scaffolding (fixed price: £39,118) [20]

scaffold hire (employer's instruction: £11,632) [21]

external fabric - repair to existing metal/timber surfaces (fixed price: £2750) [23]

renew defective missing sections of asphalt on corbelled B work (fixed price: £500) [24]

asbestos removal (employer's instruction: £3771) [26]

installation of new letter boxes (employer's instruction: £6,471.30) [27]

external signage (fixed price: £3490.47) [28]

upgrade main earthing and equipotential bonding (fixed price: £701.10), replace landlord's distribution boards and cable tails (fixed price: £2749.20), replace laterals and risers including Ryefield board (fixed price: £24,940.44), replace landlord's internal lighting and

small power (fixed price: £19,853.13) and replace external lighting (fixed price: £13,023.91) [29, 30, 31, 32 and 34]

provide IRS (fixed price: £16,981.03); builder's work in connection with IRS: (£2475); electrical work in connection with IRS: (£461.46); IRS containment: (£7525.76); 3 dish IRS: (£3758.15); IRS multi-room system: (£9816.26). Total for IRS £41,017.66 plus a proportion of "other works" (£5414.51) [35, 36, 37, 39, 40, 41 and 42]

general electrical testing and inspection: £628.80 [38]

new lateral mains (employer's instruction: £23,899.29) [43]

box in new distribution units (fixed price: £500) [44]

replace existing external mains gas pipework (fixed price:: £2150.21) [45]

replace rising mains cold water service to cold water storage tanks (fixed price: £3306.49) [46]

replace existing cold water storage tank within roof space and cold water down service (fixed price: £33,256.18) [47]

replace external foul drainage pipework (fixed price: £27,264.50) [48]

preliminaries (£65,550.16) [50]

consultants' fees (£15,428.29) [63]

management fees (£13,402.40) [64]

297. The landlord conceded that the item *replace existing external mains gas pipework: (£2150.21)* was not carried out and that it will not seek to recover the cost and that the consultants' fees will be limited to reflect its concession in relation to Baily Garner's fees.

298. The only other costs in respect of Montrose House which we disallow are:

i. *Scaffold and CCUs: £11,632 (Scott Schedule line 21)*

This arises from employer's instruction 12 (2/22). It is for additional scaffold hire (£11,032), over and above £39,118 for scaffold hire under the contract, and boxing in CCUs (£600). On the employer's instruction the total is given as £16,632 but that arithmetical error has been corrected on the final account. Mr Bull in his written statement (at 1/16) said that he was unclear as to what necessitated the additional scaffold hire charges but he was aware of the presence of house martins causing additional scaffolding charges to be

incurred. We infer from the landlord's evidence that the reason for the additional scaffold hire for Montrose House was the same as that in respect of Montcalm House and we reject the further charge of £11,032 for the reasons we have given in relation to Montcalm House.

ii. The consultancy fees of MAND for the reasons we have given in relation to Montcalm House.

Judge: Margaret Wilson