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IN THE FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT sitting at 10 Alfred Place, London WC1E 7LR

Case reference	:	**LON/00AG/LSC/2010/0035 & LON/00AG/LDC/2015/0032**
Property	:	**Flats 13 & 14, Blair Court, 2 Boundary Road, London NW8 6NT**
Applicant & Defendant (to the application for dispensation)	:	**Mr Andrew Parissis (lessee)**
Representative	:	**In person**
Respondent & Claimant (in the application for dispensation)	:	**Blair Court (St John's Wood) Management Limited (former head lessor)**
Representative	:	**Ms E Carr, Red Carpet, manager**
Type of application	:	**For the determination of the reasonableness of and the liability to pay service charges**
Tribunal members	:	**Judge Timothy Powell Mr Luis Jarero BSc FRICS**
In the county court	:	**Judge Timothy Powell, with Mr Luis Jarero BSc FRICS, as assessor**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**23 December 2015**

DECISION

(in LON/00AG/LSC/2010/0035 & LDC/2015/0032)

Summary of the decisions made

(1) In respect of the 2001 external decorations: the tribunal is satisfied that the statutory consultation requirements have been complied with and, therefore, there should be no refund to Mr Parissis, in respect of service charges he has paid for these works;

(2) In respect of the 2002 lift repair works: the statutory consultation requirements were not complied with; dispensation is not granted; and, therefore, Blair Court (St John's Wood) Management Limited should refund overpaid service charges to Mr Parissis in the sum of **£221.42**;

(3) In respect of the 2003-4 roof repairs: the tribunal is satisfied that the statutory consultation requirements have been complied with and, therefore, there should be no refund to Mr Parissis, in respect of service charges he has paid for these works;

(4) In respect of the 2003-4 installation of the satellite dish, the tribunal is satisfied that the cost falls within the terms of the lease and, therefore, the sums already paid by Mr Parissis are payable and do not require to be refunded;

(5) The tribunal declines to make any award for costs; and

(6) The tribunal makes no order under section 20C of the 1985 Act.

Background to the application

1. This was an application by Mr Andrew Parissis, the lessee of flats 13 & 14, Blair Court, 2 Boundary Road, London NW8 6NT, whereby he challenged certain historic service charges, pursuant to section 27A of the Landlord and Tenant Act 1985.

2. Blair Court is a block of flats comprising 78 flats in all, including one caretaker's flat, spread over 12 floors including the ground floor. The block was built in about 1970 to 1973. The respondent, Blair Court (St John's Wood) Management Limited ("BCM"), was the former head lessor, with responsibility under the residential long leases for delivering services and collecting service charges. Those responsibilities were taken over by Blair Court Freehold Limited ("BCF"), when it acquired the freehold in November 2008.

3. While there is a long history of litigation between the parties, described in previous tribunal decisions, it is not necessary to give details here, as the particular issues to be decided in this application were well-defined, namely:

(i) whether the respondent and former head lessor, BCM, had complied with the relevant consultation procedures in relation to major works:

- for external decorations in 2001, in the sum of £44,785;
- for lift repair works in 2002, in the sum of £37,600; and
- for roof repairs in 2003-4, in the sum of £54,943;

and, if it had not so complied, then, in each case, a determination of how much is recoverable as a service charge; and

(ii) whether the respondent was entitled (as a matter of construction of the lease) to recover through the service charge the cost of putting up a satellite dish in the sums of £13,579, in 2003, and £8,388, in 2004.

4. The application had originally been issued before the then Leasehold Valuation Tribunal ("LVT") in 2010. By a decision dated 11 April 2011, the tribunal made a preliminary determination that Mr Parissis was time-barred in respect of the service charges relating to these years, though it allowed other issues to continue (which have been dealt with at a separate, later hearing).

5. Mr Parissis appealed against the tribunal's preliminary determination and that was overturned by the Upper Tribunal (Lands Chamber) in a decision of HHJ Huskinson dated 11 November 2014; see: [2014] UKUT 0503 (LC); LRX/55/2011.

6. The Upper Tribunal remitted the case to the First-tier Tribunal (which, from 1 July 2013, is the successor to the LVT), so that the tribunal could now consider the applicant's claims in respect of these years.

7. While serious consideration was given to the comments of the Upper Tribunal in paragraph 23 of its decision about the possibility of the First-tier Tribunal (of its own motion or upon application) dismissing the application under regulation 11 of the Leasehold Valuation Tribunal (Procedure) (England) Regulations 2003 - now replaced by rule 9 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 - in the circumstances of this case and given the long history of litigation between the parties, the time that had passed since the original application was made, the relatively small sums involved and the need for finality, on balance, it was considered best simply to deal with the remitted matters in a substantive way, on their merits, rather than to seek to curtail the dispute by application of the procedural rules. The same considerations applied when BCM itself applied later to strike out the claim; but the tribunal declined to do so.

8. Directions were given on 5 December 2014 to bring the matter to hearing, initially in April 2015. To accommodate the applicant, the date

was re-arranged on two occasions; and the eventual hearing of the application took place on 11 November 2015.

9. Meanwhile, the respondent made an application for dispensation from the statutory consultation procedures, insofar as it may be found that those procedures had not been complied with. That application, under reference LON/00AG/LDC/2015/0032, was consolidated with the original application, LON/00AG/LSC/2010/0035; and a direction was given that it would be heard at the same time, on 11 November 2015.

10. Then, in September 2015, Mr Parissis made a further application to the tribunal, which related to the quantification of other unpayable, historic service charges for the years 2002 to 2008. That application, under reference LON/00AG/LSC/2015/0407, while also heard on 11th November 2015, is dealt with in an entirely separate decision and it will no longer be referred to in this decision.

The dispensation application

11. There was one unusual feature to the applications before the tribunal. The works in question spanned the period 2001 to 2004. The statutory consultation requirements in place before 31 October 2003 were those set out in an earlier version of section 20 of the Landlord and Tenant Act 1985, one which had been inserted by section 41 and paragraph 3 of Schedule 2 of the Landlord and Tenant Act 1987 (as subsequently amended, from the September 1988, by the Service Charges (Estimates and Consultations) Order 1988). This earlier version of section 20 will be referred to in this decision as "the previous section 20". Those provisions were in force until the current version of section 20 was inserted by section 151 of the Commonhold and Leasehold Reform Act 2002, with effect from 31 October 2003, subject to savings in respect of certain (existing or ongoing) qualifying works and consultation procedures.

12. For major works prior to 31 October 2003, it is the county court, not the tribunal, which has power to dispense with the consultation requirements (see: sub-section (9) of the previous section 20). For major works after 31 October 2003, it is the tribunal which has power to dispense with the consultation requirements, under (the new) section 20ZA of the Landlord and Tenant Act 1985.

13. Following amendments to the County Courts Act 1984, made by Schedule 9 of the Crime and Courts Act 2013, the county court is now able to sit anywhere in England and Wales; and all First-tier Tribunal judges are now judges of the county court.

14. Accordingly, the tribunal wrote to the parties on the 3 November 2015, stating that it intended to deal with all issues relating to dispensation at

the forthcoming hearing, that is to say, where appropriate, the tribunal judge appointed to hear the case on 11 November 2015 would exercise the power to sit as a county court judge at the same time and to appoint his tribunal wing member as a county court assessor. That would allow the tribunal to hear all of the relevant evidence in relation to the disputed service charges and then to make a determination whether or not to grant dispensation from some or all of the statutory consultation procedures, whether the relevant works took place before or after 31 October 2013.

15. In the view of the tribunal, the interests of justice were best served by one body hearing all the evidence and making all the relevant decisions in the case; and there would be an advantage to the parties as well, by saving both time and expense.

The hearing

16. The original applicant, Mr Parissis, appeared in person. The respondent company, BCM, was represented by Ms Edelle Carr of Red Carpet Estates, which acts as managing agents for both BCM and for the current freeholder, BCF. The tribunal had the benefit of a bundle of documents prepared by Mr Parissis, questioning the past consultation procedures and raising arguments against dispensation being granted, and a bundle of documents from Ms Carr/BCM, dealing with the question of dispensation. Various other documents were handed up by the parties during the hearing.

17. Both parties welcomed the tribunal's proposal to sit as a county court in order to deal with any issues relating to dispensation. Neither party asked the tribunal to inspect the premises; nor did the tribunal consider that an inspection was necessary for its determination.

External decorations in 2001 - total cost: £44,785 (Mr Parissis' share: £376.19)

18. As mentioned above, the applicable consultation requirements at the time were those set out in the previous section 20 of the Landlord and Tenant Act 1985; and a copy is annexed to this decision. However, the relevant requirements appeared in section 20(4), namely:

> "(4) The relevant requirements in relation to such of the tenants concerned as are not represented by a recognised tenants' association are -
>
> (a) At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.
>
> (b) A notice accompanied by a copy of the estimates shall be given to each of those tenants or shall be displayed in one or more places where it is likely to come to the notice of all those tenants.
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> (c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the

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

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

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

19. The evidence in the hearing bundles included a copy of a section 20 notice dated 31 May 2000 from Regency Management (Property) Ltd ("Regency"), the previous managing agent, which had been sent to all lessees of Blair Court. On the face of the notice:

(a) five tenders had been received for the work;

(b) a notice had been sent to each of the lessees in Blair Court, copies of the tenders received had been placed in the porter's lodge on the ground floor of Blair Court and lessees were informed that they may inspect them there, if they so wished;

(c) the notice described the works to be carried out in detail and invited lessees' queries in connection with the works to be sent to Regency;

(d) such queries were to be raised before the end of June 2000 (i.e. "not earlier than one month later"); and

(e) there was no evidence that any observations had been received.

20. As discussed with the parties at the hearing, in the tribunal's view, the notice appears to comply with all of the requirements of the previous section 20(4).

21. The only query related to section 20(4)(b): as the notice sent to lessees had not been "accompanied by" a copy of the estimates/tenders received, could it be said to have been "displayed in one or more places where it was likely to come to the notice of all of those tenants"?

22. The estimates/tenders were placed in the porter's lodge at the entrance to Blair Court and the notice to lessees told them so. However, Ms Carr went further and gave evidence that, normally, such estimates were to be found in a folder above the radiator outside the porter's lodge.

23. The tribunal is satisfied both that this amounted to a sufficient "display" and that sufficient notice had been given to lessees, to enable them to examine those documents at their leisure, had they wished to do so. It therefore satisfies the requirements of section 20(4)(b) of the

1985 Act (see also the decision of His Honour Judge Cooke in *London Borough of Haringey v Ball*, Central London County Court, 6 December 2004, unreported, where a similar conclusion was reached).

24. In the event, having seen the section 20 notice, Mr Parissis accepted that there had been compliance with the consultation requirements of the previous section 20; and he did not pursue this particular claim any further.

25. Had any doubts remained about compliance with the consultation requirements, dispensation would have been granted on the basis that BCM had acted reasonably, given the service of the comprehensive section 20 notice dated 31 May 2000, and because any non-compliance was marginal.

Lift repair works in 2002 - total cost £37,600
(Mr Parissis' share: £315.84)

26. There were two distinct contracts for lift repair and maintenance works: (i) with Otis in the total sum of £5,287.50, for work quoted for on 27 September 2001 and carried out by 18 February 2002; and (ii) with Lift Specialists Limited in the total sum of £32,312.50, for more substantial works quoted for in April 2002 and carried out in about June 2002.

27. With regard to the first set of lift works, the respondent's evidence was that these were necessary because, on 14 September 2001, the managing agent reported to the chairman of the board of BCM that the lifts were frequently out of service and the lift engineering insurance inspector had advised that six ropes and the drive sheave had to be replaced within six weeks. The managing agent said that he had negotiated a lower price with Otis than they had originally quoted, but he did not get other quotes because having another lift company work on the lift would have invalidated the then Otis contract.

28. With regard to the second set of lift works, in May 2002, after the lift contract had been given to Lift Specialists Limited, there was a tranche of works which had to be carried out to maintain the reliable operation of the lifts and prevent niggling intermittent faults. The works were to include the renewal of the control panels, the shaft selection, switches, wiring to the lift motor room and other associated works.

29. However, it appeared that there was no consultation with leaseholders, nor was any notice sent to the leaseholders, at the time either set of lift works was quoted for or was carried out.

30. Mr Parissis was willing to accept that the two contracts should be considered separately and that a £50 per flat 'cap' on recoverable costs in sub-section (3) of the previous section 20 should apply to each

contract. As he had paid his £44.42 share of the earlier contract and this was below the section 20 limit, he did not pursue his challenge to it. However, he maintained his challenge to his contribution to the second contract, which, he argued, should be capped at £50 due to non-consultation.

31. As there had been no consultation, Judge Powell, sitting as a county court judge, and with the assistance of Mr Jarero as his assessor, considered the respondent's application for dispensation; and gives the following judgement.

Dispensation application

32. When considering dispensation, a two-stage process is to be followed, under which the court's discretion to dispense with all or any of the statutory requirements arises only if the court is satisfied that the landlord had acted reasonably: see *Martin and Seale v Maryland Estates Ltd* [1999] EWCA Civ 3049.

33. The first question to be asked is: did the landlord act reasonably in not consulting? The most obvious example of a case where a landlord would be acting reasonably by not consulting is in the case of very urgent work, needed to be done to minimise the risk of injury to a person.

34. In the application to dispense, BCM points to the fact that Mr Parissis did not query these works when they were shown in the service charge accounts for the year ending 30 September 2002, when the amount of £37,600 was distinctly shown as being for the major works. No other leaseholder has challenged any of the works carried out at the building. The works carried out were not refurbishment of the lift car itself or any aesthetic work, but essential work to ensure that the lift worked properly and was safe to use and fit for purpose. Ms Carr also suggested that that the previous managing agent, Regency, was to blame, not BCM. Regency had not been aware of the need to apply for dispensation from the consultation requirements and, several years later, on a similar matter concerning the lift, Regency had advised BCM that it was not necessary to serve a section 20 notice, but it would send out a letter to say that the works are being instigated.

35. Mrs Carr relied on the Court of Appeal decision in *Various Claimants v Catholic Child Welfare Society & others* [2010] EWCA Civ 1106 and *The Trustees of the Portsmouth Roman Catholic Diocese Trust* [2012] EWCA 938. While the former had been overturned on appeal by the Supreme Court in [2012] UKSC 56, I do not derive any benefit from either decision. This is because each is concerned with issues of vicarious liability of institutions of the church for the sexual abuse of children by lay brothers and a parish priest, respectively, where the abusers had no defined contract of employment; very different

circumstances from a commercial management contract between two limited companies, BCM and Regency, where issues of contractual obligation and agency are more likely to apply.

36. However, I do not accept that BCM's board of directors had no responsibility for the consultation procedure. They knew that consultation was necessary and, indeed, there had been a previous consultation in relation to the roof repair works the previous year. There was no reason in the present instance not to carry out consultation. Whereas Regency may shoulder some of the blame, ultimately, it was the responsibility of BCM to comply with the statutory requirements.

37. This is all the more so, when viewed from the perspective of leaseholders, as the purpose of the consultation was to notify them that substantial costs were likely to be incurred to which they would have to contribute through the service charge; to give them an opportunity to make observations on the estimates that were obtained for the work; and, perhaps, to suggest alternative methods of work or alternative contractors. The lift works may have needed to have been done, but there was no particular urgency about these works. So far as Mr Parissis, one of the leaseholders, was concerned, BCM had not acted reasonably and I take the same view; and, therefore, because I am not satisfied that BCM acted reasonably, under the two-stage process, I have no jurisdiction to dispense with the consultation requirements in sub-section (4) of the previous section 20. Accordingly, I do not grant such dispensation to the respondent in respect of these works.

38. Even if the landlord had acted reasonably, so that I could move on to the second stage of the process, I would not have granted dispensation because there was no urgency; in fact, there was plenty of time for consultation to be carried out.

39. The total sum involved is £32,312.50. Of this, Mr Parissis paid 0.84%, being the service charge percentage in respect of flat 13, which he owned at the time. The total payable and paid by him was £271.42. He is still liable to pay the first £50 of that sum under the capping provisions. The amount which he has overpaid and which, therefore, should now be refunded to him is **£221.42**.

Roof repairs in 2003-4 - total cost: £54,943
(Mr Parissis' share: £461.52)

40. The evidence provided by the respondent included a section 20 notice dated 1 September 2003 from Regency to all the lessees of Blair Court. As with the 2001 external decorations above, the section 20 notice indicated that three tenders had been obtained from the two companies, copies of the tenders had again been placed in the porter's lodge, details of the proposed works were given, lessees were invited to

inspect the tenders in the porter's lodge, if they so wished, and to raise any queries within 28 days of the date of the notice (although the works were not proposed to start until mid-2004), and there was no evidence that any observations had been made.

41. The tribunal's view was that there had been compliance with the statutory consultation procedures, although two queries were raised. The first, a query relating to "display" under section 20(4)(b) has been dealt with above; and the same conclusion applies here, for the same reason. The second query arose under section 20(4)(d), in that BCM had only given 28 days for lessees to respond, rather than one month. However, given that the works were not planned to start for another nearly 9 months, the tribunal accepted Ms Carr's evidence that any late observations from lessees would have been taken into account.

42. Having considered the section 20 notice, and after discussion, Mr Parissis accepted that there had been compliance with the statutory consultation requirements; and he told the tribunal that he no longer wished to pursue this particular challenge.

43. Had any doubts remained about the compliance with the consultation requirements, dispensation would have been granted on the basis that BCM had acted reasonably, given the service of the comprehensive section 20 notice dated 1 September 2003, and because any non-compliance was marginal.

Installation of a satellite dish in 2003 (£13.579) & in 2004 (£8,388)

44. Mr Parissis had paid 0.84% of the 2003 satellite installation costs, namely £114.06, and 2.27% of the 2004 costs, namely £190.41; the higher percentage in 2004 being a result of his acquisition of a second flat in the building, no.14 Blair Court.

45. Mr Parissis said that he was not challenging the amounts, but rather it was a matter of lease construction: he did not think that any of those costs were allowable as costs through the service charge. As a result, he sought repayment of the full sums paid by him.

46. Mr Parissis referred to an earlier tribunal (under ref. LSC/2010/0052 & 0057) where, in a decision dated 24 June 2010, at paragraph 3, the previous tribunal determined that the installation of CCTV and access control works amounted to an improvement, for which there was no provision in the lease, as a result of which Mr Parissis (in that case) should make no contribution towards this cost (see paragraphs 22 and 23 of the decision). Similarly, he argued, in this case there was no provision in the lease that would justify charging lessees for the installation of a satellite dish, which in any event was an improvement, compared with the previous television aerial.

47. Ms Carr for the respondent relied upon the terms of the Fourth Schedule of the lease (see below) to justify recovery of the cost from lessees. She also relied upon BCM's Memorandum of Association, a company of which all lessees, including Mr Parissis, were shareholders. The objects of the company at paragraph 3(E) included: "to negotiate for and enter into contracts for the supply of a television service for the said block or such alternative service as many ensure that the occupiers of flats in the said block can receive a television signal without the use of an external aerial and to enter into contracts for maintenance and service related thereto."

48. Ms Carr said that the provision of a satellite dish was covered by the Memorandum of Association, that it was necessary to install satellite TV in order to maintain Blair Court as a high-class development, and there were discussions on the subject at the BCM AGM on 5 June 2002, between the board members and lessees present. Ms Carr produced a copy of the minutes of that meeting, which showed that Mr Ghose of Regency "explained the necessity of having satellite TV installed as the existing terrestrial cable TV is now very old and in need of replacement." There was a discussion about a meeting with three contractors as to how the satellite dish and cabling would be installed and a charge of "an additional fee of £60 plus VAT per flat for connecting each flat to the system. This charge will have to be paid by each lessee who wants the system taken into their flat."

49. When asked, Mr Parissis said that he did not know if his two flats were connected to the satellite dish, or not. Ms Carr said that most of the flats were connected to the satellite system and she believed that Mr Parissis' flats were also connected to it. She said that Mr Parissis himself had complained about Japanese language services "going down", presumably because he had received complaints from the Japanese businessmen to whom he regularly let his flats. Mr Parissis accepted that he had made one complaint along these lines, but he still did not know if his flats were connected to the satellite system; but he would accept Ms Carr's word, if she said they were. When asked, Mr Parissis could not recall whether or not he had paid a £60 installation charge in the past. However, he reiterated that that there was no evidence that the old system was in the state of disrepair: there was no report and none was produced at the 2002 AGM.

Previous tribunal decision

50. The tribunal was referred to an earlier decision of 18 December 2011 (LSC/2010/0814 & three other conjoined applications), which related to periods after 10 November 2004. At paragraph 33 of that decision, Ms Carr had conceded "that the lease does not make provision for porter's costs, porter's telephone, paladin bins, satellite aerials, water charges and common parts heaters" and, in the light of that concession, the tribunal in that case found that such costs will not recoverable as

part of the service charge. Ms Carr said that she may not have been wise to have made such a wide concession for all of those service charge items, but that it related to the matters under consideration then, and - importantly - she did not repeat the concession now, in respect of the 2003 and 2004 satellite dish installation costs; although she did not seek to resile from the concessions in relation to the other items.

51. The tribunal is, of course, not bound by previous tribunal decisions, nor is a concession before one tribunal about charges for different periods any more than persuasive in respect of similar charges for earlier periods. While it may be unusual for the tribunal to reach a different conclusion on the payability of similar charges for different periods, nonetheless, Ms Carr invited the tribunal to consider the matter afresh and to determine whether the 2003 and 2004 satellite installation costs could be properly chargeable through the lease.

The tribunal's determination

52. The tribunal is satisfied that the cost of the installation of the satellite dish in 2003-4 falls within the terms of the lease and, therefore, the sums already paid by Mr Parissis are payable and do not require to be refunded.

Reasons for the tribunal's decision

53. The lease provides, in clause 1, that the lessee will pay a service charge referred to in clause 2. By clause 2, the service charge includes a percentage part of the costs and expenses which the lessor expects to and incurs in performing its covenants under clause 3. By clause 3, the lessor covenants with the lessee to carry out and perform the obligations set out in the Fourth Schedule. These include, at paragraph 5, "to provide and maintain a television aerial system to serve the flats in Blair Court."

54. The first issue is whether the words "to provide and maintain" are wide enough to encompass renewal and replacement of the "television aerial system", as and when the need arises. In the tribunal's view, it is clearly capable of doing so. Such evidence as exists is that, at least by June 2002, the existing terrestrial cable TV was very old and in need of replacement. Such a conclusion is not particularly surprising, some 30 years after the construction of the building between 1970 and 1973. Although the minutes of the BCM AGM on 5 June 2002 do not refer to a specific report, investigations had clearly been undertaken in 2002 and, on a balance of probabilities, the tribunal finds that the television aerial system was in need of replacement.

55. The next question is whether the words "television aerial system" can encompass a satellite dish and/or satellite system. The tribunal

considers that an "aerial system" is wider in meaning than "aerial" on its own; even then, an aerial is synonymous with an antenna, which is specifically designed to receive over-the-air broadcast signals, including satellite signals. In the tribunal's opinion the word "aerial" in itself is wide enough in the modern era to encompass a satellite dish. Both perform the same function of receiving a television signal for delivery to the flats. What is required by the Fourth Schedule is not only the physical appurtenances on top of the building, but also a "system" to deliver the signals received.

56. The tribunal has considered relevant passages of *Dowding and Reynolds on Dilapidations* (fifth edition) and, in particular, paragraphs 13-08 to 13-13.

57. These paragraphs refer to the replacement of plant, services or machinery with a modern equivalent, so as to take advantage of developments in design and technology over time. The tribunal accepts that there are strong practical arguments for construing paragraph 5 of the Fourth Schedule as requiring the replacement of worn-out items with their modern equivalent, particularly communal items in multi-occupied buildings; and, by its nature, plant and machinery, including an aerial, has a shorter life expectancy than the fabric of the building.

58. The tribunal also accepts that it is within the ordinary contemplation of the parties that the installation of an exact replica may either be impossible or undesirable. If asked in 1974 whether the replacement of a "television aerial system" should include its modern equivalent, the tribunal is satisfied that the original parties to the lease would have agreed.

59. Although not strictly relevant to the interpretation of the lease, it is interesting that the Memorandum of Association of BCM made specific provision for an alternative television service to be provided which could be with or without an aerial: so, clearly, alternatives to the existing arrangement were in contemplation of the parties, even then.

60. It is also not insignificant that the two flats owned by Mr Parissis appear to have been connected to the satellite system; that his short-term occupants appear to make use of the satellite signal; and that, for many years, Mr Parissis was content for this situation to continue, passing on a complaint about a breakdown in the service on at least one occasion.

61. For all of these reasons, the tribunal is satisfied that the cost of the installation of the satellite dish in 2003-4 falls within the terms of the lease.

Application for costs

62. At the conclusion of the hearing, Mr Parissis made an application for costs against the respondent for "unreasonable conduct". Following the creation of the Property Chamber of the First-tier Tribunal on 1 July 2013, new tribunal procedure rules apply to old cases such as this, save for any provision relating to costs. That means that the tribunal had to consider Mr Parissis' application for costs in the light of its former power under paragraph 10 of Schedule 12 of the Commonhold and Leasehold Reform Act 2002. This provides that an award of costs up to £500 may been made where the tribunal determines that a party to proceedings has "acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings."

63. As the tribunal pointed out to Mr Parissis, this hearing took place because the tribunal's previous preliminary decision of 11 April 2011 had been overturned by the Upper Tribunal and the matter had been remitted to this tribunal for a fresh determination. In those circumstances, there would appear to be very little scope, indeed, for a finding that the respondent had acted in an unreasonable manner in dealing with the remitted matter; but, in any case, there was no evidence of any conduct that could be said to be frivolous, vexatious, abusive, disruptive or otherwise unreasonable.

64. In the circumstances, the tribunal declines to make any award for costs.

65. As it was conceded that there is no provision within the lease for the landlord to recover its costs through the service charge (and, in any event, BCM is no longer in a position to raise such a service charge), the tribunal makes no order under section 20C of the 1985 Act.

Name: Judge Powell **Date:** 23 December 2015

Landlord and Tenant Act 1985

Section 20 in the form in which it applies to the present case provides as follows:

> "20(1) Where relevant costs incurred on the carrying out of any qualifying works exceed the limit specified in subsection (3), the excess shall not be taken into account in determining the amount of a service charge unless the relevant requirements have been either –
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> (a) complied with, or
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> (b) dispensed with by the court in accordance with subsection (9);
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> and the amount payable shall be limited accordingly.
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> (2) In subsection (1) 'qualifying works', in relation to a service charge, means works (whether on a building or on any other premises) to the costs of which the tenant by whom the service charge is payable may be required under the terms of his lease to contribute by the payment of such a charge.
>
> (3) The limit is whichever is the greater of –
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> (a) £50, or such other amount as may be prescribed by order of the Secretary of State, multiplied by the number of dwellings let to the tenants concerned; or
>
> (c) £1,000, or such other amount as may be so prescribed.
>
> (4) The relevant requirements in relation to such of the tenants concerned as are not represented by a recognised tenants' association are -
>
> (a) At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.
>
> (b) A notice accompanied by a copy of the estimates shall be given to each of those tenants or shall be displayed in one or more places where it is likely to come to the notice of all those tenants.
>
> (c) The notice shall describe the works to be carried out and invite observations on them and on the estimates and shall state the name and the address in the United Kingdom of the person to whom the observations may be sent and the date by which they are to be received.
>
> (d) The date stated in the notice shall not be earlier than one month after the date on which the notice is given or displayed as required by paragraph (b).
>
> (e) The landlord shall have regard to any observations received in pursuance of the notice; and unless the works are urgently required they shall not be begun earlier than the date specified in the notice.
>
> (5) The relevant requirements in relation to such of the tenants concerned as are represented by a recognised tenants' association are -
>
> (a) The landlord shall give to the secretary of the association a notice containing a detailed specification of the works in question and specifying a reasonable period within which the association may propose to the landlord

the names of one or more persons from whom estimates for the works should in its view be obtained by the landlord.

(b) At least two estimates for the works shall be obtained, one of them from a person wholly unconnected with the landlord.

(c) A copy of each of the estimates shall be given to the secretary of the association.

(d) A notice shall be given to each of the tenants concerned represented by the association, which shall

(i) describe briefly the works to be carried out,

(ii) summarise the estimates;

(iii) inform the tenant that he has a right to inspect and take copies of a detailed specification of the works to be carried out and of the estimates;

(iv) invite observations on those works and on the estimates, and

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

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

(f) If any tenant to whom the notice is given so requests, the landlord shall afford him reasonable facilities for inspecting a detailed specification of the works to be carried out and the estimates, free of charge, and for taking copies of them on payment of such reasonable charge as the landlord may determine.

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

(6) Paragraphs (d)(ii) and (iii) and (f) of subsection (5) shall not apply to any estimate of which a copy is enclosed with the notice given in pursuance of paragraph (d).

(7) The requirements imposed on the landlord by subsection (5)(f) to make any facilities available to a person free of charge shall not be construed as precluding the landlord from treating as part of his costs of management any costs incurred by him in connection with making those facilities so available.

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

(9) In proceedings relating to a service charge the court may, if satisfied that the landlord acted reasonably, dispense with all or any of the relevant requirements.

(10) An order under this section -

(a) may make different provision with respect to different cases or descriptions of cases, including different provision for different areas, and

(b) shall be made pursuant to statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament."