10822

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AW/LSC/2014/0294, 0295, 0296 & 0297**
Property	:	**Flats 4, 5, 26 and 33 Addisland Court, Holland Villas Road, London W14 8DA**
Applicant	:	**Addisland Court Company Limited**
Representative	:	**Mr Robert Brown (Counsel)** **Alan Edwards & Co Solicitors**
Respondent	:	**Mr Edward Mallorie (Flat 4)** **Mr Pavel Pojdl (Flat 5)** **Mr Zein Kenneth Thompson-Mayassi (Flats 26 & 33)**
Representative	:	**Mr Simon Allison (Counsel)** **Thomas Eggar LLP**
Type of Application	:	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	:	**Mr Jeremy Donegan (Tribunal Judge)** **Mr Patrick Casey MRICS (Valuer Member)** **Mr John Francis QPM (Lay Member)**
Date and venue of Hearing	:	**23-25 March 2015** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**31 May 2015**

DECISION

Decisions of the tribunal

A. The tribunal determines that the service charges for Flat 4 Addisland Court, Holland Villas Road, London W16 8DA for the years ended 24 March 2008 and 2009 are reduced by a total of £300.

B. The tribunal determines that the sum payable for the replacement of the heat exchangers in 2013 is £69,087 (including VAT).

C. The tribunal determines that the following sums are payable for the major works undertaken at Addisland Court, Holland Villas Road, London W14 8DA ('the Block') in 2014:

Final account	£307,910.60 plus VAT
Contract administration fee	£30,018.84 plus VAT

D. The tribunal determines that the interim (advance) service charges claimed by the Applicant in the County Court proceedings, as referred to at paragraph 2 below, are payable by the Respondents in full.

E. The tribunal having determined the disputed issues, it is for the parties to now agree the adjusted balances due for each flat (to include the sums agreed or conceded during the course of the hearing).

F. Since the tribunal has no jurisdiction over ground rents, statutory interest, or court costs and fees, this matter should now be referred back to the County Court for a determination of these issues and the set-off claims for the removal of decking outside Flats 4 and 5.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act"), as to the amount of service charges payable by the Respondents for Flats 4, 5, 26 and 33 at the Block.

2. Proceedings were originally issued in the County Court Money Claims Centre in February 2014, under claim numbers A35YJ891 (Mr Mallorie), A34YJ880 (Mr Pojdl) and A34YJ821/A34YJ973 (Mr Thompson-Mayassi). The proceedings included claims for service charges, ground rents, statutory interest, court costs and fees, Defences were filed on 18 March 2014. The proceedings were then joined before being transferred to this tribunal. Directions were issued at a case management conference on 15 July 2014.

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

The background

4. The Applicant is the freeholder of the Block, which is a purpose built 7-storey 1930s block comprising of 42 flats. 41 of the flats are let on long leases and the remaining flat is used as porter's accommodation. The shareholders in the Applicant company are the 41 long leaseholders. The Block is managed by D&G Block Management Limited ('D&G'). Mr Mallorie is the leaseholder of Flat 4, Mr Pojdl is the leaseholder of Flat 5 and Mr Thompson-Mayassi is the leaseholder of Flats 26 and 33.

5. The Respondents each hold a long lease of their respective flats, which requires the Applicant to provide services and the Respondents to contribute towards their costs by way of a variable service charge. The specific provisions of the leases are referred to below, where appropriate.

6. Unfortunately this is not the first set of proceedings involving the Applicant and Mr Mallorie. There have been two previous applications to the Leasehold Valuation Tribunal ('LVT') concerning disputed service charges that were concluded in January 2009 and August 2010, respectively. There was also a contested application to the LVT for dispensation under section 20ZA of the 1985 Act, in which all leaseholders were named as respondents. That application concerned the installation of heat exchangers and associated components for the communal hot water system at the Block. It was dealt with on the paper track under case reference LON/00AW/LDC/2013/0030 and dispensation was granted in a decision dated 27 June 2013.

7. Based on the documents appended to the particulars of claim, the service charges claimed within the County Court proceedings appear to be interim (advance) charges demanded within period November 2012 to December 2013 inclusive. However this is not entirely clear and the tribunal has only determined the disputed issues that were argued at the hearing. The tribunal has no jurisdiction to determine the other sums claimed in the proceedings, namely ground rents, statutory interest, court costs and fees.

The leases

8. Copies of all four leases were included in the hearing bundle. The lease of Flat 4 was granted by Delbounty Limited to Mr Mallorie on 31 August 1990 and was for a term of 125 years from 25 March 1978. The lease of Flat 5 was granted by the Applicant to Mian Imtiazuddin on 16 August 2002 for a term of 999 years from 26 December 1996.

9. The lease of Flat 26 was granted by the Applicant to Helena Jennifer Schofield, Roop Tandon and Lorraine Mallorie on 05 March 1998 for a term of 999 years from 25 December 1996. The lease of Flat 33 was granted by the Applicant to Levon Ohannes Barzankian and Alice Ouzonian on 27 January 203 for a term of 999 years from 26 December 1996.

10. It appears that the various leases are essentially in the same form. In each case the "Demised Premises" are described in the second schedule and include:

"(v) the surface of the floor of any balcony roof garden patio or integral garage included in the demise and any railings surrounding the same

(vi) all Conduits (save those belonging to any public utility supply authorities or to any person or corporation supplying any television aerial rediffusion service internal telephone system or door porter system) which are laid in any part of the Property and serve exclusively the Demised Premises

(vii) all fixtures and fittings in or about the Demised Premises (other than the tenant's fixtures and fittings) and not hereinafter expressly excluded

BUT EXCLUDE

...

(c) the structural parts of any balconies roof gardens or patios"

11. By paragraph (2)(a) of part I of the fifth schedule to the leases, the leaseholders are obliged to pay *"..to the Lessor a Maintenance Charge being that percentage specified in Paragraph 9 of the Particulars of the expenses which the Lessor shall in relation to the Property reasonably and properly incur in each Maintenance Year and which are authorised by the Eighth Schedule.."* together with payments on account on the usual quarter days. The Maintenance Year runs from 25 March to 24 March.

12. By paragraph (1) of part II of the fifth schedule to the leases, the leaseholders are obliged:

"To keep the Demised Premises and additions thereto and the Landlord's fixtures and fittings and sanitary and electrical apparatus installed in or affixed to the Demised Premises and the window glass in good and substantial repair and condition"

13. The eighth schedule to the leases details the various costs and expenses that can be charged upon the Maintenance Fund, which include:

"(1) The cost incurred by the Lessor in complying with its obligation in Part 1 of the Sixth Schedule"

14. The Lessor's repairing covenants are to be found at part 1 of the sixth schedule and include:

"(1) Subject to and conditional upon the payment by the Lessee of the rents and the Maintenance Charge and interim maintenance charge and non-annual expenditure herein mentioned and provided that the Lessee has complied with all the covenants agreements and obligations on his part to be performed and observed to keep in good and substantial repair and condition (and to renew and improve as and when the Lessor may from time to time in its absolute discretion consider necessary)

(a) The structure of the Property INCLUDING –

(i) the roofs and foundations

(ii) all the walls of the Property whether external or internal apart from the walls and partitions referred to as included in the Demised Premises in paragraph (ii) of the Second Schedule

....

(2) As often as may be necessary to decorate the exterior of the Property including such exterior parts of the Demised Premises as the Lessee is prohibited from painting"

The hearing

15. The full hearing of the proceedings took place on 23- 25 March 2015. The Applicant was represented by Mr Robert Brown and the Respondents were represented by Mr Simon Allison. The tribunal heard oral evidence from Mr Calum Watson, Dr James Lange and Mr Mazhar Farid on behalf of the Applicant and Mr Edward Fifield, Mr Mallorie, Mr Pojdl, Mr Thompson-Mayassi, on behalf of the Respondents. The Applicant's accountant, Mr John Thompson, also attended the first day of the hearing but was not required to give any oral evidence in the light of the issues agreed/conceded.

16. Mr Watson is the managing director of D&G, which took over the management of the Block in March 2010. He verified the contents of a

detailed witness statement dated 26 February 2015, which primarily dealt with major works undertaken at the Block during the last 3 years. Mr Watson also gave oral evidence and was cross-examined regarding the replacement of the heat exchangers for the communal hot water system.

17. Dr Lange has been a director of the Applicant company since 1998 and is one of the joint leaseholders of Flat 23 at the Block. He also verified the contents of a detailed witness statement dated 26 February 2015. His oral evidence was limited, as Mr Watson and Mr Farid were the Applicant's primary witnesses on the disputed major works.

18. Mr Farid is a senior building surveyor employed by S Harris Associates Limited ('SHAL') and supervised the major works in 2014. He has a degree in surveying from Coventry University in 1994 but is not a member of the RICS. Mr Farid gave expert evidence on behalf of the Applicant. In his oral evidence he verified the contents of a detailed statement dated 26 February 2015 and was cross-examined at some length, regarding the major works in 2014. There was no formal expert's report from Mr Farid. Following the conclusion of the hearing and at the request of the tribunal, Mr Farid lodged a signed expert's declaration to accompany his statement.

19. Mr Fifield is a partner in Fifield Glyn Chartered surveyors and gave expert evidence on behalf of the Respondents. He qualified in 1997 and became a Fellow of the RICS in 2012. He has specialised in Property Management and Building Services since 1997.

20. In his oral evidence Mr Fifield verified the contents of two expert reports, dated 17 March and 14 November 2014. These dealt with the extent and timing of the 2014 major works. Mr Fifield also briefly addressed the replacement of the heat exchangers, in his oral evidence.

21. On the second day of the hearing there was a helpful "hot-tubbing" session where the tribunal effectively chaired a discussion between the experts and counsel (and in a few cases Mr Mallorie), regarding the disputed items in the final account for the 2014 major works.

22. Mr Mallorie, Mr Pojdl and Mr Thompon-Massi also gave oral evidence and verified the contents of their witness statements dated 26, 26 and 27 February, respectively. The oral evidence from Mr Pojdl and Mr Thompson-Massi was also limited, as Mr Fifield and Mr Mallorie were the Respondents' primary witnesses.

23. At this point it is appropriate to record that the statement from Dr Lange made a number of criticisms of the Respondents and the statements from Mr Mallorie, Mr Pojdl and Mr Thompson-Massi made a number of criticisms of the Applicant and its board of directors.

These criticisms did not assist the tribunal in determining the disputed service charges. The tribunal makes no findings in relation to the criticisms.

24. The Tribunal were supplied with a total of seven hearing bundles, covering all four cases. Navigating the bundles was somewhat difficult, as they contained a number of unnecessary and duplicated documents and there was no master index.

25. On the morning of 23 March 2015, prior to the hearing, the tribunal inspected the exterior of the Block together with the roof, internal common-ways, parking area and boiler room in the presence of Mr Allison, Mr Brown, Mr Farid, Dr Lange, Mr Mallorie and Mr Watson. Access to the roof was obtained via Flat 39. The tribunal did not inspect the interior of any of the other flats.

26. Following the site inspection the tribunal were supplied with written submissions by Mr Brown and an opening note by Mr Allison. The tribunal had an opportunity to read through these helpful documents before the hearing.

27. During the course of the hearing, the tribunal were supplied with copies of various additional documents including photographs of the Property, the 10-year planned maintenance programme dated 21 May 2012, the lease for Flat 40, a bundle relating to the service charges for Flat 4 and email correspondence relating to the replacement of the heat exchangers and hot water cylinders at the Block

28. At the start of the hearing, Mr Brown invited the tribunal to determine the actual cost of the 2014 major works, as well as the service charges that formed the basis of the County Court proceedings. The final account for the major works had been agreed by Mr Farid since the proceedings were issued. Mr Brown pointed out that it would save time and costs if the amount of the final account was determined at the same time as the other service charges. This was not opposed by Mr Allison.

29. After a short adjournment, the tribunal confirmed that it was willing to include the final account as part of its determination, subject to a separate application being issued by midday on 25 March 2015. The application was duly issued and a copy was supplied to the tribunal on the morning of 25 March. That application sought a determination of the service charges for the years ended March 2014 and March 2015. It stated that the total cost of the major works was £323,963 and professional fees, of which £221,615 had been billed in 2014 and £102,348 related to 2015. The tribunal assumes that VAT is payable on top of these figures.

The issues

30. The directions identified the following issues to be determined by the tribunal:

(i) The reasonableness and payability of service charge demands made in connection with two major works projects, comprising (i) the replacement of the flat roof coverings and other external repairs and decorations; and (ii) works to the communal heating and hot water system completed in 2013;

(ii) Whether the Respondent had complied with the consultation requirements in section 20 of the 1985 Act, in connection with the works to the communal heating and hot water system;

(iii) Whether the cost of the heating works are reasonable and recoverable, including the reasonableness of the management costs;

(iv) Whether the roofing works are within the landlord's obligations under the lease/whether the cost of these works are payable by the leaseholder under the lease, in particular whether flat roofs above the 6th floor are demised to the tenants of the flats on the 7th floor and whether costs of removal or storage of chattels belonging to tenants on the 7th floor can be charged to the service charge account;

(v) Whether the estimated cost of the roofing works are reasonable and recoverable, in particular taking into account the extent of the works, the relationship of works to repair works carried out from 2005 to date, the extent of the contingency fees demanded and the affordability of the works when major works to the heating system had only just been completed;

(vi) In connection with the claim against Flat 4:

(a) whether all payments made have been credited to the service charge account

(b) whether the service charges demanded in the years 2007/08 and 2008/09 are reasonable and payable

(c) whether a licence fee of £5,000 should be set off against the total claim

(vii) In connection with the claim against Flats 4 and 5

(a) whether administration charges relating to the removal of decking are reasonable and payable

(b) whether damages in connection with the removal of decking are available to be set off against the service charge claim

(viii) Whether an order should be made under section 20C of the 1985 Act; and

(ix) Whether an order for reimbursement of application/hearing fees should be made.

31. By the conclusion of the hearing the parties had agreed or conceded a number of issues, thereby reducing the scope of the tribunal's determination. The agreed/conceded issues were:

All flats

(i) The Applicant conceded that the following sums should be removed from final account for the 2014 major works and should not be charged to the service charge account for the Block:

Item
Part 3 – Schedule of works
4.5.1 Decoration of front door (£500)
Additions and variations
3.0 Excavate soil to expose and repair down pipe (£550) and 22.00 damp proofing of adjacent garage (£7,722)
7.0 Remove all cable trays from roof (£1,000) and 12.00 move cable trays (£100)
20.00 and 21.00 Out of sequence works and cleaning, arising from renovation of Flat 25 (£200)

(ii) In relation to the replacement of the communal boilers and flues at the Block the Applicant accepts that, solely in respect of work carried out by Specialist Flue Services in 2012 pursuant to a contract entered into with Cofely GDZ Suez Ltd ('Cofely') on or around 21 August 2012, the relevant contribution of any tenant is limited to £250 by virtue of section 20 of the 1985 Act and regulation 6 and schedule 4, part 2, paragraph 4 of the Service Charges (Consultation Requirements) (England) Regulations 2003 (the parties being agreed that the costs incurred of £12,710 plus VAT were otherwise reasonable for the purposes of section 19 of the 1985 Act);

(iii) By virtue of the concession at paragraph (ii) above, the service charges demanded for the year ended 24 March 2013 are reduced by the following sums:

Flat 4	£163.33
Flat 5	£209.99
Flat 26	£119.10
Flat 33	£125.20

(iv) The Respondents did not pursue any further challenge to the section 20 consultation for the boiler replacement works;

(v) The Respondents did not pursue their challenge to the management fees for the boiler replacement works;

(vi) The Applicant did not pursue its application for a refund of the hearing fee of £190; and

(vii) The Respondents' application for an order under section 20C of the 1985 Act was withdrawn.

Flat 4 only

(viii) The sum of £64.98 is to be credited to the service charge account for this flat, in relation to an arithmetical error in the balancing charge for the year ended 24 March 2009;

(ix) The claim for photocopying/administration charges of £43.76 was withdrawn by the Applicant;

(x) Mr Mallorie did not pursue his set-off claim in relation to the £5,000 licence fee, which had been partially repaid; and

(xi) Subject to the tribunal having jurisdiction to determine the service charges for the years ended 24 March 2008 and 2009, the sum of £300 is to be credited to the service charge account for this flat.

Flats 4 and 5 only

(xii) The set-off claims in relation to the removal of the decking outside these flats are to be determined by the County Court rather than the tribunal; and

(xiii) The claim for administration charges of £317 per flat, for the removal of the decking of these flats, was withdrawn by the Applicants.

32. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the remaining issues as follows.

Service charges for years ended 24 March 2008 and 2009 (Flat 4 only)

33. The service charges for these two years were the subject of an application to the tribunal made by Mr Mallorie on 31 March 2010. Those proceedings were dealt with under case reference LON/00AW/LSC/2010/0240. Mr Mallorie disputed certain items in the service charge accounts and also challenged the sums claimed on accounting grounds (incorrect accruals and missing vouchers). The final hearing of the application took place on 19 August 2010. At the hearing, Mr Mallorie agreed to withdraw the accounting challenges upon the basis that he and his wife would meet with the Applicant's accountant (Mr Thompson) in early September 2010 to try and resolve his concerns. This agreement was recorded in a handwritten note, dated 19 August 2010.

34. Mr Mallorie met with Mr Thompson on 10 September 2010, when it was agreed that further documents would be exchanged. However the parties did not agree any reduction in the service charges arising from the accounting challenges, either at the meeting or at a later stage. Mr Mallorie subsequently withheld payment of the balancing charge for Flat 4 for the year ended 24 March 2010 (£792.32), to reflect the outstanding accounting challenges.

35. Mr Brown contended that the tribunal had no jurisdiction to determine the service charges for the years ended March 2008 and 2009 upon the basis that these charges had been agreed or admitted for the purposes of section 27A(4) of the 1985 Act. He relied on the final sentence of the handwritten note dated 19 August 2010, which stated:

"If by 1st November 2010 issues still exist on which no agreement has been reached the Mallories will lodge a further application with the LVT"

36. Mr Brown suggested that the wording of the note required the Mallories to make an application to the LVT by 01 November 2010, if they wished to pursue their accounting challenges. No application was made by this date or at any subsequent time and Mr Brown argued that this omission amounted to an agreement of the service charges in question.

37. Mr Allison took a different view of the wording of the note. He contended that the only way of construing the final sentence was that 01 November 2010 was the earliest date on which the Mallories could make a further application to the LVT, rather than the last date. Upon this basis he argued that the failure to make such an application did not amount to an agreement of the service charges and there was nothing to prevent Mr Mallorie from pursuing his accounting challenges in these proceedings. The Mallories had not made any application to the LVT as they were expecting their accounting challenges to be corrected in the 2009/10 accounts. There was no correction and so the balancing charge was withheld, as an alternative to further LVT proceedings.

The tribunal's decision

38. The tribunal determines that it has jurisdiction to determine the service charges for the years ended 24 March 2008 and 2009. It follows that the charges payable by Flat 4 for these two years shall be reduced by £300, as agreed by the parties. This sum is to be credited to the service charge account for this flat.

Reasons for the tribunal's decision

39. The tribunal agrees with Mr Allison's construction of the final sentence of the note dated 19 August 2010. 01 November 2010 was the earliest date on which the Mallories could make a further application to the LVT, if the accounting challenges were not resolved. There was no deadline for making such an application and no stipulation that time was of the essence. It was reasonable for Mr Mallorie to withhold payment of the 2009/10 balancing charge rather than pursue a further application to the LVT. He has not agreed or admitted the service charges for the years ended March 2008 and 2009 and the tribunal is able to determine these charges. It follows that the agreed reduction of £300 should apply.

Replacement of heat exchangers 2013 - £69,087

40. There have been two sets of major works involving the communal hot water system at the Block, during the last 3 years. Firstly the boilers and flues were replaced in 2012. Secondly the heat exchangers, which transfer heat from the boilers to the hot water system, were replaced in 2013. The second set of works also involved the replacement of associated components and the removal of dead leg piping and surplus tanks. These works were undertaken by Cofely at a total cost of £69,087 (including VAT).

41. It was the replacement of the heat exchangers that was the subject of the dispensation decision dated 27 June 2013. The application for dispensation was contested by the leaseholders of five flats at the Block,

including the Mallories and Mr Thompson-Mayassi. Dispensation was granted upon the basis that the works were urgent, as legionella bacteria had been discovered in the communal hot water system. Paragraph 27 of that decision made it clear that the grant of dispensation did not preclude an application under section 27A of the 1985 Act to determine the cost of these works.

42. Mr Watson and Mr Fifield dealt with this issue. However neither are experts in heating engineering and this meant that they were unable to give an expert opinion on the sum charged by Cofely.

43. The Respondents contend that the sum charged by Cofely was excessive and unreasonable. Their arguments can be summarised as follows:

(a) The Applicant had been aware of the need to replace the heat exchangers since November 2012. It became aware of the urgency of the situation in January 2013 when the legionella was reported and embarked upon a shortened consultation procedure in mid March 2013. The works were then completed in May 2013. Given this timescale, the Applicant had ample opportunity to obtain competitive quotations for the works.

(b) The Applicant obtained two quotations for the works; one from Cofely, who had already replaced the boilers, for £57,573 plus VAT (£69,087.60) and one from Quotehedge Limited ('Quotehedge') for £46,390.20 plus VAT (£55,668.24). However Cofely and Quotehedge did not quote on a like for like basis. Cofely's quote was based on a plate heat exchanger with buffer vessels whereas Quotehedge's quote was based on indirect storage vessels. The quotes were analysed by independent mechanical and electrical consultants, Lamoreby Associates ('Lamoreby'). In an email to D&G dated 13 March 2013, Mr Jeff Collin of Lamoreby recommended that the Cofely quote be accepted, as he considered their system to be more suitable for the Block. He also mentioned that he had requested additional information from Quotehedge that would not be available until the following week. The Respondents criticise the Applicant's (apparent) failure to go back to Quotehedge to obtain a truly comparative quote or obtain quotes from other contractors, before instructing Cofely.

(c) Given the timescale set out at paragraph (a) above, there was no urgency to the works that might justify payment of any inflated cost/premium. Further no explanation had been given for the delay in completion of the works.

(d) Lamoreby do not appear to have commented upon the amount of the quotes; rather they focussed on the comparative merits of the two systems. This was accepted by Mr Watson in cross-examination.

(e) The works were simple and straightforward. All that was required was to remove the existing heat exchanger, alter the plumbing, install a new pump and control equipment and fit 3 new heat exchangers. The new heat exchangers can be purchased for approximately £1,000 each. The works in question were undertaken in the boiler room by 3 men within a week.

(f) After the works were completed, Mr Mallorie obtained an alternative quote from TH Waldens Limited for the sum of £12,846 plus VAT (£15,415.20). This was dated 24 October 2014. Mr Fifield also obtained an alternative quote, from DDC Maintenance dated 13 November 2014, for the sum of £21,706 plus VAT (£26,047.20). DDC inspected the boiler room before giving their quote.

(g) Shortly before the hearing, D&G obtained an indication of the comparable cost of the works from GBS (South-East). This took the form of an email from Mr Derrick Rust-Andrews dated 20 March 2015, who estimated that the cost of the works was in the region of £45,000 plus VAT (£54,000). When giving this figure, Mr Rust-Andrews was aware that the works had already been carried out. Mr Allison made the point that the email provided very little detail, had been produced very late in the day and only gave a 'ball park' figure for the works.

(h) In the light of the alternative quotes, including that from Quotehedge, Mr Allison submitted that the sum charged by Cofely was unreasonable. He invited the tribunal to substitute a figure of £26,047, being the amount of the DDC quote obtained by Mr Fifield.

44. The Applicant contends that the sum charged by Cofely was reasonable. It relies on the quotes from Cofely and Quotehedge, the independent analysis of these quotes by Lamorbey and the cost indication from GBS. In his evidence, Mr Watson referred to the urgent nature of the works. The existence of legionella was first reported in January 2013 and the works were completed in May 2013. Given the urgency, it was reasonable to rely just on two quotes.

45. Mr Brown accepted that there had been some slight delay in completion of the works but suggested that overall the Applicant had acted reasonably promptly.

46. Mr Brown made various observations on the alternative quotes obtained by the Respondents. These quotes were far less detailed and appeared to omit any building works and the removal of the redundant pipework. It was not clear whether the contractors had been supplied with the original specification of works prepared by, Neil H Horswood Services. Cofely, Quotehedge and GBS had all been supplied with the

specification. Further Cofely and Quotehedge had inspected the boiler room and the old system and pipework before giving their quotes. They were fully aware of the extent of the work involved in removing the old system and the redundant pipework. The other contractors had not seen the old system and pipework.

47. Mr Brown suggested that the Respondent's alternative quotes were of limited value, given the lack of detail and the fact that the contractors knew that the works had been completed. This meant that there was no prospect of the contactors undertaking the works.

48. Mr Brown also made the point that the quotes from Cofely and Quotehedge were similar in amount. The cost indication from GBS was lower but the difference was not substantial. In his email, Mr Rust-Andrews had acknowledged that a premium may have been added to the original quotes to reflect the urgent nature of the works. Having regard to the Quotehedge quote and the GBS indication, Mr Brown argued that the sum charged by Cofely fell within a reasonable range and should be allowed in full.

The tribunal's decision

49. The tribunal determines that the amount payable in respect of the replacement of the heat exchangers is £69,087.

Reasons for the tribunal's decision

50. There was no expert evidence from the parties, as to the cost of the works. Whilst the tribunal is an expert body, the tribunal members are not experts in heating engineering. In the absence of expert evidence, the tribunal determined the cost of the works based on the various quotes.

51. The tribunal carefully considered the alternative quotes from TH Waldens and DDC and the costs indication from GBS but concluded that these were of very limited value. In each case the documents were brief and gave little detail. Further the figures were given after the works had been completed and the contractors did not have the benefit of seeing the old system and pipework when they prepared their figures. The contractors knew that they would not be undertaking the works, which undermines the reliability of their figures. Furthermore there was no opportunity to test their evidence, as they did not give oral evidence before the tribunal.

52. The quote from Quotehedge was of greater assistance in that this was a genuine tender for the works, based on the specification and an inspection of the old system and pipework. Whilst the basis of its quote was different to that from Cofely, it does provide a helpful benchmark.

The amount of the quote was approximately 80% of the sum quoted and charged by Cofely. However there is no requirement for a freeholder to opt for the lowest quote and it was reasonable for the Applicant to instruct Cofely in the light of the independent analysis and recommendations from Lamborbey.

53. With the benefit of hindsight, it is easy to criticise the Applicant's failure to obtain a like for like quote from Quotehedge or obtain other quotes. However the works were urgent and were completed within 2 months of the quotes and 4 months of legionella being reported. The existence of these bacteria in the hot water system was a significant health risk and resulted in D&G advising residents not to use their showers. Had the Applicant sought further quotes then inevitably this would have delayed the works.

54. Having regard to the points made above, the tribunal concluded that the Applicant acted reasonably in instructing Cofely to undertake the works, without obtaining further quotes. Further there was insufficient evidence to establish that the Cofely charge was unreasonable. Whilst it might have been possible to purchase the 3 heat exchanger units for £3,000, it is also necessary to factor in the cost of the associated components and pipework, all labour costs, the cost of removing the old system and pipework and the building cost associated with the new system. There was no expert evidence to support the Respondent' contention that the Cofely charge was unreasonable. Further the most reliable evidence, being the contemporaneous quote from Quotehedge, supports the Applicant's argument that the charge was within a reasonable range. The tribunal therefore allows this charge in full.

Major works 2014 - £323,963 plus VAT and supervision fees

55. This was the most substantial area of dispute and involved four discrete issues, namely:

(a) Whether the roof repairs had been unreasonably incurred, given that there had been substantial repairs to the roof in 2005/06;

(b) Whether the works should have been phased differently, so as to spread the cost of the works over a longer period;

(c) Whether various specific expenses in the final account had been reasonably incurred and/or were recoverable as service charge items under the terms of the leases; and

(d) Whether the contract administration fees for the works were reasonably incurred.

56. The main upper roof at the Block consists of three different areas, above the flats on the seventh floor. There are also roof terraces at each end of the building at the top of the sixth floor that act as roofs to the flats below and which are used by the seventh floor flats.

57. The history of the roof and external repairs was set out in the statements of Mr Farid and Dr Lange and is summarised below.

58. The last major maintenance and external redecoration works at the Block took place between 2001 and 2003. Roof repairs were undertaken in 2005/06 and were arranged by the then managing agents, Pembertons.

59. Pembertons managed the Block between 2005 and 2010. D&G took over the management of the Block in March 2010. Pembertons failed to hand over any management files to D&G, having apparently lost them. This means that the Applicant and D&G have very little information regarding the 2005/06 roof repairs. Copies of the repair invoices were in the hearing bundles. These were all from Phillips Maintenance Contractors Limited ("PMCL") and spanned the period 12 September 2005 to 04 August 2006. The narratives on the invoices provided very little information regarding the works. In his original report, Mr Fifield described these repairs as *"..overfelting with a single layer to try and extend the life"*. Based on the invoices, it appears that the total cost of the repairs was £42,838.50. However this figure included ancillary work, such as the removal of items on the roof (including rubbish) and rebuilding two sets of steps.

60. Repairs were undertaken to the parapet wall and roof terrace outside Flat 40 in 2008, following water penetration to Flats 30, 35, and 36. These were arranged and supervised by the Applicant's then surveyors, Ahearne & Associates.

61. Ahearne & Associates prepared a planned maintenance report for the Block on 07 June 2007, which was updated in October 2009. The report dealt with the various parts of the Block and made recommendations for a planned maintenance programmed. It recorded that the areas of main upper roof had *"..recently been partially felted.."* and described them as *"..generally sound, except for the areas around the telecommunications masts.."* where repairs were required. The terraces were described as having *"..a mismatch of covering over an asphalt base"*. The report recommended the complete recovering and insulation of the roof within a period of 7-10 years and that the Applicant should review this item within 5 years.

62. The Applicant instructed its current surveyors, SHAL to submit a plan for the maintenance and decoration of the Block in March 2012. Initially this was dealt with by Mr Christian Howe. Mr Farid took over

in May 2012 and subsequently inspected the Block with a view to preparing a maintenance programme.

63. Mr Farid consulted with the directors of the Applicant Company, especially Dr Lange, regarding the maintenance programme.

64. On 12 June 2012, Dr Lange sent a circular letter to all leaseholders on behalf of the Applicant. This referred to the need for major works at the Block and opened with the following sentences "*The current value of the average flat in Addisland Court (ACCL) is between £1 million and £2 million, depending on who one talks to. It is generally agreed that a property owners' Maintenance Budget should plan for 1% of value per year, so between £10,000 and £20,000 per flat per year in our case*". This generalised assertion is misleading in that it suggests maintenance costs are directly linked to the value of a property and ignores other factors such as age, construction and maintenance history. Further it ignores the impact that location will have on the value of a property. The cost of maintaining identical properties in prime central London and the provinces should be very similar whereas the value of the properties will differ widely.

65. During his inspection, Mr Farid observed that the roof covering was showing signs of failure in several places. He instructed roofing contractors, The Garland Company UK Limited ("Garland"), which produced an initial report on the roof dated 20 June 2012 and a revised report dated 26 July 2012. The reports referred to water ingress to the flats below and Garland concluded that the roof covering had failed and required full renewal. A specification of works was appended to the reports. The estimated cost of the works was £120,000 in the June report and £100,000 in the July report.

66. Mr Farid produced a document headed "*10-Year Planned Maintenance Programme*", dated 20 July 2012. This ran to 10 pages and included property details, an executive summary and a maintenance programme. The opening sentence of the executive summary reads "*The elevations of the property are generally in good condition and the next cycle of external repair and redecoration works to the elevations are not required for a few years*".

67. The maintenance programmed identified the various works required, budget figures for these works and Mr Farid's recommendations for phasing. It was described as a 10-year maintenance programme but only covered the financial years 2012/13, 2013/14 and 2014/15. It provided that the roof repairs and certain external works should be undertaken in 2013/14. In his oral evidence, Mr Farid explained that he had updated the programme on several occasions since July 2012.

68. After producing the original programme of works, Mr Farid liaised with the directors and D&G regarding the phasing of the roof and other external repairs. Three options were considered, namely:

- Undertake the roof and external repairs at the same time;
- Undertake the roof and urgent external repairs first and delay the less urgent works, to spread the costs;
- Undertake the roof repairs only.

Mr Farid prepared spreadsheets, showing the differing estimated costs for each option. Initially he recommended the second option with the first phase of works to be completed in early 2013 and with the timing of the less urgent external works to be agreed, but within 5 years.

69. After further consultation between Mr Farid and the directors, it was agreed that the works would be split into two phases, with the roof repairs and external works to the front elevation in year 1 and works to the rear elevation in year 2. Mr Farid favoured a two phase approach, rather than three phases. He considered that this would be more economic in the long term, as it would save approximately £40,000 in scaffolding costs. There would also be savings on other preliminaries and fixed costs. Furthermore, two phases would minimise the scaffolding disruption to residents, as it would be easier to isolate sections of the Block.

70. Mr Farid subsequently prepared a specification and obtained tenders for the works to the roof and front elevation. He produced a tender report dated 18 March 2013 and D&G then served statements of estimates, as part of the formal section 20 consultation. There were also informal consultation meetings between D&G and the leaseholders. During the course of the consultation process, the Respondents obtained a report from Mr Robert Harris MRICS of Crowther Overton-Hart Chartered Building Surveyors, dated 02 August 2013. This made certain criticisms of the 10-year maintenance programme and suggested that further investigations be undertaken to ascertain whether the wholesale replacement of the flat roof covering was required. The report also suggested that further patch repairs be carried out pending any replacement of the roof covering and recommended that the latter could be combined with external repairs and redecoration in two years time. Mr Harris also addressed the question of whether economies of scale could be achieved by combing the roof repairs with the works to the front elevation. Their opinion was that any costs saving would be marginal.

71. Mr Farid was supplied with a copy of Mr Harris' report in December 2013. His colleague, Mr Shaun Harris, commented upon the report in a

letter to the Applicant's solicitors dated 20 December 2013. His conclusion was that the first phase of work was fully justified and could be robustly supported if matters proceeded to tribunal.

72. Phase 1 of the works commenced in January 2014 and completed on 22 August 2014. The works were undertaken by S Ramsay Limited ("SRL") and their final account was submitted to Mr Farid in September 2014. He produced a schedule, certifying various sums for the works completed. Details of the actual costings were finalised with SRL on 15 October 2014 and the total sum due was £323,963, which included variations totalling £29,792.40. Mr Farid's schedule has been analysed by Mr Fifield, who disputes various items. The total amount of these disputed items is £100,581, representing approximately 31% of the final cost. The hearing bundle contained a Scott Schedule, setting out Mr Fifield's comments on the disputed items and Mr Farid's responses.

73. The parties' arguments and submissions on the disputed issues are set out below.

Duplication of roof repairs

74. The Respondents' case is that the roof repairs that were undertaken in 2005/06 were of a poor standard and represented extremely poor value for money. They rely on the Garland report, which referred to *"..the very poor quality of both the material and the workmanship of the single felt overlay"*. The Respondents also rely upon the fact that the roof covering required replacement only 6 years after the 2005/06 repairs. In his original report, Mr Fifield advised that had the overfelting been carried out correctly then this should have increased the life of the roof *"..by say 10-15 years"*.

75. Mr Allison put the Respondents' case in one of two ways. Either a credit is due for the cost of the 2005/06 roof repairs on the basis that the works were of a poor standard or the cost of the 2014 roof works should be reduced by a commensurate amount, as having been unreasonably incurred. Put simply the 2014 roof repairs would not have been necessary had the 2005/06 works been undertaken to a reasonable standard.

76. In his closing submissions, Mr Allison acknowledged that the leaseholders had derived some benefit from the 2005/06 works. He suggested that a 'lost years' calculation would be appropriate, as the works had only extended the life of the roof by 6-7 years, as opposed to the 10-15 years suggested by Mr Fifield. Upon this basis he invited the tribunal to reduce the cost of works by 50%. Mr Allison also suggested that the Applicant should have pursued the original contractor, PMCL, for the defective work in 2005/06.

77. The Applicant contends there should be no reduction in the cost of the 2014 works, arising from any duplication of roof repairs. In his closing submissions, Mr Brown pointed out that the parties did not have a copy of the specification for the 2005/06 works, so cannot say whether PMCL had undertaken the works in accordance with the contract.

78. In relation to the alternative ways that Mr Allison had put the Respondent's case, Mr Brown pointed out that two of the Respondents, Mr Pojdl and Mr Thompson-Mayassi had bought their flats after the 2005/06 works. This means that they have no standing to challenge figures in the 2005/06 accounts. Mr Mallorie was also in difficulties, as the 2005/06 accounts had been the subject of a previous determination by the LVT and there had been no challenge to the roof works. Mr Brown contended that a reduction in the cost of the 2014 roof works would not be appropriate, as everyone agreed that these works were necessary and there had been no challenge to the quality of the works. It follows that the 2014 works had been reasonably incurred. Mr Brown also referred to the approach taken by the Lands/Upper Tribunal to set-off claims in ***Continental Property Ventures Inc v White [2006] LRX/60/2005*** and ***Daejan Properties Limited v Griffin [2006] UKUT 0206 (LC)***.

79. The tribunal makes no reduction in relation to the alleged duplication of the roof repairs. It has no jurisdiction to determine the service charges for 2005/06, as these charges have already been determined by the LVT and did not form part of the proceedings transferred from the County Court. Further it would not be appropriate to reduce the cost of the 2014 roof works. These works were clearly necessary and were undertaken to a reasonable standard. There was insufficient evidence to establish that the 2005/06 works were not of a reasonable standard or that the 2014 works would have been unnecessary had the earlier works been undertaken to a higher standard. The tribunal did not consider that a 'lost years' deduction was appropriate. Although the roof was failing by the time of the Garland reports in June and July 2012, it was not until 2014 that the roof was recovered. This means that the leaseholders at the Block had the benefit of the 2005/06 works for 8-9 years. This is shorter than the timescale of 10-15 years proposed by Mr Fifield but was a reasonable period and the tribunal is satisfied that the 2014 roof works were reasonably incurred.

80. At this juncture it is appropriate to briefly comment on the report from Mr Harris, dated 02 August 2013. The tribunal attached little weight to the report, as it did not take the form of an expert's report. There was no expert's declaration and it was prepared approximately 6 months before the 2014 works commenced and the County Court proceedings were initiated. It appears that the Respondents decided to replace Mr Harris, as they subsequently obtained reports from Mr Fifield and it was he who acted as their expert witness in these proceedings. Mr Harris did not give oral evidence before the tribunal and this meant that there was no opportunity to test his evidence.

Phasing of 2014 major works

81. The Respondents criticise the phasing of the works and the '10-year' planned maintenance programme. The programme produced by Mr Farid was actually for a period of 3 years, did not cover many of the building elements and was not referable to the history of works at the Block. Concerns were raised about the phasing early on and detailed questions were submitted to D&G during the consultation process. D&G circulated a detailed response to these questions by email, on 28 October 2013.

82. In his original report, Mr Fifield suggested that the external decorations could last another 18 months and expressed the opinion that *"..late 2015-2016 should be when decoration is carried out to the front elevation"*. He advised that the roof could be recovered without the need for complete scaffolding and that this would have reduced the scaffold costs for the front elevation by approximately 30% (£16,546).

83. The Respondents accept that it was reasonable to undertake the roof repairs in 2014 although Mr Allison queried the reliance on the Garland report, given that Garland are roofing contractors rather than independent experts.

84. In his closing submissions Mr Allison was critical of Dr Lange's generalised statement that property owners should budget for maintenance costs of 1% of a property's value. He also referred to Mr Farid's recommendation that the roof and non-urgent external works be undertaken in two separate phases. The Applicant appears to have ignored or overruled this advice and could not justify the decision to undertake the works to the front elevation in 2014. There was no proper pre-works survey to establish the condition of the exterior of the Block or any urgent need for works to the front elevation. These could have been deferred for two or three years, given the executive summary in Mr Farid's maintenance programme.

85. Mr Allison suggested that the phasing of the works was not thought through properly. There was no proper consideration of alternative phasing. The roof works could have been undertaken in isolation with scaffold towers, rather than full scaffolding. The works to the front elevation could have been deferred, to spread the costs and to ensure maximum value. Again Mr Allison suggested that a 'lost years' deduction would be appropriate, upon the basis that the works had been undertaken two or three years early. Working upon the basis of a 10-year redecoration cycle, he suggested that the cost of the works to the front elevation should be reduced by 2/10^{ths} or 3/10^{ths}.

86. In his closing submissions, Mr Brown argued that the Applicant's approach to the phasing of the works had been reasonable and there should be no 'lost years' deduction. The lease does not stipulate any

time period for external decorations. Rather such works are to be undertaken *"As often as may be necessary.."*. The Applicant had considered a number of phasing options and the impact that this might have on the cost of the works. It had sought professional advice from Mr Farid, before deciding to combine the works to the roof and front elevation in one phase. Mr Brown argued that more than one approach to the phasing of the works could be reasonable. He pointed out that, in response to a question from the tribunal, Mr Fifield had stated that the Applicant's approach was *"not unreasonable"*.

87. Mr Brown also pointed out that the Respondents had not advanced any financial argument for deferring the works to the front elevation. There was no evidence that contributing to the combined works would place them in financial difficulties. In the case of Mr Thompson-Myassi, there was contrary evidence. In his statement he had said *"I am fortunate to have no financial problems and the amount being billed for the major works and the heat exchanger wouldn't cause me any concern and ordinarily I would take the easy way out and just pay"*.

88. The tribunal makes no deduction for the phasing of the major works. Whilst it has some concerns as to the influence that Dr Lange had on the decision to combine the works to the roof and front elevation, the decision was a reasonable one. Clearly there are economies of scale if major works can be combined. This was acknowledged by Mr Fifield in his original report, which stated *"It is clearly more cost effective to carry out all works at the same time, however, if the cycle is extended it will reduce the difference in extra costs"*.

89. The Applicant sought professional advice from Mr Farid, as to the phasing of the major works. When assessing the various options he looked at potential economies of scale and the financial impact and disruption to the leaseholders. Having received this advice, the Applicant decided to combine the works to the roof and front elevation. This decision was a reasonable one, having regard to the potential costs saving, the impact on leaseholders and the length of time since the last redecoration works. It follows that the cost of the works to the front elevation were reasonably incurred, subject to the tribunal's determinations on the specific disputed items at paragraph 90. The fact that the works to the front elevation could have been deferred by 18 months does not mean the cost of these works was not reasonably incurred. The Applicant did not have to opt for the cheapest method of phasing the works. Rather it was sufficient to opt for an objectively reasonable method, which it did.

Specific challenges to final account

90. During the hot-tubbing session the experts went through the various disputed items in the final account. Their respective arguments, together with points advanced by Mr Mallorie, were recorded in a

detailed Scott Schedule. It is unnecessary to recite these arguments, as the Schedule is there for all to read. The tribunal's determinations on the disputed items are set out in tabular form below:

Item	Determination
Part 3 – Schedule of works	
1.8.1- Temporary WC facilities (£2,000)	Allowed in full – it was reasonable to provide temporary facilities for the duration of the works, notwithstanding that the Block has its own 'workmen's toilet'". There was no challenge on quantum.
1.8.7 – Moving and reinstating residents' property in areas other than the roof terraces, to undertake works (£500)	Allowed in full – it was reasonable to pay the builders for general removal of these items rather than rely on residents to do so. The amount charged was reasonable. There was on challenge on quantum
1.9.1 – Site foreman and management of works (£4,800)	Allowed in full – it was reasonable to accommodate the foreman and other workers in the porter's flat, whilst the porter was on holiday. This provided additional security for the Block. No set-off allowed for notional rent of the porter's flat. There was no other challenge on quantum.
1.10.1 – Scaffolding (£52,154.30)	Allowed in full – the scaffolding plan was reasonable given that the tribunal have determined that it was reasonable to combine the works to the roof and the front elevation. Full, as opposed to partial, scaffolding was appropriate. There was no other challenge on quantum.
2.1.12 – Roof domes (£2,520)	Allowed in full – the roof dome in Flat 40 needed to be removed to undertake the works to the roof and could not be refitted. The dome is part of the roof structure and falls within the Applicant's repairing obligation at paragraph 1(a)(i) of the sixth schedule to the leases. There was no challenge on quantum.
2.2.1 – Moving planters and other items on north roof terraces, to undertake works (£500)	Disallowed in full – only part of the roof terraces are demised. Many of the items were on communal areas and the Applicant should have insisted upon removal by the leaseholders/residents concerned. There was no other challenge on quantum.
2.2 Works to north roof terrace (£18,999)	£17,499 allowed – Approximately 1/3rd of the terrace is within the demises to Flats 39 and 40. The leaseholders of these flats are

	responsible for the maintenance and repair of the surface of those parts of the terrace that are demised [paragraph (v) of second schedule and paragraph (i) of Part II of the second schedule to the leases]. The tribunal disallowed a sum of £1,500 for the removal and replacement of the promenade tiles in the demised areas. These form part of the surface of the terrace and are the leaseholders' responsibility. There was no other challenge on quantum.
2.3.1.2 Provision of temporary guard rails on lift motor room roof (£500)	Agreed by Respondents during the course of the hearing so no determination required
2.4.1 Works to front elevation – bay and small flat roof spaces (£8,306)	Allowed in full – The Respondents requested a copy of the warranty for this work, which Mr Farid agreed to supply. There was no challenge on quantum.
3.2.2 Stone/brickwork repairs (£5,554)	Allowed in full – The scope of these repairs had varied during the course of the works, resulting in an overall decrease from £7,000 to £5,554. Mr Farid had checked the adjusted sums claimed with his site sheets, recording the works undertaken and was satisfied that the variations were correct. Although the sheets were not disclosed (and should have been), the tribunal accepted Mr Farid's evidence. There was no other challenge on quantum.
3.2.4 Render repairs (£3,400)	Allowed in full – The scope of these repairs had varied during the course of the works, resulting in an overall increase from £1,650 to £3,400. Again Mr Farid had checked the adjusted sums claimed with his site sheets and was satisfied that the variations were correct. The tribunal accepted Mr Farid's evidence. There was no other challenge on quantum.
3.3.2 Asphalt repairs to balconies (£600)	Disallowed in full – The asphalt is part of the surface of the balconies and is the responsibility of the individual leaseholders [paragraph (v) of second schedule and paragraph (i) of Part II of the second schedule to the leases].
3.4.1 Replacing all mastic (£6,000)	Allowed in full – It was reasonable to replace all of the mastic when redecorating the windows, given that this was 10 years old and given that next external redecoration would be in 10 years time. The tribunal accepted

	Mr Farid's evidence that there were signs that the mastic was failing, particularly at high levels. There was no challenge on quantum.
3.8.2 Easing and adjusting of windows and doors, as necessary (£500)	Allowed in full – This work was undertaken prior to the redecoration of the windows and was reasonable. There was no challenge on quantum.
3.8.5 Replacement of broken window panes (£360)	Agreed by Respondents during the course of the hearing so no determination required.
4.4.1 Decoration of external metalwork (£43,650)	Allowed in full – By the time of the hearing the only challenge to this item related to the painting of windows in the common-ways. Many of these do not close properly and/or require easing. Mr Farid advised that contractor had agreed to return to site to address this issue and that the retention (1%) more than covered the cost of snagging works. Upon this basis, no deduction is appropriate.
4.5.1 Decoration of boundary railings and front door (£1,500)	£1,000 allowed – The Applicant conceded £500 in relation to the main front door. Mr Farid accepted that this had been professionally cleaned, rather than redecorated. The tribunal accepted Mr Farid's evidence that the railings around the perimeter of the front walls had been redecorated and allow £1,000 for this work.
Additions and variations	
3.0 Excavate soil to expose & repair down pipe (£550) & 22.00 damp proofing of adjacent garage (£7,722)	During the course of the hearing, the Applicant conceded that these items were not part of the major works, would be taken out of the final account and billed separately. No determination required.
4.0 Flat 35 (£1,250) & 5.0 Flat 32 (£2,990)	Agreed by Respondents during the course of the hearing so no determination required.
7.0 Remove all cable trays from roof (£1,000) & 12.00 move cable trays (£100)	Conceded by Applicant during the course of the hearing and will be taken out of the final account. No determination required.
8.0 Strip all railings back to a sound surface (£6,600)	Allowed in the full – It was reasonable to burn off the paintwork for the balcony railings to strip back to bare metal, given the reaction when the new paint was initially applied and the advice of the Dulux

	representative, Mr Trevor Steele. In his oral evidence, Mr Fifield put forward an alternative figure of £4,000-4,800. This was upon the basis that the work should have cost £50-60 per meter and the railings spanned approximately 80 meters. However this figure was given 'off the cuff' and without detailed measurement of the railings. The tribunal is satisfied that the sum charged was within a reasonable range.
10.00 Investigate and repair leak in bathroom of Flat 17 and make good (£450)	Disallowed in full – Leak was found within a pipe joint as it passed through the external wall. This exclusively serves the demised premises and is the leaseholder's responsibility [paragraph (vi) of second schedule and paragraph (i) of Part II of the second schedule to the leases].
14.00 Balconies – sealing with mastic (£300)	£200 allowed – The mastic was mainly applied to the outer edge of the balcony slab, which is part of the structure of the Block and which is the Applicant's responsibility. The tribunal disallowed a sum of £100 for mastic applied to the asphalt upstands, which are part of the balcony floor surface and are the leaseholders' responsibility.
15.00 Re-colour 1220 bricks (£3,280.40)	Disallowed in full – Mr Farid was unable to identify the bricks (or the areas) in question or produce any instruction for this variation. Cleaning of the bricks was within the original specification. There was no documentary evidence to justify the need to re-colour such a large number of bricks.
17.00 Remove metal staircase to north terrace (£260)	Agreed by Respondents during the course of the hearing so no determination required.
19.00 Time for excessive liaison with mobile phone companies (£0)	Agreed by Respondents during the course of the hearing so no determination required.
20.00 & 21.00 Out of sequence works and cleaning, arising from renovation of Flat 25 (£200)	Conceded by Applicant during the course of the hearing, will be taken out of the final account and billed to the leaseholder of Flat 25. No determination required.

91. The total amount disallowed by the tribunal and conceded by the Applicant is £16,052.40 plus VAT (items 2.2.1, 2.2, 3.3.2, 4.5.1 and additions/variations at items 3.00/22.00, 7.00/12.00, 10.00, 14.00, 15.00, 20.00 and 21.00). This reduces the amount of the final account

to £307,910.60 plus VAT (total £369,492.72). At the conclusion of the hearing, both Counsel agreed that any reduction in the final account should be apportioned equally between the years ended March 2014 and 2015, given that the cost of the work has been charged across both service charge years. It follows that the sum allowed for 2013/14 is £213,588.80 plus VAT (£221,615 less £8,026.20) and the sum allowed for 2014/15 is £94,321.80 plus VAT (£102,348 less £8,026.20).

Contract administration fee - £31,624.08 plus VAT

92. The Respondents contend that there should be a reduction in the 10% contract administration/management fee charged by SHAL. In his closing submissions, Mr Allison made various criticisms of Mr Farid's management of the major works including the lack of a proper pre-works survey, the absence of proper records for the brickwork repairs and the re-colouring of a large number of bricks, the failure to disclose the site sheets and a failure to check that the main entrance door had been redecorated.

93. Mr Allison also criticised the delay in completion of snagging works. He queried why snagging had not yet taken place, given that the major works were completed in August 2014. The Respondents have little confidence that snagging will ever take place.

94. Mr Allison did not seek to argue that 10% was an unreasonable figure. Rather he suggested that there should be a reduction that was commensurate with the 1% retention and the cost of the various works to the brickwork.

95. The tribunal makes no reduction in the 10% rate. Having inspected the Block and made the various determinations set out in this decision, the tribunal is satisfied that the management provided by Mr Farid was of a reasonable standard. The quality of the major works was generally of a good standard and Mr Farid should be commended for this. There is some merit in Mr Allison's criticisms about missing documents but this does not detract from the quality of the works or justify a reduction in the management fee. Although there are some snagging items, the retention is sufficient to cover the cost of these works. Mr Farid should arrange for SRL to undertake the snagging without further delay.

96. The level of the management fee (10%) is entirely reasonable. No fee is payable in respect of the sums disallowed/conceded. This reduces the management fee by £1,605.24 to £30,018.84 plus VAT (total £36,022.61).

Interim service charges

97. In his closing submissions, Mr Allison submitted that a reduction in the interim service charges would be appropriate if the tribunal made a substantial reduction in the final cost of the 2014 major works, as this would suggest the budget for the works was too high. The tribunal have reduced the cost of the works by £16,052.40, which is approximately 5% of the final account sum. The total sum allowed, including the contract administration fee and all VAT is £405,515.33. This is very similar to the figure given in the original budget prepared by Mr Farid (£401,478). Given that the sum disallowed is modest and the similarity between the budget and the actual cost of the works, the tribunal allows the interim service charges in full.

Refund of fees and section 20C

98. The Applicant did not pursue its application for a refund of fees paid to the tribunal[1] and the Respondents did not pursue their application for an order under section 20C of the 1985 Act. Accordingly no orders are made in relation to fees or section 20C.

The next steps

99. The tribunal has no jurisdiction over ground rents, statutory interest or court costs and fees. This matter should now be returned to the County Court to determine these issues and the set-off claims relating to the removal of the decking outside Flat 4 and 5. However the parties may also wish to consider alternative dispute resolution. Clearly it is in everyone's interests to try and resolve the outstanding issues rather than continue with costly litigation and become increasingly entrenched. The Respondents and the directors in the Applicant company are all leaseholders and neighbours at the Block and should make every effort to try and resolve their differences.

Name: Tribunal Judge Donegan **Date:** 31 May 2015

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

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

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,

(d) the date at or by which it is payable, and
(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

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

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

Section 20

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

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or
(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
(a) an amount prescribed by, or determined in accordance with, the regulations, and
(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20B

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are

not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;

(aa) in the case of proceedings before a residential property tribunal, to that tribunal;

(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

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