12172

FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/OOAU/LSC/2016/0495**
Property	:	**34A Halliford Street, London N1 3EL**
Applicant	:	**Mrs Angela Greer**
Representative	:	**Representing herself accompanied by her husband Mr Ian Stapleton**
Respondent	:	**Mr Sean McCluskey and Ms Kathleen Tomashevski**
Representative	:	**Mrs Helen Matthews of Ellington Estates**
Additional Parties Attending	:	**Mr Charles Corder BSc (Hons) MSc APM(A)** **Mr Barry Harding AFA MCMI of Cordrose Management Limited**
Type of Application	:	**1. The liability to pay a service charge** **2. The liability to pay an administration charge** **3. The appointment of a Manager**
Tribunal Members	:	**Tribunal Judge Dutton** **Mr C P Gowman MCIEH MCMI BSc** **Mr O N Miller BSc**
Date and venue of Hearing	:	**10 Alfred Place, London WC1E 7LR on 10th and 11th April 2017 and meeting 18th April 2017**
Date of Decision	:	**9th May 2017**

DECISION

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DECISION

1. **In respect of the liability to pay service charges, the Tribunal makes the findings as set out on the Scott Schedule attached hereto and expanded upon in the findings section.**
2. **The Tribunal determines that the administration charge of £360 for the provision of a leasehold property enquiry form is reasonable and payable.**
3. **In respect of the appointment of a manager, the Tribunal is satisfied that there have been breaches of Sections 24(aa), (ab) of the Landlord and Tenant Act 1987 and that it is just and convenient to make an order appointing Mr Charles Corder the manager of the property for the period and upon the terms set out in the attached management order.**
4. **The Applicant has made an application for costs to be payable by the Respondent under the provisions of Rule 13 of the Tribunal Procedures (First Tier Tribunal) (Property Chamber) Rules 2013. Directions for the determination of this matter are set out at the foot of this decision. It is intended this matter can be dealt with on paper but if either party requires a hearing they must notify the Tribunal within 14 days of the receipt of this decision.**

BACKGROUND

1. Mrs Angela Greer, the Applicant, made three applications to the Tribunal all dated 15th December 2016. The first was a determination in respect of the reasonableness and payability of service charges for the year 1st April 2014 to 31st March 2015 and the following years through to the 1st April 2017 to 31st March 2018. In fact, the first year for the 1st April 2014 was not in issue but we will deal with that in the findings section. The issue relating to the later years, that is to say 1st April 2016 through to 31st March 2018, appeared to be in respect of insurance matters which we will deal with in the findings section. A Scott Schedule had been produced and was eventually completed by the Respondents. That has also been completed by us and is annexed to this decision. This deals with the various items in dispute relating to the reasonableness and payability of service charges for the year 2015 -16. These matters, clarified in the grounds attached to the application challenged specific items of expenditure and raised whether or not the demands were compliant with the Landlord and Tenant Act 1987, the Commonhold and Leasehold Reform Act 2002 and the Landlord and Tenant Act 1985. It is also said that they had been demanded in breach of clauses of the lease.

2. In addition to the specific items of expenditure in the years April 2015 to 2016, there was also included within the application the question as to whether or not the monies demanded by way of section 20 procedures, apparently totalling some £42,830.37, was claimable. This also drifted into the following year where there was, in addition, a charge for £75 in respect of an inspection carried out for the Respondent of the Applicant's flat.

3. There was also a challenge to the insurance premium claimed is in relation to the years April 2015 to March 2016 and April 2016 to March 2017. The complaint is that the insurance does not comply with the terms of the lease.

4. In respect of the application to determine an administration charge, this refers to a charge made of £360 by the Respondents' solicitors for the completion of a leasehold property enquiries form at the time that the Applicant was seeking to sell. There is also a challenge made to legal fees which are included in the certificate for the year ending March 2016 and some administration charges being postage, legal fees, correspondence, the preparation of accounts and the inspection fee referred to above. Again, in respect of this application reference is made to the section 20 notice.

5. The final application is for the appointment of a manager. A notice under section 22 of the had been served on the Respondents but it was said that the issues set out therein had not been addressed and accordingly the application for appointment continued. It is indicative of the case to note that the notice under section 22 of the Landlord and Tenant Act 1987 ran for some 20 pages.

6. Prior to the hearing, we were delivered two bundles of papers prepared by the Applicant running to some 639 pages. On the morning of the hearing, the Respondents produced to the Tribunal their bundle having apparently provided this to the Applicant on the Thursday before the hearing.

7. The bundles prepared by the Applicant contained the applications, the section 22 notice, correspondence with the Tribunal and directions, correspondence passing between the Tribunal, the Applicant and Mrs Matthews for the Respondents, extracts of the legislation and some authorities that the Applicant considered to be appropriate. In addition, we had the lease for the flat as well as some title documentation and photographs.

8. In respect of the appointment of a manager application, a draft management order had been submitted prepared by Mrs Greer and details of Cordrose Management Limited's experience was also included. Finally, we had the Applicant's response to the Respondents statement of case with a continuation.

9. In the Respondents' bundle, we had their statement of case, responses to the Scott Schedule with invoices to support those costs, a witness statement of Miss Tomashevski and a witness statement of Mrs Matthews.

10. During the course of the hearing we were provided with the following documents:-

   - What appeared to be the report prepared by Mr Weaver indicating a visual survey of 34A Halliford Street conducted on 18th November 2015. It had no introduction nor signature page.
   - Copies of invoices from Bircham Dyson Bell dated 27th November 2015 in the sum of £420 and dated 28th February 2016 in the sum of £900. Both had what appeared to be timesheets annexed.

- A further copy of the service charge certificate for the period 1st April 2015 to 31st March 2016 was presented which included the insurance for that year in the sum of £1,006.03.
- A copy of what purported to be a letter sent on 3rd March 2016 said to include a demand with a summary of tenant's rights was produced but said not to have been received by Mrs Greer.
- Finally, during the course of the application for the appointment of a manager, Mr Harding gave us a schedule of information that he thought would be of help to them if Mr Corder was appointed.

HEARING

11. The hearing began with an application by Mrs Greer to debar the Respondents from relying upon the evidence delivered to the Tribunal on the morning of the hearing. She said they had failed to comply with directions given in February and that the Respondents had ample time to deal with the matter. Mrs Matthews was a solicitor as apparently was Miss Tomashevski. Mrs Greer told us that the Tribunal had refused to adjourn the hearing the week before yet immediately upon such refusal the Respondents had then produced the papers which they delivered to Mrs Greer on the Thursday.

12. Mrs Matthews for the Respondents said that there had been domestic problems and that she had requested an adjournment to attend her mother's funeral. She told us that they had been working on the papers and had done the best they could.

13. Mrs Greer said that she wished the matter to proceed but that we were requested to make a decision as to whether or not the Tribunal would allow the late delivery. In the absence of an application for an adjournment by Mrs Greer, who had indeed had the papers since the Thursday before the hearing, we concluded that the matter should proceed as the cost of adjourning what was already an acrimonious dispute would not justify this step. We did not consider that Mrs Greer was prejudiced by the somewhat late delivery of the bundle of documents which was considerably smaller than the bundles that she had prepared. That is not to say, however, that we were content with the behaviour of the Respondents in producing the documents at such a late stage. It appears that upon being told that the matter would not be adjourned, the Respondents had been able to produce the documentation that day which suggests it was near to if not completed beforehand and could therefore have been provided to the Applicant and the Tribunal earlier than they did.

14. We should record that there appears now to be no issue in respect of the service charge year from 1st April 2014 to 31st March 2015. Apparently, this service charge year was a subject of a complaint to the County Court by the Respondents but the local authority, Partnership for Islington, in fact indicated that there had been an error in the demand made of Mrs Greer and settled the amount due directly with the Respondents.

15. We then turned to the items of service charges which were in dispute which are to an extent set out on the schedule annexed to this decision.

16. Mrs Greer addresses the various items of expenditure on the certificate and the schedule in her witness statement. The same cannot be said for the Respondents. However, in evidence to the Tribunal Miss Tomashevski told us this about the drains. She said that they were at the back of the house and were communal, flowing from their kitchen and that they had been regularly blocked over the years as a result of 'actions' from Mrs Greer's flat. Apparently, this was causing back up into the house and they also had sewerage backing up from the upstairs flat. The invoice in support of the sum of £126 is from Pimlico Plumbers and is dated 27th August 2015. Apparently, Pimlico recommended works, which have not been done, but there have been no problems with the drainage since they attended.

17. Mrs Greer told us that she telephoned Pimlico a couple of days before the hearing and they confirmed to her that the work that was undertaken was within the flat only. This was denied by Miss Tomashevski. The invoice itself was contained in the bundle and appears to refer an emergency blockage and refers to the clearing of a trap which was refitted and advice given as to works which were scheduled below under the heading Recommendation. This appeared to include a new waste from the sink to the gulley and associated items. There is on the invoice no clear reference to works being undertaken exterior to the Respondent's flat.

e next item of expenditure related to works of maintenance to the front rden and appears on the schedule apparently four amounts for £89, £93, £194.64 and £120. Invoices to support this were included showing a sum of £ 2.99 from Bridge End Garden Centre and two invoices from a Mr Anthony ptiste dated 29th April 2015 for £60 and 28th June 2015 for £191.65. The first amounts of £89 and £93, for which there did not appear to be supporting oices, were not pursued by the Respondents. The works appear to relate to the laying of a weed membrane to the front garden following weed treatment and the covering of that membrane with woodchip. In addition also, it is suggested that part of the labour cost related to the creation of two raised beds which had been sited in the front garden area to the exclusive use of the Respondents.

19. Miss Tomashevski, who at this point told us for the first time that both she and her husband were dyslexic, said that she would not be pursuing costs relating to the raised bed but appeared only to be seeking the amounts on the Scott Schedule of £194.64 and £120. Miss Tomashevski indicated that in her view the garden belonged to the freehold and that Mrs Greer's rights were of passage only to the flats, although it was conceded that there was the right to store a bin. Mrs Greer told us that the garden had been grassed and that she had in the past carried out some maintenance. The bulk of the works, however, were undertaken by the Respondents. Miss Tomashevski said that they had proceeded to try and improve the garden area because they were aware that Mrs Greer was wanting to sell and the garden had become somewhat overgrown. She accepted, however, that Mrs Greer had not been consulted on the question of raised beds nor the removal of the grass.

20. The next item on the Scott Schedule related to an administration charge for postage of £3.78 which was not disputed.

21. The next item related to legal fees. It was not until the second day of the hearing that we were provided with copies of what purported to be fee notes from Bircham Dyson Bell (BDB) dated 27th November 2015 in the sum of £420 and dated 10th February 2016 in the sum of £900 both inclusive of VAT. There was some narrative to the bills themselves but that did not really indicate what works had been done although the time details attached did give some indication as to the works undertaken by Mrs Matthews in her capacity as a solicitor with BDB. It is also noted that the fees in both cases had been capped. Miss Tomashevski told us that she had gone to BDB for advice on the acquisition of the freehold and the management of same and that the advice and correspondence, which were the subject of the invoices, started on 7th October 2015 and went through to February of 2016. Miss Tomashevski said that they had wanted to obtain proper advice on the management of the property as they were being bombarded with correspondence from Mrs Greer. Apparently, she had written some 57 letters in a two year period.

22. On the second day of the hearing we had some greater explanation as to the legal fees having had sight of the invoices. The invoices totalled £1,320 but only £834 was claimed, although no explanation as to this lesser sum was provided. Mrs Greer felt the fees were excessive and related to routine correspondence from a City firm. In her view there was nothing under the terms of the lease that enabled the recovery of these legal costs, although she was referred to the Management Element at schedule 3 part 2 of the lease. Mrs Greer also pointed out that some of the items of correspondence appeared to be with her conveyancing solicitors and also in respect of the alleged faulty insurance arrangements.

23. Mrs Matthews in response told us that in her view clause 5(3) of the lease, which says as follows *"a proportion of the expenses and outgoings and incurred or to be incurred by the accounts in respect of those items set out in the 3rd schedule hereto and which comprise:*
(1) The repair, maintenance, renewal and improvement of the building and any facilities and amenities appertaining to the building;
(2) The provision of services for the building;
(3) Other heads of expenditure"
gave the right to claim these costs as did part 2 of the 3rd schedule items (a) the collection of rent and service charges, (b) the administration of insurance and (c) the cost of providing certificates. She also referred to clause 3(19) of the lease which does specifically refer to legal costs but that in relation to the preparation and service of a notice under section 146 or 147 of the Law of Property Act 1925 and other matters which would not appear to be relevant in this case. She did concede that nothing in the invoices related to forfeiture proceedings.

24. The next item of expenditure related to a charge of £50 for letters. It was said by Mrs Greer that this item of expenditure related to letters written in respect of the service charge year 2014/15 which was not in issue as far as she was concerned and which was settled by the Council. It should not, therefore, be an expense that she should be expected to meet. Miss Tomashevski thought that the Council

that had previously managed the property had written letters but of course were able to absorb the cost more easily than she could do so. She reminded us that Mrs Greer had written some 57 letters over a two year period and the response thereto with a fee of £50 was reasonable. The next item of expenditure related to a charge of £25 for the preparation of the accounts. It was Mrs Greer's case that these were not certified and were incorrectly calculated and, therefore, this sum should not be paid. Miss Tomashevski said that she maintained a spreadsheet and had carried out works which took her in excess of an hour to produce the document and that £25 seemed reasonable, although she accepted that it was subject to errors. It had, she said, been produced to assist Mrs Greer's buyer.

25. On the schedule the next item of expenditure related to the inspection of the flat by Mr Weaver whose report was made available to us at the hearing. This was, we were told, a "baseline inspection" used to confirm the number of bedrooms and to take measurements of the flat's gross internal area. Mrs Greer indicated that she did not object to the carrying out of a survey and would like to see a copy of the report.

26. The next item we were required to deal with on the schedule was the apportionment of service charges between the Applicant and Respondents. It is perhaps appropriate at this stage to give something of the background of the leasehold ownership. The original freeholder was the Mayor and Burgesses of the London Borough of Islington, now we understand known as Partners for Islington. Mrs Greer had been a local authority tenant of the Council since March of 1991 and acquired the leasehold interest in the property under the Right to Buy legislation in 2008. The lease is dated 21st April 2008 for a term of 125 years and a copy of the lease was included within the papers.

27. It would appear that on 31st March 2015 the local authority transferred the freehold of 34 Halliford Street to the Respondents. The Respondents by this time were the leaseholders of Flat 34B, themselves having acquired that under the Right to Buy legislation that had vested the flat at 34A to Mrs Greer. Mrs Greer was unhappy at this as she had hoped to have acquired the freehold. Complaint was made about this in her witness statement. This may have flavoured the relationship. In any event, the Respondents became the landlords and in their first year ignoring the 2014/15 period decided that the apportionment of the service charge liability should be changed from a 50/50 split, which appeared to have been the position for some time and certainly during the period of ownership by the Council to three fifth/two fifth split in effect in their favour they only paying two fifths of the costs. This, it was said, was done on the basis of the number of bedrooms, it being alleged that the Applicant had three bedrooms in her flat, she having converted the bathroom. There was no real evidence on this point but we were told that on sale Mrs Greer had been marketing the property as a three bedroom flat but now claimed it only had two bedrooms as she had changed the use of one of the rooms. Arguments were raised as to whether or not the Applicant had obtained building regulation permission or indeed consent from the Respondents, but that is for another time.

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28. It is right to note that originally the lease provided for the apportionment to be on a rateable value basis. In the absence of a rateable value for the property, the lease provides at page 10 under paragraph 5 proviso A and B that if the rateable values are abolished or disused then there shall be substituted *"by reference to the floor area of the dwellings in the building (excluding any areas and lifts (if any) used in common) and calculated accordingly."* There is no provision in the lease which appears to indicate the assessment of the service charge on a bed weighting basis, which we accept is certainly something that is commonly used by local authorities. The Respondents do now have some measurements of Mrs Greer's flat but that has not been utilised. Mrs Greer's position is simple, that it always has been 50/50 and should remain. Miss Tomashevski thought that she was being fair and reasonable in changing the arrangements and had taken advice but made no contact with Mrs Greer about the change and made the decision unilaterally without explanation. That concluded the items shown on the Scott Schedule but there were a number of other matters that we needed to consider relating to major works, the administration charge and insurance.

29. Insofar as the major works were concerned, this had only reached the initial stage. A notice of intention to carry out works was issued on 22nd March 2016 which had in the main been based upon a similar exercise undertaken previously by the local authority before the freehold was sold. At page 507 of the bundle, there is a list of the works that it is said are required but it became apparent that some of these works related to matters which fall within the individual responsibility of the flat owner and included items such as rising damp which was not on the original specification from the local authority. The total cost appeared to come to £42,830.37 of which a share said to be payable by Mrs Greer on a 3/5ths basis was £25,698.22. The section 20 notice included a management fee at 28.5%.

30. Mrs Greer was not content with this and sought an alternative quote, which she obtained from S J Construction Limited. This appeared to be on the same basis which included, therefore, works which may not be recoverable as a service charge in that they are the responsibility of the individual leaseholder but in any event arrived at a reduced figure of £17,610.

31. Mrs Greer took a technical point that the section 20 notice had been sent to her by email and not by letter and that it did not, therefore, give her the full 30 days, although she could give no indication as to what prejudice as may have been suffered as a result. However, we heard from Miss Tomashevski that no condition report had been prepared and that the basis for the section 20 consultation was the Council's original schedule of works prepared in December of 2014 which indicated the total estimated expenditure then was £11,440.83 with a half share being £5,720.42. Miss Tomashevski sought to explain this away by indicating that when they completed the LPE1 for Mrs Greer's solicitors, although not in fact sent to them, they had to disclose some details of the proposed works and it was thought appropriate to proceed as they did. However, she thought that this was only the start of the process and was to enable the sale to go through as she wished to start the relationship with a new tenant on an honest and open basis. In effect, however, Miss Tomashevski said that she wished for the section 20 procedures to be stopped and was asked

whether she would agree that the section 20 notice be withdrawn and that the matter started again.

32. We then moved on to the question of insurance. The complaint here was firstly that the insurance policy originally taken out by the Respondents at page 423 of the bundle related only to the Respondents' flat at 34B Halliford Street but that in fact the policy document produced to Mrs Greer had been redacted so that it was difficult to follow exactly what was being said. However, we do not need to spend too much time on this as the premium of £256.56 was not being sought by the Respondents from the Applicant.

33. Instead a further policy was taken out on 16th January 2016 running to 14th January 2017 for the premises 34 Halliford Street at a premium of £1,006.03. This was through NIG and had been placed by Abaco Insurance Brokers Limited. Mrs Greer's complaint was that this policy did not have any reference to her as being at least interested in the policy which was in breach of the terms of the lease.

34. The lease terms on insurance at page 11 of the lease under paragraph 7(2) says that the Council as it was then but now the Respondents covenant with the tenant at all times to *(1) insure the demise premises in the joint names of the Council and the tenant in the full reinstatement value thereof against loss or damage by fire, tempest flood or such other risks which the tenant and the Council may hereafter agree; and (2) to keep the remainder of the building and the Council's fixtures and fittings therein (if any) insured against loss or damage by fire and such other risks as the Council considers acceptable; and in either case such value (including architect's and surveyor's fees and two years' loss of rent and service charge) to be conclusively determined by the Council who shall if requested by the tenant make available for inspection by the tenant the policy or a suitable abstract thereof.*

35. Mrs Greer's complaint was that the policy had not been entered into in agreement with her and in addition was not in their joint names.

36. For the following year it appears that the Respondents, through their Brokers Ellis David Limited had obtained insurance through Blue Fin Underwriting for the period January 2017 for one year at a reduced premium of £898.87. However, this policy still did not include the interest of Mrs Greer. However, Mr McCluskey told us that he had obtained confirmation from Blue Fin that the insurance covers both flats and the main structure and that he was arranging for the interest of Mrs Greer to be noted on the policy and obtained confirmation that premium had been paid. He attended the second day of the hearing apparently with confirmation which he was to provide to Mrs Greer. There appeared to be no challenge to the premiums being claimed and indeed Mrs Greer produced no alternative quotes. What she wanted, however, was to know that her interest had been registered and to get receipts to show that the insurance premium had been paid. It was said in the absence of this, no premiums were payable.

37. This she thought was another reason why an independent manager would be of assistance. In response Miss Tomashevski told us that the insurance placed with

Islington had been cheaper. She was not, however, prepared to be bombarded with letters as it was hard to 'sort the wheat from the chaff'. She had purchased the freehold hoping to do a better job and had sought insurance for the freehold thinking all matters would be covered. As an example of the correspondence which had flowed from Mrs Greer, we were asked to look at the second bundle pages 530 which included complaints concerning fencing, and subsequently a letter of 22nd April 2016 sent both to the Respondents and to Mrs Matthews running to some nine pages.

38. We then turn to the question of the administration charge. This related to the preparation of the leasehold property enquiry form. Miss Tomashevski said that this was prepared by her solicitors, although for reasons that are not wholly clear, apparently something to do with privacy and other matters, the form was sent directly to Mrs Greer's purchaser's solicitors and not to Mrs Greer's conveyancing solicitors. The Respondents had refused to deal with Mrs Greer and instead were prepared only to deal with her buyer. Mrs Matthews was at BDB at the time and was instructed to correspond directly with the buyer and rendered the bill of £360 for dealing with this matter, notwithstanding that on the invoice for £900 reference is made to correspondence with Mrs Greer's solicitors.

39. On the second day of the hearing, Mrs Matthews produced the fee notes from BDB. She elicited confirmation that Mrs Greer had been an enforcement officer with the local authority. We think we are correct in saying that Miss Tomashevski is a solicitor working with the local authority on matters other than property issues.

40. At the start of the second day, Miss Tomashevski gave a short address to the Tribunal concerning the appointment of a manager suggesting that we had already predetermined the position. She was of the view that her actions had been reasonable and that she had genuine concerns over her privacy apparently relating to an allegation that Mrs Greer had attended her flat and taken photographs of the interior, which included her son. She said that she was under no illusion as to the difficulty of dealing with the management and accepted that mistakes had been made. They were intending to deal with the insurance issues and that she was not an unreasonable person and needed the chance to rectify the issue. The allegations she said related to the first year and that she would be willing to make use of the services of an accountant and other professionals on an ad hoc basis as required. She told us that she would be happy to instruct a surveyor to deal with the section 20 procedures, which had themselves been done in haste, she said at the Applicant's request at the time of her sale. She thought that they were entitled to have a fair chance to put matters right and that they had not acted outrageously. She also made certain comments on the previous day's proceedings which we have noted.

41. Miss Tomashevski was then asked to go through her witness statement which appeared in her bundle of papers and is dated 6th April 2017. The statement gives some background to the purchase of the freehold but complains that the Applicant has been difficult, complaining about noise, cooking smells and other issues. There was reference to the works for which the service charge year April 2015/16 were being sought but gave no real explanation as to those. For the

following year reference was made to an allegation that the Applicant had stored a ladder on the flat roof of the bathroom and sometime later there had been a leak in the exact place where the ladder was placed. The tribunal was shown a photograph of what appeared to be a lightweight ladder propped against an external wall and footed on a flat roof. There was no further evidence provided to link this event with the alleged water penetration to the flat roof beneath. When pressed on this matter the respondent became somewhat animated and upset. The tribunal explained that in making a decision it must consider the weight of evidence presented by both parties to link cause and alleged effect. This allegation was also later advanced by Mrs Matthews, but again no evidence was provided. We noted the contents of her witness statement.

42. In oral evidence, she was asked whether there was anything she wished to add. Reference was made to her wish to maintain an arm's length relationship with the Applicant. Her witness statement had referred to matters which are to be dealt with by another Tribunal but also had three paragraphs relating to privacy, not an issue that is within our jurisdiction. It is alleged that the Applicant and her husband had covertly photographed the inside of the flat and their son in his pyjamas, a matter that was denied by Mrs Greer but this appears to have caused the breakdown of relationships between the parties, this having occurred it is said, in February of 2011. It is said that this reoccurred in April 2011. Miss Tomashevski then made further complaints about the previous day's hearing and the conduct of same and again we have noted all that has been said.

43. She was asked questions by Mrs Greer and the question of the lack of repairs to a fence was also raised. It appears the fence had been down for a while and has been repaired, although initially it would appear the Respondents were not fully aware as to who was responsible for this boundary. We were told that the fence has now been repaired by the local authority. However, Miss Tomashevski told us that she did not think it was urgent to repair the fence as the garden had not been maintained and thought that addressing it in the section 20 notice would be sufficient.

44. Thereafter Mrs Greer was asked questions by Mrs Matthews. This was based on her witness statement which were contained in bundle 1 and the contents of which we had noted. Unfortunately as with much of the documentation produced there was a good deal of repetition. Mrs Greer told us that she had a law degree and had been upset that she could not buy the freehold. Asked why she thought the certificate for service charges in the year that we were dealing with was not sufficient, she said that it was emailed to her when it should have been posted and that the lease sets out the requirement. She was asked whether she had requested receipts from the Council when they were managing the property and she that she had. Asked whether she accepted the lease provided for improvements, she said that it did but did not consider that the basic gardening requirements constituted improvements. Mrs Greer did, however, accept there should be some charge for the management of the building and asked whether she expected a full service responded that all she wanted was the service which was set out under the terms of the lease. She did accept that she would have to pay more if a manager was appointed. However, her view was that if such an appointment was made she would not be required to write letters about insurance, nor seeking details of repairs and request receipts. She said

that the number of letters was as a result of many not being answered and that if information had been supplied when first asked then the letter number would have been substantially less.

45. Questions to the liability to pay the legal costs were raised and the responses noted. The question relating to the placement of the ladder on the bathroom roof was also raised by Mrs Matthews but could not be taken anywhere as there was no evidence to support the allegations being made.

46. After the luncheon adjournment, further questioning of Mrs Greer was undertaken by Mrs Matthews. She was asked whether she thought the section 20 had been prepared in haste to assist her. Mrs Greer's response was that the first time she was aware of section 20 notices had been issued was when she was told same by the estate agent at the time of her sale. Asked whether she had disclosed the previous section 20 notice issued by the London Borough of Islington she said she had not as she did not consider it to be relevant to the transaction. Mrs Matthews asked her whether she, that is to say Mrs Greer, would deviate for the terms of the lease as evidenced by the moving of the bathroom for which there appeared she said to be no building regulations. Mrs Greer responded that she would adhere to the terms of the lease but she did not consider there was a problem as these works had been undertaken before she had acquired her lease of the property from the Council.

47. We then turn to the question of the appointment of a manager. Mrs Greer's statement sets out the circumstances behind that and we have also taken cognisance of the section 22 notice. Mrs Greer said that the matters raised in the section 22 notice have not been addressed. She did not consider that the Respondents would take any enforcement action against themselves but that a managing agent would be able to resolve the issues and that that would be the best way forward.

48. The issue of the stop cock and the electric meter was raised at this point. The facts as we understood them are as follows. It appears that the local authority had commenced proceedings against the Respondents as they had placed a door to the exterior of their property which then enclosed a small area in which the stock cock and electric meter to the Applicant's flat was to be found. Beyond that area was a further door giving access into the Respondent flat. The application by the Council did not proceed but the position is that there is now a door preventing access to the stop cock and electric meter to her flat and that the Respondents refuse to provide her a key for privacy reasons.

49. Mrs Matthews indicated that she would be prepared to continue assisting the Respondents with Mr McCluskey having the day to day management. Mrs Matthews said that she would deal with the section 20 notice instructing a surveyor to start again which would surely be the most effective way of dealing with the building.

50. Mr Stapleton, Mrs Greer's husband told her the problem was with the Respondents and that it was not nice to live in the property. Mr McCluskey, if he were the manager, would still be subject to his wife's involvement and she would

still be managing the property. In his view there was no chance of management remaining as it is.

51. Mrs Matthews went on to say that if she were to continue the management she was prepared to provide a capped fee. She said that she managed her own properties but would not actually take on the day to day management of the property, leaving that to be dealt with by Mr McCluskey, but would be there to provide assistance as necessary. Her remuneration was to be on an hourly rate, although there would be a fixed charge for certain items. It appears that Mr McCluskey has no experience in management but Mrs Matthews' view was that if he were to take that on he should be required to go on a training course. She did not it seem have any professional indemnity insurance nor public liability insurance. She did not, however, think there would be a problem in obtaining such cover.

52. We then had the chance to speak with Mr Corder who had attended with his partner, Mr Harding. Mrs Greer told us that she had found Mr Corder's details on the Leasehold Advisory Service website but had not met before.

53. Mr Corder was asked questions by Mrs Matthews. He said this was the first property with only two flats that they had been asked to become involved with, although they had dealt with a number of smaller blocks of four to six units. He accepted it was a difficult situation but that their view would be that they would not seek to look backwards but to move forward to deal with both parties equally. He said it would be usual to have a start-up meeting and to sit down and try and sort out the way forward. This would include budgeting and other matters. He had not had sight of the section 20 notices nor had he inspected the property. He had seen a copy of the lease. He said that he had been approached about a year ago but, although not inspected the property, had carried out a review on Google. His view was that on the question of repairs, the first step would be to go back to basics and obtain a survey unless one had already been done. He was familiar with the section 20 procedures and confirmed the details of his fees which is set in their document headed Application to the Tribunal at page 307 to 310 of the bundle. Asked how he would deal with correspondence, he said if they receive a letter they would reply to it. He felt that most queries could be dealt with in-house but if legal advice was necessary then his firm would pick up the cost of that themselves. The fee being sought of £350 would include issuing service charge demands and collecting the money.

54. In answer to questions from the Tribunal, he told us that he had managed approximately ten properties in London, most within Zones 1 and 2 and that they had a property in N4. There had been no previous Tribunal appointment. He accepted and understood that his duties were to the Tribunal. The indemnity presently available was £500,000 which he considered was probably sufficient. He confirmed there was no out of hours' emergency contact. On the question of building insurance, he confirmed that they were not regulated to provide the advice and would work with a broker. They would, however, handle any claims. He was aware of the need to hold monies in separately designated accounts and, although not a member of the RICS or other professional body, was aware of their obligations. He said that properties that he did manage ran smoothly.

55. Mr Harding dealt with the collection of service charges and was an accountant. He confirmed that there would be a communal meeting and was aware of the RICS code.

56. As a one-off, the question of access to the stop cock and the fuse box was raised and Mr Corder thought that a key should be given to the managing agents on a safety basis. They confirmed that they were prepared to take on the role and were fully aware of the circumstances.

57. After those gentlemen left, Mrs Matthews said that she was concerned about Mr Corder's experience having only managed some ten properties and not being used to dealing with this situation. There was no out of hours' service and he had not been to see the property nor did he have experience of a Tribunal appointment.

58. It was also suggested that the Respondents would wish to propose a manager although had nobody to suggest.

THE LAW

59. The law applicable to the application is to be found at section 18, 19 and 27A of the Landlord and Tenant Act 1985, section 24 of the Landlord and Tenant Act 1987 and Schedule 11 of the Commonhold and Leasehold Reform Act 2002.

FINDINGS

60. It is such a pity that two families sharing a property in which there are only two flats have reached such a degree of impasse and hostility that three applications have to be issued to the Tribunal to deal with issues that in truth should have been resolved by a modicum of neighbourliness.

61. Although there is little doubt that Mrs Greer is somewhat obsessive in her pursuit of excellence, writing some 57 letters in two years, it must be said that a good part of this is as a result of the Respondents' failure to address matters properly, to impose changes to apportionments and to undertake works, for example to the garden, without any neighbourly consultation. We can make no findings on the question of privacy which is not an issue for us to determine, but in any event, appears to go back to 2012 or earlier. It is time, with respect to the parties, that both moved on and dealt with the ownership and the running of this property in a more mature way.

62. We will deal with the question of whether or not a manager is appointed once we have addressed the issues in respect of service charges, insurance and administration charges. Before we do that, we think we can quite simply deal with the section 20 procedure. Miss Tomashevski appeared to be indicating that she accepted that that should stop and should start again. We think that that is a very sensible stance to take. The schedule prepared by the Council may or may not be relevant to the property. What is clear, however, is that the schedule that has now been prepared contains matters that are not the responsibility of the freeholder but rest with the individual leaseholder, for example, works to windows. Furthermore, there is reference to damp but there is no evidence in

the way of a report to justify such a cost. The management charge of 28.5% is, putting if frankly, unrealistic and unsustainable. Accordingly, if there were any doubt, we find that the section 20 procedure should stop, that the costs of the works sought under the initial section 20 notice are unreasonable and are not payable.

63. We turn then to the service charges set out on the schedule. We have completed the schedule with annotations as to our findings. We will, however, expand upon those slightly in this section of the findings dealing firstly with:

64. Repairs. The costs of the drain clearance of £126 have not been satisfactorily explained. The invoice from Pimlico Plumbers does indeed appear to refer to internal works. This was supported by a phone call made by Mrs Greer to Pimlico which is not itself evidence as there is nothing in writing from that company. However, the works that are proposed to be done appear to be wholly internal and it is interesting to note that those works have not in fact been carried out but there have been no further problems. We find that the balance of proof rests with the Respondents, the Applicant having raised the issue, and that they have not discharged that burden of proof and accordingly we disallow the sum of £126.

65. Moving on to the other maintenance provisions in respect of the front garden. Miss Tomashevski conceded that the £89 and £93 is not recoverable. It does not seem to us appropriate for Mrs Greer to be meeting the costs of creating a raised bed which she cannot use. There is, however, some obligation to deal with the maintenance of the front garden and considering the invoices from Mr Baptiste we will allow that of 28th June 2015 in the sum of £191.65 as that appears to relate to matters that properly fall within service charge items. We do not know why there was an earlier labour charge of £60. However, only one labour charge, it seems to us, is reasonable as it is possible that one of these may have related to the creation of the raised bed, which appears to have been acquired sometime around April of 2015. Accordingly, the total sum allowable for garden maintenance is £191.65.

66. The postage charge of £3.78 is not challenged.

67. Insofar as the legal fees are concerned, the invoices we were provided with do not add up to the amount that is being now sought. No proper explanation is given as to why £834 is required. It would appear that in the earlier invoice these costs may well have arisen as a result of advice being given to the Respondents as to their responsibilities in dealing with the management, which is not it seems to us an issue for which Mrs Greer should make payment. The larger invoice of £900 includes fees for dealing with the Applicant's conveyancing solicitors and insurance. We do not see why Mrs Greer should be meeting those costs. Further, it does not seem to us, and we find, that the lease makes provision for the recovery of legal fees other than in respect of forfeiture. The lease itself under the 3rd schedule part 2 for management element, refers to the administrative and other costs relating to the collection of rents and relating to the provision of certificates, but at no point does it refer to legal fees. In those circumstances, we disallow in full the sum of £834 in respect of this matter.

68. The next is a claim of £50 made by the Respondents for letters sent directly to the Applicant. As we understand it from the evidence given to us, this relates to matters in respect of the service charge year 2014/15 involving the London Borough of Islington which has been settled and for which Mrs Greer had no responsibility. In those circumstances, therefore, in the absence of any better evidence, we conclude that the sum of £50 is not allowable.

69. There are then two fees, one at £25 for preparation of the accounts and £75 for the survey. Although the accounts are not in any way shape or form perfect, there is provision for costs of preparing the certificates to be recoverable under schedule 3 part 2 and the sum of £25 is reasonable in those circumstances. The lease also makes provision at clause 3(5) for the inspection of the Applicant's flat and also includes a right to recover a fee in schedule 3 part 2 and we conclude and find that a sum of £75 is reasonable.

70. It will, therefore, be necessary for the Respondents to recalculate the service charges payable for the year 2015/16 which should include the provision for the insurance, which we will turn to now, but also the apportionment. On the question of apportionment, we do not accept that the Respondents have handled this correctly. The lease is quite clear. If there is a failure of rateable value assessment, then they have to deal with it on the basis of floor area. They have not done so. Instead they have introduced an arbitrary 3/5th - 2/5ths split which has no basis in the terms of the lease. For the moment, therefore, we can see no reason why it should not continue to be a 50/50 split as it has been for some considerable time. At some point in the future, but not for the period of any management order, the assessment of the square footage measurements of each flat could be undertaken and that could be utilised for the purposes of determining the apportionment of service charges payable. Whether it is worth undertaking that exercise is a moot point. There is limited service liability in respect of this lease. There is insurance and possible repairs. The parties may feel that the cost of calculating the square footage division outweighs a 50/50 split. There are after all just two flats.

71. We now turn to the question of insurance. The first insurance premium for £256.56 is not pursued. There is insurance premium of £1,006.03 payable for January 2016 to January 2017 and a premium of £898.87 for the year January 2017 to 2018. It is right to say that in both instances, at least at present, the notice of Mrs Greer's interest is not recorded. That does not mean it seems to us, that the property was uninsured. No evidence has been adduced by Mrs Greer to show that in the year 2016/17 had there been a claim that the insurance would have been avoided. For the following year, we are told by Mr McCluskey, who has we were lead to believe now produced details to Mrs Greer, that her interest is noted on the policy. As a matter of comment, we should say that this was handled badly by the Respondents. Mrs Greer was quite entitled to raise the issues of insurance and to whether or not it complied with the terms of the lease and a failure to properly engage in this regard and to produce insurance that met the lease requirements was inappropriate. The restriction also on the documents that might be produced was inappropriate. This could have easily have been resolved. Mrs Greer should note that her involvement is in respect of the insurance of her flat and not the property itself. It is hoped, however, that this matter can be resolved satisfactorily so that this is not an issue that arises

again the future. We are aware that there has been correspondence subsequent to the conclusion of the hearing but these arrived after we had met to make our decision.

72. We find that the premiums of £1,006.03 and £898.87 in the absence of any alternative quotes are reasonable and are payable on a 50/50 division. It must however be on the basis that the insurance complies with the terms of the lease.

73. The other item of a specific nature was the administration charge. Whilst we found the attitude of BDB (Mrs Matthews) and the Respondents unusual as to how this matter was dealt with, the fact is that the LPE1 was prepared and sent to the purchaser's solicitors and the fee of £300 plus VAT is not wildly unusual. Matters could have been made far more straight forward if usual conveyancing practice had been followed and Mrs Matthews in her capacity as a solicitor with BDB had actually sent the LPE form directly to Mrs Greer's solicitors. She did not do so and it is not wholly clear why other than further issues as to privacy. Taking the matter in the round, however, the form has been provided and a fee of £360 was reasonable.

74. We turn then to the question of the appointment of a manager. For the Respondents, we were urged to allow Mr McCluskey to take over the management assisted by Mrs Matthews. Unfortunately, we can see no end to the animosity between the parties if that arrangement is put in place. We have no doubt that Mr McCluskey will, as is suggested by Mr Stapleton, have his 'strings pulled' by his wife, and furthermore it was quite clear in the course of the hearing that Mrs Matthews and Mrs Greer are to an extent at loggerheads.

75. We are satisfied that there have been breaches of section 24 of the Landlord and Tenant Act 1987. The arrangements for insurance have not been carried out under the terms of the lease and applications for service charges have been made which are unreasonable. Even with those findings, we must be satisfied that it is just and convenient to make an order appointing a manager. We think that it is. It cannot be appropriate for this property, which consists of only two flats, to continue to flounder in its present arrangements. We hope that by making a management order for a period of two years it will give Mr Corder time to firstly deal with the section 20 issue and instigate any repairs that may be necessary, and secondly to put the insurance on a proper footing so that that can be taken on by whoever may take up the management role at the expiration of the period. It may well be that the parties are so content with Mr Corder that he and Mr Harding can continue to manage the property without the Tribunal's involvement at the end of the two year period. However, we are satisfied that something must be done and in the absence of the parties' ability to work together, then this is the only alternative.

76. We have prepared a management order which is attached. We have noted the draft prepared by Mrs Greer but have included our own provisions and delete the need for the manager to take up cudgels in respect of breach of covenant matters. That will just get in the way of trying to get this property properly managed. We had considered starting the management order from 1st June but are concerned that the lacuna between the date of this decision and the commencement of the Order could cause problems. We expect Mrs Matthews to

provide assistance to Mr Corder in respect of the handover of any paperwork that she may have and to also provide a key to the front door to the downstairs area which will afford access to the stop cock and the electricity meter.

77. We would hope that Mr Corder will set about dealing with the section 20 issues as quickly as possible and we would require him to report back to us in 12 months to tell us what has been done, whether the section 20 is underway and indeed works being undertaken and that the insurance arrangements have been satisfactorily dealt with. It will, it seems to us, be necessary for him to instruct a chartered building surveyor to carry out a full survey and draw up a specification of the works required, which complies with the lease obligations. We have no complaint about the charges made by Mr Corder and his firm. We were told that there would be an hourly rate charge apparently of £50. That seems reasonable provided it is exercised carefully and with limits. It is hoped, however, that by instructing Mr Corder to act as a Tribunal appointed manager, he will obviate the need for Mrs Greer to write another 50 plus letters.

78. We would require that Mr Corder increases the firm's insurance cover to £1m given the value of the property. We trust this will cause no difficulties. If it does he should revert back to us as provided below. But otherwise the arrangements are as set out on the Order attached. If Mr Corder considers that there needs to be any amendment to the terms of the order or inclusion of additional assistance, then he should notify us of that position within 14 days of the receipt of our decision and the Order attached.

79. Mrs Greer, after the hearing sought to claim costs under Rule 13 of the Tribunal Procedures (First Tier Tribunal) (Property Chamber) Rules 2013. Her letter dated 19th April 2017 indicated that her claim was in the sum of £933.58 and included copies of invoices to support costs claimed. It is assumed that Mrs Greer provided a copy of this letter and the attached schedule with supporting vouchers and invoices to the Respondents at that time. If she did not she must do so immediately. Attention is drawn to the Upper Tribunal authority of *Willow Court Management Company (1985) Ltd v Mrs Ratna Alexander* [2016] UKUT (LC). The directions are as follows:

1. Within 28 days of this decision the Respondents must reply to the Applicant's letter dated 19th April 2017, setting out the grounds to support any contention that they have not acted unreasonably in connection with the conduct of the case and also indicating what level of costs, if any, they would approve, with reasons for any challenge.

2. Fourteen days after receipt of the Respondents' response, the Applicant shall send to the Respondent and file with the Tribunal a final reply to the Respondents' response and lodge with the Tribunal the documents served under direction 1 and 2 as well as her letter of 19th April 2017 and the costs schedule referred to, with supporting vouchers and invoices.

3. Within 28 days of the receipt of the papers under paragraph 2 above the Tribunal will consider the application and issue a decision shortly thereafter. The matter will be dealt with by way of paper determination but if any

further directions or alterations to timescales are sought those must be requested of the Tribunal as quickly as possible.

Andrew Dutton
Tribunal Judge Dutton 9th May 2017

ANNEX – RIGHTS OF APPEAL

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

SCHEDULE

DISPUTE SERVICE CHARGES S/C YEAR ENDED 1 APRIL 2015- 31 MARCH 2016

CASE Reference: LON/00AU/LSC/2016/0495 PREMISES: 34A HALLIFORD STREET, N1 3EL

Certificate of Sums due in respect of 34A Halliford Street

ITEM NO.	ITEM	COST	TENANT'S COMMENTS*	LANDLORD'S COMMENTS*	LEAVE BLANK (FOR THE TRIBUNAL)
(1)	**Repairs:** Drain Clearance	£126.00	August 2015 Respondent relying on Clause 5(3)(1)Respondent has not complied with 07.02.17 Direction Order 1 Disclosure. Respondent has not disclosed proof of expenditure or details of work	Fat and washing powder from 34a had caused a blockage in the drains just outside of 34b hence an emergency call out on 27 August 2015. Invoice from Pimlico Plumbers attached. The Applicant was offered an appointment to view the available receipts in a letter from Bircham Dyson Bell dated 5 April 2016. The appointment offered was for 14 April 2016 at 3pm or a date that was convenient for her but the Applicant failed to take up this opportunity.	The works appear to relate to internal matters and not therefore recoverable as a service charge. The sum is therefore disallowed
(2) **(3)** **(4)** **(5)**	**Maintenance**: Front Garden Front Garden Front Garden Materials **Improvements**: Front Garden Labour	£89.00 £93.00 £194.64 £120.00	April 2015 May 2015 Respondent relying on Clause 5 (3) (1)Total cost to complete the garden is **£496.64.** No section 20 consultation 'Third Schedule Part 1 Building Element (i) Upkeep of gardens. Respondent has not complied with 07.02.17 Direction Order 1	The Respondents had always maintained the front garden at their own personal expense since moving in to 34b (December 1998). This stopped in 2012 because 34a had placed unsealed bags of Japanese Knotweed in the front garden and the garden had become overgrown and a general dumping area for rubbish from 34a. The £120 charge was for the clearance of the weed infested front garden in April 2015, primarily done because the freeholder was aware that 34a had their flat on the market.	The Respondent conceded the sums of £89 and £93 were not due and owing. Work that related to the creation of the raised beds is not recoverable as a service charge. The Applicant had no right to use them. We do allow the sum of £191.65 in respect of the invoice from Anthony Baptiste dated 28th June 2015 as this relates to the work to the front garden, but only one labour charge is accepted, accordingly the invoice dated 29th April 2015 is disallowed

			Disclosure. Respondent has not disclosed proof of expenditure or details of work	£89, £93 and £194.64 relate to bark chippings, weed killer and weed suppressing membrane. No charge was made for plants or scarecrow (which were gifts) The materials cost £194.64. One invoice for £62.99 is attached which leaves £131.65 in materials. These were bought by the Respondents' builder and are included on his invoice along with his £120 labour charge for the two days of work. Invoices attached.	
(6)	**Administratio n** Postage	£3.78	Respondent relying on **Clause 5 (3) (3) as a 'Catch all' clause** Non Compliance with disclosure 07.02.17 Direction 1 as above	This was an error. The full amount was £7.56 which related to six letters sent at £1.26 each. Invoices attached.	The Applicant accepted this charge
(7)	Legal Fees	£834.00	Respondent relying on Clause 5 (3) (3) Using Solicitor as admin. Unreasonable. No consultation. Respondent has not complied with 07.02.17 Direction Order 1 Disclosure. Respondent has not disclosed proof of expenditure or details of work	The previous freeholder included legal fees in their administration feewhen the cost of the total administration charge was added up and divided up amongst 1,829 leaseholders. These costs were incurred by the Respondents in dealing with the management of the building including dealing with the Applicant.	The invoices produced were for £420 and £900. The first pre-dates the application to the Tribunal and appears to be relating to general advice given to the Respondents. The sum of £900 includes costs associated with the sale of the Applicant's flat when a charge for the LPE form was made separately. The other items of work refer to insurance issues, which the Respondent was wrong about. Further as expanded upon in the decision we are not satisfied that the lease allows the recovery of these legal costs. Accordingly the

					sum claim in the service charge certificate of £834 is disallowed
8	Letters	£50.00	Respondent relying on **Clause 5 (3) (3) as a 'Catch all' clause** May have duplication with Legal fees Respondent has not complied with 07.02.17 Direction Order 1 Disclosure. Respondent has not disclosed proof of expenditure or details of work	These letters were from the Respondents directly. See (6) above.	It would appear that these letters, certainly in part relate to the year 2014-15, which is not in issue and was settled in favour of the Applicant. It is not reasonable for the Applicant to pay this charge
8	Preparation of Accounts	£25.00	Respondent relying on **Clause 5 (3) (3)**Accounts uncertified Respondent has not complied with 07.02.17 Direction Order 1 Disclosure. Respondent has not disclosed proof of expenditure or details of work	This was work carried out by the Respondents themselves in accordance with the terms of the lease. See (6) above.	By virtue of the lease under the provisions of the Third Sch part 2 (c) the costs of calculating and providing the certificates is recoverable. It is accepted that they were in error but we consider that a charge of £25 is not unreasonable and is payable
9	Inspection of Flat 34A	£75.00	Respondent relying on Clause 5 (3) (3) Respondent has not complied with 07.02.17 Direction Order 1 Disclosure. Respondent has not disclosed proof of expenditure or details of work	The previous freeholder charged for inspections. The Respondents considered this to be a necessary inspection in order to establish the layout and measurements of flat 34A in connection with the apportionment of service charge and the management of the building. Invoice of Geoff Weaver attached.	This is allowed and is payable under the provisions of clause 3(5) and Third Sch part 2 para (d)
10	Total	£2301.81	Respondent has added up total incorrectly. The 10	Agreed	

			items total does not add up to **£2301.81** but **£1610.43** Respondent has not complied with 07.02.17 Direction Order 1 Disclosure. Respondent has not disclosed proof of expenditure or details of work		
11	Service Charges due from 34A Halliford Street	£1381.09	Incorrect portion because total is wrong Respondent has not complied with 07.02.17 Direction Order 1 Disclosure. Respondent has not disclosed proof of expenditure or details of work	Agreed; total should be £966.25	A fresh certificate needs to be produced with a demand complying with s21B of the 1985 Act and s 47 and 48 of the 1987 Landlord and Tenant Act. The parties should then agree what may be due and owing or what requires to be reimbursed. The demand should include the insurance premium for the year 2016-17 in the sum of £1006.03
12	Proportioned service charge 3 fifths to me and 2 fifths to Respondent		Previous Freeholder LBI always charged 50/50 fair method. Respondent has not complied with 07.02.17 Direction Order 1 Disclosure. Respondent has not disclosed proof of expenditure or details of work	The lease requires the "building element" of the service charges to be apportioned according to rateable value (clause 5(3)(f)(i))and the "management element" as a "fair and reasonable proportion" (clause 5(3)(f)(ii)). Accordingly the Respondents considered it fair and reasonable to apportion the service charges based on the number of bedrooms in the two flats in the building, the method used historically by the previous freeholder. The building has 5 bedrooms. The Respondents' flat has 2 bedrooms. The Applicant purchased the lease of a 3 bedroom	As per our decision we find that the apportionment should remain on a 50;50 basis as it did until the Respondents acquired the freehold. Any change after the management period should comply with the lease under the provisos at clause 5(f) (A) and (B)(page 10 of the lease)

				flat. The Respondents believe that this is a fair and proportionate system to divide the charges. It should be noted that the Applicant has been had been marketing her flat 34A for two years as a 3 bedroom flat but is now claiming that she only has 2 bedrooms. The Applicant did not seek the Respondents' consent for this significant alteration nor building regulations approval. This breach is the subject of the Respondents' current application to the Tribunal under section 168 of the Commonhold and Leasehold Reform Act 2002, case number LON/00AU/LBC/2017/0028. One of the considerations in selecting this method of apportionment was the number of windows in each flat, because of the expense of maintaining the windows. Flat 34b has 4 windows. Flat 34a has 7 windows.	

IN THE FIRST-TIER TRIBUNAL (PROPERTY CHAMBER)

CASE REFERENCE: LON/OOAU/LSC/2016/0495

IN THE MATTER OF SECTION 24 (1) OF THE LANDLORD AND TENANT ACT 1987

AND IN THE MATTER OF

34 Halliford Street, London N1 3EL

B E T W E E N:

Mrs Angela Greer

Applicant

AND

Ms Kathleen Tomashevski and Mr Sean McCluskey

Respondent

MANAGEMENT ORDER

Interpretation:

In this Order:

(a) "Common Parts" means, as defined in the Leases at clause 7(5) and (6), the matters set out at clause 7(5) (a) to (e) inclusive and as set out in The Third Schedule.

(b) "Leases" means the long leases vested in the Applicant and the Respondent.

(c) "Lessee" means a tenant of a dwelling holding under a long lease as defined by Section 59(3) of the Landlord and Tenant Act 1987 ("the Act").

(d) "the Manager" means Mr Charles Corder BSc(Hons) APM(A) of Cordrose Management Limited of 29 Mayford Road, London SW12 8SE.

(e) "the Premises" all that property known as 34 Halliford Street, London N1 3EL

(f) "the Respondent" includes any successors in title of the freehold estate registered under Title Number AGL341886 or any interest created out of the said freehold title.

Preamble

UPON the Applicant having applied for the appointment of a Manager under Part II, Landlord and Tenant Act 1987

AND UPON the First-Tier Tribunal being satisfied that the Applicant is entitled to so apply and that the jurisdiction to appoint a Manager is exercisable in the present case

AND UPON the First-Tier Tribunal being satisfied that the conditions specified in S.24 Landlord and Tenant Act 1987 are met, such that it is just and convenient to appoint a Manager

IT IS ORDERED THAT

The Manager

1. The appointment of Mr Charles Corder as Manager of the Premises pursuant to S.24 of the Act from the date of this Order shall continue until 31st May 2019 and is given for the duration of his appointment all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of the Respondent and in particular:

    (a) To receive all service charges, interest and any other monies payable under the Leases and any arrears due thereunder (save Ground Rent), the recovery of which shall be at the discretion of the Manager. Any Ground Rent payable shall be collected by the Respondent.

    (b) The power and duty to carry out the obligations of the Respondent contained in the Leases and in particular and without prejudice to the foregoing:

        (i) The Respondent's obligations to provide services;

        (ii) The Respondent's repair and maintenance obligations; and

        (iii) The Respondent's power to grant consent.

    (c) The power to delegate to other employees of Cordrose Management Limited, appoint solicitors, accountants, architects, surveyors and other professionally qualified persons as he may reasonably require to assist him in the performance of his functions, and pay the reasonable fees of those appointed.

(e) The power to appoint any agent or servant to carry out any such function or obligation which the Manager is unable to perform himself or which can more conveniently be done by an agent or servant and the power to dismiss such agent or servant.

(f) At his absolute discretion the power in his own name or on behalf of the Respondent to bring, defend or continue any legal action or other legal proceedings in connection with the Leases of the Premises including but not limited to proceedings against any Lessee in respect of arrears of service charges or other monies due under the Leases and to make any arrangement or compromise on behalf of the Respondent. The Manager shall be entitled to an indemnity for both his own costs reasonably incurred and for any adverse costs order out of the service charge account.

(g) The power to commence proceedings or such other enforcement action as is necessary to recover any sums that may be due from the Applicant or Respondent pursuant to Paragraph 1 (f) of this Order.

(h) The power to enter into or terminate any contract or arrangement and/or make any payment which is necessary, convenient or incidental to the performance of his functions.

(i) The power to open and operate client bank accounts in relation to the management of the Premises and to invest monies pursuant to his appointment in any manner specified in the Service Charge Contributions (Authorised Investments) Order 1998 or any replacement and to hold those funds pursuant to S.42 of the Landlord and Tenant Act 1987. The Manager shall deal separately with and shall distinguish between monies received pursuant to any reserve fund (whether under the provisions of the lease (if any) or to power given to him by this Order) and all other monies received pursuant to his appointment and shall keep in a separate bank account or accounts established for that purpose monies received on account of the reserve fund.

(j) The power to rank and claim in the bankruptcy, insolvency, sequestration or liquidation of the Respondent or any Lessee owing sums of money under his Lease.

(k) The power to borrow all sums reasonably required by the Manager for the performance of his functions and duties, and the exercise of his powers under this Order in the event of there being any arrears, or other shortfalls, of service charge contributions due from the Lessees or any sums due from the Respondent, such borrowing to be secured (if necessary) on the interests of the defaulting party (i.e., on the leasehold interest of any Lessee, and the freehold of the Premises in respect of the Respondent).

(l) The power to insure the whole building as a cost to the service charge account.

(m) The power to raise a reserve fund.

2. The Manager shall manage the Premises in accordance with:

(a) the Directions of the Tribunal and the Schedule of Functions and Services attached to this Order;

(b) the respective obligations of all parties – landlord and tenant – under the Leases and Transfers and in particular with regard to repair, decoration, provision of services and insurance of the Premises; and

(c) the duties of managers set out in the Service Charge Residential Management Code (the "Code") or such other replacement code published by the Royal Institution of Chartered Surveyors and approved by the Secretary of State pursuant to S.87 of the Leasehold Reform, Housing and Urban Development Act 1993.

3. From the date of this Order, no other party shall be entitled to exercise a management function in respect of the Premises where the same is a responsibility of the Manager under this Order.

4. From the date of this Order, the Respondent shall not, whether by themselves or any agent, servant or employee, demand any further payments of services charges, administration charges or any other monies from the Lessees at the Premises.

5. The Respondent, Mrs Matthews of Ellington Estate and the Lessees and any other agents or servants thereof shall give reasonable assistance and cooperation to the Manager in pursuance of his duties and powers under this Order and shall not

interfere or attempt to interfere with the exercise of any of his said duties and powers.

6. Without prejudice to the generality of the foregoing hereof:

   (a) The Respondent shall permit the Manager and assist him as he shall reasonably require to serve upon Lessees any Notices under S.146 of the Law of Property Act 1925 or exercise any right of forfeiture or re-entry or anything incidental or in contemplation of the same.

   (b) For the time being the rights and liabilities of the Respondent as Landlord arising under any contracts of insurance to the Premises shall continue as rights and liabilities of the Manager.

   (c) The Manager shall be entitled to remuneration (which for the avoidance of doubt shall be recoverable as part of the service charges) in accordance with the Schedule of Functions and Services attached.

   (d) Within 14 days of the date of this Order the Respondent and the Applicant shall each deposit with the Manager the sum of £1,500. Failure to do so will enable the Manager to take action against any defaulting part for the recovery of the said sum of £1,500 such sum to be held by the Manager on account of monies to be expended in respect of the setting up fee (see Schedule below) professional fees leading to the Major Works and Insurance.

   (e) The Respondent will, within 14 days deposit with the Manager a key to the area in which the stop cock and electricity supply are situated for the Applicant's flat.

7. The Manager shall in the performance of his functions under this Order exercise the reasonable skill, care and diligence to be expected of a manager experienced in carrying out work of a similar scope and complexity to that required for the performance of the said functions and shall ensure they have appropriate professional indemnity cover in the sum of at least £1,000,000 providing copies of the current cover note upon request by any Lessee, the Respondent or the Tribunal.

8. The Manager shall act fairly and impartially in his dealings in respect of the Premises.

9. The Manager's appointment shall continue from the date of this Order and the duration of his appointment shall be until 31st May 2019. Any application for an extension should be considered at least three months before the expiry date of this Order.

10. The obligations contained in this Order shall bind any successor in title and the existence and terms of this Order must be disclosed to any person seeking to acquire either a leaseholder interest (whether by assignment or fresh grant) or freehold.

11. The Manager shall register this Order against the Respondents' registered title as a restriction under the Land Registration Act 2002, or any subsequent Act.

12. After a period of 12 months the Manager shall provide a written report to the Tribunal on the management of the Premises to that point in time.

Liberty to apply

13. The Manager may apply to the First-Tier Tribunal (Property Chamber) for further directions in accordance with S.24(4), Landlord and Tenant Act 1987. Such directions may include, but are not limited to:

    a. Any failure by any party to comply with an obligation imposed by this Order;

    b. For directions generally;

    c. Directions in the event that there are insufficient sums held by them to discharge their obligations under this Order and/or to pay their remuneration.

Signed Andrew Dutton

Tribunal Judge Dutton

Dated 9th May 2017

SCHEDULE

FUNCTIONS AND SERVICES

Financial Management:

1. Prepare an annual service charge budget, administer the service charge and prepare and distribute appropriate service charge accounts to the Lessees on a 50:50 basis.

2. Demand and collect service charges, payments on account for the Major Works referred to at paragraph 13 below, insurance premiums and any other payments due from the Lessees in the proportions set out in paragraph 1 above. Instruct solicitors to recover any unpaid service charges and any other monies due to the Respondent.

3. Create a form of reserve fund if so required but in any event to recover by interim demands monies required to enable any Major Works to be commenced and completed.

4. Produce for inspection (but not more than once in each year) within a reasonable time following a written demand by the Lessees or the Respondent, relevant receipts or other evidence of expenditure, and provide VAT invoices (if any).

5. Manage all outgoings from the funds received in accordance with this Order in respect of day to day maintenance and any pay bills associated therewith.

6. Deal with all enquiries, reports, complaints and other correspondence with Lessees, solicitors, accountants and other professional persons in connection with matters arising from the day to day financial management of the Premises.

Insurance:

7. Take out in accordance with the terms of this Order and the Leases an insurance policy in the Manager's own name with the interest of the Applicant, Respondent and any Mortgagee noted thereon in relation to the Premises with a reputable insurer, and provide a copy of the cover note/schedule to the Applicant and the Respondent. The existing cover should be cancelled and any refund of premium held to the credit of the Applicant and Respondent in proportion to the contributions made to such premium.

8. Manage or provide for the management through a broker of any claims brought under the insurance policy taken out in respect of the Premises with the insurer.

Repairs and Maintenance

9. Deal with all reasonable enquiries raised by the Lessees in relation to repair and maintenance work, and instruct contractors to attend and rectify problems as necessary.

10. Administer contracts in respect of the Premises and check demands for payment for goods, services, plant and equipment supplied in relation to contracts.

11. Manage such Common Parts and service areas of the Premises as there are, including the arrangement and supervision of maintenance.

12. Carry out regular inspections (at the Manager's discretion but not more than once a year) without use of equipment, of the Premises as can be inspected safely and without undue difficulty to ascertain for the purpose of day-to-day management only the general condition of the Premises.

Major Works

13. In addition to undertaking and arranging day-to-day maintenance and repairs, as soon as possible, to arrange and supervise major works which are required to be carried out to the Premises, to bring it up to a proper state of repair as required under the terms of the Leases. This to include the retention of the services of a suitably qualified Surveyor to inspect the Premises and provide a report on the condition of same and any works required. Thereafter to arrange for the Surveyor so retained to prepare a specification of works and for the Manager to thereafter obtain competitive tenders, serve relevant notices on the Lessees pursuant to s20 of the Landlord and Tenant Act 1985 and supervise the works in question.

Administration and Communication

14. Deal promptly with all reasonable enquiries raised by Lessees, including routine management enquires from the Lessees or their solicitors.

15. Provide the Lessees with telephone, fax, postal and email contact details and complaints procedure.

16. Keep records regarding details of Lessees, agreements entered into by the Manager in relation to the Premises and any changes in Lessees.

Fees

17. Fees for the above mentioned management services (with the exception of supervision of major works) would be a fee of £175 per leaseholder per annum for the Premises for the first year of management under the Order, together with an initial setting up fee of £200 to be recoverable from the £1,000 payable by the Applicant and Respondent under clause 6(d) in the Order above. Thereafter the fee shall be reviewed annually in line with inflation.

18. An additional charge shall be made in relation to statutory consultation procedures under section 20 of the Landlord and Tenant Act 1985 (the Act) of £250 plus 3.5% of the project costs up to £5,000 and thereafter a flat fee of £565 for project costs from £5,001 to £10,000; a flat fee of £715 for project costs from £10,001 to £15,000 and a flat fee of £802 for projects costing no more than £20,000. This fee is to include the management of the works, invoicing, accounting and all steps required under s20 of the Act.

19. The preparation and certification of the annual accounts in accordance with the Lease terms shall be charged at £180.

19. The undertaking of further tasks which fall outside those duties described above are to be charged separately at a present hourly rate of £50.