

**RESIDENTIAL PROPERTY TRIBUNAL SERVICE**  
**SOUTHERN RENT ASSESSMENT PANEL**  
**LEASEHOLD VALUATION TRIBUNAL**

**Case No. CHI/OOMS/LIS/2009/0087**

**REASONS**

**Application** : Sections 27A and 20C of the Landlord and Tenant Act 1985 as amended (“the 1985 Act)

**Applicant/Leaseholders** : Mr Stanislav Iachkine and Mrs Anastasia Iachkine (Flat 22), and Mrs Anni Cree (Flat 27)

**Respondent/Landlord** : Southampton City Council

**Building** : St James House, Orchard lane, Southampton, SO14 3DH

**Flat** : a flat in the Building

**Date of Application** : 21 December 2009

**Date of Provisional Directions** : 11 January 2010

**Date of Directions Hearing** : 26 January 2010

**Date of hearing** : 29 April 2010

**Hearing Venue** : Independent Tribunal Service, The Barrack Block, Western Range, London Road, Southampton, SO15 2 AH

**Appearances for Applicant/Leaseholders** : Mr and Mrs Iachkine

**Appearances for Respondent/Landlord**: Mrs M Kigonya, solicitor

**Also in attendance** : Mrs Christina Ward, Mr David Russell, and Mrs Lisa DaCruz, and, as an observer, Mr M Fisher, all from the Respondent/Landlord

**Further Directions** : 11 May 2010

**Members of the Leasehold Valuation Tribunal** : Mr P R Boardman JP MA LLB (Chairman), Mr D L Edge FRICS, and Ms T Wong

**Date of Tribunal’s Reasons** : 30 July 2010

**Introduction**

1. At the directions hearing on the 26 January 2010 the following matters were identified as issues for the Tribunal to determine at the substantive hearing of this application, namely :
  - under section 27A of the 1985 Act, in relation to the service charge for the year 2009, whether, and, if so, to what extent, the sum of £3,418.06 was payable as a contribution to the cost of the installation of a concierge security system at the Building, and, in particular, whether the works were necessary, and whether the amount was reasonably incurred
  - under section 20C of the 1985 Act, whether, and, if so, to what extent, the costs incurred by the Respondent/Landlord in relation to these proceedings should not be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholders
2. No dispute had been raised concerning :
  - a. the identity of the person by whom the service charges were payable, the person to whom they were payable or when or in what manner they were payable
  - b. the question whether the cost was in principle recoverable by way of service charge under the lease
  - c. the standard of workmanship
  - d. the question whether the consultation requirements referred to in section 20 of the 1985 Act had been complied with

### **Statutory Provisions**

3. The relevant statutory provisions are contained in sections 18, 19, 20C and 27A of the 1985 Act, and in the Service Charges (Consultation Requirements) (England) Regulations 2003 (“the 2003 Regulations”)

### **Documents**

4. The documents before the Tribunal are :
  - a. the Respondent/Landlord’s bundle pages 1 to 135
  - b. the Respondent/Landlord’s statement of case
  - c. witness statement by Mrs Ward
  - d. witness statement by Mr Russell
  - e. witness statement by Mrs DacCuz
  - f. the Applicant/Leaseholders’ statement of case pages 135 to 145
  - g. the following Lands Tribunal decisions submitted by the Respondent/Landlord :
    - **Forcelux v Sweetman** [2001] 2 EGLR 173
    - **Veena v Cheong** [2003] 1 EGLR 175
  - h. further submissions by Respondent/Landlord 11 June 2010
  - i. the Respondent/Landlord’s supplemental bundle, pages 146 to 179
  - j. further submissions by Applicant/Leaseholders 30 June 2010

### **Expressions used in these reasons**

5. In these reasons references to page numbers are to page numbers in the Respondent/Landlord’s bundle, the Applicant/Leaseholders’ statement of case, and the Respondent/Landlord’s supplemental bundle

## Inspection

6. The Tribunal inspected the Building on the morning of the hearing on the 29 April 2010. Also present were Mr and Mrs Iachkine, Mrs Kigonya, Mrs Ward, Mrs DaCruz, and Mr Russell
7. The Building was one of a number of blocks of flats in an estate called Holyrood. The Building comprised two blocks in an "L" shape, one of 4 storeys, and the other of 9 storeys
8. Immediately outside the front door to the Building were two button-operated Concierge system control panels, one above the other. Mr Russell said that the lower one was to comply with disability discrimination legislation. The panels each had buttons with numbers, a call button, a "Concierge" button, a speaker, and a camera. Inside the lobby was a fixed camera on the wall. Inside the lift there were 2 fixed cameras
9. The Tribunal was also shown into Flat 22 on floor 4 of the 9 storey block, and inspected the Concierge unit on the wall in the hall with a black and white screen and three buttons marked "concierge" (which the parties said linked to a remote operator at a different location), "privacy" (which the parties said was effectively an "off" switch and diverted calls to the remote operator), and "enter"
10. Outside the Building was a CCTV camera on a street-light-like pole, about 20 metres from the front entrance of the Building. The parties said that it was one of a number of CCTV cameras on the Holyrood estate

## The Applicant/Leaseholders' lease

11. The lease is copied at pages 8 to 35. Relevant provisions are as follows :

### *Lease particulars Part 9 (page 10)*

*The Building : .....the expression the Building where the context admits  
includes .....car parking areas.....roads, footways, garden and  
grounds*

### *Whereas (page 11)*

*(2) The Council is to manage and maintain those part of the Building that are not  
demised to individual Tenants*

### *Clause 2 [Tenant's covenants] (page 12)*

*(b) pay such proportion of the Service Charge as defined in Part 7 of the Particulars in  
the manner set out in the Third Schedule for items (shown for guidance) that may be  
charged in the Fourth Schedule*

**Third schedule**  
**(Service Charges) (pages 19 and 20)**

3.1 Subject as hereinafter mentioned to contribute and pay the relevant share specified in Part 7 of the Particulars by way of service charges payable by the Tenant as defined in clause 3.3 below of the reasonable costs incurred by the Council or its agents in the repair and maintenance improvement insurance management and provision of services (including all those costs reasonably incurred in meeting its obligations under this lease)

3.3 (b)(ii) .....(as to Part C in the Fourth Schedule) Improvements  
the Tenant will be charged for the total expense and costs thereof at the time the work is carried out .....

**Fourth schedule**  
**(Details of items (shown for guidance) that may be included in the assessment of Service Charges)**

4.1 Part A Routine annual charges (page 22)

.....

4.2 Part B Modernisations/Major Repairs/ Structural Defects (pages 23 to 25)

.....

4.3 Part C Improvements (page 26)

*When any improvements are carried out to improve the quality of the Building for the benefit of the residents the Tenant will be charged for the expense and costs thereof at the time the work is carried out.....*

*Without prejudice to the foregoing this may include the following:*

*(a) to (c).....*

*(d) Installation of "door entry" phone system*

**Consultation with lessees about door entry system before contract**

12. Documents before the Tribunal are :

- a. a notice from the Respondent/Landlord dated the 1 June 2006 under section 20 of the Landlord and Tenant Act 1985 of the Respondent/Landlord's intention to enter into a long-term agreement with one contractor for the design and installation of a digital communal door entry system in 14 blocks, including the Building (pages 42 and 43)
- b. a sheet entitled "confirmed concierge drop-in events", including times for a drop-in date on the 30 April 2007 at the Building (page 44)

- c. a sheet entitled “concierge service information from [the Respondent/Landlord] on your concierge scheme” (page 45)
- d. a notice from the Respondent/Landlord dated the 7 January 2008 under section 20 of the Landlord and Tenant Act 1985 stating that the Respondent/Landlord had now prepared a proposal based on tenders received, that the proposed contractor was the Alarming Company, and giving details of viewing opportunities and a deadline for the receipt of observations (page 47)

**Contract (“the Contract”) for the design and installation of the remotely operated Concierge Service 20 February 2008 (pages 113 to 117)**

13. The Contract :
  - a. was made between the Respondent/Landlord and the Alarming Company Ltd
  - b. stated that the Contract sum was £2,950,186.71 (page 113)
  - c. related to various properties including the Building (page 114)
  - d. stated that in consideration of the contractor's performance of the works the Respondent/Landlord agreed to pay the contractor the Contract sum at the times and in the manner set out in the Contract (page 115)

**Consultation with lessees about door entry system after contract**

14. A notice from the Respondent/Landlord dated the 15 December 2008 under section 20 of the Landlord and Tenant Act 1985 stated that the Respondent/Landlord intended to carry out the works, that the works were necessary to improve security and to provide a safer environment, that the total expenditure for the Building was likely to be £136,722.31, and that the service charge contribution was £3,418.06 plus an administration charge of £512.71, making a total of £3,930.77 (page 49)

**Subsequent correspondence between the Applicant/Leaseholders and the Respondent/Landlord**

15. By a letter dated 29 December 2008 (page 50) the Applicant/Leaseholders stated that they completely disagreed with :
  - a. the total amount of expenditure likely to be incurred of around £4,000 per flat or £137,000 per block which they believed was unreasonable considering the total potential value of the property/flat
  - b. whether the work would benefit their community after taking into account :
    - the total cost involved
    - the fact that they already had a fully working concierge system in their block
    - repair costs associated with the new concierge system due to the high level of vandalism in their block
  - c. the way the leaseholders had been consulted about this major work to the block :
    - they had never previously been informed that the leaseholders would be liable for the cost of installation; all previous letters had clearly stated that the Respondent/Landlord would use the funds it had secured from the government to make improvements to the area/block, the concierge security system being one of them
    - they had not received at least two estimates for carrying out the work
    - the full and detailed cost breakdown of the work had not been provided

16. By a letter dated 12 January 2009 (page 51) Mrs Ward replied on behalf of the Respondent/Landlord that :
- a. the cost of installing the concierge system was unfortunately high at their block as the cost was divided by a smaller number of people because their block had only 40 residences; tower blocks normally had over 100 flats which reduced the proportion of her leaseholder; the main components of the system were the hard disc recorder and the CCTV cameras which were the same for all blocks; the only reduction in costs to their block was the wiring to each flat
  - b. the work would definitely benefit their community as it had done in Weston where they had had this system for over a year; the repair costs would be reduced as the system was more robust and any perpetrators would soon realise that they were being recorded on camera; there would therefore be a reduction in vandalism
  - c. Mrs Ward had no documentation relating to the fact that costs would be covered by government funds, but there were one or two meetings held on the estate explaining all the improvements taking place and any questions would have been answered at those meetings
  - d. the consultation procedure letters sent to the Applicant/Leaseholders had given them the opportunity to view the tenders received
17. By a letter dated 21 January 2009 (page 52) the Applicant/Leaseholders stated that they did not agree with the installation cost of the concierge security system in the Building. They requested a complete and detailed breakdown of all expenditure, currently standing at about £4,000 flat or £137,000 for the block. They would like the breakdown to be at a very granular level, highlighting the cost of all individual items
18. By a letter dated 21 April 2009 (page 53) the Applicant/Leaseholders thanked Mrs Ward and Mr Russell for the meeting on 26 February 2009 to discuss the installation of the concierge security system and for agreeing to provide the requested cost breakdown which they would like as soon as possible

**Certificates of payment by Respondent/Landlord to the Alarming Company Ltd (pages 118 to 134)**

19. Certificates were dated 10 August 2009, 14 September 2009, 12 October 2009, 9 November 2009, 14 December 2009. The latter showed a grand total for the Building of £126,022.33, including £10,206.05 for one external CCTV camera

**Service charge invoice 18 November 2009 (page 54)**

20. The invoice from the Respondent/Landlord to the Applicant/Leaseholders for the concierge system was for £3,418.06 plus administration charge £512.07 making a total of £3,930.77

**Breakdown of costs per block (page 135)**

21. The breakdown showed :
- a. a total figure of £136,722.31, which had been deleted and a manuscript figure of £150,049.27 written at the side
  - b. the number of residents at the Building as 40
  - c. the average cost for the Building as £3,418.06, which had been deleted and a manuscript figure of £3,751.23 written at the side

## Statement by Mrs DaCruz 12 February 2010

22. Mrs DaCruz stated that she was employed by the Respondent/Landlord as a community services manager. Her duties included the management of the Housing Concierge Control Centre, Community Alarm service and Out of Hours and Emergency Telephone line for the Respondent/Landlord
23. The main elements of the concierge system included :
  - a. an extensive CCTV network
  - b. 24-hour hard disk recording of the CCTV cameras
  - c. a new door entry system with electronic keys allocated to each flat
  - d. video handsets to allow residents to view visitors calling their home from the main entrance
  - e. a control centre which monitored the CCTV network and was linked to the door entry system and residents handsets in the tower blocks
  - f. improvement of the physical security of the blocks
24. The pilot of the system was in Weston. As part of the pilot process research was undertaken into the effectiveness of the system. Mrs DaCruz compiled an evaluation report based on research which was at pages 56 to 98
25. They carried out routine surveillance on 11 cameras associated with the Building, both internal and external, carrying out proactive camera tours throughout the day and night. Recorded images from all cameras were retained for up to 31 days on a continuous basis. The cameras were in place to protect the Building and particularly vulnerable areas such as lifts. Two cameras in each lift were clearly able to show any misuse. Lifts were extremely costly to repair, so that any prevention of damage was going to save money on repairs and maintenance in the long term
26. The external cameras were manually operated on a regular basis by the concierge control centre. They were manually operated every couple of hours, depending on the demands placed on the service at any one time. When they were stationary they were positioned to provide optimum coverage of the site. They continued to monitor and record 24 hours a day seven days a week. Footage could be reviewed at any time within the next 30 days
27. One of the objectives of the pilot in Weston was to reduce crime. In fact, the introduction of the service initially led to an increased number of reports of crime. That was not because crime had increased but because crimes were being witnessed through the eyes of the concierge service and consequently reported. Residents began to report incidents more freely, knowing that the concierge service might have captured the evidence essential to the police in being able to deal with the report effectively. Another objective was to reduce antisocial behaviour and fear of antisocial behaviour
28. Various measures were put in place to protect privacy. These included privacy masks on windows, comprehensive training of staff, and management controls to ensure compliance with legislation
29. The system started at Weston about three years ago. Mrs DaCruz's statistics on the longer term results were at page 99
30. The main objectives of the scheme were

- a. reduce crime and the fear of crime
  - b. monitor activities through the use of CCTV and electronic keys
  - c. reduce antisocial behaviour and the fear of antisocial behaviour
  - d. reduce the numbers of unauthorised visitors entering the block
  - e. assist the Respondent/Landlord in managing tenancies by identifying breaches of the tenancy agreement
  - f. help genuine visitors to enter the block
  - g. coordinate responses to breaches of security and issues
  - h. monitor the use of door entrances and take appropriate action where issues were identified
  - i. protect individual privacy
31. Statistical data about the effectiveness of the system at Weston were in Mrs DaCruz's evaluation report at pages 71 to 75. Cameras were having a deterrent effect. Many residents felt safer and more secure since the introduction of the service. Police advised that concierge operators had assisted in real-time investigations enabling them quickly to review footage of people involved in a racially motivated attack and assisting police in confirming that the offenders had not entered any of the tower blocks after the assault, therefore directing police resources to a much narrower area. Staff had remarked on a marked reduction in rubbish being thrown out of windows
32. Based on the success of the pilot scheme at Weston a report was submitted to full Cabinet seeking permission for the implementation of the scheme in the remaining 13 tower blocks within the Southampton region. A copy of the Cabinet report and a record of the executive decision confirming approval was at pages 100 to 109
33. In the past month that concierge service had answered 172 calls from the main entrance intercom panels at the Building. They were from either residents who did not have their token and asked to be let in, or visitors. The concierge service talked to the callers, assessed whether they should be permitted into the Building and then either remotely opened the door or refused access according to circumstances
34. Concierge operators were pro-actively looking to security issues and dealt with them as soon as they were observed. For example, if a door was left propped open the concierge operator would contact the neighbourhood board and ensure that the door was made secure or ask someone else to close the door. They would review CCTV footage to see who was responsible for the security breach so that the issue could be dealt with directly with the person responsible
35. Mrs DaCruz attended a Holyrood estate residents association meeting on 8 February 2010. The residents were concerned about groups of individuals getting into the communal areas drinking, intimidating residents, and causing nuisance and damage, although this did not specifically concern the Building. The residents acknowledged that the concierge service had already prevented a lot of this type of activity in the Holyrood estate. For example the service had been actively involved in a number of incidents in the Holyrood estate. In one of the other blocks the service had observed an individual urinating in a lift, criminal damage and antisocial behaviour in the communal area of the block and criminal damage to a resident's property. Evidence of those incidents had been passed to both the police and the local housing office for tenancy enforcement action to be taken. At another block the service had observed vagrants entering the block and sleeping in the bin area. The police were notified and the individuals were removed. The service had also dealt with an incident of youth nuisance and antisocial behaviour. CCTV evidence had been provided to the local housing



office to take formal action against those families involved. During routine monitoring the service had observed people in the communal area of one of the other blocks injecting drugs and leaving associated drug litter. The police were advised and were able to deal with those involved immediately

36. The service had been a success not only for the residents but also for police and council officers. The reduction in crime figures had been encouraging and had been reflected in the feedback from residents

#### **Statement by Mrs Ward 12 February 2010**

37. Mrs Ward stated that she was employed by the Respondent/Landlord as a leasehold sales supervisor. Her duties included the collating of the relevant information about service charges and major works and corresponding with leaseholders about the charges applicable to them
38. The consultation procedure under section 20 of the 1985 Act about the proposed concierge system started before the report referred to in Mrs DaCruz's statement was submitted to Cabinet for consideration by the councillors
39. A notice of intention to undertake the works and to invite any observations was sent to all residents on 1 June 2006. A copy was at pages 42 to 43
40. Drop-in events were arranged in the remaining 13 tower blocks to provide residents with an opportunity to ask questions and to look at the system and see how it worked and to make representations and voice any concerns. These took place between April and May 2007. A copy of the drop-in event schedule was at page 44
41. A leaflet was also provided to give further information about the system. A copy was at pages 45 to 46
42. Taking into consideration the consultation with residents the decision was made to proceed with the project
43. The Respondent/Landlord entered the tendering process. A notice of proposal was then sent to all leaseholders in the 12 tower blocks. A copy was at page 47
44. After the consultation period and the conclusion of the tender process a contract was entered into for the works on 20 February 2008. Mr Russell advised her when the works were due to start and confirmed the costs listed in the contract
45. This enabled Mrs Ward to send a further letter, which she referred to as a works under long-term agreement letter. She prepared a note to enable her to send a letter. A copy of the note was at page 48, showing how the estimated costs were calculated. The letter itself was at page 49
46. After conclusion of the works, Mr Russell gave her details of the actual cost of the works. That cost was then compared with the estimates given in the works under long-term agreement letter. That letter had previously estimated costs to be £3,418.06 plus a 15% administration fee of £512.71 in accordance with the contract figures. The actual cost of the works actually came to £3,802.60. The

policy of the leasehold team was that where actual costs were more than 10% higher than estimated costs, the leaseholder was billed the original amount, taking into consideration that leaseholders relied on estimates to assist them in budgeting for impending works. As the actual amount was in excess of 10% of the previous estimate, the invoice issued reflected the estimated sum, as shown at page 54

#### **Statement by Mr Russell 11 February 2010**

47. Mr Russell stated that he was employed by Capita Symonds Ltd. He worked through the Southampton City Council Strategic Services Partnership as a building surveyor/contract administrator. It was his responsibility to manage projects and to liaise with the clerk of works who monitored progress on site and the quantity surveyor who agreed the financial side of the contract based on invoices submitted by the contractor
48. In December 2007 he was employed to project manage and administer the design, supply, installation, maintenance, and reactive repair of the remotely operated concierge service contract. At the time he became involved tenders for the work were due for return and his first task was to set up and manage the tender evaluation procedure
49. The system involved an electronic concierge system. Residents had their own access fobs which operated the main doors and allowed them entry to other areas of the building to which they had the right of access. The main door entry panels contained cameras through which residents could see the person trying to gain access. They could then choose whether they wished to speak to the person and allow/refuse them entry to the block or to refer the call to concierge control
50. The previous system was a fob and intercom system
51. The Respondent/Landlord retained images recorded by the camera system for 31 days. In addition to CCTV images, all uses of the access fobs were recorded and were kept logged for 31 days
52. In procuring the concierge programme the Respondent/Landlord adhered to the procedures that ensured best value for money for the council taxpayers and residents and complied with European procurement regulations
53. Following European Union rules the Respondent/Landlord published its OJEU notice on 21 March 2007. 32 enquiries were received. The shortlist was agreed in September 2007. Five enquiries were invited to tender on 19 October 2007. Three of the invitees did not choose to submit a tender. Two tenders were received on 14 December 2007. A tender evaluation panel was called on 7 January 2008. The panel comprised residents' representatives and officers of the Respondent/Landlord. It was serviced by Mr Russell and Mike Coombe (Capita Symonds Ltd). Tenders were assessed in accordance with the tender evaluation criteria. The tender of the Alarming Company Ltd was selected. The Respondent/Landlord's quality and quotation evaluation information sheet was at page 111. The tender evaluation panel notes were at page 112
54. The contract for the concierge system was signed on 20 February 2008. An extract was at pages 113 to 117. The contract involved 13 tower blocks in Southampton and for administrative purposes was divided into four phases, three of three blocks each, and one of four blocks. The Building was part of the final phase of the programme

55. The works at the Building started on 20 July 2009. Valuations for the work were conducted on a monthly basis. The quantity surveyor checked payment claims submitted by the contractor and then, after consultation with Mr Russell and the clerk of works that the invoiced works had been completed satisfactorily, issued certificates of payment with breakdowns of costs attached, providing a running total of the costs as the works progressed. The certificates and breakdowns of costs were at pages 118 to 135. The last of those certificates provided the final figures for the cost of the works. Only then was it possible to confirm the total costs in respect of the Building
56. After completion of the works Mr Russell informed Mrs Ward of the figure from the final certificate of payment. That was the first time that she was made aware of the final cost of the works and the first point at which she could issue any invoices to leaseholders
57. The cost of works for the Building was made up of two parts, the value of apparatus which was uniform for each block irrespective of the number of residents (electronic equipment, CCTV equipment, hard disc recorders, readers, monitors and door entry systems for front and rear doors) and other costs which were specific to the Building (the costs of connecting to the entry panel, the handset in each flat, external CCTV to cover the car parks and walkways, car park barriers etc). The total costs of the concierge programme for the Building were as follows

Element	block cost	unit cost
draft final account	126,022	3,150.55
control room equipment and fit out	7,211	180.28
data transmission network	<u>4,993</u>	<u>124.84</u>
subtotal	138,226	3,455.65
fees at 10.04%	<u>13,878</u>	<u>346.95</u>
total	152,104	3,802.60

58. The costs for the control room equipment and fit out was the cost associated with equipping the central control facility. That cost was divided equally between the 19 blocks giving a total of £7,211 for each block. The data transmission network was the cost of linking each block involved in the network to the central control facility. Again this was shared equally between the 19 blocks giving a total of £4,993 for each block
59. A breakdown of the costs for all the blocks involved was at page 135. The cost of the work at the Building was actually lower than that of the larger blocks. However as there were more residents in the larger blocks the average cost for each flat in those larger blocks was less than that at the Building

#### Oral evidence by Mrs DaCruz

60. Mrs DaCruz adopted her statement
61. In addition she said that the system, namely the CCTV network and door entry system, was linked by fibre-optic cables. All CCTV images were transmitted to the control centre in live time and were monitored in live time and also recorded digitally. The door entry system was also connected to the control centre so that staff could remotely take calls from the main entrance door and from

individual flats and could remotely open the main door. The system enhanced security within the Building and provided support and assistance for residents and visitors to the Building. The system was also used to identify and record incidents of antisocial behaviour, criminal activity, and breaches of tenancy agreements. The information supplied by the service could be shared with relevant agencies such as the police and housing management to assist in tackling the incidents

62. The control room operator could monitor any activity at the main entrance door to the Building such as residents entering and the door being opened. The door entry system was synchronised with the CCTV system, which showed all images from internal cameras (including lift cameras and the main foyer camera and the door entry panel cameras) and the external cameras on the estate. Each resident was issued with an electronic token with which to open the main door. The system recognised which flat number was associated with which token. The central control operator was able to cross reference any incidents captured on the CCTV cameras against any usage of door entry tokens. If a resident allowed access to a visitor through the door entry system then that activity was recorded on the database
63. The advantages of the concierge system over the previous door entry system were that there was now live 24-hour monitoring, and that the digitally recorded images were of a far superior picture quality. It enabled the Respondent/Landlord to take a much more proactive role in security
64. Mrs DaCruz gave further evidence about the evaluation report at pages 56 to 98
65. She also produced a sheet entitled "Holyrood concierge service-incident reports". The Tribunal gave Mr and Mrs Iachkine time to consider the document. They said that they had no objection to its being produced in evidence. The Tribunal admitted it in evidence accordingly. Mrs DaCruz said that there were three blocks in the Holyrood estate, namely Holyrood House, Canute House, and the Building. The sheet contained examples of incidents with which the concierge system had actively been involved. Only two of the incidents directly related to the Building. The one on 7 April 2010 had involved a youth writing graffiti at the main entrance. Police arrived and asked the concierge service for CCTV footage. The images had shown the individuals clearly and the police were dealing with the incident. The one on 1 November 2009 had involved a resident being harassed and frightened by a neighbour. The victim had contacted the concierge service in a distressed and frightened state. The control centre had given advice and had diverted all calls to the flat directly to the control centre. CCTV footage had been collated in case of later need. Other incidents on the sheet related directly to the other two blocks on the Holyrood estate but many affected the Building as well, such as youth nuisance, drug dealing, and vagrants
66. In cross-examination Mrs DaCruz said that she had not had direct involvement with the previous door entry system but agreed that her understanding was that there had been some form of CCTV with footage locally recorded onto a video cassette recorder. She did not know whether or not there had been any external CCTV cameras then. She understood that there had been a standard door entry system without any means of contacting a remote operator. She also understood that the quality of images and of the equipment had not been as good as the current system
67. Under the new system the electronic tokens could be disabled remotely at any time whereas in the past this had not been possible and in order to cancel a token it would have been necessary physically to retrieve it

68. When asked whether under the old system a resident could press a mute button if the resident did not want to let anyone in, Mrs DaCruz said that she did not know, but it sounded feasible
69. The new system included two external cameras on the door panels, and internal cameras in the foyer and lifts as well as external cameras. The external cameras were part of the system. When it was put to Mrs DaCruz that the external cameras should have been paid for by Southampton residents generally, just like cameras installed in, say, London Road, and should not have been included in the service charge for leaseholders, Mrs DaCruz said that the external camera charged to the leaseholders of the Building was a specific camera for the Building
70. Under the previous system police investigating an incident at the Building would have had to request a copy of the VCR tape
71. When asked whether the Respondent/Landlord had considered simply replacing the VCR recorder with a DVD recorder rather than incurring the cost of a 24-hour service, Mrs DaCruz said that it was one option. However the Respondent/Landlord thought the benefit of a comprehensive service with live monitoring was worth the extra expense. In the long term it was hoped that the new system would prevent incidents
72. When asked whether the maintenance costs of this more sophisticated system would be higher than the maintenance costs of the previous system, Mrs DaCruz said that the new system was designed to withstand a considerable amount of vandalism. For example there were two cameras in the lift, so that anyone attempting to damage one camera would be identified by the other. Each external camera was duplicated. The cameras were of sufficient quality to withstand a bullet without damage. There had been no incidents of damage to external cameras since 2006. There had been some damage to lift cameras. These had been dealt with by criminal proceedings. However Mrs DaCruz agreed that a more sophisticated piece of equipment was likely to cost more to repair than a less sophisticated piece of equipment
73. When asked whether the Respondent/Landlord had considered a wireless system to avoid the cost of wiring, Mrs DaCruz said that this had been considered. Technical experts had advised that a radio wireless system would have involved a much larger initial capital outlay and would then have been less reliable. The fibre-optic network was much cheaper to install and was more reliable
74. In answer to questions from the Tribunal Mrs DaCruz said that in relation to the report for Cabinet at page 100, the second recommendation, namely "to approve the application of a service charge commencing at £1 per week per property following installation and connection to the electronic concierge service" was for the ongoing cost of running the service, not the installation cost. The figure of £1 a week had been based on the best estimate available at the time. The current estimate was about £3 a week, of which £1 would be paid by tenants through service charge, and the remaining £2 would come from the housing revenue account, which effectively meant that tenants' rent would increase by £2. The ongoing costs included maintenance of technical equipment, staffing costs of the control centre, and the ongoing rental charges for the fibre optic network
75. The external CCTV cameras were completely new and had been installed as part of the project. Mrs DaCruz did not know whether there had been any external cameras under the old system

76. Components from the old system could not be used because none of them was compatible with the new system. The old recorders had been black and white VCR's. The pilot scheme at Weston had been effective from February 2006. The report to Cabinet at pages 100 to 106 had been prepared in June 2006, so that only three or four months of experience with the pilot scheme had been taken into account in that document. However that had been sufficient time because it had been so successful, even though it was not as comprehensive an evaluation as that subsequently prepared in February 2010 at pages 56 to 98
77. When asked who benefited from the concierge system, Mrs DaCruz said that the primary purpose was to provide security in support of the Building. However a knock-on benefit was for the public in general in the reduction in crime
78. In re-examination Mrs DaCruz said that the report to Cabinet and the Cabinet's subsequent decision was to authorise capital expenditure estimated at £3 million, to approve the application of the service charge starting at one pound a week per property following installation, and to approve the proposed block by block resident consultation proposals set out in the report, as confirmed at page 107. The final decision to carry out the works was not made until later

#### **Oral evidence by Mrs Ward**

79. Mrs Ward adopted her statement
80. In addition she said that there were seven flats in the four-storey block at the Building, of which four were leaseholders, and 33 flats in the nine-storey block, of which six were leaseholders. The residents in the four-storey block objected to the concierge system being installed. The system was therefore installed only in the nine-storey block. However, the leaseholders in the nine-storey block would only be asked to pay a 1/40 share of the cost of installation in accordance with the service charge contribution provisions in their leases, even though otherwise they might have been expected to pay a 1/33 share
81. Mrs Ward detailed the consultation procedure
82. In answer to questions from the Tribunal, Mrs Ward agreed that no costings had been put in any of the section 20 consultation letters until the letter dated 15 December 2008 (page 49). However earlier letters had made it clear that tenders were available for inspection had the leaseholders wished to see them. That letter dated 15 December 2008 also referred specifically to "new CCTV to the block and surrounding area" being included in the works
83. The expression "service charge" was used in the leases for contributions to the cost not only of ongoing day-to-day maintenance and insurance but also of major works. However the expression "service charge" in the recommendations in the June 2006 report to Cabinet on page 100 only meant the ongoing costs of servicing the system after installation, not the cost of installation itself
84. In cross-examination Mrs Ward agreed that there had only been one drop-in event for the Building. She had not organised the drop-in events and did not know why there were no meeting minutes with estimates of potential costs

85. She did not know when council tenants had been informed about the increase of £1 in their service charge and £2 in their rent as a result of the concierge system installation
86. When it was put to Mrs Ward that the first letter informing the leaseholders about the costs of installation of the system was the letter dated 15 December 2008 and that the leaseholders could not meaningfully comment on the earlier proposals to install the system without knowing the cost, Mrs Ward said that the costs could not be mentioned earlier because the costs had not been certain earlier, and the consultation procedure under section 20 of the 1985 Act did not require costs to be mentioned. The consultation letter dated 7 January 2008 (page 47) had specifically stated that a copy of the proposal could be viewed by appointment. In any event, the Applicant/Leaseholders had specifically agreed at the pre-trial review that the section 20 consultation procedure was not in issue in these proceedings
87. Mrs Ward did not know whether any council tenants at Building had objected to the concierge system being installed
88. When asked why the recommendations in the report to Cabinet at page 100 had not mentioned the cost to leaseholders, Mrs Ward said that the cost to leaseholders was not a matter for Cabinet, which merely had to decide whether to authorise in principle the expenditure on the installation
89. There was no re-examination

**Oral evidence by Mr Russell**

90. Mr Russell adopted his statement
91. In addition he said that all services for the door entry system were made by a company called GDX. Their name appeared in the payment certificates, for example at page 133
92. The components of the old system could not be used in the new system because they were incompatible. For example, camera images had been recorded in black and white on VCR tape and could not be linked to any network. The new system was digital, high-definition, and capable of transmission to the central control room along with data management including the updating of access tokens and monitoring of activity in relation to the door entry system
93. There had been no previous external CCTV cameras at the Holyrood estate. As part of the concierge system project one external CCTV camera had now been installed which was dedicated to the Building, in addition to others now on the Holyrood estate. The camera was a 360° pan tilt and zoom camera. Its direction could be controlled by the remote operator but it defaulted to the Building. It was extremely robust and was based on a military camera. It could absorb a shot gun blast at 2 m
94. In relation to the tendering process the Respondent/Landlord had followed European Union rules. After initial enquiries a tender invitation list was drawn up, and was copied at page 110. Only two companies actually submitted a tender. They were evaluated by a tender evaluation panel (which included a leaseholder representative and a council tenant representative) in accordance with the documents at pages 111 and 112 (the date of the panel meeting was in fact 7 January 2008, not 7 January 2007 as stated at the top of the document at page 112). The Alarming Company Ltd tender

was better financially and qualitatively, and the Respondent/Landlord entered into a contract with the Alarming Company Ltd on 20 February 2008 (extracts at pages 113 to 117)

95. The payment certificates at pages 118 to 135 were cumulative in that work referred to in the first payment certificate was referred to again in the second payment certificate, along with new work for the month covered by the second payment certificate, then all of that work referred to in the second payment certificate was referred to in the third payment certificate along with new work for that month, and so on. Although the external CCTV camera was mentioned more than once in the payment certificates, only one was included in the cost to the Building, as confirmed in the final payment certificate at page 133
96. The system was commissioned and became operative at the point of the final certificate. There would be no extra costs of installation so far as leaseholders were concerned. The contractor was under a 12 month period of responsibility for defects
97. The final figure paid to the contractor was £126,022.33 as shown on page 134. In addition there were costs of the control room equipment and fit out and data transmission network as set out in Mr Russell's statement so that the total cost was £152,104. However the figure invoiced to leaseholders was less because the original estimate to leaseholders had been less, as explained by Mrs Ward
98. There was no way that the system could have been provided for a lower figure. The contractor had been the best and cheapest. The tender was fixed was not subject to negotiation
99. In cross examination Mr Russell agreed that the first time that the Applicant/Leaseholders had seen a detailed breakdown of the costs of installation of the concierge system at the Building was in response to the application to the Tribunal. Payment certificates were not sent to leaseholders because they were confidential internal instructions from Mr Russell as contract administrator through the quantity surveyor to the accounts section to send the payment to the contractor
100. 19 blocks had been included in the project, including six at Weston and 13, including the Building, elsewhere. The Respondent/Landlord had about 420 other blocks which were not classified as high rise and were accordingly not the subject of the same amount of antisocial behaviour as the high-rise blocks. There was currently a project to introduce a more controllable door entry system to some of them, more controllable meaning that data could be managed better. That system had not been installed in the Building because it was a high-rise block. Mr Russell did not have with him any statistics to show that high-rise blocks were more vulnerable
101. There were three external cameras able to maintain the views of the Building. Only one had been charged to the Building, and the figure of £10,206.05 appeared at page 133
102. The figure of £17,097.17 for GDX hardware at page 133 was for the equipment, such as handsets, panels and cabling, to provide the door entry system including the panel cameras
103. Mr Russell thought that the annual ongoing maintenance cost including salaries would be about £63,000. He did not know the total cost of the previous system



104. In the payment certificate at page 131 the “value of work executed” figure of £2,385,454.57 was the cost of work and materials supplied by the contractor. The “value of materials on site” figure of £924,377.45 was the cost of the GDx equipment bought separately by the Respondent/Landlord
105. Mr Russell did not know why the displays on the handsets in each flat were in black-and-white rather than colour, but assumed that it had been to reduce cost
106. In answer to questions from the Tribunal, Mr Russell said that the reason why the manuscript figure of £150,049.27 in the breakdown of costs at page 135 did not tally with any of the total figures for the costs shown in other documents was that that figure was a revised figure before all the exact costings were known and had now been superseded by the figures summarised in Mr Russell’s statement. The original, lower, figure shown in the breakdown, which was dated 7 July 2008, was £136,722.31, which was the figure shown in the notice under section 20 of the 1985 Act dated 15 December 2008 at page 49, and was the figure upon which the service charge to the Applicant/Leaseholders was ultimately based, as confirmed in the invoice at page 54
107. The reference in the fifth column of the cost breakdown at page 135 to “fees at 8.22% 22% addition” was a reference to Capita Symonds Ltd fees of 8.22% on which the Respondent/Landlord charged 22%, making a total fee of 10.04% as set out in the calculations in Mr Russell’s statement
108. Mr Russell did not know whether any consideration had been given to leasing the concierge system equipment rather than buying it outright because he had taken over the project when it was already at the tender stage

**Mrs Kigonya’s submissions in the Respondent/Landlord’s statement of case and at the hearing**

109. Mrs Kigonya submitted that the costs of the concierge system installation could be included in the service charge payable by the Applicant/Leaseholders only to the extent that the costs had been reasonably incurred
110. The costs had indeed been reasonably incurred. The Respondent/Landlord had acted properly and responsibly
111. Only two tenders had been received. The one which was better was also the cheaper and had been chosen accordingly
112. The Applicant/Leaseholders were only being charged a 1/40 share of the cost in accordance with the lease, even though there were only 33 flats in their block
113. The benefits of the concierge system were primarily for the leaseholders, although there were benefits for the community at large as well
114. The Applicant/Leaseholders had been given the opportunity to ask questions about costs at the drop-in meeting and the notice under section 20 of the 1985 Act dated 7 January 2008 at page 47 had clearly stated that the proposal could be viewed by appointment
115. The Applicant/Leaseholders were arguing that the cost of installation were disproportionate. Mrs Kigonya accepted that if they were disproportionate then this could affect whether the costs were

reasonably incurred. However they were not disproportionate. The benefit to residents on the Holyrood estate, including the Building, could be seen from the sheet entitled “Holyrood concierge service-incident reports”. Feedback from residents had been positive. It gave them more control about who to let in. Residents had come to rely on the system and complained if there are any problems with it

116. In **Forcelux v Sweetman** the Lands Tribunal stated as follows :

*39 In determining the issues regarding the insurance premiums and the cost of major works and their related consultancy and management charges, I consider, first, Mr Gallagher's submissions as to the interpretation of section 19(2A) of the 1985 Act, and specifically his argument that this section is not concerned with whether costs are “reasonable”, but whether they are “reasonably incurred”. In my judgement, his interpretation is correct, and is supported by the authorities quoted. The other question I have to answer is not whether the expenditure to any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred*

*40 But to answer that question, there are, in my judgement, two distinctly separate matters I have to consider. First, the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Second, whether the amount charged was reasonable in the light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market*

*41 It has to be a question of degree, and while the appellant has submitted a well reasoned and, as I said, in my view a correct interpretation of “reasonably incurred”, that cannot be a licence to charge a figure that is out of line with the market norm*

117. In **Veena v Cheong** the Lands Tribunal stated as follows :

*103 ..... The word “reasonableness” should be read in the general sense and given a broad, common sense meaning. It should be distinguished from the words “reasonably incurred” in section 19(2A) of the 1985 Act the question is not solely whether costs are “reasonable” but whether they were “reasonably incurred”, that is to say, whether the action taken in incurring the costs and the amount of those costs were both reasonable.....*

118. The Respondent/Landlord had properly tested the market through its tendering process. The amount invoiced to the Applicant/Leaseholders had been reasonably incurred

119. In relation to the Applicant/Leaseholders’ application under section 20C of the 1985 Act, Mrs Kigonya undertook that the Respondent/Landlord would not be seeking to include the cost of these proceedings in any future service charge

**Mr Iachkine’s submissions in the Applicant/Leaseholder’s statement of case and at the hearing**

120. Mr Iachkine submitted that the lease did not permit the cost of installation of the external CCTV camera to be included in the service charge. A nearby playground had recently been revamped but the costs had not been included in the service charge
121. Mr Iachkine expressed surprise that there was to be no concierge system in the lowrise blocks in Southampton
122. Weston was in central Southampton and was in a less safe area than the Building and the security position was accordingly not comparable
123. The system was not going to be installed in the four-storey block at the Building and only two incidents were shown on the sheet entitled "Holyrood concierge service-incident reports". The Respondent/Landlord should have carried out more investigations before going ahead with the project
124. Mr and Mrs Iachkine had purchased their flat for £80,000. The cost to them of the concierge system installation would be £4,000, which was 5% of the purchase price of their flat. It would be like installing a Rolls-Royce engine in a Skoda. It was an improvement but the cost was disproportionate to the benefit. Just because one might like a chocolate bar did not mean that one would pay £40 for it
125. The cost had not been reasonably incurred

#### **The Tribunal's concerns on reconvening to discuss the case after the hearing**

126. At the directions hearing on 26 January 2010 the Tribunal had noted, amongst other matters, that no dispute had been raised by the Applicant/Leaseholders, who were unrepresented, concerning the question whether the consultation requirements referred to in section 20 of the 1985 Act had been complied with
127. However, no notices under section 20 of the 1985 Act had by then been supplied to the Tribunal
128. At the substantive hearing on 29 April 2010, by which time copies of notices under section 20 of the 1985 Act had been made available, the Tribunal had again noted that no dispute had been raised in that respect by the Applicant/Leaseholders, who, again, were unrepresented
129. However, on reconvening to consider its decision following the substantive hearing, the Tribunal became concerned about whether the consultation procedure under section 20 of the 1985 Act had in fact been complied with, in that there were no estimated figures in either the notice of intention dated 1 June 2006 (page 42 of the Respondent/Landlord's bundle), or the notice of proposal dated 7 January 2008 (page 47)
130. Before making any decisions, the Tribunal wished to give the parties the opportunity of making submissions in that respect, and the Tribunal accordingly made further directions giving the parties the opportunity to make further written submissions about any matters which the parties wished the Tribunal to take into account in deciding whether the consultation procedure under section 20 of the 1985 Act, as set out in the Service Charges (Consultation Requirements) (England) Regulations 2003, had been complied with. The Tribunal indicated in those directions that on receipt of any

written submissions the Tribunal intended to reconvene to consider its decision after the 24 June 2010 without a further oral hearing unless by that date either party had made a written request for a further oral hearing

#### **Further submissions by Respondent/Landlord 11 June 2010**

131. The Respondent/Landlord's submissions were that :
- a. the Respondent/Landlord was submitting a supplemental bundle of documents
  - b. the Respondent/Landlord had undertaken the consultation process in accordance with the statutory stipulations of the 2003 Regulations
  - c. standard form letters had been drafted with reference to the statutory provisions and to the example letters shown in the Leasehold Advisory Service Publication -- section 20 Consultation for Council and other public sector landlords ("the LAS publication") (extracted at pages at pages 152 to 163 of the supplemental bundle)
  - d. as shown in the Official Journal of the European Union ("OJEU") notice on pages 164 to 168 of the supplemental bundle the work attributed to the contract (extracted at pages 113 to 117 of the Respondent/Landlord's original bundle) involved the design, supply, installation, maintenance and reactive repair of remotely operated concierge service
  - e. the proposed agreement therefore incorporated both works and services
  - f. when considering whether or not to proceed with an OJEU notice it was necessary to consider the estimated value of the works in order to ascertain whether the value of the works passed the OJEU minimum value thresholds
  - g. there were different threshold levels depending on whether the agreement incorporated works or services
  - h. the proposed agreement was deemed to be a project consisting primarily of works
  - i. in 2007, when this was being considered, the OJEU threshold for works was £3,611,319
  - j. as shown in the OJEU notice (at page 164) it was estimated that the value of the contract was between £2,500,000 and £3,500,000
  - k. whilst those figures did not take the value over the OJEU works threshold, there was a risk that tenders might be returned over that value
  - l. the Respondent/Landlord therefore decided to proceed with the publication of the tender in the OJEU, which involved wider advertisement of the project whereby tenders were submitted in response, as opposed to the Respondent/Landlord inviting tenders from contractors on approved lists
  - m. the OJEU stated (at page 165) that the duration of the proposed contract would be 48 months
  - n. the extract from the contract particulars (at page 179) showed the dates for completion for the different phases under the works package, which illustrated that the works element of the contract had a term of 70 weeks and that the service part of the contract had an additional term beyond that, illustrating that the contract ran for a period in excess of 12 months
  - o. in accordance with the 2003 Regulations, and the guidance issued in the LAS publication, the contract was classed as a long-term agreement in that the contractual term of the contract ran for over 12 months
  - p. as the estimated value of the works could have placed the proposed agreement within the OJEU notice value, consultation therefore fell within the stipulations contained in schedule 2 to the 2003 Regulations

- q. as the contract involved the provision of services in addition to works, this also brought the contract into the category of qualifying works, which therefore fell within the consultation procedure in schedule 3 to the 2003 Regulations as this would also be subject to a qualifying long-term agreement
- r. the guidance in the LAS publication (at page 154) confirmed that to be the correct way to proceed
- s. the notice of intention dated 1 June 2006 (at pages 42 to 43 of the Respondent/Landlord's original bundle) followed the requirements set out in paragraph 1 of schedule 2 to the 2003 Regulations and the template letter shown in appendix 4 of the LAS publication (at page 157)
- t. there was no requirement to provide details of estimates at that stage of the consultation procedure
- u. the next stage was the preparation of proposals
- v. the preparation and notification of the proposal was in accordance with paragraphs 4 and 5 of schedule 2 to the 2003 Regulations
- w. paragraphs 4(4) to (7) of schedule 2 to the 2003 Regulations set out how the proposal was to address the issue of estimated costs during the proposal stage of the consultation
- x. paragraph 5(2) of schedule 2 to the 2003 Regulations stated that when providing notification of the proposal a copy of the proposal should be provided with the notice, or the notice should specify the place and hours at which the proposal might be inspected
- y. the LAS publication (at pages 156 to 157) set out what the proposal had to contain and the stipulations regarding the provision of estimates, with appendix 5 (at pages 150 860) containing an example notice of proposals with notes providing guidance on the provision of the proposal
- z. the procedure forms for the notice of proposal stage (at pages 169 to 175) had been drafted for all the categories of consultation under the 2003 Regulations, excluding schedule 3 where that stage was not necessary
- aa. the first page of the procedure confirmed the facts to be addressed by the proposal, including the provision of estimated costs
- bb. the remaining forms corresponded with the information required to assist in the collation of the proposal based on which schedule applied to the particular project being considered
- cc. having reviewed the consultation records the Respondent/Landlord had not been able to obtain a copy of the proposal for the Building
- dd. Mr Tony Johnson, the person who drafted the proposals in January 2008, had since left the employment of the Respondent/Landlord and it had not been possible to obtain a copy of the document from his records
- ee. the proposal in respect of Albion Towers was at pages 176 to 177
- ff. an e-mail (at page 178) confirmed that the Albion Towers proposal was a true and accurate representation of what would have been available and that there was one of each of those forms for each block involved and that the costs for each block were different
- gg. the example proposal followed the requirements set out in paragraph 4 of schedule 2 to the 2003 Regulations and the guidance shown in the LAS publication
- hh. the estimates provided corresponded with the stipulations set out in paragraphs 4(4) and (5) of schedule 2 to the 2003 Regulations in that the proposal set out the estimate for each leaseholder in addition to that for the block it related to
- ii. the notice of proposal letter (at page 47) confirmed that the proposal could be viewed at Shirley Depot, Villiers Road, Southampton..... Monday to Friday between 2 pm and 4 pm

- jj. that letter followed the requirements set out in paragraph 5(2)(a) of schedule 2 to the 2003 Regulations, in addition to the example shown in appendix 5 to the LAS publication
- kk. details of estimates had therefore been available to leaseholders at the proposal stage, contrary to the indication given during the Tribunal hearing on 29 April 2010
- ll. the consultation process had not previously been in dispute before the Tribunal and had therefore not been investigated in preparation for the Tribunal hearing
- mm. the final consultation letter sent on 15 December 2008 (at page 49) corresponded with the requirements under schedule 3 to the 2003 Regulations for qualifying works under a qualifying long-term agreement and also corresponded with the example notice of intention shown in appendix 6 (for schedule 3) in the LAS publication (at pages 161 to 163)
- nn. the Regulations required that only one consultation letter was sent during that process, being a notice of intention to enter into an agreement for works under a qualifying long-term agreement
- oo. there was no requirement to provide details of estimated costs during the initial notice of intention stage
- pp. that stage of the procedure (described in the LAS publication as the pre-tender stage) was where the landlord wished to put the leaseholder on notice of intention to commence works in order to ascertain any observations they wished to make prior to any action being taken to secure a contract
- qq. the provision of estimates was at the notice of proposals stage
- rr. that stage coincided with the landlord obtaining tenders for the works and prior to any action being taken to enter into a formal agreement
- ss. estimates were to be included with the notice of proposals or were to be made available for inspection
- tt. when sending the final notice of intention to enter into the agreement for works estimates again had to be provided
- uu. that was sent after the agreement had been entered into and was used by the Respondent/Landlord as the mechanism formally to confirm the estimated costs for the work
- vv. the Respondent/Landlord did therefore consult with the Applicant/Leaseholders in accordance with the statutory provisions
- ww. the Tribunal was asked to accept the proposal document relating to Albion Towers as a true and accurate representation of what was available for the Building in accordance with the notice of proposals dated 7 January 2008

#### **Further submissions by Applicant/Leaseholders 30 June 2010**

132. The Applicant/Leaseholders' further submissions were that :
- a. although it was not a requirement, paragraph 3 of the 2003 Regulations (at page 156) clearly stated that a landlord should provide a tenant with estimates where reasonably practicable and that if estimates could not be provided at that stage the landlord should state the reasons and the date when an estimate would be provided
  - b. the Respondent/Landlord failed to do so in the letter dated 1 June 2006 (at page 42), and again failed to provide the reason and the date when estimates would be available even in the letter dated 7 January 2008 (at page 47)
  - c. there was only a vague reference to a copy of the proposal being able to be viewed by appointment

- d. the Respondent/Landlord had confirmed in their latest submissions that the estimated value of the contract had been known to be between £2,500,000 and £3,500,000 in 2007
- e. since both the value of the contract and the number of leaseholders and tenants were known variables it would have been possible to calculate a rough estimate for the leaseholders, especially given that in June 2006 the Respondent/Landlord had already managed to estimate a service charge increase of £1 a week for each tenanted flat
- f. there was a question why the estimate for the tenants was already known in 2006 but an estimate for the leaseholders was only available in 2008
- g. paragraph 3 (at page 156) clearly stated that when the estimate was available it had to be provided within 21 days of its receipt
- h. the Respondent/Landlord might have followed the law, but it had not followed good practice
- i. it would have been reasonable to expect an estimate of future costs, even if it was a rough estimate
- j. the Respondent/Landlord had not been able to obtain a copy of the proposal for the Building
- k. the proposal was exactly the document that most leaseholders would want to receive and view on-time, being clear and precise
- l. the Applicant/Leaseholders were surprised that a proposal had not been done for the Building, or had been done but then lost, which was essentially the same
- m. the Respondent/Landlord was now saying that Tony Johnson had drafted the proposal in January 2008, which meant that the exact estimate was available to the Respondent/Landlord in January 2008, although, as previously stated, a rough estimate could have been calculated in 2007
- n. costs as high as those in this case should clearly have been communicated to the leaseholders in writing, and not buried somewhere in a pile of old papers in the hope that they would never be found
- o. the fact that the actual proposal for the Building had never been recovered could well imply that it had never been finished in the first place, and therefore was not actually viewable, contrary to the claims made by the Respondent/Landlord

### **Consideration by the Tribunal**

133. No request for a further oral hearing has been received by the Tribunal. The Tribunal has accordingly reconvened to discuss its decision without a further hearing

### **The Tribunal's findings**

134. The Tribunal has considered in the round all the evidence before it and the submissions made by Mrs Kigonya on behalf of the Respondent/Landlord and Mr Iachkine on behalf of the Applicant/Leaseholders
135. *Whether the costs were reasonably incurred*
136. The Tribunal has taken particular account of the following matters:
- a. Mr and Mrs Iachkine's submissions that the security issues at the Building and were not as bad as at Weston, that there was no need for a top of the range system including CCTV cameras, that the security system was not so much of a benefit to leaseholders at the Building as to the rest of the estate and to the public, that similar systems were not being

installed in low-rise blocks, and that the system was not cost-effective compared to the value of each flat

- b. the fact, as the Tribunal finds, that the CCTV camera next to the Building also provides information about nearby parts of the estate

137. However, the Tribunal makes the following findings :

- a. the Tribunal accepts as persuasive, and as in accordance with section 19 of the 1985 Act and the decided cases referred to earlier in these reasons, Mrs Kigonya's submission that the test in this case is whether the costs were reasonably incurred
- b. the Respondent/Landlord's reasons for wishing to install an improved entry system and CCTV system were reasonable in the circumstances, in that the Tribunal accepts as persuasive Mrs DaCruz's evidence that the primary purpose was to provide security in support of the Building, and that the knock-on benefit for the public in general in the reduction in crime was a secondary purpose
- c. the Respondent/Landlord's process of choosing the system was reasonable, in that it included introducing a pilot in Weston and carrying out an evaluation
- d. the Respondent/Landlord's choice of contractor was a reasonable one, in that it followed a reasonable tender process and was a choice based on both price and quality
- e. Mr and Iachkine have, very fairly, not challenged the cost of the system as such (as distinct from the level of that cost which will fall on them by way of their service charge), or the standard of workmanship, or the fact that the system is an improvement over the previous system
- f. although the CCTV camera next to the Building also provides information about nearby parts of the estate, only one camera has been included in the costs attributable to the Building, even though there are other cameras in other parts of the estate
- g. the Tribunal's attention has not been drawn to any provision in the lease which would have enabled the Applicant/Leaseholders to require the Respondent/Landlord to include the costs of the CCTV camera in any estate service charge, to which leaseholders in other blocks in the estate might have had to contribute, rather than including the costs of the camera in the service charge provisions in the lease relating solely to the Building
- h. the Respondent/Landlord would have taken into account when deciding whether it was reasonable to incur the costs that the Respondent/Landlord would itself be bearing three quarters of the costs, in that the Tribunal accepts Mrs Ward's evidence that out of the 40 flats in the Building only 10 are owned by long leaseholders

138. Having considered all the circumstances in the round, the Tribunal finds that the costs were reasonably incurred

139. *Consultation procedure*

140. The Tribunal has taken particular account of the following matters :

- a. Mr and Mrs Iachkine's submissions that sufficient figures were available to the Respondent/Landlord by 2007, or January 2008 at the latest, to enable the Respondent/Landlord to give the leaseholders a meaningful estimate of the likely costs at that stage, and that it was not possible for them to respond meaningfully to the consultation procedure until figures had been communicated to them



- b. the Respondent/Landlord's concession that the proposal referred to in the notice of proposal dated 7 January 2008 cannot be found and that there is no copy of that proposal before the Tribunal

141. However, the Tribunal makes the following findings :

- a. the Tribunal reminds itself that the consultation requirements which the Respondent/Landlord had to meet in this case are those set out in the 2003 Regulations
- b. the Tribunal accepts as persuasive the Respondent/Landlord's submission that in this case the material parts of the 2003 Regulations are those set out in schedules 2 and 3 to those Regulations
- c. under paragraph 1 of schedule 2 to the 2003 Regulations, there was no requirement for the Respondent/Landlord to include an estimate of costs in the initial notice of intention dated 1 June 2006
- d. under paragraph 4 of schedule 2 to the 2003 Regulations, there was a requirement for the Respondent/Landlord to prepare a proposal including either a statement of the Applicant/Leaseholders' estimated contribution to the costs, or a statement of the total expenditure, or an estimate of the current unit cost or hourly or daily rate, or a statement of the reasons for not being able to comply, and the date by which an estimate, cost or rate could be provided
- e. despite there being no copy proposal before the Tribunal, the Tribunal accepts, on a balance of probabilities, the evidence by the Respondent/Landlord that a proposal complying with paragraph 4 of schedule 2 to the 2003 Regulations was indeed prepared in relation to the Building, in that the e-mail dated 11 June 2010 so confirms, the notice of proposal dated 7 January 2008 referred to the proposal being available, and there is no evidence before the Tribunal of any leaseholder in the Building having attempted to inspect a copy of the proposal and of having been unable to do so
- f. under paragraph 5 of schedule 2 to the 2003 Regulations, there was a requirement for the Respondent/Landlord to send a notice of the proposal either accompanied by a copy of the proposal or specifying the place and hours at which the proposal might be inspected
- g. the notice of proposal dated 7 January 2008 complied with that requirement

142. Having considered all the circumstances, the Tribunal finds that the Respondent/Landlord complied with the legal requirements set out in the 2003 Regulations in this case, and that the relevant contributions of the Applicant/Leaseholders are accordingly not limited for the purposes of section 20 of the 1985 Act

143. *The Applicant/Leaseholders' application under section 20C of the 1985 Act*

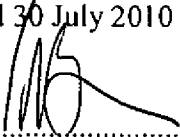
144. However, whilst the Respondent/Landlord may have complied with the legal requirements set out in the 2003 Regulations in this case, the Tribunal finds that :

- a. the Respondent/Landlord has failed in what the Tribunal would have thought would have been the Respondent/Landlord's desire to communicate effectively with the Applicant/Leaseholders, in that it would have been desirable, even though not a legal requirement, for the Respondent/Landlord to have given, at the latest in the notice of proposal letter dated 7 January 2008 itself, a written estimate, even if only a rough estimate, of the likely cost for the Building, and of the likely contribution by the Applicant/Leaseholders, rather than simply inviting the Applicant/Leaseholders to inspect the proposal, particularly as :

- the proposal itself contained estimates of the costs and the likely contribution by the Applicant/Leaseholders, so that those estimates were available at that stage
  - the notice of proposal letter dated 7 January 2008 did not make it clear (any more than it was required to do under the 2003 Regulations) that the proposal did so
- b. if the Respondent/Landlord had given such an estimate at that stage, it is likely that the Applicant/Leaseholders would have raised objections at that stage and that the costs of these proceedings before the Tribunal would have been avoided

145. Having considered all the circumstances, and in the light of Mrs Kigonya's very fair and proper undertaking at the hearing that the Respondent/Landlord would not be seeking to include the cost of these proceedings in any future service charge, the Tribunal orders that the costs incurred by the Respondent/Landlord in connection with these proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant/Leaseholders

Dated 30 July 2010



.....  
P R Boardman  
(Chairman)

A Member of the Tribunal  
appointed by the Lord Chancellor