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HM Courts & Tribunals Service

LONDON RENT ASSESSMENT PANEL

Residential Property TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A AND 19 OF THE LANDLORD AND TENANT ACT 1985 AND SCHEDULE 11 COMMONHOLD AND LEASEHOLD REFORM ACT 2002

Case Reference:	LON/00AL/LSC/2011/0795
Premises:	Flat 527, The Vista Building, 30 Calderwood Street, Woolwich, London SE18 6QW
Applicant:	Vista Building Ltd
Representative:	N/A
Respondents:	1. Mr. Michael Jeffrey Smith 2. Ms. Magdalena Smith 3. Mr. Louis Smith
Representative:	N/A
Date of hearing:	7th February 2012
Appearance for Applicant:	Mr. J. McDonnell (Director of Vista Building Management Limited and Guaranteed Property Services Limited)
Appearances for Respondents:	Mr. Louis Smith (3rd Respondent)
Leasehold Valuation Tribunal:	1. Mr. A Vance (Chair) 2. Mr Avery 3. Mrs. Hart BA (Hons)
Date of Hearing	5 March 2012
Date of decision:	11 April 2012

Decision of the Tribunal

1. The interim service charge payments demanded for the years ending 2010 and 2011 are reasonable and payable in full by the Respondents to the Applicant.

2. Administration charges comprising (i) £60 for fees incurred in 2010 and (ii) £45 and £35 for fees incurred in 2011 are payable in full by the Respondents to the Applicant.

3. The Tribunal is unable to determine the amount of interest due from the Respondents for arrears of service charge for the year ending 2010 as there was no evidence as to how it had been calculated. This issue is remitted to the County Court.

4. The application for an order under S.20C limiting the Applicant's right to recover its costs in these proceedings through the service charge is refused.

Introduction

5. This is an application under section 27A of the Landlord and Tenant Act 1985 ("The 1985 Act") for a determination of the Respondents' liability to pay service charges under their lease of Flat 527, The Vista Building, 30 Calderwood Street, Woolwich, London SE18 6QW ("the Property") and under their separate lease of a parking space. There is also an application for the determination of liability to pay administration charges under Schedule 11 Commonhold and Leasehold Reform Act 2002 ("CLARA").

6. The lease of the Property is dated 18.06.04 and is made between (1) Kerrington Developments Limited ("KDL") and (2) the Respondents. On that same date the same parties entered into a lease of parking space number 132 on Level 11 of a multi-story car park in Calderwood Street. The 3rd Respondent, Mr Smith informed the Tribunal that he does not reside in the Property and that it is tenanted.

7. It was common ground between the parties that adjacent to the Building were a small number of business units originally let out by let by KDL.

8. According to Mr McDonnell, the freehold interest in The Vista Building ("the Building") now lies with the Applicant, Vista Building Limited ("VBL") who has instructed him to deal with the management of the building. This is done through the use of two companies for which he is a Director, Vista Building Management Ltd ("VBLM") who deal with the collection of rents and service charge and Guaranteed Property Services Limited ("GPS") who are responsible for the management of the Building.

9. Company accounts obtained by Mr Smith and included in his bundle indicate that VBL is a wholly owned subsidiary of Desiman Limited and that both companies share the same directors, Mr. Paul Fellows and Mr. Marc Atkinson.

10. Mr Smith, disputes that VBL hold the freehold title of the Building and also disputes VBLM's entitlement to collect rent and service charge on behalf of VBL. He makes numerous allegations of fraud and deception in the way VBL have sought to establish their interest in the Building.

11. In 2008 VBL issued proceedings against the Respondents in Bromley County Court. Subsequently, in 2009, it issued separate proceedings against the Respondents in Banbury County Court. Both sets of proceedings were transferred to the Leasehold Valuation Tribunal ("LVT") which, in a decision dated 05.01.10 (LON/00AL/LSC/2009/0144), made a determination in respect of service charges for the years ending 2008 and 2009 (the "2009 Tribunal proceedings").

12. On 05.04.11 VBL issued further proceedings against the Respondents in Woolwich County Court (Claim Number 1W000284) seeking payment of the sum of £1,274.99 that the Applicant maintained was due in respect of:

    (a) Unpaid service charges for the years 2006, 2007, 2008, 2009 and 2010; and

    (b) Administration fees incurred in 2009, 2010 and 2011; and

    (c) Interest on unpaid service charges.

13. On 17.11.11 the County Court, in Claim number 1W000284, dismissed the claims for service charges up to and including 2009 and transferred the remaining heads of claim to the LVT for determination.

The Pre-Trial review

14. A pre-trial review was held 14.12.11 where it was concluded that the only matters left for the Tribunal to determine were the interim service charge payments due on 01.07.10 and 01.01.11, interest on the 2010 charges and the administration charges incurred in 2010 and 2011.

15. The directions issued by the Tribunal on the same day as the pre-trial review provided for each party to prepare a separate hearing file which accounts for why the Tribunal hearing bundle contains two sets of separately numbered documents.

The Hearing

16. The Applicant included, in its' Tribunal bundle, details of the end of year service charges due in respect of 2010 and 2011. These were not available when the County Court proceedings were issued. Mr. McDonnell invited the Tribunal to determine the payability and reasonableness of these final charges and not just the interim charges for those two years. Mr Smith concurred.

17. However, the Tribunal informed the parties that whilst it would have regard to the documents submitted in respect of end of year accounts its jurisdiction was limited to those matters transferred to it by the County Court namely the interim charges and administration charges for 2010 and 2011 referred to above.

18. The interim service charge estimate for 2011 was included at page 128 of the Respondents' bundle. The estimate for 2010 was not included in either parties bundle but was provided by Mr. McDonnell at the hearing. A copy of that estimate accompanies this decision together with copies of the additional documents admitted in evidence on the day of the hearing. Whilst the 2010 estimate did not include an apportioned breakdown as to the amount payable by the Respondents it did list the individual heads of expenditure and the amount budgeted for each item.

19. Neither party requested that the Tribunal inspect the Property and the Tribunal did not consider it necessary to do so.

The Respondents' Case

20. Mr Smith's principle challenge was that service charges are not payable to Vista Building Limited ("VBL") as there has been no valid transfer of the freehold interest from KDL to VBL. As such, VBLM have no authority to demand payment of service charges from him and he has never received notice that VBLM are authorised managing agents for the Freeholder.

21. He also challenged the reasonableness of most, but not all, of the heads of service charges demanded from him.

<u>The Challenge to Payability</u>

22. Mr. Smith acknowledged that services are being carried out in the Building and that under the terms of his lease he is liable to contribute towards such services. However, he does not accept that VBL are the freehold owners of the Building nor that VBLM are entitled to demand payments of service charges from him.

23. Page 49 of the Applicant's bundle contains an extract of information taken from the Land Registry register for Title SGL129662 showing VBL as being the registered owners of the Building. Mr Smith did not accept this to be a genuine document and stated that as this was not an official copy of the register it was not admissible in evidence before the Tribunal.

24. His position was that VBL has no standing in the County Court proceedings as they do not hold the freehold interest in the Building. When pressed by the Tribunal as who he thought did, in fact, hold the freehold title he stated that he believed that VBL's parent company, Desiman Ltd, may have obtained the freehold title (albeit, according to him, improperly). In his Statement of Case he claims that the Respondents remain

"under contract" with KDL and that they are under no obligation to make any payments to anyone else as no a "Notice to terminate those contracts had been received.

25. Central to his allegations of impropriety seemed to be the assertion that Paul Fellowes and Marc Atkinson, directors and shareholders of Desiman Ltd and of VBL had, as he described it to the Tribunal, "bought the freehold through the back door and had thereby deprived the lessees the opportunity to exercise their right of first refusal under Part 1 Landlord and Tenant Act 1987 as amended by the Housing Act 1996.

26. At paragraph 2 of his Statement of Case Mr. Smith appears to be asserting that VBL has been falsely representing that KDL (his original lessor) had changed its name to VBL and/or that VBL had acquired KDL. He argues that there has been no such change of name or acquisition and that VBL are simply masquerading as KDL.

27. As evidence in support of that alleged deception he highlighted two incorrect statements made by Mr. McDonnell. Firstly, in point number 3 of his letter of 29.05.09 to the Residential Property Tribunal Service (in the 2009 Tribunal proceedings) he incorrectly stated that KDL had changed its' name to VBL. Secondly, at a residents meeting on 24.02.09 he incorrectly stated that he had been asked to deal with management of the Building by the new shareholders of VBL, formerly known as KDL. That, says Mr. Smith, was incorrect as there had been no transfer of shares from KDL to VBL.

28. In his bundle Mr Smith included several documents he had obtained from Companies House. This included a copy of deceleration given by Mr. Paul Fellows and Mr. Marc Atkinson (as directors of KML) concerning assistance given by Desiman Limited for the acquisition of shares in KML. This, said Mr Smith, supported his argument that there had been no transfer of shares between KDL and VBL as stated by Mr. McDonnell.

29. As further evidence that VBL and/or Desiman Ltd had practised deception and fraud, Mr. Smith pointed out that the Building is not listed as an asset in the abbreviated accounts of Desiman Ltd for period ending 31.01.08 [238-244] or in the annual return for the period ending 21.01.09 [245–248]. Nor do the unaudited abbreviated accounts for VBL for the period ending 31.12.08 show any assets on the balance sheet [207]. In addition he alleged that the company registration number stated on a letter from Mr. McDonnell to Croydon County Court dated 27.01.10 [200] was false and that the date of the letter had been fabricated as it was date-stamped by the Court as received on 31.01.11. In addition, in his letter to the lessees dated 26.03.08 [91] Mr McDonnell referred to the freeholders having changed their name to VBL when, in reality, there was no such transfer between KDL and VBL.

30. Mr Smith also maintained that the lessees had not received any notification that GPS were responsible for managing the block. He had received no demands or

communications from GPS, only from VBLM. He pointed out that in the letter of 26.03.08 referred to in the previous paragraph Mr. McDonnell had stated that VBLM had taken over the "full management of the Building" with no mention of GPS and that in the minutes of the residents meeting on 01.07.10 [44] he stated that he "took over management in 2008".

The challenge in respect of Service Charges - 2010

31. Mr Smith did not dispute the reasonableness of charges for cleaning and rates but disputed the items of service charge expenditure set out below. Each sub-heading contains details of the estimated figure stated as stated in the service charge estimate and the actual figure contained in the end of year accounts.

32. In respect of the estimated figures, he disputed that the sums claimed were reasonable

33. He also disputed receiving the interim demand for 2011 and queried why it did not contain the name of the company making that demand or its registration number.

Accounts Fee: Estimate £1,000; Actual £960.88

34. Mr Smith's disputed that sum claimed was payable. He directed the Tribunal's attention to the letter from Andertons, Chartered Certified Accountants dated 03.06.11 [page 5, Applicant's bundle] purporting to certify the unaudited service charge accounts for the year ending 31.12.10.

35. He disputed that this letter was genuine. He believed that the letterhead had been 'pasted' on to the letter and maintained that position even after Mr. McDonnell produced the original letter. In addition, the heading of the letter states that the accountant's report related to "Vista Building Car Park, 30 Calderwood Street". This, Mr Smith contended, indicates that the report only related to the Car Park and not the Building and their fee should be limited accordingly.

36. He acknowledged that he had not raised this point before the hearing but this was because he did not have sight of the letter from the accountants until he received the Applicant's Tribunal bundle in December 2011. He agreed that he had received the accounts themselves along with the service charge demand dated 07.06.11 [26] but contended that the covering letter was not enclosed with them.

Bank Charges: Estimate £600; Actual £503.43

37. Mr Smith queried why these had been incurred when the service charge accounts do not show any income, for example, from the business units. He thought that these charges may relate to monies going out of other accounts

Building Insurance: Estimate £26,000; Actual £26,887.66

38. Mr Smith alleged that he had been trying, unsuccessfully, to obtain a copy of the building insurance policy schedule from Mr. McDonnell following damage caused to his Property through water penetration from above in late 2009. He claimed that he had written to Mr. McDonnell in late 2009 requesting a copy of the policy so he could pursue an insurance claim. This was the only letter he wrote. This letter was not in his bundle and he could not produce a copy. The letter was followed up by telephone calls requests to Mr. McDonnell in 2009 and 2010 but he had no evidence to substantiate this.

Car Park: Estimate £6,600; Actual £3,703.68

39. Mr Smith's argued that these charges did not relate to the Vista Building Car Park and were therefore not recoverable. He believed they related to a different car park, namely the one at 30 Calderwood Street adjacent to the Building used by the users of the business units.

40. He agreed that he had a parking space in the Vista Building Car Park. However, he did not believe that these charges were recoverable because they related to a different car park.

Concierge & Security: Estimate £102,000; Actual £113,279.28

41. These charges were challenged on the basis that Mr. Smith believed that the business units and users of what he described as being the "serviced flats" on the top two floors of the building also made use of these facilities so his contribution should be lower than was claimed.

42. He also believed that the Applicant may have made an error in apportionment of the charges and that the total percentage contribution across all lessees might add up to more than 100%

Lift Maintenance: Estimate N/A; Actual £10,072.02

43. This head of charge did not appear as a separate item in the service charge estimate for 2010 although it appears in the final accounts.

44. Mr. Smith did not contest the reasonableness of these costs but queried whether or not they were covered by Insurance.

Lighting & Heating: Estimate £27,000; Actual £22,779.16

45. It was Mr. Smith's contention that the business units and serviced flats used these services and, as such, his contribution should be lower. He was not persuaded otherwise by the bill Mr. McDonnell produced at the hearing.

Management Fees: Estimate £34,200; Actual £35,185.00

46. Mr Smith did not challenge the amount claimed but maintained that these were not payable for services provided by GPS as he had not received formal notice of their appointment.

Water Rates: Estimate £53,000; Actual £57,457.39

47. As with the lighting and heating charges, Mr Smith believed that the costs claimed related in part to charges incurred by the users of the business units. He directed the Tribunal to the minutes of the residents meeting on 01.07.10 [47, Applicant's bundle]. At point 6 it is recorded that Mr. McDonnell responded to a query as to whether or not the retail units used water supplied to the Building. His response was they did not and that his enquiries had identified that the retail units had their own meters. These were described as being 'under' the pavement which he had accessed by lifting a cover.

48. Mr. Smith challenged this account on the basis that it was not credible that the water company would have allowed him access, via a manhole cover, to meters located below ground level.

Repairs & Maintenance: Estimate £140,000; Actual £74,627.58

49. Mr. Smith queried the identity and the nature of the work carried out by a Mr. Lang and by a company called 'Senator' as the final accounts showed numerous invoices from them. He also queried why Senator was paid in respect of Repairs and Maintenance when they were responsible for Concierge and Security.

Telephone: Estimate £900; Actual £1,887.61

50. Mr. Smith requested sight of telephone bills as he wished to see what these charges related to. It was his position that there were no telephones in the lifts, only intercoms.

Waste Disposal: Estimate £14,000; Actual £69,85.86

51. Once again, Mr Smith's challenge was that he believed that these charges related, in part, to costs incurred by users of the business units.

<u>The challenge in respect of Service Charges - 2011</u>

52. Mr Smith considered the 2011 charges were not payable for the same reasons as for 2010 i.e. because neither VBL nor VBLM were entitled to demand payments of service charges from him. He also repeated the general challenges to the individual heads of expenditure listed above for 2010 including the estimated service charge figures.

53. His only other additional specific challenge related to the door entry system for which a budget of £81,000 had provided for in the service charge estimate. The actual cost, as reflected in the final accounts, amounted £84,224.58.

54. Mr Smith relied upon a letter dated 31.12.10 from Mr. McDonnell concerning the proposed replacement of the door entry system .The page is unnumbered but should be numbered page 277 of the bundle. It is clearly intended to be a consultation notice sent in accordance with the requirements of s.20 of the Act.

55. Mr Smith acknowledged receiving that letter at some point in 2011 (he was not sure exactly when) but denied receiving the earlier notice of intention to carry out works issued on 10.08.10 referred to in the letter, a copy of which was produced by Mr McDonnell and shown to him and the Tribunal.

56. The letter of 31.12.10 informed the leaseholders of the Building that estimates had been obtained for replacement of the door entry system and gave details of two estimates, one from Senator Security Systems Limited in the sum of £81,076.60 and the other from JEH Security Systems Limited in the sum of £115,816.80. Observations were invited by 07.02.11.

57. Mr Smith acknowledged that he made no observations following receipt of the letter nor did he seek to inspect the invoices. His position was that the works were unnecessary as he believed the system had previously been replaced as recently as 2010. Alternatively, a cheaper system should have been installed. He produced copy of a listing that he had identified on EBay's website for an 'EntryLux Proximity Door Access System' on sale from £97.22. In his view, a system such as this would have sufficed.

58. It was also his case that the residents had not requested that the system be replaced. The minutes of residents meeting of 01.07.10 [45] refer to Mr. McDonnell stating that there was a problem with the system as opposed to resident concerns being raised. He believed that Mr McDonnell had fabricated the reference to supposed complaints, apparently to provide business to Senator Security Services Ltd, whose, Managing Director, Andrew Glass, was in attendance at the resident's meeting.

59. He was asked by the Tribunal why (if he believed that the system had already been replaced in 2010) these minutes do not indicate that he challenged the need for replacement. His response was that he only received the minutes in December 2011.

Administration Charges

60. Mr Smith did not challenge the amounts claimed for administration charges but disputed the Applicant's ability to recover them on the basis that neither VBL nor VBLM had any standing to recover such charges.

Interest

61. As for interest, he claimed that none was payable as he owed no money to the Applicant.

The Applicant's Case

The Challenge to Payability

62. The Applicant's position, as described by Mr McDonnell, was relatively straightforward. In 2007 the original freeholders of the Building, KDL, transferred their freehold interest to an associated company Kerrington Management Ltd ("KML") by way of an inter-company transfer.

63. In February 2008 Desiman Ltd purchased the shares in KML. A condition of contract for this share purchase was that there had to be a change in name of the company from KML. As a result, the name of the company was changed from KML to VBL who are the current registered freehold owners of the Building.

64. At the same time he was instructed to deal with the management of the Building which he did through the use of two companies, VBLM (to deal with the collection of rents and service charges) and GPS (to deal with the management of the Block).

65. He confirmed that service charges are demanded by VBLM and get paid into a ring-fenced client account. VBLM, he said, has never had a managing agent function and is a 'non-functioning' company by which we presume he means "non-trading".

66. Since February 2008, he has carried out management functions through GPS who are paid a management fee by VBL and who also manage about 23 other, smaller, properties. Both VBLM and GPS are completely independent from VBL.

67. Mr McDonnell accepted that the statements he made in his letter to the Tribunal of 29.05.09 and at the residents meeting on 24.02.09 were incorrect in that they referred to VBL acquiring the interest of KDL. However, at that stage he was unaware of the earlier inter-company transfer between KDL and KML. It was only during the course of the 2009 Tribunal proceedings that this became clear.

68. He also acknowledged that his letter to Croydon County Court dated 27.01.10 contained an incorrect date. It should have been dated 27.01.11. The error, he said, was simply a typographical error.

The challenge in respect of Service Charges - 2010

69. Mr McDonnell's evidence was that the interim service charge demand for 2010 was sent to the leaseholders, including the Respondents, at the beginning of 2010 and accompanied a demand for service charges and ground rent.

Accounts Fee

70. It was Mr. McDonnell's position that the accountants, Andertons had been engaged in certifying the accounts for both the Building as well as the Vista Building Car Park.

71. The letter of 03.06.11 was genuine, the letterhead had not been 'pasted' on to the letter and the accountants had simply used a comma in the subject title of the letter as opposed to the word "and" i.e. it should be read as relating to the "Vista Building Car Park *and* 30 Calderwood Street .

72. He confirmed that the letter and accompanying accounts would have been sent to the lessees with the demand 07.06.11.

Bank Charges

73. Mr McDonnell confirmed that these charges related to the running of the business bank account and did not relate to other accounts.

Building Insurance

74. Mr. McDonnell stated that he had not, prior to these proceedings, been informed by Mr. Smith of any alleged dampness or water penetration problem affecting the Property. He provided the Tribunal and Mr. Smith with a copy of the relevant buildings insurance policy schedule.

Car Park

75. Mr. McDonnell confirmed that the charges related to the weekly cleaning and intermittent repair costs of the Vista Building car park and not the 18 parking spaces at rear of the Building used by the business units.

76. The significant variations in costs between 2009 and 2011 reflected the amount of repairs needed to the roller shutters to the car park. These are, from time to time hit by cars driven by users of the car park.

Concierge & Security

77. According to Mr. McDonnell, the users of the business units had no access at all to the Vista Building and therefore never used the concierge service.

78. As to the serviced flats, they are required to contribute towards the costs in the same way as the other lessees. The percentage contribution varied according to the size of flat, the average being 0.45% but larger units paid 1.2%.

Lift Maintenance

79. Mr. McDonnell confirmed that these costs were not covered by insurance and are, recoverable from the lessees. Invoice number 120 in the sum of £6,262.75 comprised the annual fee for lift maintenance for the two lifts. The other items listed in the audit trail related to charges for call outs and breakdowns.

Management Fees

80. These were payable in respect of services provided by GPS, the management company set up as a non-trading company. The sums sought were calculated on a unit basis charge to the freeholder (227 flats x £155 per flat) and then apportioned as per the percentage contributions set out in the individual leases.

Water Rates

81. Mr. McDonnell confirmed that these charges did not reflect any use by the business units who had their own meters. These are not actually located below ground but at a level just below the pavement level, located on the corner of Building close to the location of the business units. Users of the serviced flats contribute towards the costs in the same way as the other lessees as per the terms of their lease..

Repairs & Maintenance

82. Mr. McDonnell confirmed that the invoices from Senator related to repairs and maintenance of the security system e.g. the replacement of a faulty camera and repairing a fault to the door entry system. Furthermore, he stated that the company has a specialist "arm" which deals with electronics.

83. As for Mr Lang, he is a general handyman who carries out numerous, mostly small jobs as and when required such as roof repairs. His charges include labour and the cost of materials.

84. The Safeguard invoice of £10,210.75 concerned the erection of a shaft at the rear of the building to facilitate the use of a window-cleaning cradle. Previously, contractors had refused to clean the windows due to pigeon waste which needed to be cleared by jetting.

Telephone

85. At Mr. Smith's request Mr. McDonnell produced three BT telephone bills. He confirmed that one related to the telephone on the concierge desk and the other two were for the two lifts, each of which had a telephone call that allowed emergency calls.

Waste Disposal

86. Mr. McDonnell produced invoices from Joy Skips and confirmed that the charges did not include any costs incurred by users of the business units. The charges related to the removal of general household bulky items that residents can place in designated bins. These are not for the use of the business units who have their own "Biffa" skips available to them. The concierge has, in the past, whilst monitoring the CCTV system, stopped members of public from using the bins.

The challenge in respect of Service Charges - 2011

87. With regard to the door entry system, Mr. McDonnell confirmed that both the notice of intention to carry out works issued on 10.08.10 and the subsequent letter of 31.12.10 were sent to all the leaseholders of the Building. Where leaseholders were resident they were hand-delivered. Where they were not, the documents were posted to them. No observations were received in respect of either notice.

88. The system had not been replaced in 2010 as alleged by Mr. Smith. In fact, these works amounted to a replacement of the original system installed when the Building was built. Numerous complaints had been made by residents who had informed him that the system was constantly breaking down. He had been told that the system was obsolete and that repair was not a viable option.

89. As for the 'EntryLux Proximity Door Access System' this bore no comparison to the sophisticated system installed in the Building which, for example, allowed the concierge complete control over the intercom system. Copies of the three quotations received were provided to Mr Smith and the Tribunal. Originally each quoted for a key-pad operated system but as the residents wanted key-fob operation re-tenders were invited. One company, 1st Ace Security Limited declined to re-submit and the lowest quote, from Senator Security Systems, was accepted.

90. Mr McDonnell stated that the minutes of residents meeting of 01.07.10 were sent out about a week after the meeting.

Administration Charges

91. Mr McDonnell confirmed that the charges related to the need to send out letters chasing service charge arrears and the sending of an arrears notice and preparation

of particulars of claim. He relied on clause 4(g)(i) and clause 4(k) of the lease as allowing recovery of these charges. He stated that a summary of tenant's rights and obligations accompanied service charge demands and this contained a breakdown of such charges (for example the one at page 29 of the Applicant's bundle).

Interest

92. Interest, he said, was due on unpaid payments of service charges at the rate of 4% above base rate as per clause 3(17) of the lease, currently, 4.5% per annum.

The Law

93. Section 27A of the Act provides that an application may be made to a Leasehold Valuation Tribunal for a determination as to whether a service charge is payable.

94. Under Section 19, relevant costs shall be taken into account in determining the amount of a service charge payable for a period

(i) Only to the extent that they are reasonably incurred, and

(ii) Where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard.

95. Section 20 (as amended by the Commonhold and Leasehold Reform Act 2002) limits the payment of service charges in respect of qualifying works unless consultation requirements have either been complied with or dispensed with.

96. Section 20B provides that if any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, the tenant is not liable to pay so much of the service charge as reflects the costs so incurred, unless, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

97. Under Section 20C a tenant may make an application to this Tribunal seeking an order that costs incurred by their landlord in connection with proceedings before the Tribunal are not to be regarded as relevant costs for the purposes of determining the amount of any service charge payable by the tenant.

98. Section 21B provides that with effect from 01.10.07 a demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges; and a tenant may withhold

payment of a service charge which has been demanded from him if this requirement is not complied with in relation to the demand'

99. Schedule 11 of CLARA provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable

The Tribunal's Decision and Reasons

The Challenge to Payability

100. Having reviewed all the available evidence the Tribunal accepts Mr. McDonnell's evidence that the freehold title of the Building lies with VBL. We acknowledge that the extract of the Land Registry register is not conclusive evidence that VBL is the registered owner of the Building as it is only an extract and not an official copy. Nevertheless, whilst it is not admissible in evidence to the same extent as an official copy it is still admissible and it is highly persuasive especially given that there is no evidence to the contrary. If Mr. Smith wished to satisfy himself as to who owned the Building he could have checked the position at the Land Registry himself and submitted an official copy to the Tribunal. He did not do so.

101. Once VBL acquired the freehold interest in the Building it became the Respondents landlord and became entitled to recover payments of service charge from them. It was also entitled to employ Managing Agents to manage the building and to recover rents and service charge. This is specifically provided for in the Respondents lease (Clause 4(g)).

102. We accept Mr. McDonnell's oral evidence that VBL has instructed VBLM to collect rent and service charges for the Building and that it has instructed GPS to provide management services. As a result, service charges are payable by the Respondents to VBLM on behalf of VBL as per the terms of his lease

103. The background to the transfer the of freehold of the Building and the setting up of VBL, VBLM and GPS in February 2008 is a somewhat complicated one but not one that, in the Tribunal's view, casts any doubt on the question of who is entitled to receive service charges in respect of the Building.

104. We accept Mr. McDonnell's account, namely that KDL transferred their freehold interest in the Building to KML by way of an inter-company transfer. In 2008, KML was then purchased by Desiman Ltd and as part of that transaction there was a change in the name of KML to VBL. Mr McDonnell was then appointed to deal with the collection of rent and service charges and to deal with the management of the Block which was dealt with via VBLM and GPS.

105. In the Tribunal's view the company documents obtained by Mr Smith and included in his bundle support Mr. McDonnell's account and not Mr. Smith's allegations of fraud and deception.

106. Amongst other matters, they indicate that:

(i) VBL are a wholly owned subsidiary of Desiman Limited (both companies sharing the same directors, Mr. Paul Fellows and Mr. Marc Atkinson).

(ii) Desiman Ltd sought to acquire the entire issued share capital of KML through the help of a loan facility it took out with Bank of Scotland Plc.

(iii) As part of the security for that facility KML entered into a fixed legal charge over the Building in favour of the Bank.

107. We accept that Mr. Paul Fellows and Mr. Marc Atkinson were both at one time (and may still be) Directors and shareholders in Desiman Ltd and VBL and that they were also Directors in KML. We also note Mr. McDonnell's evidence that Desiman Ltd own flats in the Building and that he is a Director in both VBLM and GPS.

108. However, in the Tribunal's view none of these facts has any bearing on the Respondents liability to pay the service charges demanded of them. Nor, in our view, do the company accounts of VBL and Desiman Ltd obtained by Mr. Smith and included in bundle alter that position. As stated above we consider that they support Mr. McDonnell's account as to the background to the transfer of the freehold of the Building.

109. We found Mr McDonnell to be a credible witness and accept his evidence that the statements he made in his letter to of 29.05.09 to the Tribunal and at the residents meeting on 24.02.09 were made in error and without knowledge of the earlier inter-company transfer between KDL and KML.

110. We are also satisfied that the misdating of the letter of 27.01.10 was a typographical error. This is clear given that its' contents refer to Mr. McDonnell's inability to attend a Court hearing on 23.02.11.Mr. Smith is correct in stating that the company registration number stated in that letter is not that of VBL. It is, in fact, that of VBLM as is clear from the Companies House return on page [254]. Again, however, we do not consider this has any relevance to the Respondents liability to pay service charges. In any event, we fail to see what benefit could be derived by Mr. McDonnell by deliberately providing an incorrect company registration number or misdating the letter.

111. Mr Smith contends that he has never received proper notification that GPS are responsible for managing the block. We accept that this may not have been made clear immediately after VBL's acquisition of the Building. For example, the letter from

Mr. McDonnell dated 26.03.08 [91] refers to VBLM taking over "full management" of the Building as opposed to GPS,

112. Nevertheless, Mr. Smith has clearly been aware of the distinct roles of GPS and VBLM for some time given that this was made clear to him at the 2009 Tribunal hearing (paragraph 3 of the Tribunal's decision). Nor does he appear to have had any problems contacting the managing agents (see paragraph 27 of the 2009 Tribunal decision).

113. We do not consider that any delay in notification has any relevance to the Respondents liability to pay the service charges in issue in this application. We also note that the letter of 26.03.08 provided an address for service of Notices as being care of VBLM which we consider is sufficient to comply with the Applicant's responsibility under s.48 Landlord & Tenant Act 1987.

114. Mr Smith alleges that the Applicant has failed to comply with right of first refusal provisions of Part 1 of the 1987 Act. The Tribunal's jurisdiction in respect of this application is limited to the matters transferred to it from the County Court and we therefore do not have jurisdiction to determine this issue.

The challenge in respect of Service Charges - 2010

115. We prefer Mr McDonnell's evidence and accept, on the balance of probabilities that the interim service charge demand for 2010 was sent to the Respondents at the beginning of 2010 with a demand for service charges and ground rent.

116. The Tribunal determines that all of the estimated heads of charge are payable in full. As the copy service charge estimate for 2010 provided at the hearing did not specify the apportioned sums due to the Respondents the Tribunal is unable to determine the specific sum payable by way of the interim charge for that year. However we determine that the apportionment should be as per the terms of the Respondents leases namely at a rate of 0.45% of the total sum in respect of all heads of expenditure save for the costs relating to the parking space which are apportioned at a rate of 0.562%

117. For the avoidance of doubt, we determine that the following heads of expenditure are reasonable and payable in full:

Item	Total Costs
Accounts Fee	£1000
Bank Charges	£600
Building Insurance	£26,000

Car Park	£6,600
Cleaning	£42,000
Concierge & security	£102,000
Lighting & Heating	£27,000
Management Fees	£34,200
Rates – Council	£3,100
Rates – Water	£53,000
Repairs & Maintenance	£140,000
Telephone	£900
Waste Disposal	£14,000
Total	£450,400

118. In our view there was no substantial challenge to any of the heads of expenditure. The available evidence did not indicate that any of the charges were unreasonably incurred, nor that the estimated figured were unreasonable.

Accounts Fee

119. We accept Mr. McDonnell's evidence that the fee payable to the accountants related to work done in respect of both the Building and Vista Building Car Park. Having seen the original of the letter the Tribunal does not accept Mr. Smith's allegation that the letterhead had been fabricated or 'pasted on'. On the available evidence, we consider the estimated charge to be reasonable and payable by the Respondents.

Bank Charges

120. There was no compelling evidence to counter Mr McDonnell's oral evidence that these charges related to the running of the business bank account for VBLM. There is no reason to doubt that they have been reasonably incurred or that the estimated figure was unreasonable.

Building Insurance

121. We are not persuaded by Mr Smith's evidence that he had been trying to obtain a copy of the building insurance policy schedule from Mr. McDonnell since late 2009. There was no documentary evidence to corroborate this assertion, which was denied by Mr. McDonnell. If it had been an ongoing problem from late 2009 we would have expected Mr. Smith to communicate this to Mr McDonnell in writing outside of these proceedings. He did not do so.

122. Nor did he raise the issue before the previous Tribunal who heard the earlier application on 14.12.09 and 15.12.09. Mr Smith states that the alleged flooding had occurred in late 2009. It is possible that it may have occurred in the short period between 15.12.09 and the end of 2009. However, if it had occurred so close to the previous Tribunal hearing we would have expected Mr. Smith to have a more precise recollection of the date of the flooding. Nor is there any mention of him raising this issue at the residents meeting on 01.07.10 [44-48, Applicant's Bundle]

123. There is no evidence to indicate that this charge was unreasonably incurred or that the estimated figure was unreasonable. In any event, Mr. Smith was provided with a copy of the relevant buildings insurance policy schedule at the hearing and so this aspect of his challenge appears to have been resolved.

Car Park

124. We accept Mr. McDonnell's evidence that these charges relate to the cleaning and intermittent repair costs of the Vista Building Car Park and not the parking spaces at rear of the Building used by the business units. Mr Smith had no corroborative evidence to support his speculative assertion.

125. We consider the estimated amounts reasonable and payable by the Respondents.

Concierge & Security

126. Mr Smith had no evidence to corroborate his allegation that users of the business units used the concierge and security services in the Building. We accept Mr. McDonnell's evidence that this was not the case

127. Nor was there any evidence to substantiate his allegation that the apportionment of these charges was incorrect.

128. As such, there is no evidence to indicate that these charges were unreasonably incurred or that the estimated figures were unreasonable.

Lift Maintenance

129. Mr. Smith appeared to accept Mr. McDonnell's explanation that these charges were not covered by insurance. In any event, the Tribunal is satisfied that the sum charged is reasonable and payable.

Management Fees

130. The 2009 Tribunal reduced the estimated management fees for 2008 by 20% as it considered that there had been a degree of failure of management in that year and by a lower reduction of 10% for 2009, reflecting an apparent improvement in that year.

131. This Tribunal identifies no failings in management in 2010 and 2011 and considers the sum charged to be reasonable and payable in full.

Water Rates

132. Mr Smith's assertion that these charges included costs incurred by users of the business units was uncorroborated. We accept Mr. McDonnell's oral evidence that it is incorrect. At the hearing Mr McDonnell offered to show him the separate meters used by the business units and Mr Smith may wish to avail himself of that opportunity.

133. We consider the sum charged to be reasonable and payable in full.

Repairs & Maintenance

134. The Tribunal was satisfied with Mr. McDonnell's explanation as to the invoices submitted by Senator, the work carried out by Mr Lang and the Safeguard invoice. Other than querying these invoices Mr Smith made no substantial challenge to this head of expenditure.

135. The Tribunal notes that there is a very significant difference between the estimated sum of £140,000 and the actual charge of £45,647.93. It appears that this may be due to the lower figure including the estimated costs of lift maintenance and/or the anticipated costs for the replacement of the door entry system, neither or which are provided for elsewhere but which are listed as separate items on the final accounts.

136. That being the most likely explanation we consider the sum estimated sum charged to be reasonable and payable in full. Mr Smith will, of course, be entitled to any year-end balancing credit for this head of expenditure in any event.

Telephone

137. We accept Mr. McDonnell's evidence that the telephone bills he produced relate to the telephone on the concierge desk and the telephones in the two lifts. There is no corroborative evidence to the contrary.

138. The bills for the lift telephones showed a service charge of £45.72 each and call charges of £0.55 and £0.09 (all excluding VAT) for the quarter ending 31.03.10.

139. The bill for the concierge telephone for the same quarter showed a service charge of £45.72 and call charges of £241.45 (all excluding VAT).

140. We consider the sum charged to be reasonable and payable in full

Waste Disposal

141. We accept Mr. McDonnell's evidence that these charges related to the removal of bulky items deposited by residents in the Building and not users of the business units. There is no corroborative evidence to the contrary.

142. We consider the sum charged to be reasonable and payable in full.

The challenge in respect of Service Charges - 2011

143. The Tribunal determines that all of the estimated heads of charge are payable in full. For the avoidance of doubt, these comprise the following:

Item	Total Costs	Amount Payable
Accounts Fee	£1000	£4.50
Bank Charges	£500	£2.25
Building Insurance	£29,000	£130.50
Car Park	£4,000	£22.48
Cleaning	£44,000	£198.00
Concierge & security	£118,000	£531.00
Entryphone Costs	£81,000	£364.50
Lift Maintenance	£5,000	£22.50
Lighting & Heating	£22,000	£99.00
Management Fees	£35,500	£159.75

Rates – Council	£3,000	£13.50
Rates – Water	£58,000	£261.00
Repairs & Maintenance	£60,000	£270.00
Telephone	£1,500	£6.75
Waste Disposal	£7,500	£33.75
	Total	£2119.48

144. In our view there was no substantial challenge to any of the heads of expenditure. The available evidence did not indicate that any of the charges were unreasonably incurred or that the estimated figures were unreasonable.

145. Mr Smith repeated the general challenges he made regarding the 2010 estimated charges for the year ending 2011. Those challenges fail for the same reasons as stated above for the year ending 2010.

146. As for the specific challenge made in respect of the door entry system we accept Mr McDonnell's evidence that the initial notice of intention to carry out works dated 10.08.10 was sent to the lessees and that, on the balance of probabilities, it was received by Mr. Smith shortly afterwards. Mr McDonnell appeared to the Tribunal to be a credible witness with significant management experience and someone who was competent when it came to dealing with paperwork.

147. We also accept his evidence that the second notice dated 31.12.10 was sent to the lessees and that, on the balance of probabilities, it was received by Mr. Smith shortly later. As such, the Tribunal is satisfied the consultation requirements under s.20 of the Act have been complied with.

148. There is no evidence to support Mr. Smith's suggestion that the system had already been replaced in 2010. We also note from paragraph 18 of the 2009 Tribunal decision that in those proceedings Mr Smith himself claimed that there were problems with the keypad on entrance door to the Building. He indicated that this had not been working for months and that there had been a problem of non-residents tailgating in. This conflicts with his evidence to this Tribunal that Mr McDonnell had not received any complaints concerning the door entry system.

149. Nor are we persuaded that the 'EntryLux Proximity Door Access System' would have been a suitable replacement. Given that this information was only produced at the hearing when there was insufficient time for Mr. McDonnell to assess the differences

between the two systems we attach little weight to its evidential value. There is no evidence to support Mr. Smith's assertion that the system required repair rather than replacement and we accept Mr. McDonnell's evidence in this respect.

150. We consider the sum charged of £81,000 to be reasonable and payable, with the Respondents contribution being £364.50.

Administration Charges

151. These comprise (i) £60 for fees incurred in 2010 for letters demanding payment of alleged service charge arrears (ii) £45 for a notice issued on 14.03.11 in respect of arrears and £35.00 for preparation of particulars of claim relating to the alleged arrears.

152. The Tribunal is satisfied that these are variable administration charges as defined by CLARA and that it has jurisdiction to determine whether or not they are payable and reasonable.

153. Mr Smith has not challenged the amounts themselves but claims that they are not payable to the Applicant due to want of standing. For the reasons stated above that challenge fails. We are satisfied that the sums in question are recoverable by the Applicant from the Respondents.

154. We are also satisfied that it was reasonable for the Applicant to incur these sums given that the Respondents were in arrears with their service charge and we determine that they are sums are payable in full.

Interest

155. The amount of interest claimed in the County Court proceedings for the year ending 2010 is £38.31.

156. The Tribunal is unable to determine the amount of interest actually due from the Respondents for this period as the Particulars of Claim do not identify how that sum has been calculated and no calculation was before the Tribunal. This issue is therefore remitted to the County Court.

157. However, we have determined that all the claimed heads of expenditure for the estimated service charge year ending 2010 are payable by the Respondents. Any interest on late payments should be calculated as per the terms of the leases namely at the rate of 4% above base rate.

158. We suggest that the parties seek to agree the amount of interest due prior to any further hearing in the County Court.

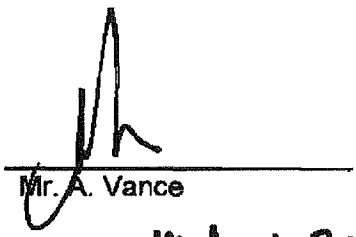
Costs

159. The Respondents seek an order under S.20C to limit the Applicant's right to recover its costs in these proceedings through the service charge. Given that the Respondents have not succeeded in any aspect of his challenge the Tribunal declines to make such an order.

Concluding Comments

160. In respect of the service charge, this Tribunal's determination concerns only the *interim* charges for 2010 and 2011. We do not have jurisdiction to determine the reasonableness and payability of the *actual* cost of services for those years.

161. Those actual costs are now known. If, following this determination, there remains any disagreement between the parties for these service charge years we would urge that they seek to resolve, or at least narrow, those areas of disagreement before any restored hearing in the County Court.

Chairman: 

Mr. A. Vance

Date: 11th April 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18 - Meaning of "service charge" and "relevant costs"

(1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

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

(3) For this purpose -

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19 – Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

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

20B. Limitation of service charges: time limit on making demands

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

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

20C. Limitation of service charges: costs of proceedings

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court[, residential property tribunal] or leasehold valuation tribunal, or the [Upper Tribunal], or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

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

(b) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

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

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

21B. Notice to accompany demands for service charges

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

[...]

20ZA. Consultation requirements: supplementary

(1) Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

[...]

Section 27A – Liability to pay service charges: jurisdiction

(1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to –

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

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

(3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the Tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Service Charges (Consultation Requirements) (England) Regulations 2003.

Part 2 - consultation requirements for qualifying works for which public notice is not required

Notice of intention

1. (1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Inspection of description of proposed works

2. (1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works

3. Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates and response to observations

4. (1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate—

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate—

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9)—

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out—

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord—

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by—

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any)—

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify—

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Duty to have regard to observations in relation to estimates

5. Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Duty on entering into contract

6. (1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any)—

(a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and

(b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

Commonhold and Leasehold Reform Act 2002

Schedule 11 - Administration Charges

Part 1 Reasonableness of Administration Charges

Meaning of "administration charge"

1. (1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—

(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,

(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,

(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or

(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—

(a) specified in his lease, nor

(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Reasonableness of administration charges

2. A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

3. (1) Any party to a lease of a dwelling may apply to a leasehold valuation tribunal for an order varying the lease in such manner as is specified in the application on the grounds that—

(a) any administration charge specified in the lease is unreasonable, or

(b) any formula specified in the lease in accordance with which any administration charge is calculated is unreasonable.

(2) If the grounds on which the application was made are established to the satisfaction of the tribunal, it may make an order varying the lease in such manner as is specified in the order.

(3) The variation specified in the order may be—

(a) the variation specified in the application, or

(b) such other variation as the tribunal thinks fit.

(4) The tribunal may, instead of making an order varying the lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified.

(5) The tribunal may by order direct that a memorandum of any variation of a lease effected by virtue of this paragraph be endorsed on such documents as are specified in the order.

(6) Any such variation of a lease shall be binding not only on the parties to the lease for the time being but also on other persons (including any predecessors in title), whether or not they were parties to the proceedings in which the order was made.

Notice in connection with demands for administration charges

4. (1) A demand for the payment of an administration charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to administration charges.

(2) The appropriate national authority may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of an administration charge which has been demanded from him if sub-paragraph (1) is not complied with in relation to the demand.

(4) Where a tenant withholds an administration charge under this paragraph, any provisions of the lease relating to non-payment or late payment of administration charges do not have effect in relation to the period for which he so withholds it.

Liability to pay administration charges

5. (1) An application may be made to a leasehold valuation tribunal for a determination whether an administration charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—

(a) has been agreed or admitted by the tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Interpretation

6. [.....]