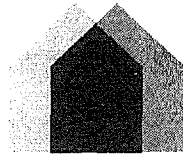


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**Residential
Property**
TRIBUNAL SERVICE

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL

THE LANDLORD AND TENANT ACT 1985 (as amended), Section 27A

Case Reference: LON/00AU/LSC/2012/0298

Premises: Flats C, D and E, 20 Fonthill Road, London N4 3HU

Applicant: Little Wonder Limited

Respondents: Alessandro Comune & Christina Basso (Flat C)
Pauline Gallagher (Flat D)
Padraic Gallagher (Flat E)

For the Applicant: Mr Adam Diamant, Land Commercial Surveyors
Limited

For the Respondents: Ms C Fairley, Counsel, instructed by Percy Short &
Cuthbert, Solicitors

Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb
Mr N Mahoney FRICS FIRPM MEWI
Mr N O Miller BSc

Date of decision: 7th October 2012

THE LEASEHOLD VALUATION TRIBUNAL FOR THE LONDON RENT
ASSESSMENT PANEL

LANDLORD AND TENANT ACT 1985 (AS AMENDED) SECTION 27A

Reference: LON/00AU/LSC/2012/0298
Premises: Flats C, D and E, 20 Fonthill Road, London N4 3HU
Applicant: Little Wonder Limited
Respondents: Alessandro Comune & Christina Basso (Flat C)
Pauline Gallagher (Flat D)
Padraic Gallagher (Flat E)

The Tribunal's decision

Background and the nature of the application

1. Little Wonder Limited ("Little Wonder") applied to the tribunal under section 27A of the Landlord and Tenant Act 1985 (as amended) ("the Act") for determination of liability of the respondent leaseholders to pay service charges in respect of their leasehold interests in Flats C, D and E, 20 Fonthill Road, London N4 3HU ("the property").
2. The property is converted block of three floors with basement. There are pub / bar premises on the ground and basement floors. There are five residential flats on the first and second floors. Flat C is a two bedroomed flat on the second floor of the building. Flats D and E are one bedroomed flats on the first floor.
3. Little Wonder is the freeholder of the building, completion of the purchase of the freehold interest taking place on 1st December 2010.
4. Little Wonder appointed Land Commercial Surveyors Ltd ("Land Commercial") as managing agents on their behalf in respect of the building. Mr Lewis Diamant MRICS MCIOB, of Land Commercial Surveyors, has had the conducted of the management throughout the relevant period and has prepared and signed the statement of case dated 19th June 2012.
5. The respondents are long leaseholders of their individual flats. A copy of the lease of Flats C and Flat B was provided in the hearing bundle. The tribunal were told that the leases of the subject flats are in similar terms. However, the percentage of the service charge payable varies between the flats.

6. An oral Pre-Trial Review was held on 29th May 2012. Little Wonder was represented by Mr Lewis Diamant and the respondents were represented by Mr W Boyes, of Percy Short & Cuthbert, Solicitors. The tribunal issued directions on the same date. The applications were consolidated and heard together. The date for the substantive hearing of the applications was stated in the directions to be 4th September 2012.
7. It was stated in the applications that the service charge year in question was 2011. A list of service charges in issue and their value was provided in each application. With different figures and percentages in respect of each of the flats this was under the headings.
 - (1) services charges for 2011.
 - (2) cost of repairs in 2011.
 - (3) cost of additional works carried out in 2011 following service of notice under section 20 of the Landlord and Tenant Act 1985 (as amended).

Each of the applications contained figures for the above items and also a figure that it was claimed had been paid on account by the particular leaseholder

8. In the tribunal's directions, amongst other things, the applicant was required as part of the statement of case to particularise the service charge costs for the relevant year by reference to the heads in the service charge accounts where appropriate, and to explain how the costs in issue were incurred and how it is contended they are reasonable. Notwithstanding this direction, no proper breakdown of the figures claimed in the applications have been provided by the applicant.
9. Amongst other matters, the sums claimed in the applications, percentages charged and accuracy of the amounts of sums paid on account is disputed by the applicants.
10. A hearing was held on 4th September 2012. The applicant was represented by Mr Adam Diamant, Mr Lewis' Diamant's son. Mr Adam Diamant is a director of Land Commercial, mainly engaged in the lettings department, and had limited knowledge of the management of the building. Mr Lewis Diamant, did not attend the hearing. An adjournment had previously been requested by Mr Lewis Diamant. For the reasons set out in the tribunal's decision dated 22nd August 2012, the application was refused. There was no further application for an adjournment made at the hearing.
11. Mr Adam Diamant had been provided with some notes by Mr Lewis Diamant and copies were provided at the hearing. The respondents were represented by Ms C Fairley of Counsel.
12. The tribunal heard oral evidence from Mr Comune, who had provided a witness statement dated 8th August 2012. Mr Gallagher gave oral evidence.

Mr Adam Daimant gave oral evidence and made submissions. The tribunal also considered various statements of case and documents including the statement of Mr William Boyes dated 21st May 2012, a copy of which was included in the hearing bundle.

13. In the applicant's statement of case by way of background it was stated that at the date of the purchase by Little Wonder (December 2010) the building was in a state of substantial dilapidation having suffered from lack of maintenance and redecoration for many years, both externally and internally.
14. The tribunal were told that in about 1999 or 2000, the upper parts of the building were converted into its current configuration of five flats and the current leases granted. Prior to the purchase of the property by Little Wonder, maintenance, repairs and cleaning were carried out or arranged by Mr and Mrs Gallagher.
15. In the application forms the applicant requested a determination as to whether the respondents are liable to pay sums alleged outstanding and invoiced by the applicant's managing agents, Land Commercial, on 7th February 2012. These were:

Mr Commune and Ms Basso (Flat C)	£3785.20
Mrs Gallagher (Flat D)	£1839.85
Mr Gallagher (Flat E)	£2674.81

It was noted that these calculations were based on service charge percentages for Flat C of 24%, Flat D of 16%, and Flat E of 20%. The tribunal will return to the issue of whether or not these are the correct percentages later in this decision.

16. The major areas of dispute between the parties can be summarised under the following headings:
 - (1) The percentages of the service charge costs payable under the leases of Flats C, D and E.
 - (2) Whether the section 20 consultation procedure has been complied with.
 - (3) Whether the service charges claimed for 2011 were recoverable / reasonably incurred.
 - (4) Whether the statutory/regulatory requirements had been complied with in respect of service charge demands.

Statutory Provisions

17. Section 18 of the Act provides:
 - (1) In the following provisions of the Act "service charge" means an amount payable by a tenant of a dwelling as part 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.
18. Section 19 of the Act provides:
- (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 provision 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 are incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.
19. Under Section 27A of the Act, an application may be made to a Leasehold Valuation Tribunal for a determination whether a service charge is payable.
20. Under section 20C of the Act the tribunal can order, if it considers it reasonable to do so, that the costs of the application should not be added to the service charge.
21. Section 20 of the Act provides that the relevant contributions in relation to qualifying works are to be limited unless certain consultation requirements are complied with or dispensed with under section 20ZA. The provisions for consultation and the relevant limits are contained in the Service Charges (Consultation Requirements) (England) Regulations 2003 SI 2003/1987 (“the Consultation Regulations”).
22. Under section 20ZA where an application has been 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.
23. **The leases**
- Copies of the counterpart leases of flats C and D were contained in the hearing bundle.

The relevant terms of the leases include the following:

Lease dated 7th July 2005 between Padraic Gallagher and Pauline Gallagher (as Landlord) and Pauline Gallagher (as Tenant). The landlord's interest is now vested in Little Wonder. The premises demised were Flat D and the term of the lease was 99 years from and including 25th December 1999.

'the Building' means the land and premises owned by the Landlord and known as 20 Fonthill Road, London N4....

'Common Parts' means paths halls staircases and other accessways and areas in the Building or its curtilage that are during the Term provided by the Landlord for common use by the tenants and occupiers of the Building or persons expressly or by implication authorised by them.

'Financial Year' means the period from 1st January to 31st December in each year

'Annual Expenditure' means:

1.13.1 all costs expenses and outgoings whatever reasonably and properly incurred by the Landlord during a Financial Year in or incidental to providing all or any of the Services and

1.13.2 any VAT payable on such sums costs expenses and outgoings but excluding any expenditure in respect of any part of the Building for which the Tenant or any other tenant is wholly responsible

1.14 'the Service Charge Percentage' means EIGHT PER CENT subject to the provision for variation in paragraph 7 of the third schedule

1.15 'the Service Charge' means the Service Charge Percentage of the Annual Expenditure

The Service Charge was payable in accordance with the third schedule and the tenant's covenants (in clause 3) included obligations to pay the rents (ground rent and insurance rent and Service Charge as further rent) in accordance with the lease terms.

The Landlord's covenants included a covenant to observe the obligations in the First Schedule (clause 4.3). The Services to be provided by the Landlord under the first Schedule included the following obligations:

- To maintain and keep in good and substantial repair and condition and renew or replace when required the Main Structure the Common Parts and any Pipes used in common by the Tenant and other tenants of the Building and which are not expressly made the responsibility of the Tenant or any other tenant in the Building.....
- As and when the Landlord shall deem necessary but not more often than every 3 years to decorate in a good and workmanlike manner the external parts of the Building and the Common Parts.
- As and when necessary to replace the fitted carpets to the Common Parts.

- Keep the Common Parts clean and where appropriate lit.
- To employ at the Landlord's discretion a firm of managing agents to manage the building and discharge all proper fees charges and expenses payable to such agents or such other persons who may be managing the Building including the cost of computing and collecting the Service Charge.
- To keep proper books of account of the sums received from the Tenant and the other tenants in the building in respect of the Annual Expenditure and of all costs charges and expenses incurred by the Landlord pursuant to his covenants in the lease.
- To set aside such sums as the Landlord reasonably requires to meet such future costs as the Landlord reasonably expects to incur in maintaining and renewing those items that the Landlord has covenanted to replace, maintain or renew.

The mechanics for calculating and payment of the Service Charge were contained in the Third Schedule to the lease. Some of the relevant provisions can be summarised as follows:

- The Landlord as soon as convenient after the end of each Financial Year is to prepare an account showing the Annual Expenditure for the Financial Year and containing a fair summary of the expenditure. This anticipates certification by the Landlord's Agent.
- The Tenant shall pay for each Financial Year following the first, a provisional sum equal to the Service Charge payable for the previous Financial Year increased by 10% or calculated upon an estimate by the Landlord or Surveyor of what the Annual Expenditure to be for that Financial Year by four equal quarterly payments on the usual quarter days.
- There is a provision for a top up or credit if the Service Charge for a Financial Year exceeds the provisional sum for that year. The top up is payable on demand and an overpayment is to be credited against the next quarterly payment of the Rent and Service Charge.
- The Landlord may withhold, add to, extend, vary or make any alterations in the rendering of the Services from time to time if the Landlord in its absolute discretion deems it desirable to do so.
- There is a provision for the variation of the Service Charge Percentage in certain circumstances (paragraph 7 of the Third Schedule).

24. The Service Charge Percentages

The Service Charge Percentages expressly specified in the leases of Flats C, D and E are;

Flat C - 12%

Flat D - 8%

Flat E - 10%

For completeness, it was noted in the statement of Mr William Boyes on behalf of the respondents, that the Service Charge Percentages under the leases of the other flats in the property (Flats A and B) were each 10%. The total of the Service Charge Percentages of the leaseholders of the Flats A to

E inclusive was therefore 50%. The tribunal were informed by Ms Fairley that Mr Boyes / his firm had drafted the leases and these were the percentages that had been agreed.

As stated in the previous paragraph, the leases contain a provision for variation of the service charge percentage, but only in the limited circumstances specified.

Paragraph 7 of the Third Schedule provides as follows:

If at any time during the Term the total property enjoying or capable of enjoying the benefit of any of the services or the Additional Items is increased or decreased otherwise than on a temporary basis or if some other event occurs a result of which is that the Service Charge Percentage is no longer appropriate to the Premises the Service Charge Percentage shall be varied with effect from the end of the Financial Year following such event by agreement between the parties or in default of agreement within 3 months of the first proposal for variation made by the Landlord in such a manner as shall be determined to be fair and reasonable in the light of the event in question by the Surveyor

Ms Fairley submitted that there were no circumstances or events to trigger any alteration in the Service Charge Percentage under the leases. Mr Gallagher and Mr Commune confirmed that there had been no agreement to alter the Service Charge Percentages.

Mr Adam Diamant, during the hearing, provided notes prepared by Mr Lewis Diamant, which formed the basis of his submissions. It was stated by Mr Lewis Diamant in his notes that:

As far as the internal works are concerned these are to be paid 100% by the leaseholders and not the commercial unit. Therefore their percentages need to be multiplied by 2 in order to ensure that they pay the correct costs of both the service charge costs for the communal parts for the residential and any repairs.....

2 of the flats both have paid for the service charges and works to be carried out to the exterior. The remaining 3 have refused to pay these costs when they had section 20 notices. They also have refused to pay the service charges in breach of the lease covenants. I can see no other way of calculating their costs in respect of the residential communal parts without doubling their proportion.

Therefore the applicant's contention was that the service charge percentages (as stated in the leases) payable by the respondents in respect of the internal works to the property were doubled to Flat C 24%, Flat D 16% and Flat E 20%. This was reflected in the sums calculation of the sums alleged claimed in the applications.

The tribunal's conclusions – service charge percentages

The percentages stated in the leases were Flat C 12%, Flat D 8% and Flat E 10%.

Having considered the evidence the tribunal finds that none of the events which could trigger a variation in the service charge percentages under the leases have occurred. There has been no proposal made to the lessees for alternation and no agreement by the lessees to any such alteration. It is not open to Little Wonder / Land Commercial to unilaterally alter the percentages in order that the leaseholders of the residential flats pay 100% of the costs of internal works. The lease specifically provides for a mechanism for variation in certain circumstances which have not occurred.

The tribunal finds that the Service Charge Percentages payable for Flats C, D and E are 12%, 8% and 10% respectively.

25. **Whether the landlord has complied with the Consultation Provisions under Section 20 of the Act**

Where relevant costs incurred on carrying out any qualifying works exceed a specified limit (the contribution of any tenant is more than £250) the excess shall not be taken into account in determining the amount of any service charge unless the relevant requirements have been complied with or dispensed with by the tribunal. The practical result is that in respect of qualifying works where the relevant costs exceed the specified limit, unless the consultation regulations are complied with or dispensed with, service charges in excess of £250 per leaseholder are not recoverable.

In the hearing bundle were copies of a notice headed *S20 Landlord and Tenant Act 1985 and The Service Charge (Consultation Requirements) (England) Regulations 2003 Notice of Intention To Carry Out Works*. This was dated 16th March 2011 and was signed. However, there was a dispute as to whether the notices served on the respondents was dated or whether this was the correct date.

The tribunal was told by Ms Fairley that the copy of the notice produced at the pre-trial review was undated. It was contended that some of the lessees had received versions the notice unsigned and undated.

Mr Comune was sent an unsigned copy on of the notice dated 1st April 2011, under cover of a letter dated 28th March 2011 from Mr Lewis Diamant. This letter stated that it contained *...a section 20 notice in respect of the proposed works attaching quotations from 2 individual contractors provided by companies who have no connection or involvement with Land Commercial Surveyors Limited. In accordance with this notice we look forward to receiving any response within 30 days and will keep the parties informed.* In paragraph 2(c) of the enclosed notice observations to the proposal in writing were invited, but end date for the relevant period for making the observations was blank (as it was in all of the other section 20 notices).

Mr and Mrs Gallagher (Flat D and Flat E) had also been sent a similar letter and notice at this time. Percy Short & Cuthbert responded on behalf of Mr and Mrs Gallagher a letter dated 7th April 2011, stating that they agreed to acceptance of the lowest tender for the repair and decoration of the internal and external parts and the proposed roof repair. Percy Short & Cuthbert did not act for Mr Comune and Ms Basso until several months later.

Land Commercial's response was dated 20th April 2011 and stated that Land Commercial was pleased to note that 'your clients' accept that we are proceeding with the lowest tender as payment has been received from other flat owners

Mr Comune's evidence at the hearing was that he and Mrs Basso had written a letter dated 27th April 2011 to Mr Lewis Diamant in response to the notice dated 1st April 2011. He produced a copy of this letter at the hearing, and said that it had been sent by first post or recorded first class post on the 27th or 28th April, 2011. In this letter Mr Comune and Ms Basso provided observations in response to the notice, including proposing an alternative contractor, with contact details, and had requested that a quotation be obtained from that contractor to achieve the best value for money for the leaseholders. They also made comments on the various works proposed.

It was submitted that notwithstanding this letter no alternative quotation had been obtained and the observations had not been taken into account.

Mr Diamant replied to Mr Comune and Ms Basso by in an email dated 3rd May 2011, a copy of which was provided at the hearing. In this he stated that he was receipt of the letter dated 27th April 2011 'which was received past the required date of Section 20 Notice'.

In the statement of case Mr Diamant had stated that: *We obtained the 2 quotations for these works to be carried out which were attached to the section 20 notices. At the end of the consultation period we had not received any comments. We were prepared to accept the lower of the 2 quotes.*

However, in his notes for the hearing Mr Diamant said: *We waited until the end of the consultation period to receive any comments from the leaseholders in respect of the quotations presented. Upon the last day of that period we received an email from Mr Comune regarding the issues. However 5 out of 6 leaseholders, including the commercial unit had not objected.....*

The tribunal's conclusions – consultation provisions

The tribunal finds that there has not been compliance with the provisions of the consultation regulations. The 'notices of intention' served on the respondents, which on the evidence available appear to have been dated 1st April 2011 and served under cover of letters dated 28th March 2011, did not specify a date on which the relevant period for making observations in relation to the proposed works ended. The notices were therefore ineffective.

Further, under the consultation regulations, following the notice of intention there is a duty to have regard to observations. Where within the relevant period a nomination is made by only one of the tenants, the landlord shall try to obtain and estimate from the nominated person. There are other requirements to be complied with as set out in the consultation regulations including provisions for the service of a further notice by the landlord (the paragraph (b) statement).

Even if the period for compliance could be implied from the covering letter (which stated 30 days), no steps were taken by the landlord / Land Commercial to obtain an alternative quotation from the suggested alternative contractor. The tribunal finds Mr Comune and Ms Basso's letter was more likely than not to have been received in time. There was no evidence that Mr Comune's other observations taken into account. Further, no paragraph (b) notice was served. Notwithstanding this non-compliance, it appears that the quotation from Joyner Property Services was accepted by the landlord. The tribunal finds that the provisions of the consultation regulations have not been complied with in respect of the internal and proposed external works.

The tribunal raised the possibility of an application for dispensation under section 20ZA of the Act with the parties at the hearing, but no such application has been made by the landlord.

26. **Property Expenditure Schedule for the year to 31st December 2011**

We now turn to the question of the amount of relevant costs chargeable to the service charge for the period to 31st December 2011.

A service charge budget had been provided to the lessees under cover of a letter from Land Commercial dated 16th March 2011. However, in a letter dated 24th October 2011 from Land Commercial to Mr and Mrs Shirtcliff (lessees of Flat B and not parties to these proceedings) it was stated that: *The service charge projected for 2011 will be disregarded. You will pay your proportion of monies physically expended during the period from 1st December 2010 – 31st December 2011 less any payments received towards service charge costs....*

It therefore seems that the landlord relies on the schedule of actual expenditure claimed for the period to 31st December 2011 and that the service charge draft budget for 2011 had been subsumed in this. A copy of this Property Expenditure Schedule for the period to 31st December 2011 was included in the hearing bundle.

It was noted that there has been no certification of the accounts in accordance with the terms of the leases. On the invoice date 7th February 2012 to Mr and Mrs Gallagher, it was noted that there has been a credit for sums paid, but the balancing procedure was not correctly completed. Amongst other matters the incorrect percentage had been applied to the sums claimed.

Invoices were included in the hearing bundle in respect of the items of expenditure with the exception of the item 'Barclays Bank' – which the tribunal was told was for bank charges and was not disputed.

At the hearing the tribunal considered evidence and submissions in respect of the items in that the Property Expenditure Schedule to 31st December 2011 as the items in issue.

We will now consider the individual items in that schedule:

- (i) Land Commercial Charges (managing agent's fees)
- (ii) Joyner Property Service Invoices
- (iii) Delta Tech fire services limited invoice dated 7th October 2011
- (iv) Fire Risk Prevention Agency Limited invoice dated 20th November 2011
- (v) Barclays Bank

27. **Land Commercial charges (managing agent's fees)**

Date	£
14/02/11	720
18/07/11	720
20/11/11	720
31/12/11	1200

These charges were supported by invoices included in the hearing bundle.

Mr Adam Diamant submitted that the basic charge for management of £720 per half year (£300 per quarter including plus VAT per flat) were reasonable charges. Ms Fairley submitted that the basic charge was excessive and suggested that the charge should be based on a percentage of expenditure.

In the statement of case Mr Lewis Diamant stated, amongst other matters, that the managing agent's fees were £1200 per annum plus VAT. He submitted that an unreasonable and unacceptable amount of correspondence had been generated between the managing agents and Percy Cuthbert & Short, Solicitors. He stated that Land Commercial had charged additional fees for this substantial amount of correspondence, service of the section 20 notices and several additional visits to the building. It was noted that in the correspondence Mr Lewis Diamant had stated in a letter dated 20th April 2011 that the managing agent's charges should be between £200 and £350 per flat per annum, and that the fees charged were reasonable for this property.

In his notes for the hearing, Mr Lewis Diamant stated that Land Commercial had received countless letters from Messrs Percy Short & Cuthbert acting on behalf of Mr and Mrs Gallagher (and later the other respondents) and that they had attempted to deal with all of these in a reasonable manner but continued to receive these letters often asking questions which they had already answered.

At the hearing Mr Adam Diamant said that Land Commercial managed other residential properties although he was not directly involved in this. He was aware that there was a Land Commercial management agreements in respect of those other properties, and thought that these may contain terms that the managing agents could charge for additional work outside its ordinary management functions. No copies were produced. There was no copy of the management agreement in respect of the subject property, neither the residential or commercial parts.

Mr Adam Diamant also said that the standard management fee for Land Commercial included a 'comprehensive service'. This was inconsistent with his submission that there was an ability to charge additional fees unless specifically agreed and outside the normally expected management duties and functions of a managing agent. Such normal functions and duties should include but are not limited to promptly answering enquiries, supplying information and serving notices complying with the consultation regulations.

Mr Gallagher in his evidence referred to the period prior to Little Wonder's ownership of the landlord's interest under the leases, when he and Mrs Gallagher owned the freehold. During that period services were provided by Mr Gallagher such as repairs, apart from when this involved electrical or plumbing issues when outside contractors were engaged. The cleaning was by the lessees or provided by the cleaner from the ground floor pub. Mr Gallagher in his evidence explained that the service charge for the management element provided was £100 per annum for each flat.

Overall the lessees challenged the basic management charge as excessive in amount. They also challenged the standard of management services provided. In particular the lessees considered that the additional charge on 31/12/11 (£1200 rather than the previous quarter's £720) was unreasonable and unreasonably incurred.

For the respondents, Ms Fairley submitted that the charge of £300 per quarter was excessive. She submitted that a reasonable fee would be 10% of annual expenditure plus VAT, and that the current fee billed equated to about 42% including VAT. In respect of the additional charge of £1200, Ms Fairley said that it was unreasonably incurred as the queries raised were reasonable and justified. In his statement Mr Boyes also contended for a management fee of 10% plus VAT.

The tribunal's conclusions – Land Commercial fees 2011

As previously stated no management agreement was produced to support the basic charge or that additional rates were chargeable under any such agreement or in what circumstances.

The tribunal notes that 3 charges for £720 were claimed in the 2011 expenditure schedule, which was in excess of the £1200 basic management fee referred to in the statement of case. Further, although the 3 invoices addressed to Little Wonder for £720 each were marked "received with

thanks”, but the invoice for £1200 dated 31st December 2011 was not so marked.

In respect of the additional charge of £1200, Mr Lewis Diamant in the statement of case said that this was in respect of service of the section 20 notice and several additional visits for the property.

On an invoice dated 31st December 2011 from Land Surveyors to Little Wonder, it was stated that this charge related to *“Land Commercial Surveyors Limited additional incurred costs from 1st December 2010 to 31st December 2011 inclusive of the cost of service of section 20 Notices and continuous correspondence to leaseholders in excess of standard management of the above development”*. In respect of the correspondence, the tribunal considers that it part of a managing agent’s duties to deal reasonably and as promptly as possible with enquiries from tenants. The tribunal does not consider the leaseholders’ solicitors did otherwise than to make reasonable enquiries and responses on behalf of their clients.

Having considered the evidence as a whole, the tribunal finds that the management was not of a reasonable standard and the additional sums claimed were not reasonably incurred. No management agreement was produced. It appeared from the correspondence that there was a lack of understanding of the managing agent’s duties. Charges appear to have been claimed otherwise than in accordance with the lease, for example in respect of the leaseholder’s percentages claimed. There also appeared to be non-compliance with section 20 of the Act / the consultation regulations, and in respect of such matters as the absence of summary of rights on service of invoices.

Having taken this into account, some work was carried out. The tribunal concludes that a reasonable charge for standard management duties to be £1200 plus VAT for the service charge year to 31st December 2011.

The tribunal finds that the Land Commercial’s charges under the service charge provisions for 2011 are limited to a total of £1200 plus VAT. No additional charge is payable.

Accordingly the respondents are liable to pay their contributions of the total figure of £1200 plus VAT in the percentages under the leases (unless already paid). However this is subject to the service of proper demands on the leaseholders, including the regulatory information (see paragraph 35 below).

28. **Joyner Property Service (“JPS”) Invoices**

These included

- 3 invoices dated 1st June 2011 for a total of £864 (marked paid on 30th June 2011)
- an invoice for £5448 dated 4th August 2011 (marked paid on 15th September 2011)

- an invoice for £1188 dated 14th October 2011 (marked paid 18th November 2011).

Mr Lewis Daimant's notes stated that at the commencement of his firm's appointment the property was in extremely poor condition especially the internal communal parts, and the carpet to the stairway. He stated that there were no power points in the communal areas to enable carpets to be vacuumed. His firm had set up a designated service charge account for the property and also an initial budget to cover what was required to maintain the building including cleaning, fire regulations including fire risk assessment and general maintenance. They had complaints from the flat owners that the roof was leaking which was attended to, and they also dealt with a window which he said needed urgent attention.

The carpets in the communal parts had not been changed for many years and he stated that this had to be replaced as a Health and Safety issue. When trying to get the carpets laid Mr Gallagher physically barred entrance to the carpet company on one occasion. On the second occasion the carpet was laid. He stated that the exterior of the property was in exceptionally poor condition having not been maintained nor decorated for many years. The property is 4 storeys from the basement commercial unit to the roof. He submitted that it is not possible to inspect the roof without erecting scaffolding.

29. **JPS invoice dated 1st June 2011 for a total of £864 including VAT**

This work included:

- (i) Repair to the front door lock (£180) and a call out to replace blown lamps in the common area (£80).
- (ii) Call-out to repair the roof gulley for the top floor flat (£200).
- (iii) Electrical work - fitting a new socket in the common area and full periodic test (£260)

Ms Fairley accepted that the work had been done, but submitted that this was too expensive and also challenged the standard of the work. Mr Gallagher said that the door lock had been in good condition and that all that was wrong with it was that some of the screws were loose. He stated that there was a socket on each landing and that no new sockets had been required. In respect of the lamps, Mr Gallagher said that 3 bulbs would not go out at once and that there should not have been a call-out charge unless there was an emergency. In respect of the roof gulley, this charge was not contested at the hearing. Mr Comune said that a repairperson had attended and the leak had stopped.

The tribunal's conclusions – JPS invoice dated 1st June 2011

Having considered the evidence the tribunal finds that the work was of a reasonable standard and the cost of £864 including VAT was reasonably incurred.

Accordingly the respondents are liable to pay their contributions to the total figure of £864 including VAT in the percentages under the leases (unless already paid). However this is subject to the service of proper demands on each of the leaseholders, including the regulatory information.

30. **JPS invoice dated 4th August 2011 for a total of £5,448.00 including VAT**

The items included were:

- internal decoration works to the walls, ceilings, skirting boards, door frames, stair hand rails and spindles and removal of broken window glass on the landing and replaced with new glass
- Removal of the existing carpet and underlay and fitting of new underlay and carpet.

The tribunal's conclusions – JPS invoice dated 4th August 2011

The tribunal finds that these were qualifying works for the purposes of section 20 of the Act, and that for reasons stated earlier in this decision the provisions of the consultation regulations had not been complied with.

The amount recoverable (subject to correct demands) from each of the respondents in respect of the JPS invoice dated 4th August 2011 is therefore limited to £250 per lessee.

For completeness and subject to the above limitation, the tribunal's conclusions in respect of whether the work was of a reasonable standard and whether the costs were reasonably incurred would have been as follows:

- The works of internal decoration were of a reasonable standard and the costs reasonably incurred save the glass replacement. The window was replaced approximately 2 months later with a new UPVC window and therefore this element of the cost was not reasonably incurred and the tribunal would have made a deduction of £150 to reflect this.
- The defects to the carpet were rectified and the costs were reasonably incurred.

31. **JPS invoice dated 14th October 2011 for £1,188 including VAT**

This was for the removal of an existing rotting sash window on the first floor landing and disposal. The supply and fitting of a new UPVC window with fire escape hinges, and repair to damaged decoration from the installation and repainting where required.

The tribunal's conclusions – JPS invoice dated 14th October 2011

At the hearing it was stated that the standard of works and reasonableness of the cost of this item was not challenged.

The tribunal finds that the costs were reasonable and reasonably incurred. Accordingly the respondents are liable to pay their contributions of the total figure of £1188 including VAT, in the percentages under the leases (unless already paid).

However this is subject to the service of proper demands on each of the leaseholders, including the regulatory information.

32. **Delta Tech Fire Services Limited – invoice dated 7th October 2011**

The amount claimed was £124.80 including VAT. This was for servicing the fire fighting equipment (£25 plus VAT) and replacing the fire extinguisher (£79 plus VAT).

The tribunal's conclusions – Delta Tech Fire Services Limited invoice

Having considered the evidence the tribunal finds the cost to be reasonable and reasonably incurred. The respondents are liable to pay their contributions of the total figure of £124.80 including VAT in the percentages under the leases unless already paid, and subject to proper demands including the regulatory information.

33. **Fire Risk Prevention Agency Limited - invoice dated 20th November 2011**

The amount claimed was £282 including VAT.

The tribunal's conclusions – Fire Risk Prevention Agency Limited invoice

Having considered the evidence the tribunal finds the cost to be reasonable and reasonably incurred. The respondents are liable to pay their contributions of the total figure of £282 including VAT in the percentages under the leases unless already paid, and subject to proper demands including the regulatory information.

34. **Barclays Bank invoices**

These charges were not challenged at the hearing.

35. **The tribunal's conclusions – whether the landlord has complied with requirements for information to be supplied with service charge demands**

The evidence was that the service charge demands were not accompanied by a statement of tenants' rights and that the statutory requirements have not yet been complied with by the landlord.

Under section 21B(1) of the Act (inserted by the Commonhold and Leasehold Reform Act 2002, section 153), 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. 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.

36. **2012 Budget**

The tribunal notes that a copy of the service charge budget for 2012 was included in the hearing bundle. However this was not the subject matter of the applications and the tribunal makes no finding on this.

37. **Section 20C of the Act**

The tribunal heard submissions in respect of section 20C under which 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 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 tenant or persons specified in the application. The respondents have been partially successful and it was reasonable that they opposed the landlord's application. The tribunal considers that it is appropriate to make and makes an order under section 20C.

38. **Paragraph 10 Schedule 12 Commonhold and Leasehold Reform Act 2002**

The respondents applied for an order for costs under paragraph 10. However, the tribunal does not consider that it has been shown that the circumstances under paragraph 10(2) apply in this case, and makes no order under paragraph 10.

39. **Summary of conclusions**

- The Service Charge Percentages payable for Flats C, D and E are 12%, 8% and 10% respectively.
- The landlord has not complied with section 20 / the Consultation Regulations as detailed in this decision.
- Managing agent's (Land Surveyors) charges for the year to 31st December 2011 are limited to £1200 plus VAT.
- Costs of the internal works (JPS invoice dated 4th August 2011) limited to £250 per leaseholder.
- Other costs set out in property schedule for the year to 31st December 2011 are in accordance with the above findings.
- Provisions for service of summary of tenant's rights not complied with.
- Order under section 20C made.
- No order made under paragraph 10 of Schedule 12.

Chairman: Miss A Seifert

Date: 7th October 2012

Members of the Leasehold Valuation Tribunal:

Miss A Seifert FCI Arb
Mr N Mahoney FRICS FIRPM MEWI
Mr N O Miller BSc