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LONDON RENT ASSESSMENT PANEL

DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTIONS 27A & 20C OF THE LANDLORD AND TENANT ACT 1985

Case Reference: LON/00AU/LSC/2012/0317

Premises: 88C Highbury Hill, London N5 1AP

Applicant: Morgelay Limited

Representative: None

Respondent: The London Borough of Islington

Representative: None

Date of hearing: Monday 17 September 2012

Appearance for Applicant: Ms Maria Laretta

Appearance for Respondent: Mr Neil Rowland, Commercial Team Leader
Mr Brian Holness, Building surveyor
Mr Doug Pope, Leasehold and Customer Service Officer

Leasehold Valuation Tribunal: Mrs O'Sullivan
Mrs Redmond, BSc(Econ) MRICS
Mrs West

Date of decision: 26 October 2012

Decisions of the Tribunal

- (1) The Tribunal determines that the consultation carried out in respect of the major works for which the final account was issued on 6 December 2011 was valid.
- (2) The Tribunal determines that the sum of £4,716.97 is payable by the Applicant in respect of the major works subject to an adjustment being made for item 20 on the schedule entitled "Upgrade electrical cupboard" which was conceded by the Respondent.
- (3) The Respondent conceded the application under section 20C as it did not intend to pass any legal costs in connection with the proceedings through the service charge. Accordingly for the avoidance of doubt the Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 the effect of which is that the landlord may not pass its costs of the Tribunal proceedings to the lessees through the service charge.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the service charges payable in respect of major works carried out in 2010/11.
2. The dispute concerns an invoice dated 6 December 2011 in the sum of £4,716.97 for service charges for the actual cost of major works to the premises. The whole of the sum is in dispute.
3. The relevant legal provisions are set out in the Appendix to this decision.

The hearing

4. The Applicant was represented by Ms Laretta, a director of the Applicant company. The Respondent was presented by Mr Rowland, a commercial team leader and Mr Pope, a leasehold officer. Mr Holness, a building surveyor, also attended the hearing and gave evidence on the major works themselves.
5. Both parties had prepared and filed bundles of documents prior to the hearing which the Tribunal had had the opportunity to read in advance of the hearing.

The background

6. The property is a one bedroom flat in a mid-terraced house converted into four flats known as 88C Highbury Hill (the "Flat").

7. The Applicant holds a long lease of the Flat which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge.

The Inspection

8. At the hearing Ms Laretta raised an issue as to whether some of the major works, namely the replacement of the roof at the property, had taken place. The Tribunal therefore decided at the conclusion of the hearing that an inspection would be helpful and this took place in the afternoon of 17 September 2012.
9. Ms Laretta objected to the inspection taking place that afternoon as she had not given notice to the tenant and might not be able to gain entry to the Flat. She wished to show the Tribunal the interior of the windows to which she said no works had taken place, the cost of these works to the Applicant was identified in the final account as £356.25.
10. The Tribunal noted that the directions had stated at page 1 that "*an inspection to be arranged by the tribunal if it considers it necessary*". It was therefore considered that the parties had been put on notice that an inspection may take place. In addition most of the items comprised in the major works could be seen externally and in the communal areas without the need for access to the Applicant's flat. The Tribunal must have regard to proportionality and it did not appear to the Tribunal to be proportionate to reconvene a Tribunal to inspect the interior of the windows to the flat at the Applicant's convenience when the cost in issue to an inspection of the interior of the Flat was £356.25. In any event given that time had passed since the major works it was by no means clear that an internal inspection would be of assistance in any event. It was primarily due to the Applicant's own challenge regarding whether the roof had been replaced that an inspection was deemed necessary. The Tribunal therefore decided that an inspection would take place that afternoon. In any event on arriving to inspect the property the Applicant's tenant was present at the property and happy to provide access to the Flat so no further issue arose in this regard.
11. The flat is contained in a substantial four storey period end of terrace house. The majority of windows are timber sash. The Tribunal was able to inspect the front and had a limited view of the upper parts at the rear from an adjacent road. The exterior of the property was seen to be in good condition. Paintwork was in good condition, some repointing was evident and gutters appeared to have been recently replaced. Cables were seen to have been clipped neatly. The roof to the property appeared to have been recently replaced.
12. Access is via steps to the raised ground floor with original wide double entry front doors and entry phone. The Tribunal inspected the common parts. They appeared clean with vinyl flooring and painted walls. The nosings to the stairs appeared to have been recently replaced.

13. The Tribunal inspected the interior of the windows to Flat C, the subject flat. The exterior of the paintwork to the window cill was closely inspected and appeared to have been painted in the not too distant past. Traces of mastic could be seen around the window. The Tribunal noted restrictors and lift handles to the kitchen window.

The issues

14. At the start of the hearing Ms Laretta for the Applicant summarised her challenges to the major works as follows:
- (i) Whether the Qualifying Long Term Agreement ("QLTA") relied upon by the Respondent entitled it to carry out the works.
 - (ii) Whether the scope of the QLTA was for management only and did not cover major works.
 - (iii) Whether there was valid statutory consultation prior to 2003.
 - (iv) The reasonableness of service charges relating to the major works given that the building had been fully refurbished 5 years previously.
15. The Tribunal took these issues one by one and was referred by Ms Laretta to the relevant parts of her statement of case. Having heard evidence and submissions from the parties and considered all of the documents provided, the Tribunal has made determinations on the various issues as follows.

The statutory consultation

16. Mr Pope for the Respondent first outlined the background and the consultation which had taken place.
17. A notice in the OJEU had been published in the week ending 1 February 2002 in relation to the proposed private finance initiative ("PFI") and a copy was provided to the Tribunal at pages 1-5 of the Respondent's bundle. The nature of the contract was stated to be *"refurbishment, maintenance and management of council street properties located within the London Borough of Islington"*. The nature of the works to be provided was stated as *"The works are expected to comprise refurbishment works to deal with repairs backlog and bring properties and dwellings up to certain standards and maintenance works to keep properties and dwellings at these standards, including planned, cyclical and responsive maintenance and repairs"*. The time limit for completion of the work or duration of the contract was stated as follows; *"It is anticipated that the contract period will be 25 to 35 years. It is currently hoped that the PFI2 scheme will commence in December 2003"*.

18. Mr Pope's evidence was that the leaseholders were subsequently sent a newsletter dated June 2002 informing them of the PFI 2 Housing Scheme and setting out the bidders. These included Partners for Improvement in Islington who were stated to be "a consortium of United House Solutions, Rydon Property Maintenance Limited Ltd (construction and maintenance companies), Hyde Housing Association and HBOS Halifax Bank of Scotland – funder). The newsletter also set out a PFI 2 timetable which was said to be subject to review and change as the scheme progresses.
19. An information note was then sent out in October 2003 in relation to the PFI 2 Scheme which set out the aims of the contract and stated that the PFI contract would be a long-term partnership between the Council and the contractor. It also stated that the PFI 2 scheme was currently scheduled to reach contract commencement by December 2005.
20. In fact the Tribunal heard that negotiations took some time between the Respondent and the Office of the Deputy Prime Minister who funded the project. On 3 July 2006 a formal notice was served on all leaseholders by the Respondent informing them of its intention to enter into a contract. Leaseholders' were invited to express their views prior to the decision being made to enter into a contract with the preferred bidder.
21. The contract was subsequently entered into by the Respondent with the consortium know as "Partners for Islington" on or around 3 December 2006
22. Subsequently a notice was served under section 20 of the 1985 Act dated 26 February 2010 (the "Section 20 Notice") on the leaseholders, including the Applicant. The notice and enclosures were contained at pages 23 to 30 of the Respondent's bundle. The notice was stated to be served on behalf of the London Borough of Islington by Partners for Improvement in Islington who were defined as "Partners". It was served under Schedule 3 and Regulation 7 (3) of the Service Charges (Consultation Requirements) (England) Regulations 2003. The total estimated cost of the works was stated to be £28,320.57 plus Contractors costs of £2,265.65 and Preliminary Costs of £5,734.92. The Applicant's estimated individual recharge was £9,859.24.
23. The Tribunal was referred to copies of three observations made in respect of the Section 20 Notice contained in the bundle.
24. For the Applicant Ms Laretta explained that she purchased the Flat in 1996 and had lived in it until 2004 when she sold it to the Applicant. She has not resided at the Flat since that time.
25. She objected to the works as she considered they were unnecessary as the property had been fully refurbished in 2005. She did not provide any evidence however as to the condition of the property as at 201011 and confirmed that she had not seen the property since "a long while ago" and certainly not since before the major works in issue.

26. She submitted that the consultation in relation to the major works was fundamentally flawed for several reasons.
27. First she referred the Tribunal to the results of several company searches relating to Partners for Improvement Ltd and Partners for Improvement Islington 2 Limited. Partners For Improvement Islington 2 Limited ("Partners 2") was incorporated in 2006. She therefore queried how they could possibly have been part of a consortium which had entered into a contract in 2006 and which had been identified as one of four potential bidders in 2002 in response to the notice in the OJEU. In response Mr Pope explained that there were in fact two legal entities referred to as "Partners". The first, Partners for Improvement in Islington Ltd, had been party to a previous PFI contract which was not relevant to this property. A second company, Partners 2, was then incorporated to form part of the consortium for the second PFI.
28. The original bidders referred to as Partners comprised United House, Rydon Property Maintenance, Hyde Housing Association and Bank of Scotland. Partners for Improvement 2 Limited was the legal entity was later incorporated in 2006 as the vehicle who would enter into the PFI 2 contract. The section 20 notice dated 26 February 2010 was simply stated to be served by Partners for Improvement in Islington ("Partners") acting as managing agents for the London Borough of Islington. Mr Pope says that this reference was to Partners 2. It was served on the headed notepaper of Partners for Improvement in Islington Ltd. Mr Pope's evidence was that there was only in fact one headed notepaper which was used for all "Partners" purposes. He pointed out that the notice correctly identified the landlord. He also pointed out that save for the reference to the wrong "Partners" entity the remainder of the notice was technically correct and correctly identified the landlord on whose behalf the notice was served.
29. Ms Laretta also complained that she had not received a summary of the observations. The Tribunal referred the Applicant to the provisions of Schedule 3 and took Ms Laretta through the requirements which do not require the landlord to provide a summary but require the landlord to have regard to observations. Ms Laretta did not accept that the provisions of Schedule 3 had been satisfied and went on to say that she did not consider that any regard had been had to the Applicant's observations. The Tribunal considered the written observations made by Ms Laretta for the Applicant in response to the Section 20 Notice and the responses made contained in the bundle at pages 35 to 29. She found the DVD about the S20 process patronising and did not attend the presentation as she did not consider that would be useful. She complained that she had been unable to speak to the surveyor, that the description of the works was inadequate which she said referred to "*everything under the sun*" and that the landlord's reason for saying why the works were necessary as merely "*maintenance*" was not enough.

Consultation - The Tribunal's decision

30. The Respondent entered into a Qualifying Long Term Agreement in October 2006 in respect of which public notice had been given before 31 October 2003. As a result paragraph 7(3)(b) of the Service Charges (Consultation requirements)(England) Regulations 2003 (the "2003 Regulations") provides that the relevant consultation requirements are those set out in Schedule 3 to those regulations.
31. The first question that the Applicant asked was whether there had been valid consultation prior to 2003 and also whether the Respondent was entitled to carry out the 2010 works pursuant to the QLTA. The Tribunal was satisfied that public notice had been given in the Official Journal of the European Union and that as a result the requirements of Schedule 3 applied to any subsequent major works. The procedure to be followed by the Respondent pre dated 2003 and thus it was the provisions of Schedule 3 which applied.
32. The Tribunal considered the section 20 process carried out in 2006 after the PFI 2 had been entered into. The Applicant's main issue in this regard was that Partners 2 had only been incorporated in 2006 and also that the notice had been given on the headed notepaper of Partners 1 rather than the correct legal entity Partners 2. The Tribunal considered the provisions of Schedule 3 to the 2003 Regulations carefully. It is set out in the schedule to this decision in full. It provides among other things that the notice must contain:
- A description of the qualifying works to be undertaken
 - Why the qualifying works are necessary
 - A statement as to the estimated expenditure
 - An invitation for written observations and for the landlord to state its response to those observations
33. At paragraph 1 it provides that it is the landlord who shall give notice. It was not argued and it could not be said to be the case that the notice was not given clearly on behalf of the Respondent, the London Borough of Islington. It is the Tribunal's conclusion that the Section 2 notice complied with these provisions. In particular the requirements as to the general description of the works and the invitation of observations was included. Paragraph 4 requires the landlord to state a response to observations made. It is the Tribunal's view that the Respondent complied with this provision in that it replied to each of the letters received from the Applicant and gave its response. The Tribunal did not accept that those responses were inadequate as suggested by the Applicant.

34. The Tribunal accepts that the Section 20 notice was served on the headed notepaper of the wrong Partners entity. It appears in fact that when serving the notice "Partners" were serving them as managing agents and it appears that "Partners" was a generic term used. However this does not invalidate the Section 20 notice served which complies in all respects with the provisions of Schedule 3. Likewise it does not consider that the fact that the Partners 2 was not incorporated until 2006 invalidates the consultation.
35. The Tribunal appreciates that the background to the major works may well have caused some confusion for the Applicant as the 2005 major works were carried out under the new regulations which applied to these works because the PFI had not been entered into at this time. This appears to have contributed to the confusion. In addition the Applicant did not appear to appreciate that the provisions of Schedule 3 to the 2003 Regulations applied in the case of the 2010/11 major works.
36. The next question asked by the Applicant was whether the scope of the QLTA was for management only and did not cover major works. The Tribunal had regard to the notice in the OJEU referred to above which clearly referred to not only management but also *"refurbishment, maintenance and management of council street properties located within the London Borough of Islington"*. The Tribunal accordingly concluded that the scope of the QLTA provided for refurbishment and maintenance such as the major works contract.
37. The Tribunal therefore concluded that there had been valid consultation in relation to the 2010/11 major works.

The Major Works

38. Mr Rowland commenced by giving the Tribunal some background to the major works. The Tribunal was referred to a copy of a document entitled "Notes on the External survey process" at page 94 of the Respondent's bundle. The Tribunal heard that the findings of this survey would be transcribed onto a document known as a Works Order. The loft and basement flat would also be inspected for any damp issues as they were deemed to be communal areas. The Tribunal was further informed that the previous major works were actually completed in 2004 and that the standard recommendation for the frequency of major works was every 5-7 years. Before the works were carried out the condition of each property was considered to ensure only necessary works were undertaken. However the roof could not be inspected in detail before scaffolding was erected so it was difficult to reach a view as to whether the roof required replacement until such time as full scaffolding had been erected. Furthermore, Mr Rowland confirmed that there was no financial incentive for the Respondent to carry out more works as fixed costs applied irrespective of any increase in the cost of the project as a whole. Mr Holness gave evidence for the Respondent in relation to the major works as the surveyor who had

carried out the original survey. He confirmed that he had carried out a survey from the scaffold on 8 October 2010. He referred the Tribunal to photographs contained within the bundle of the roof and showed what he suggested were problem tiles which had started to deteriorate. His findings were that on the front and rear of the roof approximately 60% of the tiles had started to deteriorate. In his view a percentage of between 40-50 would suggest that the roof needed replacing. His view was that the roof would not be watertight for another 5 years and that any pressure to the tiles would cause them to crack. He had concluded from his inspection that it would be more cost effective to replace the roof.

39. Ms Laretta raised several issues in relation to the works which were set out in a Scott schedule together with the Respondent's response. The Tribunal does not intend to repeat the whole of the contents of the schedule but sets out below the main points of contention.

- a. The Applicant claimed that works to the loft and other communal parts were not communal works and therefore should not be included.

In response Mr Rowland submitted that the Respondent relied upon clause 7(5)(a) of the Lease which contained the freeholder's obligation to deal with any damp affecting the structure of the building.

- b. The cost of the loft insulation was submitted to benefit the leaseholder only and therefore should not form part of the charge.

Similarly Mr Rowland submitted that the works to insulate the loft were of benefit to the whole of the property and the Respondent also relied upon clause 7(5)(a) of the Lease which contained the freeholder's obligation to deal with any damp affecting the structure of the building.

- c. There was no evidence of leaks or emergency work which suggested that the roof did not need replacing. Ms Laretta also queried why if the roof had been replaced there had been no canopy erected. She also commented that she was not convinced that the roof had been replaced.

Mr Holness accepted that there had been no leaks but submitted that there was a possibility of leaks within the next 5 years. As for the works Mr Holness explained that the use of a canopy would have increased costs and it was possible to strip a roof and make it watertight within one day.

40. In answer to the Tribunal's query Ms Laretta confirmed that she had no professional surveying experience but had experience "*as a property investor*". She did not elaborate on her qualification to express a view on the condition of the roof and tiles.

41. Ms Laretta claimed the last major works were carried out in 2005. The Tribunal was referred to a certificate of practical completion at page 66 of the Respondent's bundle which showed the works were completed on 2 February 2004.
42. Ms Laretta was unable to say if she challenged the quality of the works themselves.

The Tribunal's decision

43. The Tribunal determines that the amount payable in respect of the major works is £4,716.97.

Reasons for the Tribunal's decision

44. The Tribunal accepts that it is reasonable to carry out major works to the exterior of a property on a 5-7 year cycle. It accepts on the evidence before it that the last cycle took place in early 2004. The major works before the Tribunal were carried out 2010/11 and the Tribunal was satisfied that they were not premature.
45. In relation to the works themselves the Tribunal accepted the Respondent's evidence given by Mr Holness, the surveyor, who had acted in relation to the major works programme, as to the condition of the property and the necessity of the works generally. The Applicant had no evidence to put before the Tribunal as to the condition of the property in 2010 and admitted that she herself had not seen the property for some time and certainly not since before the 2010 works.
46. The main item challenged was the replacement of the roof. Again the Tribunal accepted Mr Holness' evidence as to the condition of the roof found on inspection. This was supported by photographic evidence which clearly showed tiles in some state of deterioration on several sections of the roof. Again the Respondent did not have any evidence to put before the Tribunal which challenged Mr Holness' findings and evidence save for generalised comments about the condition of the tiles. As a qualified building surveyor the Tribunal fully accepted the evidence given by Mr Holness in this regard.
47. Ms Laretta also challenged whether the roof had in fact been replaced. The Tribunal accordingly attended at the property and its findings on inspection are set out above. It was clear from inspection that the roof at the property had been recently replaced. The Tribunal considered that it was irrelevant whether or not a canopy had been erected.
48. In relation to the Applicant's challenges to damp works to the ground floor flat the Tribunal accepted that having regard to clause 7(5)(a) of the lease the landlord has responsibility for any damp affecting the structure of the building.

The Tribunal accepted that the damp works to the first floor flat came within this provision and should be allowed.

49. As far as the insulation of the loft was concerned the Tribunal was unable to identify the specific loft area to which works had taken place on inspection. It accepted however that works to insulate a loft area would benefit the building as a whole and as a result are recoverable by the landlord under clause 7(5)(a).
50. As mentioned above both parties had completed a Scott Schedule. For the sake of completeness the Tribunal has also completed a column in the schedule with its comments/findings which is attached.
51. No specific challenge was made by Ms Laretta as to the quality or reasonableness of the cost of the works themselves. However the Tribunal would mention that the contract appeared to the Tribunal to have been well executed. The exterior of the property was in very good condition given that the works to the paintwork had taken place in 2010. It also noted that although the estimated cost of the works to the Applicant had been £9,859.24, the actual cost was the lower sum of £4,716.97.

Application under s.20C and refund of fees

52. The Applicant applied for an order under section 20C of the 1985 Act. The Respondent having made a concession the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

Chairman: Sonya O'Sullivan

Date: 26 October 2012

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to 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.

Section 20B

- (1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.
- (2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or 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;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
 - (b) 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;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 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.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 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).

Schedule 12, paragraph 10

- (1) A leasehold valuation tribunal may determine that a party to proceedings shall pay the costs incurred by another party in connection with the proceedings in any circumstances falling within sub-paragraph (2).
- (2) The circumstances are where—
- (a) he has made an application to the leasehold valuation tribunal which is dismissed in accordance with regulations made by virtue of paragraph 7, or
 - (b) he has, in the opinion of the leasehold valuation tribunal, acted frivolously, vexatiously, abusively, disruptively or otherwise unreasonably in connection with the proceedings.
- (3) The amount which a party to proceedings may be ordered to pay in the proceedings by a determination under this paragraph shall not exceed—
- (a) £500, or
 - (b) such other amount as may be specified in procedure regulations.
- (4) A person shall not be required to pay costs incurred by another person in connection with proceedings before a leasehold valuation tribunal except by a determination under this paragraph or in accordance with provision made by any enactment other than this paragraph.

Schedule 3

Consultation requirements for Qualifying Works under Qualifying Long Term Agreements and Agreements to which Regulation 7(3) Applies

Regulation 7(1) and (2)

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 tenant's 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) Contain a statement of the total amount of expenditure estimated by the landlord as likely to be incurred by him and in connection with the proposed works;
- (d) Invite the making, in writing, of observations in relation to the proposed works;
- (e) 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 upon which the relevant period ends.

Inspection of description of proposed works

2. – 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 and estimated expenditure

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

Landlord's response to observations

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in

writing to the person by whom the observations were made, state his response to the observation.

Repair and overhaul to leave in working order	356.25	£356.25	Never carried out	Nil	£356.25	No access to property. Leaseholder request that we write to her for access. The cost of window repairs in 2004 was £3793.00.	The interior of the windows appeared to be in good order and recently painted. The item was allowed.
Redecorate windows externally	245.00	£245.00	Already carried out in 2005/6	Nil	£245.00	Previous major works completed in February 2004 not 2005/6. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary to maintain the condition of the building as nearly 7 years had passed.	The windows were seen to be in good order on inspection. The cost was allowed.
			Already carried out in 2005/6	Nil		This was not carried out in major works of 2004 as not detailed in the works schedule. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary.	The cables appeared neatly fixed on inspection. Item allowed.
Tidy/refix cables	£57.00	£12.96			£12.96		
Damp works - Isolate Abutment of garden wall	£31.74	£7.21	Already carried out in 2005/6	Nil	£7.21	Enclosed find survey carried out on 6th May 2009, detailing damp works required, and subsequent guarantee for the works from Sovereign.	Please see decision. Item allowed.
Damp works flat A - Remove skirting and renew	£66.15	£15.04	Already carried out in 2005/6	Nil	£15.04	Works required to facilitate damp works	Please see decision. Item allowed.
Damp works flat A - make good walls / levelling (dubbing out)	£10.35	£2.35	Already carried out in 2005/6	Nil	£2.35	Works required to facilitate damp works	Please see decision. Item allowed.
Damp works - Repointing works	£20.70	£4.71	Already carried out in 2005/6	Nil	£4.71	Works required to facilitate damp works	Please see decision. Item allowed.
Damp works flat A - Hack off plaster, Render, Tank and skim	£347.81	£79.06	Already carried out in 2005/6	Nil	£79.06	Works required to facilitate damp works	Please see decision. Item allowed.
Damp works flat A - Decorations following damp treatment	£65.00	£14.77	Already carried out in 2005/6. Applicant not liable for internal decorations to Flat A	Nil	£0.00	Agreed. Removed from bill	Please see decision. Item allowed.
Insulate loft hatch	£19.00	£4.32	Applicant not liable as loft is in Flat D	Nil	£4.32	The loft is deemed to be part of the communal area and hence leaseholders are responsible for a proportion of the costs.	Please see decision. Item allowed.
Insulate loft with TP10 kinospan insulation	£380.00	£86.37	No idea what it is the claim to have insulated	Nil	£86.37	The loft is deemed to be part of the communal area and hence leaseholders are responsible for a proportion of the costs. Photographs attached of work carried out.	The item was considered reasonable and allowed in full. On Applicant's own figures she suggested a sum of upto £2000 to be reasonable.
Erect scaffolding to undertake the work	## ## ##	£495.51	Already carried out in 2005/6	Nil	£495.51	Scaffolding is required to carry out surveys, external decorations and repairs and roof works due to the height of the building to carry out the works in a safe manner.	
Upgrade electrical cupboard to fire resistant	£171.00	£38.87		Nil	£0.00	These works were done, but Fire Risk Assessment only asks for warning signs. Agreed to remove from bill.	This item was conceded by the Respondent
Redecorate walls	£245.00	£55.69	Not necessary. Already carried out in 2005/6	Nil	£55.69	These works were carried out in 2004 but an inspection is made of the communal areas prior to any works commencing. These works were deemed necessary following the inspection and carried out accordingly. It is not unusual for this type of work to be carried out every 5-7 years as communal areas are high traffic areas.	Allowed in full.
Redecorate soffits and ceilings	£72.00	£16.37	Not necessary. Already carried out in 2005/6	Nil	£16.37	These works were carried out in 2004 but an inspection is made of the communal areas prior to any works commencing. These works were deemed necessary following the inspection and carried out accordingly. It is not unusual for this type of work to be carried out every 5-7 years as communal areas are high traffic areas.	Allowed in full.

Redecorate previously painted joinery skirting/dado/picture rail etc	£130.00	£29.55	Not necessary. Already carried out in 2005/6	Nil	£29.55	These works were carried out in 2004 but an inspection is made of the communal areas prior to any works commencing. These works were deemed necessary following the inspection and carried out accordingly. It is not unusual for this type of work to be carried out every 5-7 years as communal areas are high traffic areas.	Allowed in full.
Refurbish communal external door including new heavy duty door closer	£266.00	£60.46	Not necessary. Already carried out in 2005/6	Nil	£60.46	These works were carried out in 2004 but an inspection is made of the communal areas prior to any works commencing. These works were deemed necessary following the inspection and carried out accordingly. It is not unusual for this type of work to be carried out every 5-7 years as communal areas are high traffic areas.	Allowed in full.
Renew door entry systems	£849.62	£147.66	Not necessary. Already carried out in 2005/6	Nil	£147.66	These works were carried out in 2004 but an inspection is made of the communal areas prior to any works commencing. These works were deemed necessary following the inspection and carried out accordingly. It is not unusual for this type of work to be carried out every 5-7 years as communal areas are high traffic areas.	Allowed in full. The lease allows for improvements and the Tribunal accepted that it was more economic to repair than replace the item
Electrical upgrade and/or rewire of communal area to current regulations	£508.35	£115.09	Not necessary.	Nil	£115.09	Enclosed find electrical certificates and detailed breakdown of the works carried out	Allowed in full as reasonable.
Floor Coverings Vinyl	£647.90	£147.27	Not necessary.	Nil	£147.27	An inspection is made of the communal areas prior to any works commencing. These works were deemed necessary following the inspection and carried out accordingly. There is no record of this being carried out in February 2004 according to the work schedule.	Allowed.
Refix handrail	£23.75	£5.40	Not necessary.	Nil	£5.40	An inspection is made of the communal areas prior to any works commencing. These works were deemed necessary following the inspection and carried out accordingly and is a minor repair.	The Tribunal heard this was likely to be a resealing and allowed it in full.
Supv and fit aluminium nosing bars to communal stair treads	£247.00	£56.14	Not necessary.	Nil	£56.14	An inspection is made of the communal areas prior to any works commencing. These works were deemed necessary following the inspection and carried out accordingly. There is no record of this being carried out in February 2004 according to the work schedule.	The Tribunal saw new nosings on inspection and allowed this item.
Repair & maintenance of gutters							
Replace gutters	£78.00	£17.27	Not necessary. Already carried out in 2005/6	Nil	£17.27	There is no record of this work being carried out in 2004, only that the existing were cast iron and needed repairs carried out to them. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary.	The Applicant submitted there was no evidence this was necessary, Mr Holness gave evidence as to his findings on inspection. The Tribunal accepted Mr Holness' evidence and allowed the cost in full.
External decorations							
Redecorate communal external doors - frames	£95.00	£7.96	Not necessary. Already carried out in 2005/6	Nil	£7.96	An inspection is made of the communal areas prior to any works commencing. These works were deemed necessary following the inspection and carried out accordingly. It is not unusual for this type of work to be carried out every 5 years as communal areas are high traffic areas.	The Tribunal accepted Mr Holness' evidence as to his findings on inspection and the necessity for the works. The Tribunal saw evidence of these works on inspection. The item was allowed in full.
Redecorate external pipes	£10.00	£2.27	Not necessary. Already carried out in 2005/6	Nil	£2.27	External decorations were carried out in 2004 at a cost of £5149.07. We have carried out the same works for £1451.00. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary to maintain the building as nearly 7 years had passed.	The Tribunal accepted Mr Holness' evidence as to his findings on inspection and the necessity for the works. The Tribunal saw evidence of these works on inspection. The item was allowed in full.
Redecorate fascia, soffit and bargeboards	£260.00	£59.10	Not necessary. Already carried out in 2005/6	Nil	£59.10	External decorations were carried out in 2004 at a cost of £5149.07. We have carried out the same works for £1451.00. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary to maintain the building as nearly 7 years had passed.	The Tribunal accepted Mr Holness' evidence as to his findings on inspection and the necessity for the works. The Tribunal saw evidence of these works on inspection. The item was allowed in full.
Redecorate previously painted surfaces exceeding 300mm oirth	£24.00	£5.46	Not necessary. Already carried out in 2005/6	Nil	£5.46	External decorations were carried out in 2004 at a cost of £5149.07. We have carried out the same works for £1451.00. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary to maintain the building as nearly 7 years had passed.	The Tribunal accepted Mr Holness' evidence as to his findings on inspection and the necessity for the works. The Tribunal saw evidence of these works on inspection. The item was allowed in full.
Redecorate previously painted surfaces n.e 300mm oirth	£80.00	£16.18	Not necessary. Already carried out in 2005/6	Nil	£16.18	External decorations were carried out in 2004 at a cost of £5149.07. We have carried out the same works for £1451.00. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary to maintain the building as nearly 7 years had passed.	The Tribunal accepted Mr Holness' evidence as to his findings on inspection and the necessity for the works. The Tribunal saw evidence of these works on inspection. The item was allowed in full.

Redecorate previously painted surfaces	£420.00	£95.47	Not necessary. Already carried out in 2005/6	Nil	£95.47	External decorations were carried out in 2004 at a cost of £5149.07. We have carried out the same works for £1451.00. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary to maintain the building as nearly 7 years had passed.	The Tribunal accepted Mr Holness' evidence as to his findings on inspection and the necessity for the works. The Tribunal saw evidence of these works on inspection. The item was allowed in full.
Redecorate previously painted surfaces n.e. 300mm oirth	£105.00	£23.87	Not necessary. Already carried out in 2005/6	Nil	£23.87	External decorations were carried out in 2004 at a cost of £5149.07. We have carried out the same works for £1451.00. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary to maintain the building as nearly 7 years had passed.	The Tribunal accepted Mr Holness' evidence as to his findings on inspection and the necessity for the works. The Tribunal saw evidence of these works on inspection. The item was allowed in full.
Redecorate windows (communal) both sides	£70.00	£15.91	Not necessary. Already carried out in 2005/6	Nil	£15.91	External decorations were carried out in 2004 at a cost of £5149.07. We have carried out the same works for £1451.00. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary to maintain the building as nearly 7 years had passed.	The Tribunal saw evidence that windows had been painted relatively recently. The item was allowed.
Pointing & fabric repairs							
Repoint brickwork to all elevations to match existing areas exceeding 1 M2	£501.60	£114.01	Not necessary. Already carried out in 2005/6	Nil	£114.01	Only 6m2 was carried out in 2004. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary.	The Tribunal accepted Mr Holness' evidence as to his findings on inspection and the necessity for the works. The Tribunal saw evidence of these works on inspection. The item was allowed in full.
Repoint around subcills, joints, parapet fillets etc	£166.25	£37.79	Not necessary. Already carried out in 2005/6	Nil	£37.79	25LM were carried out in 2004. Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary.	The Tribunal accepted Mr Holness' evidence as to his findings on inspection and the necessity for the works. The item was allowed in full.
Mastic pointing/sealing to windows and doors, where brickwork joins with timber surfaces	£271.70	£61.76	Not necessary. Already carried out in 2005/6	Nil	£61.76	Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary.	The Tribunal accepted Mr Holness' evidence as to his findings on inspection and the necessity for the works. The item was allowed in full.
Roof repair & renewal							
Replace entire roof covering including all associated works	4750.00	£1,079.68	Not necessary AND not carried out. Was carried out in 2005/6	Nil	£1,079.68	See separate report to substantiate the reason for replacing this roof.	See decision. The item was allowed in full.
Soil and Vent Pipe repairs							
Supply and fit new balloon grilles where missing and/or damaged	£52.25	£11.88	Not necessary. Already carried out in 2005/6	Nil	£11.88	Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. These were installed to prevent the gutter outlets from getting blocked.	The Tribunal accepted Mr Holness' evidence on inspection and the necessity for the works. Item allowed in full.
Brickwork Repairs							
Rebuild part of parapet wall	£520.60	£118.33	Entire parapet wall was rebuilt in 2005/6. There was no sign of it needing any repairs	Nil	£118.33	Once the scaffold is erected an external survey is carried out to ascertain what works are required to the block, externally and to the communal area. The survey carried out is visual only. The purpose of the survey is to record what defects are present and to present these in the form of a survey detailing what remedial works are required. Only necessary works are carried out dependant on the condition of the building when the survey is carried out. This work was deemed necessary.	The Tribunal accepted Mr Holness' evidence on inspection and the necessity for the works. Item allowed in full.
Remove vegetation	£57.00	£12.96	Applicant is not responsible for allowing wysteria in garden of Flat A to overgrow. owner or tenant of Flat A are. Additionally, judicious	Nil	£12.96	Similar works were carried out in 2004 and you did not complain about this at the time. The works were necessary to prevent damage to the structure of the building.	The Tribunal accepted Mr Holness' evidence on inspection and the necessity for the works. Item allowed in full.
Sub Total	£14,137.02	£3,677.95			£3,624.31		
Contractor's Management Overheads and Preliminary Costs							
	3993.71	£1,039.02	I thought Partners said they had "no financial incentive to carry out the works"??		£1,023.87	The contractor's management overheads include a proportion of the company's central overheads such as head office and staff costs, which are not included in the preliminaries and an amount for profit. Percentages were agreed between PFI Ltd and Partners experts.	
						Preliminaries include for site management & supervision, site offices, transport, cleaning, communications, surveying and technical staff costs and health and safety. Percentages were agreed between PFI Ltd and Partners experts.	The costs were considered reasonable and allowed in full.
Leaseholder Final Account Figure		4,716.97			4,648.18		