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HM Courts & Tribunals Service

Leasehold Valuation Tribunal
Case no. CAM/26UE/LSC/2013/0013

Premises:	**16 Milner Court, Bridgewater Way, Bushey, Herts WD23 4UB**
Hearing:	**3 May 2013**
Applicant:	**Ms Kiran Patel (tenant)**
Represented by:	**Miss Bhavna Vora (as informal advocate)**
Respondent:	**Southern Land Securities Ltd**
Represented by:	**Hamilton King Limited (Managing Agent)**
Members of Tribunal:	**Mr G M Jones - Chairman** **Mr N Martindale FRICS** **Ms C St Clair MBE BA**

ORDER

1. The sum payable to the Respondent by the Applicant by way of service charges for Flat 16 Milner Court, Bridgewater Way, Bushey, Herts WD23 4UB in respect of general gardening for each of the years ending 24 June 2009 to 24 June 2012 inclusive is £47.50 per annum..

2. Pursuant to paragraph 1 hereof the Applicant is entitled to a credit against her service charge account for Flat 16 in the sum of £511.16.

3. No service charges are payable to the Respondent by the Applicant for Flat 16 for years ending 24 June 2010 to 24 June 2012 inclusive in respect of proposed works of external maintenance and decoration.

4. The sum of £1,708.31 is payable to the Respondent by the Applicant in respect of Flat 16 in year ending 24 June 2013 on account of the estimated cost of proposed works of external maintenance and decoration.

5. Save as aforesaid it is declared that the service charges claimed by the Respondent from the Applicant in respect of Flat 16 for years ending 24 June 2009 to 24 June 21012 inclusive were reasonably incurred and are payable by the Applicant.

6. Pursuant to section 20c of the Landlord & Tenant Act 1985 the costs recoverable by the Respondent in connection with this Application through the service charge account for Milner Court shall be limited to £500 including VAT.

7. Paragraphs 4 and 5 of this Order shall not take effect unless and until the sums therein mentioned have been lawfully demanded in accordance with the provisions of the Service Charges (Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007.

Geraint M Jones MA LLM (Cantab)
Chairman
28 June 2013

REASONS

0. BACKGROUND

The Property

0.1 This property is a one bedroom apartment in a block of eight leasehold apartments Nos 13-20 Milner Court. This block is part of a small housing development also including a number (about 20) of terraced freehold houses. The Landlord owns only the freehold of 13-20 Milner Court and the Managing Agent manages only those eight apartments and a modest area of associated grounds; which grounds do not include the communal parking areas. The apartments within the landlord's title have individual entrances; so there are no internal common parts. The upper apartments have concrete balconies with timber parapets.

0.2 The building is a two-storey block of brick and tile construction, originally with timber-framed windows, most of which have been replaced by the tenants (who are responsible for the maintenance of and repairs to windows) with uPVC double-glazed units. The gable ends have large areas of stained timber cladding. Each apartment has an external store with a wooden door. In the grounds within the landlord's title there are some shrubs and a number of trees. The building generally is in a fair state of repair, though all external woodwork (apart from the new parapets to the balcony of Flat 20) is in poor decorative condition. The tarmac pathway leading to the entrances to the flats is also in rather poor condition.

The Lease

0.3 The leases are all in substantially the same form. The landlord is responsible for insurance, external decorations and structural repairs. The tenants are responsible for internal repairs and decorations and for the maintenance and repair of windows and external doors. The lease plans are not entirely consistent. The lease plan of Flat 20 excludes the balcony entirely, while the lease plan of Flat 16 includes the balcony but plainly excludes the parapets. On a proper construction, it appears that the balconies are the responsibility of the landlord because the balcony floors are structural and the parapets (whether structural or not, which is perhaps debatable) are excluded from the lease plans. In the usual way, the landlord is entitled to collect a service charge (including making provision for a reserve fund for major structural repairs), the tenant being responsible for one eighth of the landlord's total reasonable costs of management, repair and maintenance in accordance with the landlord's responsibilities as defined in the lease.

1. THE DISPUTE

1.1 The Applicant is generally concerned about the increase in the amount of insurance premiums and service charges in recent years. This has led her to scrutinise the landlord's costs and to take issue with some of them. A particular cause for concern has been the landlord's attempts since Hamilton King took over as managing agent in July 2008 to carry out external decoration and maintenance. In this regard, the Applicant raises issues about the consultation process which, she says, was fatally flawed. The Applicant also questions whether repairs carried out to the balcony parapets of Flat 20 are within the scope of the service charge provisions.

1.2 The Applicant's initial objection to the insurance costs was not pursued because the Applicant found it impossible to obtain "like-for-like" insurance quotations. The Tribunal did, however, note that, while the insurance costs appear somewhat higher than average for this type of block in this type of location, the building does appear to have a rather unfortunate claims history, which is likely to have had an effect on the level of premiums charged. The insurance is arranged by the landlord and, so far as Hamilton King are aware, no insurance commissions are received by the landlord.

1.3 In the course of the hearing the tenant (through her advocate and sister-in-law), also withdrew her objection to the annual accountancy charges. A number of small items of repair were also conceded. Miss Vora, who happens to be a Criminal Solicitor but pretends to no expertise in landlord and tenant law, conducted herself in a thoroughly professional manner, for which the Tribunal is most grateful.

2. THE ISSUES

2.1 The issues the Tribunal was ultimately asked to determine will be dealt with in sequence and there is no need to list them here. A helpful list of the issues is to be found in the Respondent's Statement of Response in the Respondent's well-organised hearing bundle.

3. THE EVIDENCE

3.1 Most of the relevant evidence was in documentary form and not greatly in dispute. The Tribunal found the Respondent's bundle of great assistance and is also grateful for the trouble taken by the landlord's representative, Property Manager Janet Di, to copy and produce to the Tribunal during the midday adjournment some important documents relating to the issues of balcony repair and garden maintenance.

3.2 The Tribunal will in these Reasons set out the evidence only to the extent necessary to demonstrate what conclusions were reached on disputed issues of fact and why. Undisputed facts will be stated without qualification or explanation.

4. THE LAW

Service and Administrative Charges

4.1 Under section 18 of the Landlord & Tenant Act 1985 (as amended) service charges are amounts payable by the tenant of a dwelling, directly or indirectly, for services, repairs, maintenance, improvement, insurance or the landlord's costs of management. Under section 19 relevant costs are to be taken into account only to the extent that they are reasonably incurred and, 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. Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable.

4.2 Under section 27A the Tribunal has jurisdiction to determine whether a service charge is payable and, if so, the amount which is payable; also whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for those costs and, if so, the amount which would be payable.

4.3 In deciding whether costs were reasonably incurred the LVT should consider whether the landlord's actions were appropriate and properly effected in accordance with the requirements of the lease and the 1985 Act, bearing in mind RICS Codes. If work is unnecessarily extensive or extravagant, the excess costs cannot be recovered. Recovery may in any event be restricted where the works fell below a reasonable standard.

4.4 The Service Charges (Summary of Rights and Obligations) Regulations 2007, made under section 21B of the 1985 Act and taking effect from October 2007, require a landlord serving a demand for service charges to accompany that demand with a statutory notice informing the tenant of his rights. If this is not done, the tenant is entitled to withhold the service charge payments so demanded.

Consultation

4.5 Under section 20 of the 1985 Act (as substituted by section 151 of the Commonhold & Leasehold Reform Act 2002 with effect from 31 October 2003) and the Service Charges (Consultation Requirements) (England) Regulations 2003 landlords must carry out due consultation with tenants before undertaking works likely to result in a charge of more than £250.00 to any tenant ("qualifying works") or entering into long term agreements costing any tenant more than £100.00 p.a. This process is designed to ensure that tenants are kept informed and have a fair opportunity to express their views on proposals for substantial works or on substantial long term contracts.

4.6 In cases where the same contractor is employed to carry out items of work on a regular basis, there may or may not be a 'long term agreement' within the meaning of the section. There will be many cases in which a single contractor carries out numerous items of work, perhaps over a long period, under a series of individual contracts. Such individual contracts may or may not be awarded under an express or implied umbrella contract specifying rates of remuneration and, perhaps standards of performance. There may or may not be a commitment for the landlord or manager to employ the services of the contractor. In each case, it will be a question of fact whether there is a qualifying long term agreement.

4.7 The consultation requirements vary depending upon the circumstances of the case and, in particular, whether the landlord is a designated public body for the purposes of statutory regulations dealing with public works, services and supplies and, in such case, whether the value of the contract exceeds the relevant threshold set under the Public Contracts Regulations 2006. These regulations are designed to provide a level playing field for contractors from EU member states bidding for large public sector contracts in such states. The threshold is, for obvious reasons, set at a fairly high level.

4.8 In this case the relevant requirements are those set out in Part 2 of Schedule 4 to the 2003 Regulations. The landlord must first provide to the tenants (and, if applicable, to the tenants' association) prescribed information about the proposed works and invite them to put forward a contractor. The consultation period is 30 days. The landlord must have regard to the tenants' observations, which might result in a change in the specification of works. After that, the landlord may be obliged to seek an estimate from a contractor or contractors nominated by the tenants. That is likely to occupy a further period of at least 14 days. The landlord must then inform each tenant of the amounts of at least two estimates and the effect of any observations received and the landlord's responses and invite observations on the estimates. All estimates must be made available for inspection. The second consultation period is also 30 days. The landlord must have regard to any observations made. There are other requirements to provide information; but these should not delay the works.

4.9 Landlords who ignore these requirements do so at their peril. Unless the requirements of the regulations are met the landlord is restricted in his right to recover costs from tenants; he can recover only £250.00 or £100.00 p.a. per tenant (as the case may be) in respect of qualifying works. However, it is recognised that there may be cases in which it would be fair and reasonable to dispense with strict compliance.

4.10 Accordingly, under section 20ZA (inserted by section 151 of the Commonhold & Leasehold Reform Act 2002) the Leasehold Valuation Tribunal may dispense with all or any of the consultation requirements if satisfied that it is reasonable to do so. This may be done prospectively or retrospectively. Typically, prospective dispensation will be sought in case of urgency or, perhaps where a tenant is refusing to co-operate in the consultation process. Retrospective dispensation will be sought where there has been an oversight or a technical breach or where the works have been too urgent to wait even for prospective dispensation. These examples are not meant to be exhaustive; there may be other circumstances in which section 20ZA might be invoked.

Notification within 18 months

4.11 Furthermore, under section 20B(1), if any relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment is served on the tenant then, unless subsection (2) applies, the tenant shall not be liable to contribute to those costs. Subsection (2) provides that subsection (1) shall not apply if within that period of 18 months, the tenant was notified in writing that those costs had been incurred and that he would subsequently be required to contribute to them through the service charge.

Information for tenants

4.12 Under section 21 of the Landlord & Tenant Act 1985 a tenant liable to pay service charges may in writing require the landlord, directly or through his agent, to supply him with a written summary of the costs incurred in the last accounting period which are relevant costs in relation to the service charges payable or demanded.

Amongst the information the landlord must provide is the aggregate of any amounts received by the landlord on account of the service charge in respect of relevant dwellings and still standing to the credit of the tenants at the end of the relevant accounting period. The landlord must supply the summary within one month of the request or within 6 months of the end of the accounting period, whichever is the later.

4.13 Under section 22 the tenant may, within 6 months of receiving the summary, require the landlord in writing to afford him reasonable facilities for inspecting the accounts, receipts and other documents supporting the summary and for taking copies or extracts from them. The landlord must make those facilities available to the tenant for a period of two months beginning not later than one month after the request was made. Under section 25, failure to comply with the provisions of sections 21 or 22 is a criminal offence. The Commonhold & Leasehold Reform Act 2002 contained provisions amending these sections; but those provisions are not yet in force.

4.14 Section 21B(1) provides that 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. The summary must be in statutory form, in accordance with the requirements of the Service Charges (Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007, which came into force on 1 October 2007. Section 21B(3) provides that 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. By section 21B(4), where a tenant withholds a service charge under section 21B any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

Service charge funds held by landlords or managing agents

4.15 Under section 42 of the Landlord & Tenant Act 1987, where the tenants of two or more dwellings are liable to contribute towards the same costs by the payment of service charges, any sums paid by contributing tenants must be held on trust to defray costs incurred in connection with the matters for which the relevant service charges were payable and, subject thereto, on trust for the contributing tenants. It follows that the landlord (or his agent) is under a duty to account to the tenants for any interest received on funds so held. The funds are "client funds" and the tenants as well as the landlord are the agent's "clients" for this purpose. However, tenants are not entitled to a refund. On termination of any lease, the leaseholder's share passes to the remaining tenants and upon termination of the last lease, to the landlord.

4.16 The RICS Service Charge Residential Management Code (2nd Edition) approved by the Secretary of State under the terms of section 87 of the Leasehold Reform Housing & Urban Development Act 1993 sets out good practice for landlords' agents and managers of residential blocks. Part 10 of The RICS Code deals with "Accounting for Service Charges". Agents and managers are advised that accounts should reflect all expenditure in respect of the relevant accounting period, whether paid or accrued and should indicate clearly all the income in

respect of the accounting period, whether received or receivable. Copies of such accounts should be made available to all those contributing to them. Service charge funds for each property should be identifiable and either placed in a separate bank account or in a single client/trust account. Where interest is received this belongs to the fund collectively; it should be shown as a credit in the service charge accounts and retained in the fund and used to defray service charge expenditure.

4.17 All chartered surveyors and others engaged by way of business in residential property management should be familiar with the provisions of this Code, to which the LVT is required to have regard.

Insurance and Insurance Commissions

4.18 Under section 30A of the Landlord & Tenant Act 1985 and the Schedule to the Act, landlords must supply to tenants who contribute to insurance costs a summary of the policy and must also, if the tenant makes a request in writing, permit the tenant to inspect any relevant policy or associated documents and to take copies.

4.19 In ***Williams –v- Southwark LBC*** (2001) 33 HLR 22 (ChD), Lightman J held that an insurance commission payable to a manager is, in effect, a discount on the cost of insurance, which should be passed on to tenants. However, unless the arrangement of insurance is a service included in the management fees under the terms of the management agreement (as the RICS Code recommends), the manager is entitled to make a reasonable charge for arranging insurance. In that case, the Council as manager handled local claims and it was conceded that, in those circumstances, an allowance of 20% made by the insurers was a reasonable fee. However, this type of allowance can be made only where there is evidence of services being performed by the landlord or managing agent for the insurer; also, the amount must be reasonable in all the circumstances.

Right to Manage under LTA 1987 section 22 and CLRA 2002 Part 2 Chapter 1

4.20 Since 1987 tenants have had the right to apply under section 22 of the Landlord & Tenant Act 1987 to the LVT for the appointment of a replacement manager in cases where the management has been defective. Such applications are likely to succeed only where there have been persistent or serious defects or defaults in management.

4.21 The Commonhold and Leasehold Reform Act 2002 introduced a new collective right for long leaseholders (basically those with leases for a fixed term of more than 21 years) to acquire the right to manage premises as defined in section 72 through the medium of a right-to-manage or RTM company. There is no need, in order to exercise this right, to show that there has been any defect or fault in the previous management.

4.22 Miss Vora mentioned to the Tribunal that Miss Patel was interested in the possibility of replacing Hamilton King with different management. However, that issue is not before the Tribunal and would require a separate application supported (in the case of a 'no-fault' RTM application) by a majority of tenants.

Costs generally

4.23 The Tribunal has no general power to award inter-party costs, though a limited power now exists under Schedule 12 paragraph 10 to the Commonhold & Leasehold Reform Act 2002 to make wasted costs orders. In general, if the terms of the lease so permit, the landlord is able to recover legal and other costs (eg the fees of expert witnesses) associated with an application to the Tribunal from the tenants through the service charge provisions i.e. he is entitled to recover a contribution to such costs not only from the defaulting tenant but from all tenants.

4.24 However, under section 20C of the Act of 1985 the Tribunal has power, if it would be just and equitable so to do in the circumstances of the case, to prevent the landlord from adding to the service charge any costs of the application. The Lands Tribunal in the case Tenants of ***Langford Court –v- Doren Ltd*** in 2001 said that the LVT should use section 20C to avoid injustice. Clearly the manner in which this discretionary power is (or is not) exercised will depend upon the facts of the case. The relevant factors in this case are discussed in section 5 of this Decision.

4.25 In addition, under the Leasehold Valuation Tribunal (Fees) (England) Regulations 2003 reg. 9 the Tribunal may order a party to reimburse the Applicant in respect of application and hearing fees. This power is likely to be exercised in cases where the applicant is substantially successful, unless he has been guilty of unreasonable conduct in connection with the application, e.g. where he has unreasonably rejected a proposal for mediation or a fair and proper offer of compromise.

5. DISCUSSION AND CONCLUSIONS

Balcony Repairs to Flat 20

5.1 Under the terms of the leases, the landlord is responsible for structural repairs and external decorations and the tenants for internal repairs and decorations. The leases make it clear that windows, window frames, external doors and door frames are the responsibility of the tenant. Were the balconies the responsibility of the tenants, the Tribunal would expect them to have been mentioned expressly. Balconies are undoubtedly structural and, in the judgment of the Tribunal, parapets are also structural, being a crucial part of the structure for obvious health and safety reasons. The lease plan of Flat 20 excludes the balcony from the demised premises and the lease plan of Flat 16 appears carefully to exclude the parapets from the demised premises. In the judgment of the Tribunal, the landlord is clearly responsible for the repair of balcony parapets in both flats and is entitled to recover the costs of such repairs from the tenants through the service charge provisions. It is not suggested that the costs incurred on this occasion (£1,146.00) were unreasonable. Due contribution is therefore payable by the Applicant.

General Gardening

5.2 The Respondent's service charge accounts are prepared for year ending 24 June. Gardening costs comprise two distinct elements. Firstly, there is a regular program of general garden maintenance carried out by Lloyd Cleaning Company. The annual costs appear in the service charge accounts under "Cleaning and/or gardening". There are no cleaning services provided.

5.3 The Tribunal was told that Hamilton King use a standard form of contract for garden maintenance, which includes a generic description of the services to be provided. It appears that Lloyds wrote to Hamilton King in July 2008 detailing their charges and proposing an annual increase each September of 2%, which they duly implemented. Their first invoice was for October 2008, so that the 2008-9 service charge figure was for 9 months only. There were also VAT changes during the relevant period, which somewhat distorted the picture as shown in the service charge accounts. The garden maintenance contract with Lloyds was not reviewed between July 2008 and June 2012 but is currently being re-tendered. It was not suggested that any attempt had been made until recently to assess the extent of the work required or the reasonableness of the charges overall.

5.4 The annual costs were for year ending June 2009 £954.25 (commencing October 2008); for 2010 £1,361.13; for 2011 £1,551.36; and for 2012 £1,742.58. In 2008-9 each visit cost £55.00 + VAT; there were two visits per month except in December, January and February, when there was one visit. In 2009-10 there were three visits in July at £55.00; two in August at £55.00; and then two per month except December, January and February (when there was one per month) and April (when there were three) all at £56.10 + VAT (VAT is clearly payable if applicable). Thus there were 23 visits in all. But the June 2010 invoice (£131.84) was not included in the total, so that the 2009-10 total was for 11 months..

5.5 For 2010-11, there were included two visits in June, July, August (all at £56.10); a September invoice which included a visit on 1 October (at the increased rate of £57.22 + VAT per visit); two more for October; two for November; one for each of December, January and February; a March invoice for three visits including one on 1 April; two more for April; and two for May. Thus over a 12 month period there were again 23 visits. The price per visit was increased to £58.36 with effect from September The same pattern continued for 2011-12, except that this time the June invoice was included, making 25 visits over 13 months. Again the rate per visit increased with effect from September to £58.36 + VAT.

5.6 In summary, Lloyds made 23 visits a year and their price per visit increased by 2% per annum from £55.00 in 2008-9 to £58.36 in 2011-12 (a total increase of 10.6%). Two questions arise: were the rates reasonable on a per visit basis and were there more visits than was reasonably required, bearing in mind in both cases the very limited extent of the grounds involved and the simple nature of the work required. It is important to note that, as will be seen, another contractor was employed to carry out pruning of trees and shrubs.

5.7 Miss Vora argued that the cost of general gardening was excessive. Miss Patel has obtained an alternative quotation from local contractor Buds Horticulture Herts to carry out the required works on the basis of monthly visits of 2 hours between April and August and one hour between September and March i.e. 17 hours @ £20.00, a total of £340.00 per annum. Miss Vora was willing to concede an extra hour, making £360.00 per annum. She told the Tribunal that the contractor in question dealt on a similar basis with the more extensive gardens around her flat and carried out the work to a good standard.

5.8 The Tribunal considers that the work involved would be suitable for a small local contractor who would not have to travel far and probably not be registered for VAT. One visit per fortnight of an hour from April to October and one hour per month from November to March would amount to 19 hours at £20.00 per hour. In the judgment of the Tribunal, that would be a reasonable basis on which to deal with this very simple and small scale gardening contract. The charges of Lloyds were quite disproportionate to the tasks involved and the number of visits far more than necessary. It may be that the Lloyds rates and the number of their visits would have been perfectly acceptable for a more substantial and more complex area of garden; but in this particular case they were inappropriate.

5.9 Moreover, a competent managing agent who had inspected the site and given due thought to the matter ought not to have entered into such a contract and certainly ought not to have continued with it once the separate contract for the pruning of trees and shrubs was in place. Moreover, it seems clear that Lloyds did not in fact deal adequately with the shrubs prior to the commencement of the tree and shrub pruning contract because, had they done so, the report which was, as will be seen, commissioned in 2010 would have been in different terms. There is no suggestion that Lloyds considered it part of their brief to prune the trees nor did they in fact do so.

5.10 The Tribunal considers that a reasonable charge for the whole of the four-year period would have been £380.00 p.a. (excl. VAT) and finds that no sum beyond that figure should form part of the service charge accounts. The amount payable by the Applicant is thus £50.00 per annum for each of the relevant years and her service charge account must be credited with the surpluses, a total of £501.16.

Tree and Shrub Maintenance

5.11 In 2009 concerns arose as regards damage to the building and to adjoining hard surfaces caused by tree roots. Insurers Axa became involved. A report was commissioned from Arboricultural Consultants Marishal Thompson Group, which led to a Technical Report to Axa Insurance from Stephen Briant of Crawford & Company Adjusters (UK) Ltd. The reports identified significant issues in relation to trees and shrubs, some of which were very near the building. Some initial works followed by a regime of regular maintenance and control of the sizeable trees and shrubs located near the building was recommended. Hamilton King really had no option but to implement the recommendations if insurance cover was to be maintained. They instructed ABM Trees Ltd, a fairly local firm who were willing to undertake the necessary works at a charge of £700.00 + VAT for the initial work; £400 per annum for work recommended to be carried out annually and £500 per visit for biennial work.

5.12 It is not surprising that the Applicant was puzzled by this service charge item, as the costs at first sight appear surprisingly high, having regard to the number and size of the trees involved. But once all the relevant documentation was before the Tribunal, it became clear, in the judgment of the Tribunal, that Hamilton King had acted reasonably throughout. The Tribunal is satisfied that all the associated costs were reasonably incurred and due contribution is payable by the Applicant.

Major Works of External Maintenance and Decoration

5.13 In 2009 Hamilton King set about arranging for external maintenance and decoration of the building, as there were issues with climbing plants, gutters needed to be cleared out and the external woodwork was in need of decoration. This issue originally arose because the Applicant, while accepting that work needed to be done, complained of defects in the consultation process, which took place early in 2010. In the judgment of the Tribunal, it is clear that the initial consultation letter of 14 January 2010 was defective because it did not contain sufficient information about the proposed works to enable the tenants (had they so wished) to invite additional contractors to tender. The second consultation letter enclosed a specification of works; but by then it was too late.

5.14 Tenders notified in a letter of 29 April 2010 ranged from £9,917 + VAT to £13,310 + VAT. The lowest tender was accepted and on 16 June 2010 was revised downwards (as some works were omitted) to £8,960 + VAT. But a letter of 4 May 2011 added £529.69 for the surveyor's initial work, 10% for further professional fees (basically supervision of works and agreeing the contractor's final invoice) and 10% on top of that for management fees to reach a total including VAT of £13,010.48. The Applicant considered this too high; her objections were set out in a letter dated 18 May 2011.

5.15 As a result of the Applicant's resistance and refusal to make any advance payment towards the cost of the works, the project was then postponed until 2012. This was explained to tenants in a letter dated 21 March 2012, which also gave notice of updated tenders. Hamilton King (not unreasonably) took the view that they were not in a position to instruct contractors until at least half the tenants had paid. On 5 September 2012 they issued a further demand for payment by 5 October 2012, a little late in the year to begin this type of work.

5.16 Meanwhile, the issue arose with the balcony of Flat 20, which was clearly an urgent matter for health and safety reasons. The external works project was postponed until 2013. On 24 January 2013 the Applicant gave notice of her application to the LVT. The outcome of all this is that the Respondent accepts that the consultation process must be repeated and new tenders sought. The Applicant accepts that this may involve some additional surveyor's fees. Meanwhile the Respondent seeks payment on account to ensure that funds will be in hand when the tendering and consultation process is complete and the Applicant, while reserving her position as regards the actual cost of the works, accepts that the sum demanded is not unreasonable on that basis.

5.17 For this reason, the Tribunal does not need to decide whether to grant dispensation to the Respondent under section 20ZA in relation to the defective tendering process. However, it is relevant to note that, in the judgment of the Tribunal, the Applicant's concerns about the original consultation process were not unreasonable. It remains to be seen what the final contract price will be and, of course, the Applicant will still be entitled to expect due consultation; a reasonable contract price; no more than reasonable allowances for professional and management fees; and work of a reasonable standard.

Costs

5.18 This Tribunal takes the view that it has a wide discretion to exercise its powers under section 20C in order to avoid injustice to tenants. In many cases, it would be unjust if a successful tenant applicant were obliged to contribute to the legal costs of the unsuccessful landlord or, irrespective of the outcome, if the tenant were obliged to contribute to costs incurred unnecessarily or wastefully. In many cases, it would be equally unjust were non-party tenants obliged to bear any part of the landlord's costs.

5.19 However, in some cases, the landlord's conduct of his defence may be a reasonable exercise of management powers even if he loses. The landlord may have made an offer the tenant ought to have accepted. In such cases, it might be reasonable for the tenants generally to bear those costs. In other cases, for example where the non-party tenants supported the unsuccessful landlord, it might be reasonable for the non-party tenants to contribute to the landlord's costs. A wide variety of circumstances may occur and the section permits the Tribunal to make appropriate orders on the facts of each case.

5.20 In this case, the Tribunal considers that it was reasonable for the Applicant to make an application to the LVT but also considers that the scope of the Applicant's complaints was a good deal wider than was reasonable. It became clear during the hearing that the Applicant had almost no knowledge of the cost of services included in the service charge and was obliged to make extensive concessions during the hearing. Thus both parties were partly successful. However, there were management failures in relation to consultation and general gardening and the Respondent ought not to be permitted to pass on the full cost of representation at the Tribunal (said to be £800 + VAT) to the tenants. Overall, on the information available to date, the Tribunal concludes that it would be just and equitable in the circumstances of the case to order that the landlord should be disentitled from treating his costs of and arising out of the application over and above the sum of £500 (including VAT) as relevant costs to be taken into account in determining any service charge relating to the property. In effect, the Respondent's costs will be capped at £500.

5.21 The Tribunal has noted that the service charge demands included in the hearing bundle do not appear to include the information required by the Service Charges (Summary of Rights and Obligations and Transitional Provisions) (England) Regulations 2007, though it is possible that the statutory information was supplied on a separate sheet. Accordingly, paragraphs 4 and 5 of the Order shall not take effect unless and until it is established that the said charges have been lawfully demanded.

Geraint M Jones MA LLM (Cantab)
Chairman
28 June 2013