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HM Courts & Tribunals Service

Residential Property
TRIBUNAL SERVICE

LEASEHOLD VALUATION TRIBUNAL (Eastern Region)

LANDLORD AND TENANT ACT 1985 Sections 27A, 20C and 20ZA ("the Act")

	CAM/38UC/LSC/2011/0173 CAM/38UC/LDC/2013/0004
Property:	Charles Ponsonby House, Osberton Road, Oxford OX2 7PQ
Applicants:	Mr John Payne Miss Angela Phillips Mr R J Painting, Executor for Mrs B Painting deceased Mrs Gillian Roy, Executrix of Mrs E C Davis deceased Mrs Myfanwy Jones, Executor of Mrs A Costello deceased Mrs Kate Peyton, Executrix for Mrs R Peyton deceased
Respondent:	Wyndham Housing Association Limited (Landlord)
Representatives for Applicants:	Mr J Pearman
Representatives for Respondents:	Messrs Blake Lapthorn, Solicitors
Attendees at Hearings for the Applicants:	Mr J Pearman Mr J Payne
Attendees at Hearings For the Respondents:	Mr J Bates of Counsel Mr Phillip Smithson, Mr Alan Taylor and Mr Carlos Ruiz, all of Wyndham Housing Association Limited
Hearing Dates:	16th and 17th October 2012 8th & 9th April 2013
Tribunal Members:	Mr Andrew Dutton – chair Mrs S Redmond BSc (Econ)MRICS Mr M Bhatti MBE
Date of Decision:	20th May 2013

DECISION

The Tribunal determines the sums payable as set out in the findings section of this document.

The Tribunal determines that insofar as the Section 20ZA application is concerned, an order under Section 20C should be made preventing the landlord from recovering the costs associated with this application and the representation at the Tribunal, the Tribunal considering it just and equitable to do so.

The Tribunal determines that there be an order under Section 20C precluding the landlord from recovering more than 50% of its costs associated with the Section 27A claim made by the Applicants.

REASONS

Background

1. This matter started life as an application dated 14th December 2011 made by three Applicants, Mr Payne, Miss Phillips and Mr Painting. Initially the application sought to challenge service charges from 1999 to 2011. As a result of a preliminary hearing, the details of which were promulgated some time ago, the period for which the Tribunal was prepared to entertain the claim was limited to 2005 onwards to include consideration of the service charges in 2012, although it should be noted at the time of the hearing in April 2013 final accounts had not been produced. We will deal with the 2012 position in the findings section of this document.

2. Wyndham Housing Association, referred to as the Landlord throughout this decision irrespective of whether it is the Applicant or the Respondent, is a not for profit making organisation providing accommodation for the elderly. It has two units of accommodation, one at Charles Ponsonby House (CPH) and the other at Wyndham House (WH). It is the concerns raised by the leaseholders at CPH which causes this application to come before us.

3. We understand that there are 34 long leases in CPH and 33 short term tenancies in WH.

4. The standard lease is for a term of 125 years from 25th March 2000 upon payment of an initial premium but thereafter the rent being one peppercorn. The service charge contribution required from each leaseholder is one 34th subject to a possible uplift if there is joint occupancy. The Landlord's obligations are set out at clause 5 of the lease and include the provision of a warden service and accommodation for the warden. In clause 7 of the lease is to be found the definition of the accounting year, which ends on 31st December and sets out the service charge provisions at clause 7.5. In particular clauses 7.5.3 and 7.5.4 were the subject of scrutiny, particularly in dealing with the issue of management costs, to which we shall refer in due course.

during the process of preparing for this hearing the Respondent has been obstructive and abused that process and has refused to provide all the relevant documents, again to the detriment of the Applicants."

7. This appears to succinctly set out the Applicants' position.

8. In a later statement of case, in fact a response to the Respondent's statement of case dated February 2013, this tenor of language continues. At paragraph 2.7(2) the following is said:-

"The Respondent makes liberal use of false and misleading statements throughout its testimony and it continues to withhold key relevant documents from the Tribunal despite the Tribunal's repeated reminder in writing to it that all relevant documents are to be provided to enable the Tribunal to make its decision. The Respondent has perverted the course of justice by refusing to provide the contract that relates to the invoices it does provide and in so doing makes inconsistent statements involving third parties whilst at the same time resisting providing the information requested by the Applicants' accountant.

2.7(3) The Applicants should be applauded for the way in which they have attempted to keep their costs to a minimum in sharp contrast to the Respondent. The Respondent's behaviour towards this case is typical of that which gives the LVT its reputation for being a very difficult challenge for the layman leaseholder."

9. It is in this tenor that the proceedings have been conducted between the parties. However, as we have indicated above, it cannot be said by either side that they have been unable to fully put forward their case, save of course that the Applicants continued to suggest that there is other paperwork available which would have assisted them in further arguing the points which they wished to raise.

Issues

10. In the statement of case prepared by the Applicants in September of 2012 apart from an extensive tirade concerning the non-disclosure and attempts to disrupt the process, it is possible to discern that the following issues arise.

- Lack of supporting invoices.
- Accounting issues re the alleged non-crediting of service charge monies.
- The Dalkia/Mitie issues.
- Allocation between WH and CPH.
- Including costs which should be charged to individual leaseholder amongst the service charge accounts.
- Excessive accountancy charges.
- Challenge to purchases made by individual members of staff.
- Advertising.

13. On 8th April 2013, we heard that Mr Smithson was unwell and could not attend. No application for an adjournment was made by the Landlord because there was no indication as to when Mr Smithson may be well enough to appear before the Tribunal. However, Mr Bates on behalf of the Landlord stated that it was the Landlord's view that the matter needed to be completed and that the intention was to refer to key documents but that there was no further evidence to be given in respect of the issues before us. He also confirmed that the Landlord did not oppose an order being made against it for £500 costs under Schedule 12 paragraph 10 of the Commonhold Leasehold Reform Act 2002 in respect of the adjournment from the first hearing.

14. Also before us on 8th April 2013 was the Landlord's application seeking dispensation from the consultation requirements under Section 20 of the Act. It was agreed that this dispensation application should be dealt with first.

15. Mr Bates provided us with a copy of the Supreme Court decision in *Daejan Investments Limited v Benson and others [2013]UKSC(14)*. For the Landlord we had before us a bundle containing the grounds for seeking dispensation and the witness statement by Mr Smithson. For the Respondents, we had a witness statement from Mr Payne and submissions made in each of the statements of case relating to the five contracts which the Landlord believed required dispensation.

16. The Application is against all leaseholders at CPH and it is accepted that in respect of the five contracts for which dispensation is sought, consultation had not taken place. The five contracts are as follows:

    (i) In 2005 Tunstall were contracted to provide an upgrade of the warden call system. The total cost was £13,616.77 plus VAT. We were told that Tunstall were chosen because they had installed the original system and no other company was prepared to upgrade the existing system or to provide guarantees in respect thereof. The Landlord therefore contended that there was really only one contractor who could carry out the work but the project provided good value for money and that the residents were kept informed via the House Advisory Committee meetings.

    (ii) The second contract was R&R Builders in 2005 when a contract was entered into to extend the garden room. The sum involved was £10,673.99 plus VAT. The work had apparently been undertaken at the behest of the leaseholders who it is said were kept fully informed through various House Advisory Committees and meetings with the consultant.

    (iii) The third contract is with Gutter Maintenance (Oxford) Limited. In 2007 the contractor replaced all gutters, drainpipes and other external

addresses the various contracts. It is fair to say that in respect of all the contracts for which dispensation was sought, save the Dalkia issue and the boiler replacement, the leaseholders did not dispute that the works were required. The allegations of breaches and the prejudice suffered are to a large extent repeated in respect of each of these five contracts.

21. For example at paragraph 54 of Mr Payne's witness statement he sets out the failures insofar as the provisions of Section 20 are concerned. It is not of course disputed by the Landlord that there was no consultation process, in the strict sense of the legislation, followed by them.

22. At paragraph 55 the statement sets out the prejudice suffered by the leaseholders. They include the following points:

- The tender was not competitive.
- The leaseholders were denied the opportunity to propose a contractor.
- Until the application to the LVT the leaseholders had never seen any documentation relating to the works.
- The leaseholders were not aware of the nature of the planned works.
- No cost in use calculation was made nor was any attempt made to compare the relative merits of upgrading the system.
- No other companies were invited to tender.
- Tenders were not sought and opened in accordance with good practice.

This allegation of prejudice is repeated in respect of the other contracts. It is also suggested at the end of Mr Payne's witness statement that an order under Section 20C in respect of the dispensation application should be made and that the costs incurred by the lessees should be paid by the Landlord.

23. Mr Pearman made further submissions at the Hearing. The key factor he said that differentiated this case from the Daejan case was that there had been no consultation process at all. The discussions in the House Advisory Committee were not helpful he said because this was a Trust Committee and there was a limited chance for the leaseholders to attend. There was also some doubt as to whether the main committee minutes would appear on the noticeboard for viewing by the residents. It was, he said, an improper way of dealing with the matter, the more so as a number of the residents were elderly and it may well be that their relatives would have been interested in the position. Mr Payne did accept that there had been more openness from March 2005 onwards although the minutes were not circulated and there was no way for the leaseholders to really know what was going on.

24. Turning to the specific contracts and that in respect of Tunstall, the warden call system had been upgraded again some two years ago. It was suggested it might have been appropriate to have looked at an alternative at the time of the initial upgrade rather than there be a tie in with Tunstall in respect of the existing system. Insofar as the R&R contract was

29. We then considered a number of other contracts where it was alleged by the Applicants that the provisions of Section 20 had not been complied with. This was not admitted by the Landlord. They are as follows:

(1) Derek and Andrew Price. These were decorating works over a period of time. The Applicants' comments on this are contained at paragraph 244 of their statement of case dated January 2013 and responded to at paragraph 119 of the Respondents' response dated 4th February 2013. Further references are made to this contract at paragraph 250 of the Applicant's response.

(2) The next contract in issue was Grant Thornton but the complaint relating to that was withdrawn.

(3) The next was the Whites and Solo Cleaning. Again paragraph 275 onwards of the January statement of case, paragraphs 122 and 123 of the Landlord's response and paragraph 252 of the Applicants' response deal with this issue.

(4) The next contract for which it was said consultation was required relates to the Chiltern Lifts issue which is set out at paragraph 295 onwards in the Applicants' January statement of case, paragraph 33.10 in the Respondents' reply and paragraphs 254 and 256 in the Applicants' document of February 2013. Mr Bates sought to argue that qualifying works were to a building and that maintenance was not qualifying works.

(5) M&S Windows. Again detailed submission was made paragraph 303 of the January statement of case on the part of the Applicant, paragraph 124 of the Respondents' February statement of case and at paragraph 260 onwards of the February response by the Applicants.

(6) A second Chiltern Lifts issue in the sum of £596 was not pursued nor was the challenge to the Blake Lapthorn costs.

(7) The charges in respect of the LVT for the Hearing of 2010 it was said should not have been included as a service charge and this appeared to be agreed by the Landlord. We were told, that in any event, it was not met from service charge income.

(8) The final contract we considered was the Dalkia Energy contract for the servicing of equipment and the supply of gas and electricity. This has generated a great deal of correspondence and submissions. The concerns of the Applicants stem from the apparent numbering of the contract, which on the documentation produced to us was entered into before the consultation requirements came into force. Such was the intent of the Applicants to pursue this matter that at paragraphs 237 through to 243 various issues are raised concerning the agreement suggesting that this was one to which Section 20 consultation should have taken place. In respect of the Landlord's position their response starts at paragraph 16 in the February 2013 statement of case dealing with disclosure and goes into further detail at paragraph 523. The landlord maintains that the Dalkia contract

The cost of management shall not exceed the sheltered management allowance permitted from time to time by the Housing Corporation.

It is necessary to consider the ARHM code which it appears both parties accept applies. At item 3 of the code on page 22 there is a non exhaustive list of the management services. As a matter of comment it seems to us that certain matters would not ordinarily fall within the standard management services provided by a managing agent in respect of ordinary residential accommodation. These would include for example drawing up risk assessment plans, preparing specifications, obtaining tenders and supervising major works, preparing replacement cost assessments for insurance and possibly other matters which are included.

31. At item 3.12 of the Code it limits the fees for registered social landlords. At 3.13 it states *"new schemes with leases sold for the first time after April 2001 are not the subject of these limits. However, these limits apply to all existing leases on the schemes run by RSLs and in receipt of public subsidy (Housing Association or Social Housing Grant) sold for the first time prior to 2011.*

32. The limits are based on a unit, are set on a flat-rate basis and do not take account of different property sizes or types of scheme. Where these limits apply no individual leaseholder should pay more than the limit for those management charges that are covered by the limit. At 3.15 the limit for the financial year 2005/06 was set at £293 per unit enhanced if VAT is applicable to £330. The limit is reviewed annually and any changes are published by the Housing Corporation.

33. It should be noted that the Landlord did not at any time seek to argue that the code did not apply and indeed the lease specifically indicates it does. For the Landlord it was suggested that the costs were part of the central overhead which the auditor split on a 50:50 basis and are recoverable.

34. On the Scott Schedule the next item which fell to be challenged in each year were legal and professional, and audit and accountancy. The Applicants say the lease does not require the service charge to be audited and that the provisions of the lease have not in any event been complied with. Paragraph 7.6 of the lease provides that a certificate should be supplied showing the difference between the amount obtained as an estimate and the actual expenditure for the year in question. It is said that no such certificate has ever been produced. Again it is suggested by the Landlord that these charges are part of the central overhead and are payable.

35. The next issue related to marketing and advertising. It was said for the Applicants that the advertising really only benefitted the Respondents in respect of WH it being its rental property and that whilst there was some expense that the residents of CPH would be prepared to meet, for example leaflets and the website, there were no other items of expenditure which they thought were appropriate. The Respondents indicated that in their

year, although the sums vary. For each year, it appears that each payment is set out in the Schedule, taken from Mr Smithson's spread sheet, backed up where available, with invoices. Some are not in dispute, some indicate that the costs are shared, some indicate that they are duplicated, some are challenged because invoices are missing and some because they have been wrongly allocated between CPH and WH. In many cases the sums involved are really quite small and to enable us to be proportionate we have had to take certain views on matters which are set out in the findings section of these reasons.

THE RELEVANT LAW

Please see the annex for the relevant sections of the Act which have been applied in this case.

FINDINGS

40. There are two principles that we have reached in concluding our findings in this case. The first is that we accept the accuracy of the accounts. These have been prepared in accordance with various standards as set out in the Auditor's Report for each year and confirm that the accountants have audited the financial statements of the Landlord. This includes the Income and Expenditure account for each house. Accordingly whilst we accept that the accounts make no reference to the Landlord and Tenant Act 1985 we accept that they have been prepared to a high standard and are to be relied upon.

41. The second principle is that we accept the accuracy of the spread sheets prepared by Mr Smithson in so far as they confirm payments have been made. Mr Smithson struck us as an honest witness and the spread sheets have been mainly supported by invoices. The spread sheets were not challenged to any great degree by the Applicants. Where those invoices are missing we find that the entry on the spread sheet is sufficient evidence that a payment has been made. It is also noted that no meaningful comparable evidence has been given to us by the Applicants and in reality there has been no challenge to the standard of work or the need for same where an issue is raised. With these principles in mind we turn to the issues.

42. Before we deal with the question of dispensation we will consider whether there are any particular matters that we need to consider as set out on the Scott Schedule. A review leads us to conclude that there are limited areas for which we consider a ruling from us is required. Given our findings that the fact that the invoice is missing does not mean that it is irrecoverable it seems to us that a number of complaints in that regard are not sustainable. Further having found that the accounts are not to be challenged that also removes certain other items. In addition also, some sums in dispute are so small on an individual basis that it is disproportionate to consider them. It is claims involving small amounts that may give support to the contention raised by the Landlord that Mr Pearman's fee basis has impacted on the usual 'reasonableness' that one might expect to see in litigation of this

general expenses where there is a challenge in the sum of £2,810.85. The figures appear to be made of Chritchley and Derby invoices. One for £1,050 relates to the production of schedules following a request for information by the Applicants. These schedules were not put before us. The Derby invoices appear to relate to works carried out advising in respect of Messrs Payne and Pearman's applications and the second relates to the work related to a licence to sublet. It is said that both costs are entirely in connection with CPH and chargeable under the lease. With respect we cannot accept that that is the case. The £1,500 it appears relates to costs associated with defending the claim made by Mr Payne and the second appears to relate to costs which should be borne by the leaseholder seeking the licence to sub-let. This was in the sum of £420. **In our view therefore although we are not quite clear how the figure of £2,810.85 as shown on the Scott Schedule, has been achieved, we considered it might be more, we find that that is an amount which should be disallowed and therefore needs to be taken account when preparing the assessment of figures payable.**

47. For the year 2010 we have reviewed the Super Clean South invoices. There appears to be one in April, two in July and another in October. We were told in evidence that Super Clean attend three times. We cannot see therefore why there are four charges, two in July for example and accordingly it seems to us that there is a duplication and **we therefore allow a reduction in respect of this item of £281.31 but nothing else for that year.**

48 For the year 2009 we see no reason to make any reductions for the reasons we have already stated with regard to invoices and accounts, although of course if we have not made it clear, our findings in respect of the management charges remain for each year in question.

49 In the year 2008 we do consider that there needs to be a review of the Park Lane Driveways invoices. The Respondents in their statement of case at paragraph 48 explained that the work had been done in phases and that the Respondent was invoiced three times. There were apparently two interim payments of £2,647.50 which appears on Mr Smithson's schedules in August and September of 2008 and a final payment made in October of £3,533. It does seem to us that this is one contract. Indeed the Respondents in their statement of case do not appear to assert to the contrary. In those circumstances it seems to us that this is a case where a consultation should have been undertaken. **No application to dispense has been made and in the circumstances, therefore, we are prepared to only allow the sum of £8,500 against the total invoice price of £8,825.**

50. We note that in this year (2008) there is also a further Derby invoice but this relates, it is said, wholly to general works associated with CPH sales enquiries. This seems to us to be different from dealing with specific licences to assign or other matters for which the leaseholder should pay. Sales enquiries could be requests made for service charge information

contract were agreed as being required by the leaseholders. In each case their suggestion is that they were not able to obtain alternative quotations and that they were, for the reasons set out in Mr Payne's statement, and supported by the statements of case, prejudiced.

56. It is necessary for us to consider the Supreme Court judgment and in particular the lead judgment of Lord Neuberger. At paragraph 42 he says as follows:-

> "*So I turn to consider Section 20ZA(1) in its statutory context. It seems clear that Sections 19 to 20ZA are directed towards ensuring that the tenants of flats are not required (i) to pay for unnecessary service or services which are provided to a defective standard or (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard. The former purpose is encapsulated in Section 19(1)(b) and the latter in Section 19(1)(a). The following two sections, names Section 20 and 20ZA, appear to me to be intended to reinforce and to give practicable effect to those two purposes. This view is confirmed by the titles of those two sections which echo the title of section 19.*
> *43. Thus the obligation to consult the tenants in advance about proposed works goes to the issue of the appropriateness of those works and the obligations to obtain more than one estimate and to consult about them go both to the quality and the cost of the proposed works.*"

His Lordship continues at paragraph 44 as follows:-

> "*44. Given that the purpose of the requirements is to ensure that the tenants are protected from (1) paying for inappropriate works or (2) paying more than would be appropriate, it seems to me that the issue the LVT should focus when entertaining an application by a Landlord under Section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the Landlord to comply with the requirements.*
>
> *45. Thus in a case where it was common ground that the extent, quality and cost of the works were in no way affected by the Landlord's failure to comply with the requirements, I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely this position that the legislation intended them to be ie as if the requirements had been complied with.*
>
> *46. I do not accept the view that dispensation should be refused in such a case solely because the Landlord seriously breached or departed from the requirements. That view could only be justified on the grounds that adherence to the requirements was an end in itself or that the dispensing jurisdiction was a punitive or exemplary exercise. The requirements are a means to an end, not an end in themselves, and the end to which they are directed is the protection of the tenants in relation*

been no cost in use calculation, other companies could have tendered and tenders were not sought and opened in accordance with good practice.

60. It is right to say that in none of these cases have the leaseholders provided any evidence to show that they could have obtained the costs more cheaply elsewhere or that the works would have been done differently or were not done correctly or to a reasonable standard. Mention is made of the R&R works to the day room and positioning of the pillars. No structural engineer has been engaged by the Respondents to show that the works were incorrect or were unsatisfactory. Whilst it is accepted that the Supreme Court ruling is recent, it has always been necessary for tenants to be able to show that they have suffered prejudice and to put forward some evidence to show that such prejudice has been suffered. It seems to us that making a general comment that they have not been consulted is of course a statement of the obvious. What they needed to show was whether had they been consulted matters would have been different. In the question of the Tunstall matter it seems that the evidence is that this was the preferred and perhaps the only contractor who would be willing to undertake the works. There is no complaint as to the standard of the works, although some comment made that the Respondents are tied into a longer contract than might have otherwise been the case. If it had been necessary to employ a new contractor and to completely reconfigure the system, then no doubt that would have created substantially more expense for the residents to bear. As far as the R&R Builders are concerned, there appears to be no particular criticism of the quantum of the costs but rather the positioning of the pillars but as we have commented above, no evidence has been shown to indicate that they are wrongly positioned other than as an aesthetic point but of course there may be a structural reason, although it has to be said this was not advanced by the Landlord. The Landlord says the works were at the behest of the leaseholders who were closely involved in this particular project. Insofar as the Gutter Maintenance matter is concerned, there is, it seems, some form of alternative quotation obtained from R&R Builders, which is not so far removed from the Gutter Maintenance figures. Again, it is accepted that these works were required, there is no challenge to the adequacy of the works and there has been no evidence produced from the leaseholders that the costs were unreasonable or could have been obtained elsewhere more cheaply. The same applies to the Specialist Fire contract.

61. Insofar as the Dalkia contract is concerned, this related to the replacement of the boilers. It was in part considered in the 2010 decision when it was raised as a peripheral issue. At that time the information given to us appeared to indicate that the replacement was required on an emergency basis. Having reviewed the matter we are not content that is in fact the case. The letter from Mitie providing a quote in November 2009 makes no comment on the need to deal with any change on an urgent basis. It seems to us therefore that that suggestion does not bear weight. In this case there is no admission by the leaseholders that the works were required. There seems to be no doubt that the replacement of the boilers took place towards the end of 2009 and there does appear to be a benefit

64. Insofar as the Whites and Solo agreement is concerned, we have seen a copy of that contract and are satisfied that it is not a qualifying long term agreement. It is determinable upon three months' notice and as a cleaning contract one would not be surprised that that is the case. **Accordingly we are satisfied that this is a contract that does not require consultation and the costs are recoverable.**

65. Insofar as the Chiltern Lifts matters are concerned the first agreement is dated in 1986 and the second one is not for a period of more than 12 months. We do not, however, accept Mr Bates' suggestion that qualifying works have to be works limited to the building. The maintenance of equipment in the building would, subject to costs, in our view require dispensation. However, a review of the invoices shows that none of the years in question resulted in costs exceeding the statutory figure of £8,500. (£250 x 34) They vary from £1,554.72 in 2008 to £6,278.03 in 2011. The costs involved are not disputed nor is the quality of the work. None of these constitute qualifying works and as we have indicated we do not consider that this is a qualifying agreement. **Accordingly those costs associated with Chiltern Lifts are allowed.**

66. We then turn to the M&S Windows contract. Again we were provided with invoices at the conclusion of the Hearing and have considered those. The invoices provided, ignoring two that are dated in December 2011, total £15,268. There is a demand for £7,000 as a deposit dated 20th December 2010 and there is then a further payment made on 1st February 2011 in the sum of £8,268 which is intended to settle those invoices which total £15,268. The figure 849 is marked on each one. It seems to us therefore that this is clearly a contract for which consultation was required. The total invoice price was £15,268 paid by way of a deposit in December 2010 and the balance in February in 2011. **No dispensation has been requested and in those circumstances we limit the sum recoverable and reduce the amount recoverable as a service charge from £15,268 to £8,500. The other two invoices in December 2011 appear to relate to other works which includes the installation of replacement seals and replacement toughened units which total £2,998 and in our view do not fall within the contract referred to above and recoverable in full.**

67. In respect of the Dalkia agreement for the purposes of the provision of utilities we find that his does not constitute a qualifying long term agreement. The agreement within the papers shows a date of 10th February 2003 before the consultation period began under the regulations. Although there is confusion as to the appropriate numbering, it does not seem to us that it is realistic to accept that three members of Mitie should have conspired with the Landlord to lie about the contract numbering. We are satisfied on the evidence available to us, supported by the correspondence referred to above, that the contract came into existence before the qualifying provisions under the 2003 regulations. As to the costs claimed thereunder as referred to at paragraph 38 above, we are unhappy about admitting this late evidence as to the costs. In any event it does not

resolve that matter, but enforcement of the decision is through the County Court.

72. Finally, we should record that we were saddened to hear of Mr Smithson's illness. It seems that new faces have been appointed to deal with the management and we hope that going forward lessons can be learned from these proceedings and that there will be no need to revisit the Tribunal.

Chairman: _____

A A Dutton

(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.

(e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.

(6) Regulations under section 20 or this section—

(a) may make provision generally or only in relation to specific cases, and

(b) may make different provision for different purposes.

(7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.