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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	LON/00BB/LSC/2013/0340
Property	:	283 Romford Road, Forest Gate, London E7 9HJ
Applicant	:	Mr Pritam Singh
Representative	:	Ms Angela Louis, Counsel, instructed by D.H.Law Ltd, appeared on behalf of Hexagon Property Company, the managing agents.
Respondents	:	Mr Mikael Haile Belay Mr Maryou Lambros Mr Ragae Exander
Representative	:	In person
Type of Application	:	Determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Mr Robert Latham Mr Michael Taylor FRICS Mrs Rosemary Turner JP
Date and venue of Hearing	:	21 and 22 October 2013at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	5 December 2013

DECISION

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(1) The Tribunal determines that the sum of £3,405.93 is payable by each of the three Respondents in respect of the major works, namely 25% of the total of £13,623.70.

(2) The Tribunal determines that the sum of £45 is payable by Mr Belay as administration charges.

(3) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

(4) The Tribunal makes no order for the Respondents to reimburse the sums that the Applicant has expended in respect of the tribunal fees.

The Application

1. By an application dated 13 May 2013 (at p.1-8 of the Bundle), the Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by Mr Mikael Belay, the tenant of Flat D (the Basement Flat), 283 Romford Road, London E7 9HJ. The Claim relates to Service Charge Year 7 April 2012 to 6 April 2013. The most significant item was a claim for £11,994.75 in respect of major works. This was based on an Invoice dated 17 January 2013 (at p.84). This was demanded as a payment in advance. The Applicant also claimed administration charges of £186 and £230.40 in respect of legal fees relating to the Section 20 works.

2. On 6 August 2013, the Tribunal gave Directions (at p.9-12). The Tribunal identified the following issues to be determined:

   (i) Whether the sum of £11,994.75 for major works (then in progress) has been reasonably incurred and is payable by the Respondent. The Respondent confirmed that the other service charges were not in dispute.

   (ii) Whether the Applicant has duly complied with the Section 20 consultation process;

   (iii) Whether the sums claimed for administration and legal charges are payable.

   (iv) Whether an order should be made under Section 20C of the 1985 Act.

3. On 5 July 2013, the Applicant filed its Statement of Case (at p.13-102). The Respondent failed to file his case.

4. The matter was set down for hearing before the Tribunal on 6 September 2013. Two additional tenants were present at the hearing,

namely Mr Maryou Lambros, the tenant of Flat C (the Second Floor Flat) and Ms Antonia Okonma, the tenant of Flat A (the Ground Floor Flat). Mr Belay and Ms Okonma gave evidence. The case was adjourned part heard. However, due to the illness of the Chair, the application was relisted to be heard afresh.

5. On 6 September, the Tribunal gave further Directions. Mr Lambros was joined as a party to the application. Ms Okonma was in a different position as a default judgment had been made against her in the County Court. Ms Okonma was permitted to apply to be joined as a party to the proceedings provided that the County Court judgement had been set aside. We were told that Ms Okonma has applied to set aside the judgment, but that this application has yet to be determined.

6. The Tribunal further directed that Mr Ragae Exander be notified of the application and invited to apply to be joined. On 10 September, Mr Exander applied to be joined. On 18 September, the Tribunal made a further Direction joining him as a party.

7. In September, the major works were completed. On 11 September, Hexagon Property Co Ltd ("Hexagon") notified the landlord that the final cost of the works was £33,838.19 (at p.376). This was substantially less than the sum of £47,979.00 which had originally been demanded from the tenants. The parties are agreed that we should focus on the actual, rather than the estimated, cost of the works.

8. Pursuant to the Directions, the following witness statements have been filed on behalf of the landlord:

(i) Qalab Ali, Director of Hexagon (5.7.13) at p.13-102 and (11.10.13) at p.330-378;

(ii) Ateek Rahman, a Graduate Building Surveyor of GH Chartered Surveyors ("GHCS") (11.10.13) at p.379-388):

(iii) Zaheer Asghar, Proprietor of Asghar Building Services (11.10.13) at p.390-2).

9. The following witness statements were filed on behalf of the tenants:

(i) Mikael Belay (25.9.13) at p.258-263.

(ii) Maryou Lambros (25.9.13) at p.264-319.

10. The relevant legal provisions are set out in the Appendix to this decision.

The Hearing

11. The case was listed before us with a time estimate of two days. Ms Louis, Counsel, appeared on behalf of the landlord. She adduced evidence from Mr Rahman and Mr Ali.

12. Mr Asghar was not available to give evidence. On 9 September, the Tribunal had directed that he should attend to give evidence. Mr Ali told us that Mr Asghar had had "an incident". The tenants were anxious that he should give evidence. The Tribunal indicated to the landlord that we would also wish to hear from Mr Asghar given the tenant's concerns about the quality of the works. On the second day of the hearing, Mr Ali informed the Tribunal that he had left a message on Mr Asghar's mobile telephone at 19.00 on the previous evening. The message had not been returned. We are reluctant to give any significant weight to Mr Asghar's witness statement given his failure to attend and the absence of any adequate explanation for his absence.

13. The four tenants all gave evidence. We had no witness statement from Mr Exander. He gave oral evidence which assisted the Tribunal. Indeed, his evidence was the most reliable of the witnesses that we heard.

14. At the close of the hearing, Mr Ali provided us with a Final Account Summary. The original contract sum of £42,838.39 had included a contingency of £3,000, the net sum being £39,838.39. We have been provided with various Payment Certificates and Variation Orders which are at p.341-374. Mr Ali computed that there had been omissions totalling £21,354.39 from the Original Order and additions of £9,663.75. The final cost came in at £31,018.14. Of this, £29,803.29 had been paid to Mr Asghar by 16 September 2013, leaving a 2.5% retention of £1,214.85. The landlord has also sought to charge professional fees on top of this.

15. During the course of the hearing, Mr Ali also provided the following:

    (i) A Bundle relating to the Section 20 Consultation; and

    (ii) A Bundle relating to Asghar Building Services.

    (iii) Office Copy Entries for the four flats.

16. The Tribunal sought clarification of the administration fees that the landlord was seeking to recover against Mr Belay. Ms Louis told us that these are claimed in respect of chaser letters dated 19 July 2012 (£48 at p.141); 18 October 2012 (£48 at p.147) and 31 October 2012 (£90 at p.153).

17. We also sought clarification of the claim for legal fees of £230.40. This sum appears in an Interim Bill submitted by DH Law Ltd dated 8 May 2013 (at p.226). It was difficult to reconcile this with a schedule of costs dated 18 October 2013 in respect of which £1,336 is claimed. Thus in the first bill a sum of £32 is claimed for "meeting with client in relation to s20 major works" on 15 February 2013; whilst in the second, £160 is claimed for taking instructions from client and associated work on 18 February 2013. However, Ms Louis informed us that the landlord is no longer seeking to recover this sum against Mr Belay. The landlord will rather seek to recover costs of £4,403.20 against all four tenants. This is set out in a Statement of Costs dated 21 October 2013. The Applicant has reduced his claim by £850 to £3,553.20 (£350 relates to tribunal fees which are considered separately; only £500 is now claimed in respect of the attendance of Mr Rahman who was not required to return on the second day of the hearing).

18. The Tribunal need to determine the following issues:

(i) Whether the Applicant landlord has duly complied with the Section 20 consultation process;

(i) Whether the sum of £31,018.14 + professional fees has been reasonably incurred and is payable by the four tenants. Strictly, only three of the tenants are parties to this determination;

(iii) Whether the administration charges of £186 are payable by Mr Belay;

(iv) Whether an order should be made under Section 20C of the 1985 Act.

(v) Whether the tenants should reimburse the Applicant the fees that he has paid in respect of this application, namely an application fee of £200 and a hearing fee of £150.

19. We completed the hearing at 13.15 on the Second day. Thereafter, we inspected the property at 283 Romford Road and were afforded access to the four flats. Only Mr Lambros currently occupies his flat. The other tenants have let out their flats.

20. On 31 October, the Tribunal reconvened to consider our decision.

The Inspection

21. 283 Romford Road is a three storey semi-detached property with a basement. It was built in 1881 of traditional brick construction with a part pitched/part flat main roof. There is a side passage which leads to

the communal entrance door providing access at ground floor level into a hallway from which access is gained to the three flats on the ground, first and third floors via a staircase. The Basement Flat, Flat D, has an independent access via an entrance towards the rear that leads to stairs down to basement level.

22. The front of the property has a concrete hard standing area with steps down to the basement level where there is a steel sliding shutter which formerly gave access to the basement when used as an office.

23. Overall, the external condition is fair. Whilst the major works have recently been carried out which is the subject of our determination, there are defects that have not been addressed. These include (i) lack of protection to the front area which creates a real health and safety risk (see the photograph at p.62); (ii) blocked drains which appear to be a longstanding problem; (iii) chimney pots which appear to have torn polythene sheet cappings flapping in the wind; (iv) missing section of the rainwater pipe at the rear of the property; (v) missing section of a soil and waste pipe at the rear; and (vi) some asbestos corrugated sheeting which has been left lying in the rear garden.

24. The standard of the work which has just been completed is poor and has not addressed all of the work required to put the property into a good condition. There was also some evidence of damp in Flat C (second floor) by the chimney breast, and in Flat D (basement flat) by the rear wall. The hallway was in a poor condition. There was paint on the carpet which was worn. There was no evidence of recent cleaning, a service which the landlord claims to provide.

The Background

25. There is an unfortunate history to this property, much of which is not relevant to the issues which this Tribunal need to determine. On 4 February 2004, Mr Singh acquired the freehold interest in the property (see p.122). We are told that he lives at 2 Kingswood Road, Ilford, Essex IG3 8UE (p.84). He has a business address at 8 Whilems Works, Ilford, Essex IG6 3HJ (see p.376). Mr Singh has taken no part in these proceedings.

26. On 3 October 2005, Mr Singh granted Mr Belay leases of Flats C and D. The term granted is 99 years from 29 September 2003. The lease in respect of Flat D is at p.103-9. He apparently paid £170k for Flat D. Mr Belay suggested that he had acquired his leasehold interests in June 2004. He would seem to be mistaken. He subsequently acquired the leasehold interest in Flat B. The plan of the basement flat is at p.119. Mr Belay describes a history of disrepair. He was unable to make contact with the landlord. He alleges that he lost substantial sums because he was unable to let out his properties.

27. On 8 August 2007, Ms Okonma registered her leasehold interest in Flat A. She has never occupied her flat. She states that within a week, the communal ceiling collapsed. She contacted the then managing agents, SS Properties. She was apparently told that Mr Singh was not to be found.

28. In 2008, Mr Belay sought to carry out major works to Flat D and other areas of the property at a cost of some £20k. This included excavating the area to the front of the property with steps leading to the basement. He converted it for commercial use. It was let to Clifton Finance. The absence of any railings around this excavated area creates a real health and safety risk. Mr Belay also built a small extension to the rear. It would seem that Mr Belay did not obtain the landlord's consent to these works which impinged upon parts of the building outside his demise. Mr Belay asserts that he obtained planning permission. However, we doubt that Building Control would have approved of the arrangements at the front of the property.

29. Mr Belay got into financial difficulties and in due course, his mortgagee repossessed Flats B and C. It is apparent that there was some contact between SS Properties and Mr Belay in 2009. They were chasing him for arrears of ground rent in respect of Flat C which were discharged (see p.285).

30. On 6 January, Mr Lambros registered his leasehold interest in the Second Floor Flat, Flat C. He paid £160k. He is the only tenant who currently occupies his flat. In August 2010, Mr Lambros arranged for works to the roof at a cost of £1,000 (see p.283-4). He arranged for further works to be executed in October/November 2012.

31. On 15 December 2010, Mr Exander registered his leasehold interest in the First Floor Flat, Flat B. He paid £185k. He had intended to occupy his flat. However, his father fell ill, so he went to Brighton to care for him. He currently resides with his family in Worthing.

32. On 4 October 2011, Hexagon took over the management of the property on behalf of the landlord. Mr Ali is one of the three directors in the firm. He is a Member of the Institute of Residential Property Management and is also a Bachelor of Law. He has been managing properties for 10 years.

33. Following their appointment, Hexagon engaged GHCS to carry out a condition survey of the property. On 3 November 2011, Mr Rahman undertook this survey. Mr Rahman did not finalise his inspection report until 24 August 2012 (at p.159-74). He explained that this was because the landlord had failed to pay his firm's fees. His overall conclusion was that the condition of the property was fair, although there were aspects of the concrete and render elements which had been neglected and required repairs. He noted the immediate need to erect

safety railings around the basement level drop, work which has still not been executed. Significant repairs were required to the main entrance door. A minor overhaul of the roof was required. However, a specialist roofing contractor should investigate and provide details of the roof section.

34. Subsequent to 24 August, Hexagon instructed GHCS to prepare a Schedule of Works. In his second witness statement (at p.332), Mr Ali explains how the roles for administering the works were agreed between Mr Singh, Mr Rahman and Hexagon. Mr Rahman was appointed as the lead surveyor to compile the specification of works and to validate the standard of workmanship in stages as the works were completed. Hexagon's role was to serve the relevant Section 20 notices, respond to any nomination and observations and tender the works. Hexagon also had the role of Contract Administrator under the JCT Minor Works Contract 2011. The latter involves releasing payment certificates for the works, ensuring that parties to the contract adhere to their terms of the contract, i.e. keeping fairness between the parties, making payment and recording variations as certified by the lead surveyor.

35. This is a very unusual way to manage a building contract for works of this nature. Mr Rahman emphasised in his evidence that that he had no involvement whatsoever with the financial aspects of the contract. This was affirmed by Mr Ali.

36. The Schedule of Works is at p.91-99. Mr Rahman described how this was based on his inspection in November 2011. He was in some doubt as to whether he had gained internal access to the property during that inspection. In cross-examination, he was reminded that his report made specific reference to damp staining to the ceiling in the communal staircase (p.161).

37. Mr Rahman did not return to re-inspect the property despite the fact that his inspection had been some ten months previously and repairs had subsequently been executed to the roof. A review of the 27 Variation Orders (at p.341-374) indicates that a very significant number of original specified items were varied during the course of the works. Whilst it is appreciated that the Surveyor assessing the condition of the property was limited to an inspection from ground level, the Tribunal is satisfied that the original specification was inadequate to deal with the repairs required to the property.

38. Neither Mr Rahman nor Mr Ali provided the Tribunal with any adequate explanation as to why a number of items were included. Indeed, we have asked ourselves whether the landlord ever intended to execute them. The specification included the replacement of the windows. This was unnecessary as the tenants had installed new windows themselves. Significant works were proposed to the communal

hallway and staircase which was to be completely redecorated and provided with new carpeting and lighting. In the event, a lick of paint was applied to the walls and paint which spilt onto the carpet was not removed and the carpet was not replaced. The landlord has been charging the tenants for cleaning this area. On our inspection, there was no evidence that this service was being provided. The condition of this part of the building is of particular concern to tenants.

The Lease

39. The lease in respect of Flat B is at p.103-19. We highlight the following provisions:

(i) Clause 2(3)(i) – the payment of a service charge equal to 25% of the specified expenses.

(ii) Clause 2(3)(i)(e) – the employment of a managing agent

(iii) Clause 2(3)(ii)(a) – the amount of the service charge may be certified by the managing agent

(iv) Clause 2(3)(ii)(d) – this may extend to reasonable provision for anticipated expenditure.

(v) Clause 2(17) – payment of the landlord's reasonable expenses incidental to the preparation of a section 146 Notice.

Issue 1: The Consultation Process

40. The Consultation procedures required by Section 20 of the Act are complex. In the current case, they are to be found in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003 No.1987) ("the Regulations"). The relevant provisions are set out in Part 2 of Schedule 4 ("Consultation Requirements for Qualifying Works for which Public Notice is not Required").

41. These requirements have been helpfully summarised by Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

Stage 1: Notice of intention to do the works

Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent,

allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates

The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notices about estimates

The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons

Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

Stage 1

42. On 10 October 2012, Hexagon initiated the statutory consultation process by serving their Notice of Intention to carry out qualifying works (at p.67-71). The Notice complies with the statutory requirements. However, in practice, Hexagon gave the tenants little indication of the scope of the works which the landlord intended to execute. There is reference to "our planned preventative maintenance programme". The proposed works are not described. Rather, the tenants were notified that details of the works could be inspected at 115 Fencepiece Road, the address of Hexagon's office. This is all that the Regulations require. The letter refers to Hexagon's surveyor assessing the tendering contractors to achieve the best price and to confirm the most competent contractor. This did not occur in practice.

43. Mr Ali stated that this letter was sent by recorded delivery on 10 October 2012 to Mr Belay at Flat D; Mr Lambros at 7 Barnes Court, E16 3LW; Mr Exander at Flat B and Ms Okonma at 19 Alice Gilliat Court, W14 9QG. The letter sent to Mr Belay is at p.67-71. The recorded delivery receipt is at p.72. We were provided with copies of the letters sent to the other tenants.

44. Mr Belay stated that he did not receive this or any of the notices. He contends that they were not sent. Hexagon rather allowed them to pile up in the office. At the relevant time, Flat D was let to Ms Okaye. Mr Belay first saw the notices when they were provided by his mortgagee.

Mr Belay conceded that he had not notified the landlord of his address at 1 Trafalgar Road. The landlord did not send any letter to him at this address. Mr Belay contends that the landlord should have been aware of this from his mortgagee.

45. Mr Lambros told us that Flat C was empty at this time. He was living at Barnes Court. He did not receive the notice. In cross-examination, it was put to him that he had admitted receiving the notice (see his witness statement at p.265). Mr Lambros responded that this was not what he had intended to state. He had rather meant to state that this was a day "after we have **allegedly** received the stage 1 of the S20 major work application".

46. On 10 October 2012, Mr Lambros had e-mailed Mr Ali complaining that water was coming into his flat (see p.275). He was in the process of modernising his flat at a cost of some £12k. On 28 October, he was married and it is apparent that he wanted to make Flat C a pleasant home for his wife. On 11 October, Hexagon wrote to him informing him that roof repairs would cost £2,750 (see p.279). On 18 October, the landlord applied to the LVT to dispense with the consultation requirements (LON/00BB/LDC/2012/0118). In the interim, Mr Lambros arranged for works to be carried out paying £800 for scaffolding (see p.153) and £1,000 to JAS Roofing Ltd (p.281). The LVT determined the application on the papers and dismissed it on 28 November 2012, noting that the works had now been done.

47. Mr Exander was willing to accept that the letter was sent to him. The second notice was emailed to him. He was not entirely clear whether he had first seen the first notice in October 2012, or when the second notice was e-mailed to him.

Stage 2

48. Mr Ali subsequently obtained estimates from two builders, Ultim8 Fitting and Decoration, who quoted £51,932 and Asghar Building Services, who quoted £42,838.39. No contractor had been nominated by a tenant. Mr Ali stated that Hexagon have a list of ten approved contractors. Tenders were invited from two based on the type of work to be undertaken and their previous experience.

Stage 3

49. On 3 December 2012, Hexagon served their Statement of Estimates in relation to the proposed works advising leaseholders of the estimates which had received in respect of the proposed works (at p.74-76). The letter made no reference to the tenants being liable for any professional or management fees or in respect of the proposed works. Mr Ali stated that this letter was sent by recorded delivery on 3 December to Mr

Belay at Flat D; Mr Lambros at Flat C; Mr Exander at Flat B and Ms Okonma at 19 Alice Gilliat Court, W14 9QG. The letter sent to Mr Belay is at p.74-6. The recorded delivery receipt is at p.77. We were provided with copies of the letters sent to the other tenants, together with the recorded delivery slips.

50. Mr Belay denied that he received this notice. Mr Lambros accepted that he had received this letter. Mr Exander accepted that he had been e-mailed a copy of this notice on 5 December 2012 (see p.250).

Stage 4

51. On 17 January 2013, Hexagon served their Notice of Reasons for Awarding the Contract (at p.81-3). Hexagon described how they had accepted the tender from Asghar Building Services because it was the cheapest. Further, they had appeared the more experienced and competent. A number of references had been obtained. Copies of these were provided to the Tribunal. The letter stated that the contract obliged GHCS to issue certificates at the appropriate time and use their professional judgment in so doing. An important part of the certificate was stated to be the financial certificate which stipulated the amount of money due to the contractor. This is not what occurred in practice: Mr Rahman had no involvement in the financial aspects of the contract.

52. At the same time Hexagon also made a demand for payment of £11,994.75. This is described as being "Contribution towards s.20 Major Works". There is no explanation as to how this sum is computed.

53. Under, their leases, each tenant is obliged to pay 25% of any service charge. A tenant could therefore have computed that the total cost of the major works was £47,979. However, this is £5,141 (12%) higher than the tender which Hexagon had stated that it had accepted from Asghar Building Services. It is apparent that the landlord was seeking to recover professional/management fees for which no explanation was provided. This seems to be 10% for fees + VAT.

54. Mr Ali stated that these letters were sent by recorded delivery on 17 January to Mr Belay at Flat D; Mr Lambros at Flat C; Mr Exander at Flat B and Ms Okonma at 19 Alice Gilliat Court, W14 9QG. The letters sent to Mr Belay are at p.81-3. We were provided with copies of the letters sent to the other tenants. Mr Ali states that Hexagon also e-mailed all the consultation letters to Mr Belay on 17 January (see p.85). He had learnt of Mr Belay's e-mail address from an e-mail which Hexagon had received from Mr Exander on 2 January (at p.79) and which had been copied to Mr Belay.

55. Mr Belay denied that he had received these letters. On 18 February, Mr Lambros paid the sum of £11,994.75 which had been demanded. In

April 2013, Mr Exander paid £8,000 towards the sum which had been demanded.

The Tribunal's Decision on Issue 1

56. We are satisfied that the landlord has complied with the consultation requirement. However, there are aspects of the tendering process which we consider further under Issue 2.

57. The substantive issue on the consultation requirements is whether the landlord "gave notice in writing" to the tenants. We accept the evidence of Mr Ali that these were sent by recorded delivery either to the tenant's flat or to an alternative address which had been supplied by the tenant. The evidence that the relevant letters were sent by recorded delivery is convincing. A number of recorded delivery receipts have been provided. Mr Exander was willing to accept that the letters had been sent. Mr Belay was not living at Flat D at the time. He accepted that he had not given the landlord any other correspondence address. We suspect that Mr Lambros was pre-occupied with his forthcoming marriage and did not realise the significance of the notices that he received. It is apparent that he had some engagement with the earlier application to the LVT.

58. One issue causes us greater concern and this is the manner in which the landlord has added professional fees to the sum demanded without any explanation to the tenants. When the demand for payment of the interim service charge was made, the tenants could not ascertain why this sum was 12% higher than they might reasonably expect.

59. Section 20 of the 1985 Act imposes a duty to consult where the "relevant costs" exceed an appropriate amount (s.20(3)). The appropriate amount is where the "relevant contribution of any tenant" is more that £250 (Regulation 6). The phrase "relevant contribution" is defined by s.20(2) as "the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works". The Section is therefore concerned with the total contribution which a tenant may be required to contribute through the service charge in respect of any qualifying works.

60. We are therefore satisfied that at Stage 3, the tenants were entitled to be notified of the total contribution which they might be required to make. If the landlord intended to add any professional or management fees, he should have notified the tenants of the contribution that they would be required to make. In the current case, they were not. We are satisfied that this is relevant to the total sums that they are now required to contribute.

Issue 2 – The Sums Reasonably Incurred and Payable in respect of the Major Works

61. In considering this issue, the starting point is the Schedule of Works (at p.91-9) and the tender submitted by Asghar Building Services. We note the following:

(i) There were a number of provisional sums included by the Surveyor.

(ii) A number of items were priced by Asghar Building Services as provisional sums.

(iii) Two items at [3.2.11] and [3.7.4.] which had been priced by Asghar Building Services with typed figures inserted, appear to have been amended by the insertion of hand written sums. Mr Ali stated that these sums were amended after tenders had been returned following his assessment of the process and discussions with the contractor.

(iv) An arithmetical check of the process set out in the tender submitted by Asghar Building Services reveal the following errors:

(a) The original sums within the submitted tender total £40,038.14.

(b) Within the total of Provisional Sums stated by Asghar Building Services as £11,550, the contractor has included the sum of £3,700 for [3.1.9] which was for an alternative roof covering specification. This sum should not have been included in the tender figure.

(c) Asghar Building Services stated a tender total of £42,838.39.

(v) In assessing the tender submission, Hexagon failed to follow accepted industry practice which include:

(a) Tenders should be arithmetically checked to ensure that there are no errors;

(b) Contractor's Provisional Sums should be checked.

(c) Contractors should be notified of any error/discrepancies and invited to stand by their tender or withdraw.

(b) Only minor arithmetical errors should be open to correction.

62. It is clear that Hexagon did not follow the normal procedures. Mr Ali described how discussions were held with Asghar Building Services regarding pricing which resulted in amendments being made to their original submission, for example to [3.2.11] (£250 amended to £2,000) and [3.7.4] (£572.50 amended to £5,720).

63. The following items in the Specification which should have been priced by the contractor, were rather priced as Provisional Sums: [1.11]; [3.1.5]; [3.1.9]; 4.4.1]; and [4.4.4].

64. The Tribunal are satisfied that had the correct procedures been followed, the tender as submitted by Asghar Building Services would have been £40,038.14. This figure allows for the inclusion of Provisional Sums as priced by the contractor for the items set out above. The Tribunal adopts this sum of £40,038.14 in assessing the reasonableness of the contract for the major works. This sum does not include any professional or management fees.

65. As we have already discussed, Hexagon did not administer the contract in line with good industry practice. Further they did not follow the practice as outlined in their Stage 4 letter of 17 January 2013, namely that Mr Rahman, of GHCS, would carry out the role of "monitoring officer". At [3] of his statement (at p.380), Mr Rahman describes this role as undertaking regular inspections, reporting any variations and possible delays. Hexagon, through Mr Ali, acted as contract administrator quantifying the variations and adjusting prices accordingly.

66. During the course of the works, between April and August 2013, Mr Rahman issued 27 Variation Orders, copies of which are included at p.341-374. The Variation orders were signed by Mr Rahman as "Inspecting Surveyor" and passed to Hexagon who then inserted the financial implications, and signed the order together with Mr Asghar. At irregular intervals, Hexagon issued a letter/payment certificate to Asghar Building Services enclosing the Variation Order and stating the payment which was to be made.

67. Mr Exander pointed out that a number of variations were approved by Mr Rahman after Hexagon had approved the payment. Thus a payment of £1,320.50 was approved on 5 July 2013 which included a variation to item [3.3.1] (see p.350). Mr Rahman did not approve this variation until 22 July (see p.355). Payment was approved for variation to item [3.4.2] on 5 July; Mr Rahman did not approve this variation until 22 July (see p.357). Payment was approved for variation to item [3.1.1] on 26 June; Mr Rahman did not approve this variation until 22 July (see p.356).

68. Apart from being an unusual method of administering a contract, it also involved a number of "advance payments". For example, VO No.1 (at p,

342) issued at the commencement of the works stated that the Contractor should arrange his own water and electrical supplies and this was priced at £2,500. Mr Ali stated that the Contractor used a generator to provide power. By paying the Contractor this large sum at the start of the works, rather than spread throughout the period of the contract, Hexagon was making in effect an "upfront" or advance payment.

69. Payments were made to Asghar Building Services on the basis of letter/payment certificates. Asghar Building Services submitted no invoices during the course of the works. The only letter which Mr Ali was able to produce at the request of the Tribunal was one dated 16 September 2013 confirming moneys received for the works in the sum of £29,803.29. Mr Ali confirmed in his first witness statement ([8] at p.16) that Asghar Building Services were not registered for VAT.

70. On the first day of the hearing, The Tribunal asked Mr Ali to provide a Final Statement of Account for the works. On the second day, he apologised that he had left the papers at home. He was subsequently able to retrieve them and provide copies to the tribunal and the Respondents.

71. This document, headed "Final Account Summary for Major Works" did not specify the final cost. We calculated that the total cost was £31.018.14, of which £29,803.29 has been paid to Asghar Building Services. There has thus been a retention of 2.5%.

72. Attached to this summary is a page, incorrectly, headed "Variation Account Summary". The sums used in these summaries are those set out in the Specification. Mr Ali has accepted that there are errors with some of the sums set out in the Variation order.

73. The Tribunal are satisfied that we should assess the reasonableness of the costs incurred against the assessment of the sums set out in the original Tender. This schedule is based on those sums:

Variation Order	Omit	Add
1	nil	2,500
2	1,200	nil
3	2,800	nil
4	4,137.50	nil

5	450	nil
6	650	88
7		3,510
8	312.50 150.63	nil nil
9	500	688.45
10	70 156	63
11	162.50	1,127.55
12	No adjustment made as reference to spec. seems to be incorrect	
13	252.50	152.50
14	74.75	669.60
15	375	335
16	1512.50	Nil
17	375	112.50
18	900	265 (work to clean carpet)
19	250	nil
20	379.76	nil

	300	(light fittings)
21	500 1,000	Nil
22	168.89	135.11 172.53
23	89.36	Nil
24	nil	175.20
25	200	Nil
26	8,750	4,250
27	3,000	500 65
Total	**£28,716.89**	**£14,809.44**

74. Using these figures, the Final Account Summary results in the following:

Original Tender Sums as assessed by the Tribunal	£40,038.14
Less omissions as set out in Variation Orders	-28,716.89
Plus Additions as set out in Variation orders	+14,809.44
Total:	**£26,130.69**

The Tribunal are satisfied that this sum of £26,130.69 is the sum that is payable subject to the further assessment of reasonableness. This does not include the additional sums for which the landlord has sought to claim for GCHS's professional fees (6% + VAT) and Hexagon's management fee (5% + VAT). We consider these fees hereafter.

75. The Tribunal are satisfied that a number of the costs of the works undertaken that have been agreed by Hexagon are manifestly unreasonable. We give the following examples:

(i) VO1 – Water and Electricity Supplies: It was initially proposed that the contractor would negotiate supplies with a tenant and that the works would take 12-14 weeks (see p.89). On 24 April, the contractor was rather instructed not to utilise a supply from a tenant, and £2,500 was approved for him to provide his own supply (p.342). We are satisfied that a supply could have been negotiated with a tenant for some 10% of this, namely £250.

(ii) VO11 – Removal of Fascias and Soffits: £1,127.25 (p.355). The front and half flank elevation have the original plaster cornicing. This has not been replastered. We reduce this to £845.44 (by 25%)

(iii) VO 18 – Thoroughly wash carpet: £265 (p.363). When we inspected, the carpet was filthy. Paint had been left on it. This should be omitted entirely.

(iv) VO 26: New Entrance door, side lights and roof lantern: £4,250 (p.373). The landlord has installed a standard door which has been fitted poorly. This sum is manifestly excessive for the work that we saw. We assess a sum of £1,250.

76. The Tribunal concludes that the cost of the major works are unreasonable for the following reasons:

(i) The Specification for the Works was not properly prepared.

(ii) The procurement process and the management of the building works was flawed with separate Surveyor and Contractor Administrators appointed leading to excessive costs.

(iii) Failure to follow standard procedures in respect of assessing tenders submitted and engaging in negotiations with the contractor on the pricing of items.

(iv) Poor selection of contractor as the workmanship is poor and their administration (e.g. the lack of invoices) nonexistent.

77. Given the general poor workmanship evident, the Tribunal is satisfied that there should be a further reduction of 33% for all other items. We therefore find that the following sum is payable in respect of the major works:

Tribunal's Assessment of Total Costs as per original tender (see para 73 above)	£26,130.69
Reductions set out in para 74 above	5,796.81
	20,333.88
Reduction of 33% in respect of the poor quality of the work	6,710.18
Total Payable:	**£13,623.70**

78. The final issue for us to consider is the additional sums which the landlord has sought to claim for GCHS's professional fees (6% + VAT) and Hexagon's management fee (5% + VAT). This seems to be 1% more than was claimed initially (see para 53 above). We have already found (at para 59 that if the landlord intended to add any professional or management fees to "the relevant contribution" that the tenants would be required to make towards the major works, he should have specified this in the Stage 3 Notice. The landlord failed to do so. We are therefore satisfied that these fees are not recoverable.

79. If we are wrong on this, we would have reduced by fees by 50% allowing 3% + VAT for GCHS and 2.5% + VAT for Hexagon. We are satisfied that the poor administration of these works justify these reductions.

The Administration Fees

80. The Applicant claims a total of £186 against Mr Belay in respect of chaser letters dated 19 July 2012 (£48 at p.141); 18 October 2012 (£48 at p.147) and 31 October 2012 (£90 at p.153). This relates to a demand

dated 8 May 2012 for service charges of £444.78. We do not have a copy of that demand.

81. Ms Louis relies on clause 2(3)(1)(e) in respect of this claim (at p.31). This permits the landlord to recover the costs and expenses incurred by the landlord in employing managing agents and charge this to the service charge account. We are satisfied that she should rather rely on Clause 2(17) which permits the landlord to recover against the individual tenant the costs incidental to the preparation of a section 146 Notice (at p.36).

82. We turn to the sums claimed. We are satisfied that £48 is excessive for a first chaser letter. This is no more than a standard template. We allow £15. We take the same view in respect of the second chaser letter and allow a further £15. £90 is claimed for the third chaser letter. Ms Louis told us that this higher sum was necessary as the landlord needed to instruct solicitors. There is no evidence that the landlord did so. In any event, we note from the Solicitor's Schedule of Costs with which we were provided at the hearing, that the Solicitors would only have charged £16 had they sent a letter. Again, this is no more than a standard letter and we allow a further £15. The Tribunal therefore reduces the claim for administration charges from £186 to £45.

Further Matters

83. In his statement, Mr Belay raises two further matters. He complains that the time given for consultation was inadequate. We are satisfied that the landlord complied with the statutory time limits. Secondly, he objects to the costs being distributed equally between the four tenants. The 25% contribution is specified in his lease.

Application under s.20C and Refund of Fees

84. The Directions of 9 September 2013 noted that the tenants are making an application for an order under section 20C of the 1985 Act. We have recorded our concerns about the manner in which this contract was managed. We have made a significant reduction in the sums sought by the landlord against the tenants. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in all the circumstances for an order to be made under section 20C of the 1985 Act, so that the Applicant may not pass any of its costs incurred in connection with the proceedings before the Tribunal through the service charge.

85. At the end of the hearing, the Applicant made an application under Regulation 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 for a refund of the fees that he has paid in respect

of the application/hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondents to refund any fees paid by the Applicant.

86. Either party has the right to appeal to the Upper Tribunal (Lands Chamber) (s.175 Commonhold and Leasehold Reform Act 2002). Permission to appeal is required which should initially be sought from this Tribunal.

Robert Latham

Tribunal Judge

5 December 2013

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 20 - Consultation Requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section *"relevant contribution"*, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

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 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.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Regulation 13

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.