12324

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AC/LSC/2016/0431**
Property	:	**Flats 1 – 50 Vernon Court Hendon Way, London NW2 2PD**
Applicant	:	**Various Leaseholders at Vernon Court – as per application as amended**
Representative	:	**Integrity Block Management Ltd**
Respondent	:	**Brencastle Management (Vernon Court) Limited**
Representative	:	**Comptons Solicitors**
Type of application	:	**(1) For the determination of the reasonableness of and the liability to pay a service charge** **(2) To dispense with the requirement to consult lessees about major works/ a long term agreement**
Tribunal members	:	**Judge Carr** **Kevin Ridgeway MRICS**
Venue	:	**10 Alfred Place, London WC1E 7LR**
Date of decision	:	**10th August 2017**

DECISION

Decisions of the tribunal

(1) The tribunal determines that the service charges in relation to replacement of entry doors, the door entry system and the installation at Mag Locks is reasonable and payable by the Applicants.

(2) The sums payable by the Applicants in connection with the entry system totals £13,350, for Mag Locks etc total sum of £3,663.20 and for the replacement doors, £19,316.64. The amount payable by each individual Applicant can be ascertained from the attached spreadsheet [at appendices A, B & C. These have been amended in manuscript to correctly reflect the tenants that are a party to this application as agreed by both parties.

(3) The tribunal makes the determinations as set out under the various headings in this Decision.

(4) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicants in respect of the service charge years 2015 and 2016.

2. In connection with the Application the Respondent made an application under section 20ZA of the Act for dispensation from consultation. .

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

The hearing

4. The Applicants were represented by Mr Paul Simon of Integrity and he was accompanied at the first day of the hearing by Mr Laurence Freilich Managing Director of Moreland Estate Management. The Respondents were represented by Mr Andrew Kasriel of Counsel instructed by Comptons Solicitors. Various of the Applicant Lessees attended one or other day of the hearing. A full list of the Applicants is attached to their statement of case at Annex 1.

5. The Application was originally listed for the 4th April 2017 when it was adjourned, part heard until 14th June 2017. Directions were issued on 27th April 2017.

The background

6. The property which is the subject of this application is a large inter war residential block of flats at Vernon Court London NW2. The property is arranged as four contiguous blocks facing the Hendon Way, a busy London thoroughfare. Each block has its own front entrance, staircase and lift. The front of the building is comprised of what were once substantial gardens which over the years have been assumed into Hendon Way. The façade of the property is attractive. On inspection the tribunal noted that the lifts were the small old fashioned lifts that were typical of the period. There is a total of 50 flats across the four blocks, including the former porter's flat, Flat 1, the entrance to which is at the side of block.

7. The tribunal inspected the property before the second day of the hearing in the presence of Mr Simon and Mr Kasriel. The description of the property above draws upon observations at the inspection.

8. The Applicants hold long leases of the property which require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease and will be referred to below, where appropriate.

9. The Respondent is the management company named in the leases of the flats at the property. The Respondent is a mutual company limited by guarantee, limited to a contribution of £1.00 per member. Counsel for the Respondent points out in his skeleton argument – and the Tribunal considers that it is relevant - that the Respondent does not hold funds other than on trust for the lessees and does not retain profits for itself. It is non-trading and its accounts are those of a dormant company. Further its directors are not remunerated, giving their services voluntarily. The Respondent has for many years engaged the services of professional managing agents to carry out the Managers; duties under the leases, and has relied on them to perform the management duties reasonably and correctly.

10. A particular issue was raised in connection with the contribution to service charges paid by Flat 1, the former porter's flat. The lessee has been contributing, but the lease of Flat 1 provides for a 0% contribution. It was agreed between the parties that the matter fell outside of the application before the Tribunal and would be resolved separately.

The issues

11. The Directions of 27th April 2017, which were agreed with the parties identified the relevant issues for determination as follows:

(i) The payability and/or reasonableness of service charges for service charge years 2015 and 2016 relating to works to the front entrances to the blocks, more particularly

(a) (charged in 2015) the replacement of the front entrance doors of each of the four blocks

(b) (charged in 2016) the replacement of mag-locks on the front entrance doors of the four blocks that comprise Flats 1 – 50 at Vernon court; and

(c) (charged in 2016) the replacement of the buzzer-entry door system at the front entrance of the four blocks

(ii) The particular issues the Tribunal is asked to decide are as follows:

a. Whether the Respondent was entitled to charge the relevant costs as a service charge under the terms of the flat leases;

b. If the Tribunal's decision in 9 (ii) a above is in the affirmative, whether the Respondent carried out statutory consultation pursuant to Section 20 of the Act ('the statutory consultation') in respect of each s hem of work;

c. Contingent upon the Tribunal's determination of 9(ii)b above, in the negative, whether the Respondent is entitled to dispensation from consultation for any or all schemes of work; and

d. Contingent upon the Tribunal's determination of 9(ii)a and 9(ii)b above and subject to the Tribunal's decision in 9(ii)c above, the amount chargeable by way of service charges, in respect of the costs of each scheme of works; or

e. If the Tribunal's determination of 9(ii)a above is negative, then, similarly, the amount so chargeable.

12. Having heard evidence and submissions from the parties and considered all of the documents provided, the tribunal has made determinations on the various issues as follows.

The scope of the covenant to repair

The arguments of the Applicants

13. The Applicants argue that, in relation to the works to and replacement of the doors, including the Mag locks and door entry system, those works fall outside of the terms of the lease and therefore they ought to be entitled to a refund of their pro-rata share of the Replacement costs.

14. They refer the Tribunal to clause 6(a) of the Lease which provides

To maintain and keep in good and substantial repair and condition (i) the main structure of the building including the principal internal timbers and the exterior walls and any other structural walls and the foundations and the roof thereof with its main water tanks, main drains, gutters and rain water pipes (other than those included in this demise or the demise of any other flat in the building) (ii) all such gas and water mains and pipes drains waste water and sewage ducts and electric cables and wires as may by virtue of the terms of this lease be enjoyed or used by the lessees in common with the owners or tenants of the other flats in the building (iii) the common parts (iv) the boundary walls and fences of the building (v) the flat or flats or accommodation whether in the building or not occupied or used by any caretakers porters maintenance staff or other persons employed by the managers in accordance with the provisions of sub clause (e) of this clause (vi) all other parts of the building not included in the foregoing subparagraphs (i) to (v) and not included in this demise or the demise of any other flat or other part of the building

15. The Applicants do not believe that the replacement of the doors falls within the scope of the Respondent's covenant 'to maintain and keep in good and substantial repair and condition'.

16. The Applicants believe that the original doors did not need to be replaced and the Applicants further believe that it would have been sufficient to repair the damage (if any) to one or more of the original doors without replacement.

17. In the alternative, the Applicant argues that even if one of the original doors needed replacing, that did not justify replacing all of the doors.

18. The Applicants believe that the Replacement was an improvement and the Applicants further believe that improvements are outside of the scope of the Respondent's obligations under the lease.

19. The Applicants believe that the Respondent's decision to fund the replacement doors with monies demanded and paid by way of leaseholders contributions amounts to a breach of the Respondent's fiduciary duties as trustee of the contributions under section 42 of the Landlord and Tenant Act 1987 and the Applicants further believe that the Respondent had no authority to spend those funds because it failed to consult

Respondent's argument

20. The Respondent's argument is that replacement of the doors is a form of repair and may be used where appropriate, even if it entails a measure of improvement. The actual words in clause 6(a), 'to maintain and keep in good substantial repair and condition' the Respondent argues should be construed to include replacement and in some cases improvement, for example where items are worn out. The Respondent argues that there could not, logically be a legal principle that all forms of replacement are excluded simply by virtue of an interpretation of the word 'repair to mean that new items cannot be supplied.

21. The Respondent points out that Vernon Court is over 80 years old and inevitably items such as boilers, lift machinery, rusted metalwork rotted timber and joiner will have had to be replaced. Once replaced the new items may be superior, more suitable or more up to date in design.

22. The Respondent refers to a number of cases where the courts have held that replacement of existing with new amounts to repair, and they go further and allow that an element of improvement does not preclude such work from being works of repair.

23. In the most recent case cited by Counsel, London Borough of Hounslow v Waaler [20017]EWCA Civ 45 (02 February 2017) the Court of Appeal considered the elements of repair as against improvements in the context of replacement of windows and cladding to a higher standard than previously installed at the premises. In his judgment, Lord Justice Lewison reviewed the various authorities and set out seven propositions that he described as uncontroversial in the context of contract liability, and with which Lord Justice Burnett and Lord Justice Patten agreed. These are

    (i) The concept of repair takes as its starting point the proposition that that which is to be repaired is in a physical condition worse than that in which it was at some earlier time:

    (ii) Where the deterioration is the product of an inherent defect in the design or construction of the

building the carrying out of works to eradicate that defect may be repair

(iii) Prophylactic measures taken to avoid the recurrence of the deterioration may also be repair

(iv) In principle where there is a choice of methods of carrying out repair, the choice is that of the covenanter provided that the choice is a reasonable one

(v) At common law there is no bright line division between what is a repair and what is an improvement

(vi) The use of better materials or the carrying out of additional work required by building regulations or in order to confirm with good practice does not preclude works from being works of repair

(vii) Where a defect in a building needs to be rectified the scheme of works carried out to rectify it may be partly repair and partly improvement.

24. Lord Justice Lewison made it clear that it remains for the Tribunal to decide whether the landlord's decision was a reasonable one, according the landlord, what, in other contexts is described as a margin of appreciation.

25. Therefore the Respondent argues that what was done in this particular case was wholly within the description of repairs, as enunciated. Further the Respondent argues that the is case is not one which could be described as partly repair and partly improvement.

26. The Respondent addressed the particular circumstances of the case in support of the decision for replacement. In connection with the replacement of the main entrance doors the Respondent points to the evidence of the London Door Company that the two sets of doors and frame were beyond economical repair, the managing agent in 2014, Trust, also considered that the door to block 26 – 50 had to be replaced as no repair was going to work. Moreover all of the doors were old and weak, and there was a need to provide equivalent security to resist vandalism and forced entry in circumstances where there and been a number of break-ins to the flats, it was reasonable to negotiate with LDC on the durability and costs for similar sets of doors to be provided throughout. There was also the added consideration that, matching sets of doors should preferably be used on all four main entrances to the building for a consistent appearance.

27. Overall the Respondent argues that the decision to replace all of the doors was a reasonable decision arrived at after careful consideration of alternatives with both the financial and security interests of all leaseholders in mind.

28. In connection with the installation of the Mag locks, the Respondent states that the previous Mag-Locks were carefully removed from the original main entrance doors when they were being replaced and were refitted to the new doors in 2015. Unfortunately the old locks did not work efficiently on the new doors. As a result the Respondents were advised, and decided to have them replaced. In these circumstances the replacement of the Mag locks was reasonable, particularly as servicing and maintenance of the existing items was no longer feasible.

29. In connection with the door entry systems, there had been some form of audio-door entry system controlling access to the building for some time and its installation was anticipated in the covenants of the lease. Door entry systems deteriorate with normal wear and tear and will require replacement from time to time and there is some suggestion that there was some damage as a result of vandalism. The Respondents argument is that the system was due to be replaced as a matter of urgency. In order to save costs it was arranged that a new system would be installed that could operate using the existing wiring as far as possible.

30. Statutory consultation was carried out by the then managing agents notifying the intention to replace the door entry systems and no objection was then raised by leaseholders asserting that they ought to be repaired by some other means without replacement or any other objection.

31. In response to the argument about the Respondent's fiduciary duty or breach of trust, the Respondent denies any such breach. The Respondent acted in good faith and in what it perceived to be the best interest of the leaseholders.

The tribunal's decision

32. The tribunal determines that all of the works carried out and challenged by the Applicants fall within the relevant covenant of the lease and that therefore the monies are payable (subject to determinations on consultation requirements set out below) and that there has been no breach of fiduciary duties

Reasons for the tribunal's decision

33. The tribunal accepts the arguments of the Respondent. In particular it is persuaded by the cases cited.

34. Such an interpretation of the lease is in the long run to the advantage of lessees as it ensures not only that the covenants in the lease remain workable but also that the property remains in an up to date and effective condition and remains marketable.

Requirement to consult on the replacement doors, the entry system and the maglocks

The Applicants' argument

35. The Applicants argue that as the total cost of replacement of the doors is £19,316.64 and the threshold for consultation is £8,710.81 a consultation exercise was required by the statute.

36. The Applicant further argues that the costs of replacement of the door entry system and the maglocks was £19,235.70 and that therefore a consultation exercise was required.

37. The Applicant argues that there was a wilful failure to consult.

The Respondent's argument

38. The Respondent argues that there was partial compliance with the provisions of s. 20, that part of the work did not actually fall within the ambit of s.20 and to, the extent that there was a failure of compliance, the Respondent seeks relief by way of Dispensation under s.20ZA.

39. The Respondent disputes the Applicants' arithmetical approach in that they seek an aggregate refund of all moneys over the aggregate threshold. This totals £9,144.84 on the doors, and £9,063.95 on the Door Entry phone system combined with the earlier Mag Locks.

40. The Respondent argues that on a true construction of the subsections if a given tenant would otherwise have to pay more than £250 and only then, the limitation requirement simply operates to cap the amount payable by him or her at £250.00

41. Further the Respondent argues that the Applicants have inappropriately included in their claims a number of smaller invoices for additional costs incurred, which arose during the course of or after the relevant major works item was undertaken. These, the Respondent argues, were all for extra requirements, or unforeseeable circumstances encountered and as such could not have been included at the

consultation stage. The Respondent's case is that the Applicants' claim should be expressed in terms of the original contract sum as follows:

(i) 4 sets of Street Entrance Doors - £19,316.64 (including kick plates)

(ii) Mag Locks - £3,663.20

(iii) Door Entry phone systems - £13,350.00

42. The Respondent also argues that it is wrong to aggregate the consultation requirements in respect of separate items of work combining the costs of the replacement Mag Locks with the costs of the replacement Door Entry phone system ordered and carried out between June and September 2016.

43. The Respondent also argues that the Applicants are mistaken in making an aggregate claim for refund of a balance due to lessees. The application refers only to those lessees who have confirmed their participation in the Application.

44. The Respondent prepared an amended calculation in spreadsheet form. This spreadsheet was further amended at the conclusion of the hearing and is attached to the decision with manuscript amendments to the total potential reductions.

45. The explanation for the organisation and calculations on the spreadsheet is set out in Counsel's skeleton argument.

46. The Respondent makes the following points in relation to the consultation process. By way of background the Respondent explained that there had been a number of changes of managing agent. However notwithstanding the changes there have been several letters and notices set to al lessees by the relevant agents at the time with reference to the prescribed statutory consultation procedure.

47. In respect of the consultation on street entrance doors, in June 2013 Trust Property Management began the s.20 consultation process for both external and internal repair and maintenance work by letter dated 17th June 2013, which the Respondent states is an adequate 1st stage notice. At the same time Trust Property also sent lessees their improvement in security letter intimating that Mag locks were to be installed immediately. By the letter of 8th May 2014 Trust Property Management reissued their previous 1st stage s.20 consultation but now confined to external repairs and redecorations. This was based upon a specification of works dated May 2014 drawn up by Glenny LLP. The Schedule of work referred at item 3.1.13 to repair and ease and adjust entrance doors. In the event after further vandalism and general

deterioration and the complete failure of one set of doors, this Schedule Item was evidently upgraded to include complete replacement rather than repair. In their letter dated 9th July 2014 Trust Property Management issued their 2nd stage 20 consultation in respect of the proposed external repairs and redecorations.

48. In its letter of 24th November 2014 Trust Property Management notified a change of proposed contractor, in the light of late receipt of another tender for the works at a lower price. In the absence of any comment from lessees it was recommend by Trust Property Management that this contract be appointed without further consultation.

49. The Respondent argues, and this goes to the dispensation application, that this decision was in the lessees; interest and they could not be regarded as having been prejudiced by it.

50. There appears to have been a further retender carried out by Trust Property Management during February - March 2015 which resulted in the receipt of a quotation from Prolek Projects Ltd at £161,056.35, being some £11,700 less than the previous lowest tender. Trust went ahead to place the external repairs and recordation contract with Prolek.

51. The Respondent argues that the considerable savings made by successive re-tendering more than covered the costs for the replacement Street Entrance Doors ordered in January- February 2015.

52. The Respondent also refers to a number of complaints sent by email from various lessees, including some of the Applicants during the period September 2014 – March 2015. The complaints explain, doors being kicked in and/or vandalised, total lack of security, squatters/trespassers accessing staircases and going onto the roofs, the necessity for stronger, reinforced doors with better locks.

53. The Respondent argues that in response it was reasonable to permit a contract variation, for the repair easing and adjustment of the exiting doors to be increased to allow for comprehensive replacement of the defective doors and frames. Moreover for economy of scale and to obtain a discount it was reasonable to order all four sets of replacement doors to be carried out in one contract rather than dealing with these piecemeal.

54. The Respondent therefore asks the Tribunal to accept that no further consultation was required under the Act in that this was in the nature of a variation to the Schedule of Works. The Respondent argues further, or in the alternative, that this is a case that falls within the provisions of s.20ZA of the Act in that at the time the decision was taken in February

2015 and in the light of the emergency repairs required, it was reasonable to dispense with the outstanding requirements of consultation on the grounds that it was necessary as the repairs were in the nature of emergency repairs, and the lessees were not financially prejudiced.

55. In connection with consultation on door entry phone system the letter from Trust Property Management of 23rd October 2014 constituted the first stage of the s.20 notification in respect of the internal repairs, redecorations and replacement systems, including the Door entry phones. By 11th June 2015 Trust Property Management wrote to update lessees with their intention to further postpone the internal refurbishment works including the replacement door entry phone system, until after the external repair and redecoration works had been completed. The works had not commenced in the autumn of 2014 but were themselves postponed until the spring of 2015, following the re-tendering exercise. As matters developed, the appointment of Trust Property Management ended in October 2015.

56. After Moreland Estate Property Management had been appointed in October 2015 the new managing agent obtained the estimates dated 2nd December 2015 to continue and complete those external repairs which had not been undertaken by Trust Property's previous contractors.

57. By letter of 10th February 2016 Moreland Estate issued their 1st stage s.20 notice in respect of a 2nd round of external repair and redecoration but also incorporated consultation for the replacement Door entry phone system, superseding the notices already issued in 2014 by Trust Property Management.

58. During 2016 the Mag Locks were replaced apparently successfully at a price below the consultation threshold.

59. There were a number of inquiries relating to the Door Entry system made by Moreland Management which are fully set out in the Applicants' bundle. The Respondent argues that it is regrettable to find that there was no conclusive report or recommendation in connection with the Door Entry system from Moreland, there appears to have been consideration by Moreland of the January 2016 Door Entry estimates from AK Locksmiths Ltd, even though Moreland had expressed a preference for using the same contractor for both Mag Locks and the Door Entry. Nor did Moreland issue a 2nd stage consultation with a view to placing an order with the successful contractor. Moreland failed to alert the Respondent in good time to the urgent necessity to embark on consultation or alternatively to treat the matter an emergence. Further Moreland failed to suggest an Application for Dispensation which the Applicants now say should have been done then rather than now.

60. Far from proceeding to the necessary 2nd stage s.20 consultation on the Door Entry phone systems, Moreland actually announced the postponement of the works by letter dated 6th April 2016 while at the same time consulting on the further external redecorations and Repairs. The Respondent considers that Moreland landed the Respondent into the present dispute.

61. No further consultation was instituted by Moreland. Further the existing Door Entry systems were becoming severely defective. Emails were being received from lessees indicating that if the entrance doors were shut they could not be opened by means of the Door Entry release.

62. The Respondent took matters into their own hands. They checked the earlier estimate of 26th January and instructed Moreland to accept it.

63. The Respondent refers to the various estimates in the Applicants bundle to show that there has been no financial prejudice caused to lessees by the peremptory appointment of A.K Locksmiths.

64. It was only when the Respondent had appointed A.K Locksmiths to carry out the work that Moreland warned of the dire consequences of proceeding without adequate consultation. Rather than attempting to postpone matters even further Moreland should long previously have responded to the situation and instituted the 2nd stage consultation. The Respondent argues that when Moreland asked it to accept the decision in the face of the urgency of the situation and do their best to mitigate the risks facing Brencastle, Moreland decided to turn on Brencastle instead and to lead the Applicants into issuing the present Application.

65. The Respondent argues with respect to the Door Entry phone system that although 1st stage s.20 consultation had taken place with regard to the intention to carry out such works, the 2nd stage requirements of s.20 could not be engaged purely owing to the urgency of the situation that had arisen by 25th May 2016. For that reason the Respondent asks the Tribunal to accept its application for dispensation on the basis of the necessity in the nature of emergency repairs and that the lessees were not financially prejudiced.

66. In summary the Respondent argues that the s.20 consultation was sufficient to comply or that no s. 20 consultation was necessary owing the value of the item being below the threshold or where there was deficiency of consultation, the Respondent should be entitled to dispensation under s.20ZA in that it is unjustified by the emergency nature of the work carried out, particularly in the circumstances that there were not financial prejudice to the lessees.

The tribunal's decision

67. The tribunal determines (i) that the calculation of the monies at stake is as explained by the Respondent and set out more fully in the attached spread sheet (ii) that whilst attempts were made by the Respondent to consult there were some omissions in the consultation process that made it defective (iii) that it does not accept that there was a wilful refusal to consult and (iv) it accepts the application to dispense with consultation on the basis of the emergency nature of the works and that no evidence of financial prejudice.

Reasons for the tribunal's decision

68. In connection with (i) the arguments of the Respondent accord with the tribunal's interpretation of the statutory provisions and are therefore accepted. The tribunal also determines that the installation of the Mag Locks was a separate set of works and cannot be amalgamated with other works for the purpose of triggering the consultation proposals.

69. The evidence suggests that there were serious attempts to consult, but the Tribunal accepts that there was no full consultation particularly in connection with the replacement of the door entry system. The Tribunal notes that there was inadequate advice given by the professional managing agent at the time, in particular in connection with the possibility of making a dispensation application.

70. The tribunal accepts the evidence that there was no financial prejudice to the Applicants as a result of consultation failures and that there was an urgent need to carry out the works because of the security lapses in the block (in relation to the works to replace the doors) and the problems caused by the failure of the Door Entry System.

71. In the light of these determinations by the tribunal there is no need for decisions on issues d and e as these issues were contingent upon decisions on a, b and c.

Application under s.20C and refund of fees

72. In the application form the Applicant applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines not to make an order.

73. The tribunal notes that the first day of the hearing was made up of interlocutory applications by the Applicant and in the second day there was extensive cross examination of the Respondent despite the early concession that there had been no consultation about the doors. This led to questioning by the Tribunal of the Applicant as to the purpose of

his questions and to comments from Respondent's Counsel as to filibustering.

Name: Judge Carr **Date:** 10th August 2017

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;
   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

(1) An application may be made to the appropriate 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 the appropriate 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 20

(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 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 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 that tribunal;
- (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
- (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
- (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
- (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
  (a) specified in his lease, nor
  (b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration charge is payable and, if it is, as to—
  (a) the person by whom it is payable,
  (b) the person to whom it is payable,
  (c) the amount which is payable,
  (d) the date at or by which it is payable, and
  (e) the manner in which it is payable.

(2) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which—
  (a) has been agreed or admitted by the tenant,
  (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
  (c) has been the subject of determination by a court, or
  (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
  (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject matter of an application under sub-paragraph (1).

Appendix A - Entry System

Flats 1 - 50, Vernon Court, Hendon Way, London NW2 2PD

Percentage Breakdown of Costs Incurred (Service charge)

Applicants' Flats highlighted in yellow
Subdivision of Costs Incurred

Flat No.	Percentage	2015/16 (Entry System) £13,350.00	If capped to £250 / flat	Potential Reductions
1	0	£0.00	£0.00	
2	2.18	£290.77	£250.00	£40.77
3	1.4	£186.73	£186.73	
Red	2.18	£290.77	£250.00	£40.77
5	1.4	£186.73	£186.73	
6	2.18	£290.77	£250.00	£40.77
7	1.4	£186.73	£186.73	
8	2.18	£290.77	£250.00	£40.77
9	1.4	£186.73	£186.73	
10	1.4	£186.73	£186.73	
11	2.27	£302.77	£250.00	£52.77
12	1.4	£186.73	£186.73	
12A	2.27	£302.77	£250.00	£52.77
14	1.4	£186.73	£186.73	
15	2.27	£302.77	£250.00	£52.77
16	1.4	£186.73	£186.73	
17	2.27	£302.77	£250.00	£52.77
18	2.46	£328.11	£250.00	£78.11
19	2.46	£328.11	£250.00	£78.11
20	2.46	£328.11	£250.00	£78.11
21	2.46	£328.11	£250.00	£78.11
22	2.46	£328.11	£250.00	£78.11
23	2.46	£328.11	£250.00	£78.11
24	2.46	£328.11	£250.00	£78.11
25	2.46	£328.11	£250.00	£78.11
26	2.09	£278.76	£250.00	£28.76
27	1.81	£241.42	£241.42	
28	2.18	£290.77	£250.00	£40.77
29	1.81	£241.42	£241.42	
30	1.97	£262.76	£250.00	£12.76
31	1.97	£262.76	£250.00	£12.76
32	2.09	£278.76	£250.00	£28.76
33	1.97	£262.76	£250.00	£12.76
34	1.81	£241.42	£241.42	
35	2.87	£382.80	£250.00	£132.80
36	1.97	£262.76	£250.00	£12.76
37	1.97	£262.76	£250.00	£12.76
38	2.18	£290.77	£250.00	£40.77
39	2.09	£278.76	£250.00	£28.76
40	2.09	£278.76	£250.00	£28.76
41	1.97	£262.76	£250.00	£12.76
42	1.97	£262.76	£250.00	£12.76
43	Amber 2.09	£278.76	£250.00	£28.76
44	2.09	£278.76	£250.00	£28.76
45	2.09	£278.76	£250.00	£28.76
46	2.09	£278.76	£250.00	£28.76
47	1.97	£262.76	£250.00	£12.76
48	2.09	£278.76	£250.00	£28.76
49	2.09	£278.76	£250.00	£28.76
50	2.09	£278.76	£250.00	£28.76
Total	100.09	£13,350.00	£11,718.11	£1,631.89
			Total (highlighted only)	£441.38

£1,591

£400

Red left
Amber Just Joined
Yellow - already

Appendix B – Mag Locks

Percentage Breakdown of Costs Incurred (Service charge)

Applicants' Flats highlighted in blue
Subdivision of Costs Incurred

2015/16 (Mag Locks etc.) £3,663.20	If capped to £250 / flat	Potential Reductions
£0.00	£0.00	£0.00
£79.79	£79.79	£0.00
£51.24	£51.24	£0.00
£79.79	£79.79	£0.00
£51.24	£51.24	£0.00
£79.79	£79.79	£0.00
£51.24	£51.24	£0.00
£79.79	£79.79	£0.00
£51.24	£51.24	£0.00
£51.24	£51.24	£0.00
£83.08	£83.08	£0.00
£51.24	£51.24	£0.00
£83.08	£83.08	£0.00
£51.24	£51.24	£0.00
£83.08	£83.08	£0.00
£51.24	£51.24	£0.00
£83.08	£83.08	£0.00
£90.03	£90.03	£0.00
£90.03	£90.03	£0.00
£90.03	£90.03	£0.00
£90.03	£90.03	£0.00
£90.03	£90.03	£0.00
£90.03	£90.03	£0.00
£90.03	£90.03	£0.00
£90.03	£90.03	£0.00
£76.49	£76.49	£0.00
£66.24	£66.24	£0.00
£79.79	£79.79	£0.00
£66.24	£66.24	£0.00
£72.10	£72.10	£0.00
£72.10	£72.10	£0.00
£76.49	£76.49	£0.00
£72.10	£72.10	£0.00
£66.24	£66.24	£0.00
£105.04	£105.04	£0.00
£72.10	£72.10	£0.00
£72.10	£72.10	£0.00
£79.79	£79.79	£0.00
£76.49	£76.49	£0.00
£76.49	£76.49	£0.00
£72.10	£72.10	£0.00
£72.10	£72.10	£0.00
£76.49	£76.49	£0.00
£76.49	£76.49	£0.00
£76.49	£76.49	£0.00
£76.49	£76.49	£0.00
£72.10	£72.10	£0.00
£76.49	£76.49	£0.00
£76.49	£76.49	£0.00
£76.49	£76.49	£0.00
£3,663.20	£3,663.20	£0.00
	Total (highlighted only)	£0.00

Appendix C – Doors

70

Percentage Breakdown of Costs Incurred (Service charge)

Applicants' Flats highlighted in green
Subdivision of Costs Incurred

2014/15 (Street Entrance Doors) £19,316.64	If capped to £250 / flat	Potential Reductions
£0.00	£0.00	£0.00
£420.72	£250.00	£170.72
£270.19	£250.00	£20.19
£420.72	£250.00	£170.72
£270.19	£250.00	£20.19
£420.72	£250.00	£170.72
£270.19	£250.00	£20.19
£420.72	£250.00	£170.72
£270.19	£250.00	£20.19
£270.19	£250.00	£20.19
£438.09	£250.00	£188.09
£270.19	£250.00	£20.19
£438.09	£250.00	£188.09
£270.19	£250.00	£20.19
£438.09	£250.00	£188.09
£270.19	£250.00	£20.19
£438.09	£250.00	£188.09
£474.76	£250.00	£224.76
£474.76	£250.00	£224.76
£474.76	£250.00	£224.76
£474.76	£250.00	£224.76
£474.76	£250.00	£224.76
£474.76	£250.00	£224.76
£474.76	£250.00	£224.76
£474.76	£250.00	£224.76
£403.35	£250.00	£153.35
£349.32	£250.00	£99.32
£420.72	£250.00	£170.72
£349.32	£250.00	£99.32
£380.20	£250.00	£130.20
£380.20	£250.00	£130.20
£403.35	£250.00	£153.35
£380.20	£250.00	£130.20
£349.32	£250.00	£99.32
£553.89	£250.00	£303.89
£380.20	£250.00	£130.20
£380.20	£250.00	£130.20
£420.72	£250.00	£170.72
£403.35	£250.00	£153.35
£403.35	£250.00	£153.35
£380.20	£250.00	£130.20
£380.20	£250.00	£130.20
£403.35	£250.00	£153.35
£403.35	£250.00	£153.35 +
£403.35	£250.00	£153.35
£403.35	£250.00	£153.35
£380.20	£250.00	£130.20
£403.35	£250.00	£153.35
£403.35	£250.00	£153.35
£403.35	£250.00	£153.35
£19,316.64	£12,250.00	£7,066.64
		£6,895.22
	Total (highlighted only)	£2,072.74
		£1,902.02