10418

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AP/LSC/2013/0567**
Properties	:	**Dorking Court, 86 Hampden Lane, London N17 0AT and Horsham Court, 17 Lansdowne Road, London N19 0LP**
Original Applicants	:	**Dorking Court RTM Co Ltd** **Horsham Court RTM Co Ltd**
Added Applicants	:	**Janet Dias (Flat 3, Dorking Court)** **Mr Goldberg (4 & 7 DC)** **Tome Ascensao (5 DC)** **Helia Ascensao (6 DC)** **Goldenkey Properties (9 & 15 DC)** **Milebank Investments Ltd (11 DC & 11 & 15 HC)** **Raymond Brown (12 DC)** **Wonder Investments Ltd (13 DC & 5 HC)** **Brian Allcock (14 DC)** **Kenneth Salmon (16 DC)** **Riverdeal Ltd (17 DC)** **David & Beatrice Fischer (18 DC)** **Nikitas Properties Ltd (1 Horsham Court)** **Elaine Brissett (3HC)** **Zenon Piasecki (4 HC)** **Leona Georgiou (7 HC)** **Millstar Investments Ltd (8 & 14 HC)** **Uniview Ltd (9 HC)** **Nicolette Edwards (10 HC)** **Irina Hoble-Aldersley (13 HC)** **Morris Herzog (16 HC)** **Zoaib Sharif (17 HC)** **Paul Steliou (18 HC)**
Representatives	:	**Brethertons solicitors** **Sterling Estates Management Ltd**
Respondent	:	**Paul Hodson Archard**
Representative	:	**BP Collins LLP solicitors**
Respondent to s.20ZA application	:	**Ben See (12 HC)**
Type of Applications	:	**Liability to pay service charges** **Dispensation from consultation requirements**

Date and venue of hearing	:	**3rd, 4th, 5th September and 7th October 2014; 10 Alfred Place, London WC1E 7LR**
Tribunal Members	:	**Judge Nicol** **Mr J Barlow FRICS** **Mrs R Turner JP**
Date of Decision	:	**10th November 2014**

DECISION

Decision of the Tribunal

(1) The service charge demands served for and during 2006-2011 were valid to the extent that they complied with the terms of the leases but were defective and not payable due to the fact that they were not accompanied by Summaries of Rights and Obligations.

(2) The service charge demands served in January 2014 were accompanied by a sufficient Summary of Rights and Obligations.

(3) The service charge demands served for and during 2006-2011 would have fallen foul of section 20B(1) of the Landlord and Tenant Act 1985 but that they were accompanied by statements which were sufficient to stop the 18-month time limit applying in accordance with section 20B(2).

(4) The service charge demands served in January 2014 are payable save to the extent that they exceed the relevant proportion of the expenditure set out in the statements accompanying the previous demands (and subject to any expenditure held not to be reasonable and/or payable otherwise in this decision).

(5) In relation to the service charge year 2011-2012, due to the effect of section 20B(1), costs incurred between 28th September and 14th December 2011 are not recoverable.

(6) Further, the letter of 12th June 2013 constituting the service charge demand for the service charge year 2011-2012 was not valid because it did not comply with the terms of the "new style leases" in that it was not accompanied by a full and fair summary of the service charges.

(7) The Respondent's agreement with Standish Mackintosh Ltd was not a "qualifying long-term agreement" within the meaning of the Landlord and Tenant Act 1985 but his agreement with Paul Simon Seaton Commercial Estate Agents Ltd is.

(8) The Respondent conducted no consultation in relation to his agreement with Paul Simon Seaton Commercial Estate Agents Ltd and the Tribunal has decided it would not be reasonable to dispense with the requirement to do so. Therefore, the amount recoverable from the lessees in relation to their services is limited to £100 per year per flat in accordance with section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003.

(9) Dispensation from the consultation requirements is granted in relation to:-

(a) Works undertaken by M&D Builders in the sum of £5,275 in 2006.

(b) The provision of scaffolding by Yes Scaffolding in the sum of £41,800 in 2011 and 2012.

(c) The works undertaken by Heritage Home Counties Ltd in the sum of £78,720 in 2011 and 2012.

(d) Window works by Lordship Double Glazing in the sum of £7,575 in 2012.

(10) However, the sum of £98,142.90 charged by Standish Mackintosh, Heritage Home Counties and Yes Scaffolding is not payable by the lessees by operation of the right to manage provisions in the Commonhold and Leasehold Reform Act 2002, having been incurred after the right to manage had been acquired in respect of the subject properties.

(11) The Tribunal's determination of the reasonableness and payability of certain charges is set out in the Scott Schedules appended to this decision. The Tribunal finds that the charges included in the demands were reasonable and reasonably incurred, save as conceded by the Respondent or reduced or disallowed for reasons set out below.

(12) An order is made under section 20C of the Landlord and Tenant Act 1985 against the Respondent that his costs of these proceedings may not be added to the service charge.

(13) Mr See's application for a section 20C order against the Applicants is refused.

The Tribunal's Reasons

1. The Respondent is the freehold owner of Dorking and Horsham Courts, two blocks of 18 flats each and associated garages in the Tottenham area of north London. On 17th April 2012 Horsham Court RTM Co Ltd acquired the right to manage Horsham Court in accordance with Chapter 1 of Part 2 to the Commonhold and Leasehold Reform Act 2002. On 14th May 2012 Dorking Court RTM Co Ltd did similarly for Dorking Court.

2. On 8th August 2013 the two RTM companies jointly applied for a determination as to the payability of various service charges allegedly incurred during the 6 years prior to the acquisition of the right to manage. Amongst other matters, the Respondent objected to the standing of the RTM companies to bring such an application. The RTM companies disagreed but, in order to avoid a dispute on the issue, the more expedient route was taken of seeking the addition of some of the lessees as joint applicants. Those who were added are listed in the heading to this decision. The two RTM companies and the added lessees are hereinafter referred to as the Applicants.

Procedural History

3. The application has had an unfortunately long procedural history:-

(a) A case management hearing was listed for 5th September 2013. Neither party attended although some directions were proposed. Judge Goulden issued standard directions.

(b) There were difficulties in complying with the directions of 5th September 2013 so a further case management hearing was listed for 5th November 2013. Both parties attended by legal representatives. Judge Barran issued further directions, replacing the earlier order, with an inspection of the subject properties scheduled for the morning of 26th March 2014 and the hearing for the afternoon and the following day.

(c) The Tribunal duly carried out its inspection on 26th March 2014 but, at the commencement of the hearing, both parties' counsel raised matters which they both felt necessitated adjourning the hearing. One of those matters was that the Respondent now sought dispensation from statutory consultation requirements under section 20ZA of the Landlord and Tenant Act 1985 but no-one had thought to notify all the potential respondents, namely all the lessees of the two subject properties. Therefore, the hearing was adjourned on further directions to 2nd May 2014 with a time estimate of one day. Full details are set out in the Tribunal's order of 26th March 2014.

(d) Unfortunately, the case was still not ready for hearing on 2nd May 2014, there being various problems which could not be resolved or worked around on the day. Both counsel also revised their time estimate to two days plus reading time for the Tribunal. There was discussion as to whether there were any discrete issues that could be dealt with in the remaining time. In due course, the Tribunal decided the issue of whether the Respondent could recover legal costs under the terms of the relevant leases and made yet further directions, with the hearing listed over three days, inclusive of time for the Tribunal's reading before the hearing and deliberations after. Again, full details are set out in the Tribunal's order of 7th May 2014.

(e) On 12th August 2014 the Applicants' solicitors belatedly applied for permission to adduce expert evidence in accordance with rule 19(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules

2013. The Tribunal refused the application by order dated 14th August 2014.

(f) By letters and faxes dated 15th and 18th August 2014 the Applicants' solicitors applied for an adjournment of the upcoming hearing and for a review of the refusal of permission to adduce expert evidence. The Tribunal refused the application by order dated 20th August 2014.

(g) The Tribunal heard the case on 3rd, 4th and 5th September 2014. All the oral evidence was heard but it was not possible for counsel to complete their submissions. A further half-day hearing was set for 7th October 2014 but, in the event, that hearing did not finish until 4pm that day.

The Issues

4. The delay allowed for a degree of refinement of the issues between the parties. The Applicants and the Respondents produced the following joint List of Issues:-

1) Whether valid demands have been issued to those tenants with one of the two types of leases held at the subject properties, termed "old style leases".

2) Whether valid demands have been issued to those tenants with the other type of lease, termed "new style leases".

3) Whether demands were accompanied by the Summary of Rights and Obligations required by section 21B of the Landlord and Tenant Act 1985 and the Service Charges (Summary of Rights and Obligations, and Transitional Provisions) (England) Regulations 2007. This issue is considered below together with the first issue.

4) Whether, in respect of the statutory consultation requirements under section 20 of the Landlord and Tenant Act 1985 and the Service Charges (Consultation Requirements) (England) Regulations 2003:-

4.1 The Respondent's agreement with Standish Mackintosh Ltd, the surveyors instructed in relation to major works in 2010-2012, was a "qualifying long-term agreement".

4.2 The Tribunal should dispense with the statutory consultation requirements in accordance with its power under section 20ZA of the Landlord and Tenant Act 1985 in respect of:

4.2.1 Works undertaken by M&D Builders in the sum of £5,275 in 2006.

4.2.2 The provision of scaffolding by Yes Scaffolding in the sum of £41,800 in 2011 and 2012.

4.2.3 The works undertaken by Heritage Home Counties Ltd in the sum of £78,720 in 2011 and 2012.

4.2.4 Window works by Lordship Double Glazing in the sum of £7,575 in 2012.

5) Whether the Respondent can recover legal costs as a service charge under the terms of the leases – this issue was resolved in the Tribunal's order of 7th May 2014.

6) Whether charges included on the demands have been incurred (relating to missing or alleged duplicate invoices) or have been reasonably incurred (relating, inter alia, to the management fee).

7) Whether the costs of the present proceedings are not to be regarded as relevant costs recoverable under the service charge pursuant to the Applicants' application under section 20C of the Landlord and Tenant Act 1985.

5. Counsel for the Applicants, Mr Armstrong, identified two further issues:-

1) Whether the Respondent can recover or demand any costs after the right to manage vested in the two RTM companies.

2) Whether the Respondent's management agreement with Paul Simon Seaton Commercial Estate Agents Ltd is a "qualifying long-term agreement". This issue is considered below together with issue 4.1.

Witness Evidence

6. The Applicants presented witness evidence from the following:-

(a) Mr See gave oral evidence for the Applicants but also on his own behalf as a respondent to the Respondents' dispensation application.

(b) Mr Antonio Ahmed, director of Sterling Estates Management, appointed by the two RTM companies to manage the subject properties, gave evidence orally and in a witness statement dated 28th August 2014.

(c) Lessees were asked to put their names to a standard form witness statement which asserted that the estate was not maintained in a proper or reasonable manner prior to the acquisition of the right to manage and that service charges had not been demanded properly and were excessive and unreasonable. Some lessees responded with their own comments or additional evidence: Ms Irinia Hoble (Flat 13, Horsham Court), Ms Nicolette Edwards (Flat 10, Horsham Court), Ms Janet Dias (Flat 3, Dorking Court) and Mr D and Mrs B Fischer (Flat 18, Dorking Court). Three others, Nikitas Properties Ltd (Flat 1, Horsham Court), Ms Helia Ascensao (Flat 6, Dorking Court) and Mr Tome Ascensao (Flat 5, Dorking Court) responded just by signing the letter. None were presented for cross-examination.

7. The Respondent presented witness evidence from the following:-

(a) The Respondent himself gave evidence orally and in a witness statement dated 14th February 2014.

(b) Mr Nicholas Seaton, director of Paul Simon Seaton Commercial Estate Agents Ltd ("**PSS**"), appointed by the Respondent to manage the subject properties in 2005, gave evidence orally and in two witness statements dated 14th February and 27th August 2014.

(c) Mr Michael Durham, director of Standish Mackintosh Ltd, appointed by the Respondent to supervise major works in 2010-2012, gave

evidence in two witness statements dated 17th February and 2nd September 2014. He was not made available for cross-examination.

(d) Ms Sarah McLoughlin, a senior associate at the Respondent's solicitors, BP Collins LLP, gave evidence in a witness statement dated 25th March 2014 as to service of invoices, demands and prescribed information in January 2014.

(e) Ms Gemma Hunter, a solicitor at BP Collins, gave evidence in a witness statement dated 24th April 2014 as to the sending of correspondence to the lessees in April 2014.

The Properties

8. The two subject blocks are each arranged over three floors and have three entrances, some of which have entryphones, leading to stairwells providing access to the floors above. There are some garages next to Dorking Court. There is a large paved communal area between the two blocks. Horsham Court has a pitched roof, apparently installed in 1999, and Dorking Court has a flat roof, replaced in 2012. While some of the flats appear to retain their original windows, some have clearly been replaced at different times.

9. It was apparent from the Tribunal's inspection on 26th March 2014 and various photos presented by both parties that both blocks and the area in between are and have been in poor condition for a long time. The external decorations are poor, with peeling paint on windows and doors. There are meter cupboards attached to the external walls in varying states of disrepair. The area between the blocks is uneven, strewn with small bits of rubble and some litter, some retaining walls are distorted and the few areas with vegetation are uncultivated. The communal stairwells are worn and substantially overdue for redecoration. Stair treads are worn and some have broken away. There are missing panels to areas where pipes are boxed in, some exposing possible asbestos.

10. The Respondent and his agent, Mr Seaton, put the blame for the condition of the subject properties squarely on the difficulties of managing them. It was alleged that many lessees did not pay their service charges. Many of the properties are sub-let, some in arrangements with the local housing authority for emergency accommodation for otherwise homeless people. The Respondent asserted that such people did not take the same pride or care in their surroundings as resident lessees so that they caused or allowed damage to occur.

11. For the Applicants, the inability of the Respondent and his managing agents to bring about the standards they hope and expect in the management of the subject properties was their principal motivation for acquiring the right to manage. The current managing agents, Sterling Estates Management, have been conducting consultation for

pending major works in an attempt to address at least some of the Applicants' ongoing concerns.

Whether valid demands have been issued to tenants with "old style leases".

12. Service charge demands were sent to lessees for the years 2006-2011 in the form shown at pages 995-1211 of the hearing bundle. For the year 2012 the Respondent relies on a letter before action dated 12th June 2013 served on all lessees by his solicitors, BP Collins.

13. The Applicants accept that the "old style" leases had no formal requirements so that these demands complied with those leases. It had been argued that a demand was invalid if the amount sought was wrong or wrongly apportioned but this point had been abandoned by the time of the final hearing.

14. However, the Applicants disputed that the demands other than the letter of 12th June 2013 had been accompanied by the Summary of Rights and Obligations required under section 21B of the Landlord and Tenant Act 1985 until they were re-served in January 2014 as described in her witness statement by Ms McLoughlin. The Applicants relied on the following evidence:

(a) Mr See gave live evidence that demands he received had not been accompanied by the Summary.

(b) Ms Hoble complained in her written evidence that invoicing had been "piecemeal" with demands only served in one year since 2008, although she does not specifically mention the Summary.

(c) The standard form witness statements of Ms Edwards, Ms Dias, Mr D and Mrs Fischer, Nikitas Properties Ltd, Ms Ascensao and Mr Ascensao asserted that demands have never been "in accordance with statutory requirements" without identifying which requirements were being referred to.

(d) Lessees were asked to provide documents for the Tribunal application. Copies of demands which were provided to the Applicants' representatives were not accompanied by the Summary which would have been expected, in at least some cases, if that is how they had originally been served.

15. The Respondent had no documentary evidence that the Summary had accompanied any demands. Unlike some agents, PSS did not print the Summary on the reverse of the demands. Instead, Mr Seaton told the Tribunal it was his firm's practice for the member of staff responsible for stuffing the envelopes with the demands to have copies of the Summary which should be put in alongside the demands. He did not directly supervise this activity.

16. The Tribunal was concerned that PSS do not appear to give due respect to the value of conducting their business in a formal manner. For example, the Respondent employed PSS purely on a handshake, without any formal retainer or contract, as referred to further below.

An experienced and professional agent would know that such informality carries significant risks but that is the way PSS conducted themselves. It is not too much of a stretch to think that members of staff did not attach sufficient importance to ensuring demands were accompanied by the Summary.

17. Further, it is possible that members of PSS staff made mistakes. The Applicants relied for a number of purposes on the fact that invoices were missing in relation to much of the alleged expenditure. The Respondent has been able to rely on other evidence, such as cheque stubs, that the money was actually spent but it does not speak well of PSS office procedures that the invoices were unavailable in the first place. Mr Seaton said that he thought his office retained electronic copies of relevant invoices but his staff were unable to access them due to IT problems. He himself admitted that this also did not reflect well on the efficiency of his firm's administration.

18. More significantly, the only direct evidence was that of Mr See who the Tribunal found to be a credible witness. In the circumstances, the Tribunal is satisfied that the demands were served without the Summary until re-service in January 2014.

19. The Applicants argued that the failure to serve demands accompanied by the Summary until January 2014 means that the lessees' liability is limited to their shares of expenditure incurred within the preceding 18 months. Under section 20B(1) of the Landlord and Tenant Act 1985, a tenant is not liable to pay so much of their service charge as reflects any relevant costs incurred more than 18 months before "a demand for payment of the service charge is served on the tenant." They argued that a "demand" means a lawful demand and that a demand is not lawful unless, amongst other requirements under the lease and any statute, it complies with section 21B. Since the demands prior to January 2014 did not comply with section 21B, they were not lawful and so section 20B(1) was also not complied with.

20. Morgan J stated in *Brent LBC v Shulem B Association Ltd* [2001] EWHC 1663 (Ch); [2011] 1 WLR 3014 at paragraph 53 of his judgment, "The reference to a demand in section 20B(1) presupposes that there had been a valid demand for payment of the service charge under the relevant contractual provisions." On that basis, the Respondent accepted that a demand must comply with the lease for the purposes of section 20B(1). However, Mr Byass further argued that a demand did not have to comply with statute, for which he relied on *Johnson v County Bideford Ltd* [2012] UKUT] 457 (LC); [2013] L&TR 18.

21. The issue in *Johnson* concerned the requirement to give the landlord's name and address under section 47 of the Landlord and Tenant Act 1987. George Bartlett QC, President of the Upper Tribunal Lands Chamber, distinguished *Shulem B* and held that the later service of demands which did comply with section 47 validated the earlier ones which had not so complied. Mr Byass asserted that the distinction was

based on the fact that the relevant requirements in *Shulem B* were contractual while those in *Johnson* were statutory. In this he is supported by the authors of Tanfield Chambers's Third Edition of *Service Charges and Management* at paragraph 14-007.

22. However, the basis of the decision in *Johnson* is set out in paragraph 10 of the judgment,

> The invalidity with which Morgan J was concerned was ... not one that was capable of retrospective correction. An invalidity that arises by virtue of a failure to comply with the requirements of s.47(1) is by contrast one that can be corrected and can be corrected with retrospective effect. That is what subsection (2) provides. In my judgment, therefore, the lessees' contentions based on s.20B necessarily fail.

23. Section 47(2) provides that the amount demanded is not due "at any time before [the required] information is furnished" so that the amount becomes due at the time when the information is furnished, however much later that may be. It is clear that it was this saving provision which distinguished *Johnson* from *Shulem B*, not that the relevant requirements happened to be in a statute rather than in a contract. The problem for the Respondent is that there is no equivalent saving provision in section 21B of the Landlord and Tenant Act 1985.

24. Instead, section 21B(3) provides that a tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand. All this means is that a demand must be accompanied by the Summary. The effect is suspensory in that the amount is due as soon as a demand is accordingly served together with the Summary. However, there is nothing in section 21B which obviates the effect of the 18-month time limit in section 20B.

25. Therefore, the effect of sections 20B(1) and 21B of the Landlord and Tenant Act 1985 would be to limit the amounts which the Respondent may recover from the lessees to expenditure incurred in the 18 months prior to January 2014, subject to two points.

26. Firstly, the Applicants allege that the Summary served in January 2014 was itself defective. The form of the Summary is prescribed by Service Charges (Summary of Rights and Obligations, and Transitional Provision) (England) Regulations 2007. The Regulations were amended, with effect from 1st July 2013, by Schedule 2 of the Transfer of Tribunal Functions Order 2013. The amendments alter the wording of the Summary which must accompany demands. References to the "leasehold valuation tribunal" have been replaced by "First-tier Tribunal" and two of the paragraphs have been replaced. The original wording was:

> (5) Where you seek a determination from a leasehold valuation tribunal, you will have to pay an application fee and, where the matter proceeds to a hearing, a hearing fee, unless you qualify for a waiver

or reduction. The total fees payable will not exceed £500, but making an application may incur additional costs, such as professional fees, which you may also have to pay.

(6) A leasehold valuation tribunal has the power to award costs, not exceeding £500, against a party to any proceedings where—

it dismisses a matter because it is frivolous, vexatious or an abuse of process; or

it considers a party has acted frivolously, vexatiously, abusively, disruptively or unreasonably.

The Lands Tribunal has similar powers when hearing an appeal against a decision of a leasehold valuation tribunal.

27. The replacement wording is:

(5) Where you seek a determination from the First-tier Tribunal, you will have to pay an application fee and, where the matter proceeds to an oral hearing, a hearing fee, unless you qualify for fee remission or exemption. Making such an application may incur additional costs, such as professional fees, which you may have to pay.

(6) The First-tier Tribunal and the Upper Tribunal (in determining an appeal against a decision of the First-tier Tribunal) have the power to award costs in accordance with section 29 of the Tribunals, Courts and Enforcement Act 2007.

28. In essence, there are three notable changes to the wording of the Summary:

(a) The Tribunal has changed its name, from the leasehold valuation tribunal to the First-Tier Tribunal.

(b) The Tribunal to which any appeal is directed has changed its name from the Lands Tribunal to the Upper Tribunal Lands Chamber.

(c) The Tribunal's power to order one party to pay another party's costs used to be limited to £500 but is no longer.

29. Mr Armstrong pointed out that the Summary served in January 2014 should have been in the amended version but was, in fact, in the old version. He further pointed to the apparently mandatory wording of reg.3 of the Regulations which state that the Summary "must" contain the prescribed wording. He submitted that, since this Summary did not, section 21B had not been complied with.

30. In response, Mr Byass referred the Tribunal to *R v Soneji* [2005] UKHL 49; [2006] 1 AC 340 in which the House of Lords held that the correct approach to an alleged failure to comply with a provision prescribing what must be done was to ask whether it was a purpose of the legislature that an act done in breach of that provision should be invalid.

31. In the Tribunal's opinion, the purpose of the Regulations is to ensure that the receiving lessee is aware of their rights so as to be able to enforce them. Although reg.3 states that the Summary must be legible in a typewritten or printed form of at least 10 point, the Tribunal

recognises that it is possible to achieve that purpose without necessarily requiring strict compliance with this provision. Similarly, the references to the wrong name of the Tribunal and Upper Tribunal are highly unlikely to have any substantive effect, let alone to cause prejudice to any receiving lessee.

32. The Tribunal was more concerned with the changes to the costs provisions. It is easily conceivable that a lessee who would not be put off exercising his rights in the Tribunal by a possible costs order of £500 would be deterred by the risk of an unlimited or unpredictable costs order. However, against this must be balanced the severe prejudice to a landlord who would otherwise not be able to recover money to which they were contractually entitled. In the Tribunal's opinion, the original wording is sufficient so that the legislature could not be said to have intended its use after 1st July 2013 to render the Summary or the demand it accompanied invalid.

33. The second point was raised by the Respondent. The demands for 2006-2011 were accompanied by a summary of the annual service charge account entitled "Statement of Account of Expenditure", copies of which were at pages 921-934 of the hearing bundle. Mr Byass asserted that these statements constituted notification that the relevant costs had been incurred for the purposes of section 20B(2) of the Landlord and Tenant Act 1985 so that the 18-month time limit in section 20B(1) did not apply.

34. Morgan J in the above-mentioned *Shulem B* case considered what section 20B required:

(a) A written notification under section 20B(2) should state that the relevant costs which were incurred more than 18 months before the relevant demand for payment of the service charge have been incurred. (paragraph 55 of the judgment)

(b) It is not sufficient if the notification merely states that services have been provided for an unspecified cost. Costs must be identified so that, when section 20B(2) is applied to the relevant notification, it will be possible to say whether the costs which the lessor wants to include in the service charge were notified to the lessee. (paragraph 56)

(c) The lessor must state the costs it has actually incurred, not estimates of such costs. (paragraph 57)

(d) If the lessor is unable to state with precision what the amount of the costs was, it should specify a figure for costs which it is content to have as a limit on the amount ultimately recoverable. If the lessor later demands a smaller sum, then the statement of the greater amount includes a statement of the lower amount. (paragraphs 58 and 65)

(e) The notice under section 20B(2) must tell the lessee that they will subsequently be required to contribute to the costs referred to in the notice but it is not necessary for the notice to tell the lessee what proportion of the cost will be passed on to them nor what the resulting service charge demand will be. (paragraphs 59 and 65)

(f) The obvious purpose of section 20B as a whole is to impose a time limit on a lessor's ability to make a service charge demand. The 18-month time limit is short and there is no power to extend it other than by a notification under section 20B(2). (paragraph 60)

(g) As was said by Etherton J in *Gilje v Charlegrove Securities Ltd* [2004] 1 AllER 91 at paragraph 27, the policy behind the time limit is that the tenant should not be faced with a bill of which he or she was not sufficiently warned to set aside provision and it is not directed at preventing the lessor from recovering expenditure of which there was adequate prior notice. (paragraph 61)

(h) As was also said in *Gilje*, section 20B has no application where there are advance service charges or payments on account and the expenditure does not exceed them or the lessor does not request any additional payment. (paragraph 64)

35. Neither the old nor the new-style leases have provision for advance service charges or payments on account. The new style leases do provide for a sinking fund but the Respondent did not or could not make use of it. The statements provided by the Respondent's agents with the demands for 2006-2011 were clearly intended to summarise the expenditure in the past year. That the amounts might be wrong only serve to provide a maximum limit to what the Respondent may ultimately recover. In the Tribunal's opinion, the statements appear to provide the information required by section 20B(2) as interpreted in *Shulem B*, save in one respect.

36. The statements do not themselves tell the lessee that they will subsequently be required to contribute to the costs referred to. However, they accompanied a demand, albeit defective as set out above. Taken together, the statement and the demand would make it clear to any reasonable recipient that they would be required to contribute to the expenditure listed in the statement as part of their service charge. Therefore, the Tribunal has decided that the statements satisfy the requirements of section 20B(2) so that the 18-month time limit does not apply in relation to the expenditure incurred for the years 2006-2011.

37. For the year 2012 no similar statement of expenditure was served. As mentioned above, the Respondent relies on his solicitor's letter before action dated 12th June 2013. However, measured against the principles in *Shulem B*, the letter does not comply with section 20B(2) (although it was correctly accompanied by the Summary of Rights and Obligations under section 21B). The letter states an amount allegedly owing by the receiving lessee but does not give any idea of the total expenditure, let alone any detail which would allow the lessee to identify which costs are included.

38. The service charge year for 2012 started on 28th September 2011. Mr Byass identified the 18-month time limit as going back to 14th December 2011 (after allowing two days for service of the letter of 12th

June 2013). The lack of compliance with section 20B(2) means that costs incurred between 28th September and 14th December 2011 are not recoverable.

39. Therefore, in conclusion in relation to the demands under the old-style leases, the Tribunal has decided that:-

(a) The original demands for 2006-2011 were defective and not payable due to the fact that they were not accompanied by Summaries of Rights and Obligations.

(b) The demands served in January 2014 were accompanied by a sufficient Summary of Rights and Obligations.

(c) The demands would have fallen foul of section 20B(1) but that the original demands were accompanied by statements which were sufficient to stop the 18-month time limit applying in accordance with section 20B(2).

(d) Therefore, the demands served in January 2014 are payable save to the extent that they exceed the relevant proportion of the expenditure set out in the statements accompanying the original demands (and subject to any expenditure held not to be reasonable and/or payable later in this decision).

(e) In relation to 2012, due to the effect of section 20B(1), costs incurred between 28th September and 14th December 2011 are not recoverable.

Whether valid demands have been issued to tenants with "new style leases".

40. The service charge demands, the accompanying statements and the letter of 12th June 2013 made no allowance for differences between the old and new-style leases. Therefore, the points made above in relation to old-style leases apply equally to the new-style leases. However, Mr Armstrong asserted that the demands for 2006-2011 and the letter of 12th June 2013 were defective in that they did not comply with Part IV of the Fourth Schedule to the new-style leases:-

> 4. As soon as practicable after the Account Day in each year throughout the term the Lessor will furnish the Lessee with a statement which (save for correction of any manifest error therein or omission therefrom) shall be conclusive and binding on the parties hereto setting out a full and fair summary of the maintenance charge in respect of the maintenance expenditure for the previous year or period and setting out the amount standing to the credit of the Lessee (if any) in the Sinking Funds and certifying the amount due from the Lessee.

41. Mr Armstrong asserted that the lessees were not provided with the following which were required by their leases:-

(a) A full and fair summary of the charge;

(b) The amount standing to the credit of the lessee in the Sinking Funds; and

(c) A certification of the amount due from the lessee.

42. The Tribunal is satisfied that there is no requirement to set out the amount standing to the credit of the lessee in the Sinking Funds if there is nothing and a statement of the amount due from the lessee constitutes certification for these purposes. Further, the afore-mentioned statements which accompanied the original demands for 2006-2011 provided sufficient detail to constitute a full and fair summary.

43. However, the letter of 12th June 2013 provided no more than a schedule of interest said to be accruing on unpaid ground rent and service charges – the schedule even inaccurately suggested that a major works invoice had been presented when it had not been. There can be no doubt that it cannot answer to the description of a full or fair summary of the relevant service charge. Therefore, the letter of 12th June 2013 cannot constitute a valid demand for service charges under the new-style leases.

Whether the Respondent's agreements with Standish Mackintosh Ltd and Paul Simon Seaton Commercial Estate Agents Ltd are "qualifying long-term agreements"

44. A "qualifying long term agreement" (QLTA) is defined in section 20ZA(2) of the Landlord and Tenant Act 1985 as an agreement entered into, by or on behalf of the landlord, for a term of more than 12 months. Such an agreement is subject to detailed consultation requirements under the Service Charges (Consultation Requirements) (England) Regulations 2003. Under section 20(1) of the Act, tenants' service charge contributions are limited unless these consultation requirements are complied with or dispensed with by the Tribunal.

45. The Respondent has employed PSS since 2005 as his managing agents for the two subject properties and employed Standish Mackintosh in 2011/12 to supervise major works. He did not consult the lessees before doing so. If his agreement with either constituted a QLTA, then he should have consulted. It is asserted on behalf of the Respondent that neither agreement is a QLTA but that, if the Tribunal is against him, dispensation is sought in the alternative.

46. Mr Byass relied on *Paddington Walk Management Ltd v Peabody Trust* [2010] L&TR 6 in which it was held:-

(a) The point of the QLTA provisions is to bring major periodic contracts into the consultation regime where it is proportionate to do so.

(b) Whether an agreement is a QLTA cannot depend simply on the fact that the agreement could continue beyond 12 months if unabated.

(c) An agreement for a fixed term of 12 months and then from year-to-year is not an agreement for a term of more than 12 months.

(d) The whole flavour of the provisions is "long-term". A monthly periodic contract cannot be regarded as long-term. There needs to be a commitment of more than 12 months.

47. Mr Armstrong in turn relied on *Poynders Court Ltd v GLS Property Management Ltd* [2012] UKUT 339 (LC) in which the *Paddington Walk* case was distinguished. In *Poynders* the subject management agreement had no term so the contract was indefinite. The services were to be provided for more than 12 months and so it was a QLTA. This was not altered by the existence of a clause for termination on three months' notice.

48. It is clear on the facts in the light of the above law that the Respondent's agreement with Standish Mackintosh, partly set out in a letter dated 10th July 2010, cannot be regarded as a QLTA. Standish Mackintosh happen to have been employed for around 2 years until building control certification in September 2012. However, the major works they were involved with were clearly never intended to last that long. There were delays in consultation and in the execution of the works, as discussed further below. The Tribunal is satisfied that, when originally employed, the expectation was that Standish Mackintosh would complete their work within a year and so, on any view of the law, the Respondent's agreement with them could not be a QLTA. This is supported by the fact that the letter of 10th July 2010 contained no term or period for the length of the contract.

49. The Applicants' Skeleton Argument pointed to the amount of money being paid to Standish Mackintosh. It is difficult to see how this is relevant to the question of whether there was a QLTA.

50. On 30th August 2005 the Respondent's then agents, Countrywide, gave notice that they would withdraw from managing the subject properties on the basis that they were unmanageable. There appears to have been a single incident of a resident with mental health problems threatening a cleaner with a knife which had grown by the time of Countrywide's letter into a story about contractors, plural, being "set upon and attacked by a resident armed with knives". Countrywide also quoted locks being broken, glass being smashed immediately after replacement and fly-tipping by non-residents. The Tribunal does not under-estimate the difficulties of managing such problems but finds it extraordinary that the response of a professional agent was just to give up. In any event, the Respondent had to find a replacement which he did in PSS.

51. The Respondent's agreement with PSS is somewhat unusual. It was never reduced to writing and so its terms can only be deduced from what was said between the Respondent and Mr Seaton when they reached agreement on site. The Respondent gave Mr Seaton a tour of the subject properties, accompanied by a sub-tenant who pointed out various issues. Mr Seaton indicated, on behalf of PSS, that he would be prepared to take on the management of the properties and he shook hands with the Respondent. The Respondent understood that the

lessees would be discharging PSS's fees through the service charge and did not appear to take a great interest in what they were – the fees were and still are calculated on the basis of £300 per year per flat plus 10% of the annual service charge expenditure. No term of any length was agreed.

52. The Tribunal is aware from its expert knowledge that managing agents do not take on management responsibilities of this size or nature without at least a hope or expectation that it would last for several years. A year is normally the minimum requirement to become sufficiently familiar with the needs of any particular property. In this case, it was made clear to Mr Seaton that the subject properties had significant problems which would require a long-term approach to be resolved. The Tribunal is satisfied from the evidence that the Respondent and PSS intended their agreement to last for significantly longer than 12 months so that it falls within the same category as that considered in *Poynders*, namely a management agreement for more than 12 months, by which reason it was and is a QLTA.

Dispensation from consultation requirements

53. The Tribunal has the power under section 20ZA of the Landlord and Tenant Act 1985 to dispense with the statutory consultation requirements if satisfied that it would be reasonable to do so. This power was extensively considered by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854. It was held:-

(a) While there is obvious value in identifying the proper approach to the application of section 20ZA, any principles that can be derived should not be regarded as representing rigid rules. (paragraphs 40 and 41 of Lord Neuberger's judgment)

(b) Section 20ZA is part of a number of provisions in the same part of the Landlord and Tenant Act 1985 directed towards ensuring that tenants of flats are protected from (i) paying for unnecessary services or services of a defective standard or (ii) paying more than they should for services which are necessary and provided to an acceptable standard. (paragraph 42)

(c) The issue on which the Tribunal should focus must be the extent, if any, to which tenants were prejudiced in terms of either (i) or (ii) by the landlord's failure to comply with the consultation requirements. (paragraph 44)

(d) Where the extent, quality and cost of the works were in no way affected, it is hard to see why dispensation should not be granted, at least in the absence of some very good reason. (paragraph 45)

(e) Dispensation should not be refused solely because a landlord has seriously breached the requirements. (paragraph 46)

(f) The financial consequences to the landlord of not granting dispensation and the nature of the landlord are irrelevant. (paragraph 51)

(g) The Tribunal has the power to grant dispensation on terms (paragraph 54) and can impose conditions (paragraph 58).

(h) The legal burden of proof is always on the landlord, although the factual burden of identifying some relevant prejudice is on the tenants. (paragraph 67)

(i) The Tribunal should be sympathetic to tenants because the landlord is in default of its statutory duties and because, due to that default, the Tribunal is having to undertake the exercise of reconstructing what would have happened. (paragraph 68)

(j) Tenants must identify what they would have said if they had been given the opportunity to comment. (paragraph 69)

54. Having decided that the Respondent's agreement with PSS was a QLTA and that there had been no consultation on it, the Tribunal must consider whether it is reasonable to grant dispensation. The Tribunal has concluded that it would not.

55. PSS's fees are £300 per year per flat plus 10% of all service charge expenditure. Although Mr Seaton said that this was PSS's standard fee structure, the Tribunal pointed out to the parties at the hearing that it is unusual. Most agents charge an amount per year per flat and £300 is not outside the range which might be charged on properties like the current ones. Most agents would also charge an additional percentage for one-off events such as major works programmes and small administration charges for extra items such as issuing debt recovery letters.

56. However, those additional charges cannot equate to PSS's charging 10% of all service charge expenditure. But for refusing dispensation and the consequences that follow, the Tribunal would have held that the management charges were not reasonably incurred to the extent that they included the 10% charge. The Tribunal is certain that, if the lessees had been given the opportunity to comment on PSS's appointment, they could have proposed an alternative managing agent who would not have included the 10% element in their charges so that they would have been cheaper than PSS. The Tribunal does not doubt that the Respondent was seriously worried that no-one would want to take on the job as managing agents and that management of the subject properties is and would have been seen as more difficult than most. However, the fact that PSS and Sterling Estates Management have been willing to do it confirms the Tribunal's experience that it should have been possible to find an alternative managing agent. By being denied the opportunity to look for and propose such an alternative, the lessees were prejudiced financially.

57. No terms or conditions were proposed for the granting of dispensation and, in the circumstances, the Tribunal cannot see that there are any terms or conditions which would be appropriate. Therefore, for each accounting period, that is for each year for which service charge

accounts have been made up, the amount payable by each lessee in respect of PSS's services is limited to £100.

58. In 2006 M&D Builders undertook works to the roof of Dorking Court in the sum of £5,275 which is large enough to engage the statutory consultation requirements. However, the Tribunal is satisfied that it is reasonable to grant dispensation in this instance. Water was apparently penetrating into upper floor flats. This was work which had to be carried out more urgently than the requirements would have allowed. Further, there is no evidence of any kind that any lessee was in any way prejudiced by any lack of consultation in this case.

Major works

59. Before considering the issues between the parties relating to the major works programme in 2011 and 2012, including those concerning consultation, it is necessary to set out what happened.

60. The roof of Horsham Court was replaced in 1999. The Respondent said that he had planned to do the same for Dorking Court soon after but his then agent, General Accident, pulled out of property management, the main Horsham Court refurbishment contractor, Tarian Ltd, went into liquidation and the manufacturer of the roofing system used had ceased trading. The new agents, Countrywide, obtained estimates for the refurbishment of Dorking Court in 2001 but the works did not proceed, apparently due to another contractor going out of business.

61. There was then a delay, unexplained other than for the changeover in management from Countrywide to PSS. In 2008-9 PSS consulted the lessees on various refurbishment works but they did not go ahead. Mr Seaton wasn't sure whether this was because some lessees protested that the works were unaffordable or due to problems with collecting the service charge.

62. The Respondent and PSS then brought in Mr Durham of Standish Mackintosh in 2010 to supervise the project. Mr Durham reviewed the proposed works with Mr Seaton and they agreed a lesser programme of works which might be more affordable for lessees. On 5th August 2010 Mr Seaton sent out a Notice of Intention to Undertake Works pursuant to the statutory consultation requirements under section 20 of the Landlord and Tenant Act 1985. The works were stated as:-

> Replacement of flat roof with a new roof fully insulated in accordance with the latest Building Regulations. Including scaffolding for access and safety.

63. By letter dated 5th April 2011 Mr Seaton informed lessees:-

1. This Notice is given pursuant to the Notice of Intention to Carry out Works issued on 5th August 2010. The final consultation period in respect of the Notice of Intention of Works after redelivery of 9 uncollected Notices, ended on 30th December 2010.

2. We have now obtained estimates from two main contractors in respect of the works to be undertaken.

3. The amount specified in the estimates from the two main contractors originally asked to tender for the entire general maintenance works including window replacement is as follows:-

Priestfield Property Services Ltd	£296,140.00 ex. VAT
Heritage Home Counties Ltd	£219,712.00 ex. VAT
Paul Beckwith Plumbrite	£ no tender returned

4. As set out within the tender analysis received from Standish Mackintosh Limited due to the apparent high levels of cost tendered by the two main contractors, are as follows:-

Superior Floors Limited	£9,180.00
Levi Decorators Limited (Decorating for Granted)	£40,910.00
Maple Windows Contracting Limited	£47,284.00 ex. VAT
Lordship Double Glazing Limited	£50,000.00 inc. VAT

The maintenance and repair works contract will be awarded to Heritage Home Counties Limited; the external window replacement contract will be awarded to Lordship Double Glazing Limited; and the repainting work will be undertaken by Levi Decorators Ltd.

64. Maple Windows had been invited to tender as a result of their being put forward by one of the lessees.

65. It is worth noting that a great deal changed between the letters of 5th August 2010 and 5th April 2011. The former letter only referred to the roof but the later one introduced window and other works. Although the second letter contained the first mention of specialist contractors for the non-roof works, the contractors had already been selected so there was no opportunity for lessees to comment on them or propose alternatives.

66. Mr Seaton does not recollect any lessees responding to the letter of 5th April 2011. On 13th June 2011 he sent a further letter to lessees enclosing a breakdown of the works costing £216,552 plus VAT, surveyors and legal costs and a 10% administration fee:-

• Entrance door Replacement	£2,400
• Door Step Replacement	£4,170
• Communal Hall Power	£1,100
• Hall Lighting Replacement	£1,325
• External Gas Meters Replacement	£950
• Single Downpipe Replacement	£187
• Communal Hallway Floor/Stair Renewal	£9,180
• Internal Soil Stack Renewal	£8,200
• External Window Replacement	£50,000 exc 11 flats
• Communal Gardens	£1,650
• Main Roof Renewal	£56,200

- Access Scaffolding £22,000
- Roof Access/Protection Scaffolding £19,000
- Communal Hallway Redecoration £40,190

67. The letter of 13th June 2011 also specified how much each lessee was to pay. The intention was that each lessee should pay a contribution in advance, despite the fact that the leases had no provision for advance payments. The Respondent's clear obligation under the leases is to carry out repair and maintenance and then collect the cost in arrears but, instead, when only some lessees paid, the work was done as and when funds were available and, ultimately, the only works undertaken were clearance of the communal gardens, some of the window replacement and the Dorking Court roof replacement.

68. The scaffolding went up around Dorking Court on or about 1st July 2011. It was decided that any windows being replaced could be addressed without scaffolding so none was put up at Horsham Court, although no change in cost was notified to any lessee. What happened thereafter is somewhat unclear due to non-disclosure of relevant documentation and Mr Durham's absence from the hearing. Mr Byass asserted that the Respondent had disclosed all that he was able to disclose, implying that Mr Durham had not co-operated. However, Standish Mackintosh were the Respondent's contractors and those documents they held relating to work he instructed them to do would have belonged to him. The documents should have been disclosed or a better explanation for their absence should have been available.

69. It appears from an invoice dated 7th December 2011 from Lordship Windows for £10,100 that works replacing stairwell windows had been completed by that date, although there were no other documents such as a specification of works or a detailed account. Apparently some lessees agreed and paid for their own windows to be replaced but the parties agree that these payments do not go through the service charge.

70. Work began on the roof on some unknown date after the scaffolding went up. Mr Seaton thought that work began with boreholes soon after the scaffolding was erected. Unanticipated problems were found with the old asphalt layer affecting the plasterboard under the joists which required substantial alteration to the specification, even to the extent of requiring building control approval. The contractor, Heritage, the local authority building control officer and Mr Durham agreed a new specification between them although this was not notified to any lessee and there was no documentary evidence of what it consisted of. The new specification included raising the flat roof slightly higher (an un-named firm from Whetstone was apparently employed to calculate the distance between the roof and the joists) but otherwise the differences from the old specification were not recorded.

71. When the new specification was agreed or when the works started according to it is not known. The following is known:-

(a) Heritage produced a Final Statement dated 18th July 2012.

(b) It is recorded on Heritage's Final Statement that there were Additional Costs dated 5th January 2012 and Additions to Costs dated 18th January 2012. It is likely that these additions refer to the changes involved in the new specification, implying that it was agreed by those dates.

(c) According to Mr Seaton, there was an unplanned break in works due to a long delay in getting development drawings from the local authority.

(d) A copy of the Building Control Register was handed to the Tribunal during the hearing. It shows the application for approval for the Dorking Court roof was received on 15th March 2012 and completed on 13th September 2012.

(e) Mr Seaton told the Tribunal that he thought the works were completed shortly before completion of building control approval, so around August 2012, and the scaffolding came down after that.

(f) Yes Scaffolding's last invoice was issued in October 2012.

72. Three parts of the major works engaged the statutory consultation requirements (although various figures appeared in the documents relating to these contractors, the Tribunal has taken the sums from the agreed List of Issues):-

(a) The provision of scaffolding by Yes Scaffolding in the sum of £41,800.

(b) The works undertaken by Heritage Home Counties Ltd in the sum of £78,720.

(c) Window works by Lordship Double Glazing in the sum of £7,575.

73. There can be no doubt that, despite the fact that there was some consultation which reflected the requirements, there were also significant breaches of them. Apart from the roof works, the nature and extent of the work and who was to carry it out was not subject to any consultation before they were finalised. As for the roof works, they were subject to such a substantial change which significantly increased the price that they were effectively new works on which there should have been further consultation – in the event, there certainly would have been sufficient time for the consultation process. The only real question is whether dispensation should be granted.

74. The fact is that the Applicants have not demonstrated that they suffered any financial prejudice as a result of the breaches of the requirements. They were denied the opportunity to bring in an expert to examine the issue by not raising the possibility of an expert report until it was too close to the final hearing and so too late. More significant, though, is that they are not going to have to pay the full price of the roof works or the scaffolding for the reasons set out further below. The Tribunal has no doubt that, in the final calculation, the lessees will have received the benefit of a new roof for substantially less than any price that they might have had to pay after a proper consultation process.

75. As for the windows, there is nothing to suggest that the final sum of £7,575 exceeds that which could have been achieved after a full

consultation. The Applicants had objected to higher sums previously being demanded but the Respondent no longer pursues them.

76. Mr Armstrong submitted that the Supreme Court in *Daejan* had left a residual discretion to refuse dispensation even when no prejudice has been demonstrated. His argument is persuasive but, whether or not he is right, the Tribunal sees no basis for refusing dispensation in all the circumstances of this case.

77. Therefore, the Tribunal has decided to grant the Respondent dispensation from the statutory consultation requirements for the above three elements. However, that is not the end of the Applicants' challenge to these costs.

78. The Applicants point to the fact that the right to manage was acquired on 17th April 2012 for Horsham Court and 14th May 2012 for Dorking Court. Both dates are several months before the works had been completed. The Applicants argue that costs incurred at a time when it was known that the management would soon pass over to the lessees could not be regarded as reasonably incurred. They further argue that costs incurred after the right to manage had been acquired are not recoverable.

79. The Applicants assert that the Respondent must have known about the pending exercise of the right to manage in December 2011. However, the Tribunal accept that he first knew about it in January 2012 when he expresses genuine surprise in an e-mail about receiving the RTM company's notice. He could have put a halt to any further expenditure in relation to the works at that point but he did not. The question is whether he should have.

80. In the Tribunal's opinion, it does not necessarily follow that incurring costs is unreasonable just because a management changeover is pending. If a landlord committed themselves, and their lessees, to some new and expensive programme of works after coming to know of the pending exercise of the right to manage, it would be strongly arguable that it would not be reasonable to have done so. However, the particular course of action in this case had started in 2010 and had progressed a long way by January 2012. It is entirely understandable that a responsible manager would seek to complete the programme.

81. Having said that, the Tribunal is also satisfied that the situation is different after the right to manage has been exercised. Under section 96(2) of the Commonhold and Leasehold Reform Act 2002 management functions which a landlord has under the relevant leases are instead functions of the RTM company. Therefore, as at each of the two relevant dates, the Respondent ceased to have any management functions in relation to the relevant block.

82. Section 97(2) goes further to say that the landlord is not entitled to do anything which the RTM company is required or empowered to do under the leases unless they reach agreement. The Respondent did not

even seek agreement with the Applicants but permitted the works to carry on as if there had been no management changeover. There is no provision in the Act for an RTM company to take on any ongoing liabilities or services and so there was simply no basis in law for the Respondent or his contractors to continue to incur expenditure on the works, let alone to be able to pass it on through the service charge.

83. Mr Armstrong pointed to the following invoices which post-date the acquisition of the right to manage:-

• 24th May 2012	Heritage	£12,567
• 18th June 2012	Standish Mackintosh	£3,220
• 23rd June 2012	Heritage	£19,320
• 26th June 2012	Standish Mackintosh	£1,610
• 18th July 2012	Heritage	£20,769
• 19th July 2012	Standish Mackintosh	£2,076.90
• 26th July 2012	Yes Scaffolding	£1,440 £8,640 £5,000
• 18th October 2012	Yes Scaffolding	£4,200

84. Mr Armstrong also pointed to the record in their Final Statement of 18th July 2012 of a payment of £19,300 to Heritage on 10th June 2012 for which there is no corresponding invoice.

85. These items total £98,142.90. Mr Armstrong submits that they are not payable by operation of the right to manage provisions in the Commonhold and Leasehold Reform Act 2002.

86. Mr Byass responded that the Respondent was already committed to these costs which crystallised with the new specification in January 2012. He pointed to HHJ Mole QC's statement in *OM Ltd v New River Head RTM Company Ltd* [2010] UKUT 394 (LC) at paragraph 22:

> The purpose of the legislation seems to me to be strictly limited. Its words suggest an intention to achieve the transfer to the RTM of those assets and powers that need to be transferred to the RTM for it to be an effective management company from the date of acquisition, leaving alone existing rights and relationships before the date of acquisition.

87. Under section 94(2) a landlord is entitled to retain uncommitted service charge payments to meet "costs incurred before the acquisition date". The Court of Appeal held in *Burr v OM Property Management Ltd* [2013] EWCA Civ 479; [2013] 1 WLR 3071 that costs are incurred not on the provision of services but either when the supplier presented an invoice or on payment. This was a decision in relation to section 20B of the Landlord and Tenant Act 1985 but Mr Byass accepted, rightly in

the Tribunal's view, that the words "costs incurred" should be interpreted in the same way in both statutes.

88. The Tribunal is satisfied that HHJ Mole QC's statement in *OM Ltd* does not conflict with or modify the plain meaning of the decision in *Burr*. The earliest the costs listed above were incurred was when the invoice was presented. They were all clearly presented after the date of acquisition. There is no corresponding invoice for the payment apparently made on 10th June 2012 but there is no reason for thinking that any such invoice pre-dated the acquisition of the right to manage. Therefore, the sum of £98,142.90 is not payable by the lessees.

Whether charges included on the demands have been incurred or have been reasonably incurred

89. The Applicants submitted in a Scott Schedule a long list of items which they asserted had not been reasonably incurred. The Scott Schedule for each year is attached as a further Appendix to this decision with the Tribunal's comments in the final column. However, there are some general points to be made here.

90. Mr Byass helpfully produced a Note on the Scott Schedule which set out the Respondent's position on the items listed. The Note records a number of concessions by the Respondent:

(a) As already mentioned above, the Respondent has failed to provide invoices in support of many items. Mr Seaton blamed this on IT problems in his office but, in any event, the Respondent has been forced to rely on cheque stubs and bank statements instead. For the purposes of determining the payability of the items in the Scott Schedule, the Respondent has not relied on costs which he thinks probably were incurred but for which there are no invoices or cheque stubs.

(b) The demand for Horsham Court for 2009 should be reduced from the amount originally demanded, £714.04 per flat, to £629.33. The latter sum is calculated by taking the amount in the accounts produced in 2014 and reducing it by the concessions recorded in the Scott Schedule.

(c) The demand for Dorking Court for 2009 should be similarly reduced from £714.04 to £672.90.

(d) The demand for Dorking Court for 2010 should be reduced from £714.68 to £671.22.

(e) The demands for Horsham and Dorking Courts for 2008 should be reduced from £715.94 to £700.42.

(f) There is probably some similar adjustment to be made for the 2012 demands.

91. In the light of the matters set out in the Scott Schedule and above, the Tribunal finds that the charges included in the demands were reasonable and reasonably incurred, save as conceded by the Respondent or reduced or disallowed for reasons set out above.

Costs of the proceedings

92. The Applicants sought an order under section 20C of the Landlord and Tenant Act 1985 that the Respondent's costs in these proceedings may not be added to the service charge. Mr See made the same application as against the Applicants who now have the power under the leases and the right to manage.

93. The Tribunal has already determined in its decision of 7th May 2014 that legal costs are recoverable through the service charge under the leases of the subject properties. The Tribunal may only set aside this contractual right if satisfied that it is just and equitable to do so. The primary considerations are normally which party has succeeded on the issues raised and the circumstances in which the proceedings were issued and reached a final hearing.

94. The Tribunal has made findings substantially reducing the sums alleged by the Respondent to be owing. Further, the proceedings have prompted the Respondent to concede items which could and should have been conceded earlier. Even those matters on which the Tribunal found in favour of the Respondent were properly raised by the Applicants given the lack of transparency or documentation supporting the management activities of the Respondent and his agents. In all the circumstances, it would not be just or equitable for the Respondent to recover any of his legal costs through the service charge and an order is made under section 20C to that effect.

95. As for Mr See, he says he did not seek and does not support the application. Nevertheless, the Tribunal is satisfied the Applicants were right to raise their concerns, while Mr See and his fellow lessees have benefited substantially from this decision. It would not be appropriate to make a section 20C order against the Applicants.

Name: NK Nicol **Date:** 10th November 2014

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 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 20ZA

(1) Where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

(2) In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.

(3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
(a) if it is an agreement of a description prescribed by the regulations, or
(b) in any circumstances so prescribed.

(4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.

(5) Regulations under subsection (4) may in particular include provision requiring the landlord—
(a) to provide details of proposed works or agreements to tenants or the recognized tenants' association representing them,
(b) to obtain estimates for proposed works or agreements,
(c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,

(d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and

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

(6) Regulations under section 20 or this section—

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

(b) may make different provision for different purposes.

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

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.

Section 21B

(1) A demand for the payment of a service charge must be accompanied by a summary of the rights and obligations of tenants of dwellings in relation to service charges.

(2) The Secretary of State may make regulations prescribing requirements as to the form and content of such summaries of rights and obligations.

(3) A tenant may withhold payment of a service charge which has been demanded from him if subsection (1) is not complied with in relation to the demand.

(4) Where a tenant withholds a service charge under this section, any provisions of the lease relating to non-payment or late payment of service charges do not have effect in relation to the period for which he so withholds it.

(5) Regulations under subsection (2) may make different provision for different purposes.

(6) Regulations under subsection (2) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

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 30

In the provisions of this Act relating to service charges—

"landlord" includes any person who has a right to enforce payment of a service charge;

"tenant" includes

(a) a statutory tenant, and

(b) where the dwelling or part of it is sub-let, the sub-tenant.

Commonhold and Leasehold Reform Act 2002

Section 94

(1) Where the right to manage premises is to be acquired by a RTM company, a person who is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

must make to the company a payment equal to the amount of any accrued uncommitted service charges held by him on the acquisition date.

(2) The amount of any accrued uncommitted service charges is the aggregate of—

(a) any sums which have been paid to the person by way of service charges in respect of the premises, and

(b) any investments which represent such sums (and any income which has accrued on them),

less so much (if any) of that amount as is required to meet the costs incurred before the acquisition date in connection with the matters for which the service charges were payable.

(3) He or the RTM company may make an application to a leasehold valuation tribunal to determine the amount of any payment which falls to be made under this section.

(4) The duty imposed by this section must be complied with on the acquisition date or as soon after that date as is reasonably practicable.

Section 95

Sections 96 to 103 apply where the right to manage premises has been acquired by a RTM company (and has not ceased to be exercisable by it).

Section 96

(1) This section and section 97 apply in relation to management functions relating to the whole or any part of the premises.

(2) Management functions which a person who is landlord under a lease of the whole or any part of the premises has under the lease are instead functions of the RTM company.

(3) And where a person is party to a lease of the whole or any part of the premises otherwise than as landlord or tenant, management functions of his under the lease are also instead functions of the RTM company.

(4) Accordingly, any provisions of the lease making provision about the relationship of—

(a) a person who is landlord under the lease, and

(b) a person who is party to the lease otherwise than as landlord or tenant,

in relation to such functions do not have effect.

Section 97

(1) Any obligation owed by the RTM company by virtue of section 96 to a tenant under a lease of the whole or any part of the premises is also owed to each person who is landlord under the lease.

(2) A person who is—

(a) landlord under a lease of the whole or any part of the premises,

(b) party to such a lease otherwise than as landlord or tenant, or

(c) a manager appointed under Part 2 of the 1987 Act to act in relation to the premises, or any premises containing or contained in the premises,

is not entitled to do anything which the RTM company is required or empowered to do under the lease by virtue of section 96, except in accordance with an agreement made by him and the RTM company.

(3) But subsection (2) does not prevent any person from insuring the whole or any part of the premises at his own expense.

(4) So far as any function of a tenant under a lease of the whole or any part of the premises—

(a) relates to the exercise of any function under the lease which is a function of the RTM company by virtue of section 96, and

(b) is exercisable in relation to a person who is landlord under the lease or party to the lease otherwise than as landlord or tenant,

it is instead exercisable in relation to the RTM company.

(5) But subsection (4) does not require or permit the payment to the RTM company of so much of any service charges payable by a tenant under a lease of the whole or any part of the premises as is required to meet costs incurred before the right to manage was acquired by the RTM company in connection with matters for which the service charges are payable.

DISPUTED SERVICE CHARGES S/C YEAR ENDED 28th SEPTEMBER 2006

Case Reference: LON/00AP/LSC/2013/0565

Property: Dorking Court & Horsham Court, 86 Hampden Lane, London N17 0AT

No.	Item	Cost	Applicant's Comments	Respondent's Comments	Tribunal's comments
1	**Cost Heading: Cleaning** Please note the copy invoices provided amount to a total of £480.00. The combined total in the accounts for the Year Ending 28th September 2006 amount to a total of £780.00. No invoices have been provided for the remaining sum of £300.00 which is therefore disputed.			It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £300 notwithstanding the fact that no invoices can be found.	The cleaner had a difficult job. That job was not to make the subject properties look good but to clean what was there, in the time that was paid for, using the materials available. The subject properties were not in good decorative order and no amount of cleaning could change that. There was no accessible water supply so water had to be brought in from off site for cleaning purposes. The Tribunal is satisfied that these sums are reasonable for the service delivered. The Tribunal is also satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
2	PJ Collins – Invoice 17.1.06	£80.00	Leaseholders dispute that services provided were to standard given the ongoing state of the external areas. The Applicant will accept 50% of this cost.	The cleaning services provided, which were for monthly visits of agreed duration, were reasonably performed. Contemporaneous complaints relate to the excessive dumping of rubbish, which was beyond the scope of the contracted cleaning services to deal with. It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for 100% of this cost.	
3	PJ Collins – Invoice 8.2.06	£80.00			
4	PJ Collins – Invoice 26.04.06	£80.00			
5	PJ Collins – Invoice 22.5.06	£80.00			
6	PJ Collins – Invoice 25.5.06	£80.00			
7	PJ Collins – Invoice 17.7.06	£80.00			
8	**Cost Heading: Grounds Maintenance / Gardening** No invoices have been provided for the combined sum of £160.00 shown in the accounts for the Year Ending 28th September 2006. This sum is therefore disputed.			It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £160 notwithstanding the fact that no invoices can be found.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
	Cost Heading: Repairs & Maintenance				

9	Addison Lovett & Lord Invoice 04478 11.11.05	£5287.50	This invoice includes £1,000 plus VAT for a completely different property. The cheque stub provided with the invoice indicates payment of the total made from the same account as Dorking & Horsham Court. No clarification if this sum is included in the annual accounts. This fee is disputed as being an unreasonable level as no evidence of report is provided and no works were undertaken as a result.	Kingsfield Court is another property of which the Respondent is the freehold owner. Paul Simon Seaton were also responsible for the management of Kingsfield Court at the same time as managing Horsham and Dorking Court. The certified accounts clearly identify the correct apportionment between Kingsfield Court, Horsham Court and Dorking Court. The Respondent has not tried to recover these sums from the Applicants.	The Tribunal is not satisfied that the lessees at Dorking or Horsham Courts were charged for services delivered in relation to Kingsfield Court, despite the fact that the invoice referred to it and the monies were wrongly run from the same account. As with most of these charges, the Applicants' concern is understandable given the lack of transparency or documentation and they were entitled to raise it.
10	M & D Builders No date or invoice identifier	£5,275.00	Not a legitimate invoice, no company address, contact number or invoice number. Invoice states works to Dorking Court but no detail is provided as to confirmation of correct liability split within the certified accounts. This invoice also falls above the Section 20 limit but no consultation carried out. This invoice is disputed as being incorrectly and unreasonably incurred.	This invoice relates to the emergency works of re-felting the roof of Dorking Court. In so far as it is necessary to do so, the Respondent will apply to dispense with the consultation requirements. The Applicants have not established any prejudice.	As already referred to in the body of this decision, the Tribunal is satisfied that this was necessary and urgent work for which it is reasonable to grant dispensation from the statutory consultation requirements. The evidence was not as full as it could or should have been but, on the balance of probabilities, the Tribunal is satisfied that this work was done for a reasonable price.
11	**Cost Heading: Electricity** Please note the copy invoice provided amounts to a total of £23.99. The combined total in the accounts for the Year Ending 28th September 2006 amount to a total of £45.59.			It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank

	No invoices have been provided for the remaining sum of £21.60 which is therefore disputed. Furthermore all costs have been issued against Horsham Court. No detail is provided regarding electricity costs for Dorking Court.	maintains its claim for £21.60 notwithstanding the fact that no invoices can be found. The Respondent's agents have made enquiries which confirm that there is one electricity meter for both blocks and therefore the cost of services is to be split equally between Horsham and Dorking Court.	statements but also Mr Seaton's evidence as to the service delivered by PSS.
12	**Cost Heading: Sundry** No invoices have been provided for the combined sum of £2,341.38 shown in the accounts for the Year Ending 28th September 2006. This sum is therefore disputed.	It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £2,341.38 notwithstanding the fact that no invoices can be found.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.

DISPUTED SERVICE CHARGES S/C YEAR ENDED 28th SEPTEMBER 2007

Case Reference: LON/00AP/LSC/2013/0565

Property: Dorking Court & Horsham Court, 86 Hampden Lane, London N17 0AT

No.	Item	Cost	Applicant's Comments	Respondent's Comments	Tribunal's comments
1	**Cost Heading: Cleaning** There is a disparity between the invoices provided for this section and the total cost within the certified accounts for the Year Ended 28th September 2007, in that the invoices exceed the accounts by £240. No clarification has been provided. These are not accepted.			The excess of £240 in this year accounts for the missing invoices in the sum of £300 in the year end 2006 accounts.	See comments for 2006.
2	PJ Collins – Invoice 7.9.06	£80.00	Leaseholders dispute that services provided were to standard given the ongoing state of the external areas. The Applicant will accept 50% of this cost.	The cleaning services provided, which were for monthly visits of agreed duration, were reasonably performed. Contemporaneous complaints relate to the excessive dumping of rubbish, which was beyond the scope of the contracted cleaning services to deal with. It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for 100% of this cost.	
3	PJ Collins – Invoice 28.9.06	£80.00			
4	PJ Collins – Invoice 27.10.06	£80.00			
5	PJ Collins – Invoice 1.12.06	£160.00			
	Cost Heading: Repairs & Maintenance				
6	Lynbo General Store Invoice 86 28/9/06	£120.00	No detail has been provided as to which block this relates to or how this cost has been apportioned. These are not accepted.	These keys relate to the security gate that was installed at this time. Leaseholders in both Horsham Court and Dorking Court were provided with a key. The Respondent maintains his claim for 100% of this cost.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
7	Winters Haulage Ltd Invoice 22309 28.8.07	£141.00	Duplicate copies of this invoice have been provided – does this indicate duplicate payments? A materials order from Paul	It is clear from the invoices, cheque stubs and bank statements that this is not a duplication. The Respondent	

			Simon Homes is also included, is this duplicated billing? No detail as to what skip provided for. These are not accepted.	maintains his position for £141.00.	
8	Turnkey Developments Invoice PSS/0506/DC 28.9.06	£620.00	Invoice relates to an insurable peril being flood damage to a specific flat. No evidence of insurance claim or rebate to leaseholders. These are not accepted.	This has been included in error.	These items have been conceded on behalf of the Respondent so no further comment is required.
9	Turnkey Developments No Invoice identifier 25.1.07	£3003.20	As above. Should be part of insurance claim but no evidence of claim or rebate. Total cost advised on invoice is above the Section 20 limit but no evidence of any consultation. These are not accepted.	The Section 20 limit is in fact £4,500 per block (£250 per leaseholder), however, this has been included in error.	
10	Turnkey Developments Invoice PSS/0706/DC 1.11.06	£480.00	Garage repair responsibility of garage owners. Not a service charge item. This could also have been claimed against the estate insurance policy. These are not accepted.	This has been included in error.	
11	M. Matheou & Sons No invoice identifier or date	£1135.00	Cost is excessive as stairwell cleaning gone from £80 to £240. No detail given as to apportionment of costs. The Applicant will accept £660.	It is not clear on what basis the Applicants will accept £660. In any event, the Respondent maintains his position for £1,135.00	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
12	Lynbo General Store Invoice 19 8.5.07	£60.00	No detail as to what block this is for. Second invoice within accounts for key provision – is there duplication? These are not accepted.	The keys were provided to all leaseholders to enable access to the communal areas. The invoices clearly identify that this invoice is for the provision of 20 x mortice keys and the previous invoice is for the	The Tribunal is satisfied from the evidence that the sums were actually and properly incurred.

				provision of 80 x cylinder keys. The Respondent maintains his position for £60.00	
13	LMG Glass Invoice 7370 28.5.07	£1135.05	Cost excessive for works provided. Applicant will accept £850 all inclusive.	This is not considered to be an excessive sum for the works completed. The Respondent maintains his position for £1,135.05	No evidence was presented as to why this might be thought excessive and so the Applicants' claim on this point must be rejected.
14	Turnkey Developments No Invoice identifier 15.6.07	£4504.80	Invoice for works that are an insurable peril. No evidence of claim made or rebate received. Full cost seems to have been included in the certified accounts. These are not accepted.	This has been included in error.	This item has been conceded on behalf of the Respondent so no further comment is required.
15	LMG Glass Invoice 7376 15.6.07	£291.40	Invoice indicates return within 14 days for more repairs to same area as per above. Initial works not done properly therefore cost disputed.	These works were not included within the original invoice. The glass repairs are of a different type and size and therefore this is not duplication. The repair work was necessary and not as a result of bad workmanship.	The Tribunal is satisfied that this objection is a misunderstanding on the part of the Applicants and is rejected.

16	**Cost Heading: Major Works** No invoices have been provided for the combined sum of £1,089.90 shown in the accounts for the Year Ending 28th September 2007. This sum is therefore disputed.	There appears to be a corresponding credit for this sum which was an unpaid cheque from a leaseholder.	The Tribunal is satisfied that this was another misunderstanding and the sum has an offsetting credit.
17	**Cost Heading: Accountancy Fees** No invoices have been provided for the combined sum of £720.00 shown in the accounts for the Year Ending 28th September 2007. This sum is therefore disputed.	Please see enclosed invoice. The Respondent maintains his claim for 100% of this cost.	The Tribunal could not locate the "enclosed invoice" in the three hearing bundles or additional papers but the accounts include a sum of £360 for each of 2006 and 2007 which is reasonable for the production of such accounts. Apparently, no invoice had been produced when demands were sent out but one will be provided in due course.

18	**Cost Heading: Management Fees** No invoices have been provided for the combined sum of £12,463.49 shown in the accounts for the Year Ending 28th September 2007. No breakdown is provided as to how this figure has been reached. The dilapidated state of the property indicates little or no proper management service, therefore this sum which equates to £346.21 per unit is disputed.	The management fees are calculated at £300 per flat plus 10% of expenditure. In the circumstances, the management fee is considered to be reasonable, particularly given the historical difficulties of managing Horsham and Dorking Court.	As referred to in the body of this decision, the Tribunal has decided that, by reason of the breaches of the statutory consultation requirements, the management fees are already limited to £100 per year per flat and there is no further reduction to be made.

DISPUTED SERVICE CHARGES S/C YEAR ENDED 28th SEPTEMBER 2008

Case Reference: LON/00AP/LSC/2013/0565

Property: Dorking Court & Horsham Court, 86 Hampden Lane, London N17 0AT

No.	Item	Cost	Applicant's Comments	Respondent's Comments	Tribunal's comments
1	**Cost Heading: Cleaning** Please note the copy invoices provided amount to a total of £915.74. The combined total in the accounts for the Year Ending 28th September 2008 amount to a total of £1,055.74. No invoices have been provided for the remaining sum of £140.00 which is therefore disputed.			The remaining invoices relate to services provided by Greenclean Limited. The Respondent requested copy invoices, but this request was refused as there are outstanding invoices to be paid which have been rendered since the Applicants commenced management of the properties. In any event, the Respondent maintains his claim for £140 notwithstanding the fact that no invoices are available.	See comments for 2006.
2	No detail of company or invoice number 26.07.08	£81.99	Leaseholders dispute that services provided were to standard given the ongoing state of the external areas. The Applicant will accept 50% of this cost.	There are no contemporaneous complaints about the standard of cleaning. The Respondent maintains his claim for 100% of this cost.	
3	No detail of company or invoice number 16.08.08	£70.00			
4	Greenclean Ltd Invoice 10595 21.12.07	£669.75			
5	M Matheou & Son No invoice identifier 17.2.08	£94.00			
6	**Cost Heading: Grounds Maintenance** Please note the copy invoices provided amount to a total of £345.00 The combined total in the accounts for the Year Ending 28th September 2008 amount to a total of £400.00. No invoices have been provided for the remaining sum of £55.00 which is therefore disputed.			It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £55.00 notwithstanding the fact that no invoices can be found.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.

7	**Cost Heading: Repairs & Maintenance** Please note the copy invoices provided amount to a total of £2,818.88. The combined total in the accounts for the Year Ending 28th September 2008 amount to a total of £3,271.24. No invoices have been provided for the remaining sum of £452.36 which is therefore disputed.			It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £452.36 notwithstanding the fact that no invoices can be found.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
8	M Matheou & Son No invoice identifier 17.2.08	£452.37	Works to the doors and locks were carried out in the previous year. It is not reasonable for duplicated works to be undertaken so soon. These are not accepted.	This work relates to a different repair which was necessary as the doors had dropped which resulted in the locks not aligning correctly. The previous works related to replacement glass. The Respondent maintains his position for 100% of this cost.	The evidence is that some problems recurred, often very quickly, so it does not necessarily follow that a repair done a year after the first one is not reasonable. In any event, the Tribunal accepts that the charges related to different matters.
9	**Cost Heading: Electricity** The costs for this heading have tripled within this Year End with no explanation. It is concerning that no costs are being incurred for electrical supply at Dorking Court.			The Respondent's agents have made enquiries which confirm that there is one electricity meter for both blocks and therefore the cost of services is to be split equally between Horsham Court and Dorking Court.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
10	**Cost Heading: Management Fees** No invoices have been provided for the combined sum of £11,502.22 shown in the accounts for the Year Ending 28th September 2008. No breakdown is provided as to how this figure has been reached. The dilapidated state of the property indicates little or no proper management service, therefore this sum which equates to £319.51 per unit is disputed.			The management fees are calculated at £300 per flat plus 10% of expenditure. In the circumstances, the management fee is considered to be reasonable, particularly given the historical difficulties of managing Horsham and Dorking Court.	As referred to in the body of this decision, the Tribunal has decided that, by reason of the breaches of the statutory consultation requirements, the management fees are already limited to £100 per year per flat and there is no further reduction to be made.
11	**Cost Heading: Accountancy Fees** No invoices have been provided for the combined sum of £720.00 shown in the accounts for the Year Ending 28th September 2008. This sum is therefore disputed.			Please see enclosed invoices. The Respondent maintains his claim for 100% of this cost.	The Tribunal could not locate the "enclosed invoices" in the three hearing bundles or additional papers but the

			accounts include a sum of £360 for 2008 which is reasonable for the production of such accounts.
12	**Cost Heading: Sundry** No invoices have been provided for the combined sum of £460.96 shown in the accounts for the Year Ending 28th September 2008. This sum is therefore disputed.	It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £460.96 notwithstanding the fact that no invoices can be found.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.

DISPUTED SERVICE CHARGES S/C YEAR ENDED 28th SEPTEMBER 2009

Case Reference: LON/00AP/LSC/2013/0565

Property: Dorking Court & Horsham Court, 86 Hampden Lane, London N17 0AT

No.	Item	Cost	Applicant's Comments	Respondent's Comments	Tribunal's comments
1	**Cost Heading: Cleaning** There is a disparity between the invoices provided for this section and the total cost within the certified accounts for the Year Ended 28th September 2009, in that the invoices exceed the accounts by £209.99. No clarification has been provided.				See comments for 2006.
2	No detail of company or invoice number 29.09.08	£140.00	Leaseholders dispute that services provided were to standard given the ongoing state of the external areas. The Applicant will accept 50% of this cost.	There are no contemporaneous complaints about the standard of cleaning. The Respondent maintains his claim for 100% of this cost.	
3	No detail of company or invoice number 1.12.08	£140.00			
4	No detail of company or invoice number 3.2.09	£140.00			
5	No detail of company or invoice number 22.12.08	£70.00			
6	No detail of company or invoice number 2.3.09	£70.00			
7	No detail of company or invoice number 22.3.09	£70.00			
8	No detail of company or invoice number 27.4.09	£140.00			

9	No detail of company or invoice number 27.5.09	£82.02			
10	No detail of company or invoice number 27.7.09	£79.97			
11	No detail of company or invoice number 1.7.09	£140.00			
12	No detail of company or invoice number 27.10.08	£70.00			
13	No detail of company or invoice number	£70.00			
	Cost Heading: Grounds Maintenance				
14	North London Carpenters & Glaziers No invoice identifier 8.12.08	£575.00	This invoice has been charged to Dorking Court only. This is incorrect as the works relate to estate matters which should be split equally between both blocks. These are not accepted.	The Respondent maintains his claim for 100% of this cost, however will accept that the cost should be attributed to Horsham Court and Dorking Court in equal shares.	The Applicants have put forward no objection to this item other than an incorrect split which the Respondent has conceded.
15	**Cost Heading: Repairs & Maintenance** Please note the copy invoices provided amount to a total of £1,701.18 The combined total in the accounts for the Year Ending 28th September 2009 amount to a total of £1,827.68. No invoices have been provided for the remaining sum of £126.50 which is therefore disputed.			It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £126.50 notwithstanding the fact that no invoices can be found.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
16	**Cost Heading: Electricity** It is concerning that no costs are being incurred for electrical supply at			The Respondent's agents have made enquiries	The Tribunal is satisfied from the evidence that the

	Dorking Court.			which confirm that there is one electricity meter for both blocks and therefore the cost of services is to be split equally between Horsham Court and Dorking Court.	sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
17	**Cost Heading: Management Fees** There is a disparity between the invoices provided for this section and the total cost within the certified accounts for the Year Ended 28th September 2009, in that the invoices exceed the accounts by £5,536.82. No clarification has been provided.			The management fees are calculated at £300 per flat plus 10% of expenditure. In the circumstances, the management fee is considered to be reasonable, particularly given the historical difficulties of managing Horsham and Dorking Court.	As referred to in the body of this decision, the Tribunal has decided that, by reason of the breaches of the statutory consultation requirements, the management fees are already limited to £100 per year per flat and there is no further reduction to be made
18	No invoice identifier 31.10.06	£14,755.65	The invoice indicates this is for management fees for the period of 29.9.05 to 28.9.07 namely 2 years worth. This is unreasonable as fees should be collected within each year. Additionally the invoice is dated 31.10.06 but included in the certified accounts for the year ending 2009. This places it outside of the time allowed for recovery of charges from leaseholders. These are not accepted.	The invoice should be dated 31.10.08 and this is a typographical error; the period should be 29.09.06 – 28.09.07, and again, there is a typographical error.	The Tribunal accepts that there were typographical errors which is consistent with other aspects of poor administration referred to in the body of the Tribunal's decision.
19	Paul Simon Seaton PSS3393A 30.1.09	£2,658.73	The dilapidated state of the property indicates little or no proper management service, therefore this sum which equates to £295.41 per unit per annum is disputed. This also does not match with the figures presented in the certified accounts. These are not accepted.	It is disputed that little or no management was carried out at Horsham Court and Dorking Court. PSS carried out reasonable works in the circumstances.	See comment at 17 above.
20	**Cost Heading: Accountancy Fees** No invoices have been provided for the combined sum of £720.00 shown in the accounts for the Year Ending 28th September 2009. This sum is			Please see enclosed invoice. The Respondent maintains his claim for	The Tribunal could not locate the "enclosed invoice" in the three

	therefore disputed.	100% of this cost.	hearing bundles or additional papers but the accounts include a sum of £360 for 2009 which is reasonable for the production of such accounts.
21	**Cost Heading: Insurance** Please note the copy invoices provided amount to a total of £5,388.54. The combined total in the accounts for the Year Ending 28th September 2009 amount to a total of £5,472.80. No invoices have been provided for the remaining sum of £84.36 which is therefore disputed.	It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £84.36 notwithstanding the fact that no invoices can be found.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS and the Respondent's evidence as to how the insurance was arranged by him.

DISPUTED SERVICE CHARGES S/C YEAR ENDED 28th SEPTEMBER 2010

Case Reference: LON/00AP/LSC/2013/0565

Property: Dorking Court & Horsham Court, 86 Hampden Lane, London N17 0AT

No.	Item	Cost	Applicant's Comments	Respondent's Comments	Tribunal's comments
1	**Cost Heading: Cleaning** Please note the copy invoices provided amount to a total of £560.00 The combined total in the accounts for the Year Ending 28th September 2010 amount to a total of £980.00. No invoices have been provided for the remaining sum of £420.00 which is therefore disputed.			It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £420.00 notwithstanding the fact that no invoices can be found.	See comments for 2006.
2	No detail of company or invoice number 24.04.10	£210.00	Leaseholders dispute that services provided were to standard given the ongoing state of the external areas. The Applicant will accept 50% of this cost.	There are no contemporaneous complaints about the standard of cleaning. The Respondent maintains his claim for 100% of this cost.	
3	No detail of company or invoice number 18.12.09	£70.00			
4	No detail of company or invoice number 28.10.09	£70.00			
5	No detail of company or invoice number 22.12.08	£70.00			
6	No detail of company or invoice number 30.3.10	£70.00			
7	No detail of company or invoice number 22.3.09	£70.00			
	Cost Heading: Repairs & Maintenance				
8	KM Furlong	£2,200.00	This invoice indicates a	This has been included in error.	This item has been conceded on

	No invoice identifier 25.6.10		considerable amount has been spent on roof works for Dorking Court, carrying a 1 year guarantee. However an invoice is present in the invoice bundle for the following year that includes £21,000 plus VAT for a temporary roof for Dorking Court. This indicates a duplication in works. These are not accepted.		behalf of the Respondent so no further comment is required.
9	**Cost Heading: Electricity** It is concerning that no costs are being incurred for electrical supply at Dorking Court.			The Respondent's agents have made enquiries which confirm that there is one electricity meter for both blocks and therefore the cost of services is to be split equally between Horsham Court and Dorking Court.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
10	**Cost Heading: Management Fees** No invoices have been provided for the combined sum of £12,220.37 shown in the accounts for the Year Ending 28th September 2010. No breakdown is provided as to how this figure has been reached. The dilapidated state of the property indicates little or no proper management service, therefore this sum which equates to £339.45 per unit is disputed.			It is disputed that little or no management was carried out at Horsham Court and Dorking Court. PSS carried out reasonable works in the circumstances. The Respondent maintains his claim for 100% of this cost.	As referred to in the body of this decision, the Tribunal has decided that, by reason of the breaches of the statutory consultation requirements, the management fees are already limited to £100 per year per flat and there is no further reduction to be made.
11	**Cost Heading: Accountancy Fees** No invoices have been provided for the combined sum of £720.00 shown in the accounts for the Year Ending 28th September 2010. This sum is therefore disputed.			Please see enclosed invoice. The Respondent maintains his claim for 100% of this cost.	The Tribunal could not locate the "enclosed invoice" in the three hearing bundles or additional papers but the accounts include a sum of £360 for 2010 which is reasonable for the production of such accounts.

12	**Cost Heading: Sundry** Please note the copy invoices provided amount to a total of £806.00. The combined total in the accounts for the Year Ending 28th September 2010 amount to a total of £1,625.60. No invoices have been provided for the remaining sum of £819.60 which is therefore disputed. It is concerning that a cheque stub has been provided that only lists "cash" at £700.00 with no further explanation.	It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £819.60 notwithstanding the fact that no invoices can be found.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.

DISPUTED SERVICE CHARGES S/C YEAR ENDED 28th SEPTEMBER 2011

Case Reference: LON/00AP/LSC/2013/0565

Property: Dorking Court & Horsham Court, 86 Hampden Lane, London N17 0AT

No.	Item	Cost	Applicant's Comments	Respondent's Comments	Tribunal's comments
	Cost Heading: Cleaning				See comments for 2006.
1	Greenclean Ltd Invoice 25689 5.11.10	£166.15	Leaseholders dispute that services provided were to standard given the ongoing state of the external areas. The Applicant will accept 50% of this cost.	Please see enclosed Contract. There are no contemporaneous complaints about the standard of cleaning. The Respondent maintains his claim for 100% of this cost.	
2	Greenclean Ltd Invoice 25973 26.11.10	£154.16			
3	Greenclean Ltd Invoice 26308 24.12.10	£154.16			
4	Greenclean Ltd Invoice 27058 18.2.11	£157.44			
5	Greenclean Ltd Invoice 27415 18.3.11	£157.44			
6	Greenclean Ltd Invoice 27766 15.4.11	£171.89			
7	Greenclean Ltd Invoice 28132 13.5.11	£163.73			
8	Greenclean Ltd Invoice 28584 10.6.11	£163.73			
9	Greenclean Ltd Invoice 28890 8.7.11	£163.73			
10	Greenclean Ltd Invoice 29252 5.8.11	£165.63			
11	**Cost Heading: Repairs & Maintenance** There is a disparity between the invoices provided for this section and the			Please see comments on individual items below that	The items relating to Standish Mackintosh,

	total cost within the certified accounts for the Year Ended 28th September 2011, in that the invoices exceed the accounts by £34,848.72. No clarification has been provided. The below comments are against the invoices.			deal with this apparent disparity.	Lordship Double Glazing and Yes Scaffolding have already been dealt with in the body of this decision.
12	Standish Mackintosh Ltd No invoice identifier 14.2.11	£2800	This is a letter not an invoice. Costs for obtaining guidance for Freeholder and Agent are not service charge matters. Reservice of Section 20 notices due to errors is not a service charge matter. Section 20 fees should be incorporated in the management fee. No specification or timesheet breakdown is provided. This fee is excessive in any case. These are not accepted.	In so far as it is necessary to do so, the Respondent will apply to dispense with the consultation requirements. The Applicants have not established any prejudice.	See above.
13	Lordship Double Glazing Ltd Invoice 517068 7.12.11	£10,100	Invoice partly relates to Flats 1, 2 and 10. It is unclear if this is a service charge matter or lessee responsibility. These are not accepted.	Windows were replaced for those leaseholders who expressed a wish to have them replaced. Further information on this is given in the witness statement.	See above.
14	Diamond Building Services No invoice identifier 24.11.10	£150.00	Relates to works to Flat 12, is this part of an insurance claim along with other works to this area noted within the 2011 year end? These are not accepted.	This has been included in error.	These items have been conceded on behalf of the Respondent so no further comment is required.
15	Diamond Building Services No invoice identifier 25.11.10	£935.00	Payment made against a quotation not an invoice. Work appears to be for damages within Flat 12. These are not accepted.	This has been included in error.	
16	Standish MacKintosh Ltd No invoice identifier 30.11.10	£660.00	This is a letter not an invoice. Relates to works to Flat 12, part of an insurance claim? These are not accepted.	Accepted.	
17	Diamond Building Services No invoice identifier 20.10.10	£1400.00	Payment made against a quotation not an invoice. Work appears to be for damages within Flat 12. These are not accepted.	This has been included in error.	
18	Diamond Building Services No invoice identifier	£755.00	Invoice for ceiling repair at 5 Dorking Court, this should have been part of an insurance claim.	This has been included in error.	

	20.10.10		Possibly linked to the works at Flat 12 above. These are not accepted.		
19	Wood Green Timber Company Ltd No invoice identifier 29.11.10	£123.38	No proper explanation or detail provided. These are not accepted.	This work relates to the replacement of joists in connection with the roof of Dorking Court. The Respondent maintains his claim for 100% of this cost.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
20	LMC Glass Invoice 118341 15.4.11	£233.26	The works detailed are unreasonable given the windows were evidently replaced by Lordship a few months later. These are not accepted.	The managing agents confirm that this work related to the replacement of broken glass and was reasonable and necessary in the circumstances. The Respondent maintains his claim for 100% of this cost.	
21	Standish MacKintosh Invoice 11/24 4.8.11	£2800.00	Disputed as being excessive for works allegedly undertaken. These are not accepted.	This fee is based on a percentage of the costs of the major works, as is normal in this type of contract.	See above.
22	Yes Scaffolding Ltd Doc No. 0000000559 1.7.11	£41,000.00	Lessees dispute validity of the Section 20 procedure, the level of scaffolding provided and that little/no works were undertaken to warrant the extensive scaffolding cost. Additionally the scaffolding damaged the ground it was on with no repairs/rebate being applied. These are not accepted.	Please note that only £14,000 is being claimed in this year. The remaining sums are claimed in the year end 2012 accounts. The Respondent has only now been advised that damage was caused by the scaffolding.	
23	Standish MacKintosh Ltd No invoice identifier 14.8.11	£275.00	The works detailed are part of a managing agents normal activities and should therefore already be included in any management fee. These are not accepted.	Accepted.	
24	**Cost Heading: Electricity** The invoices detail Horsham Court but these costs have been applied entirely to Dorking Court, contrary to previous year end accounts. No clarification is provided as to why.			The Respondent's agents have made enquiries which confirm that there is one electricity meter for both blocks and therefore the cost of services is to be split equally between Horsham	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr

		Court and Dorking Court.	Seaton's evidence as to the service delivered by PSS.
25	**Cost Heading: Management Fees** No invoices have been provided for the combined sum of £14,970.86 shown in the accounts for the Year Ending 28th September 2011. No breakdown is provided as to how this figure has been reached. The dilapidated state of the property indicates little or no proper management service, therefore this sum which equates to £415.88 per unit is disputed.	The management fees are calculated at £300 per flat plus 10% of expenditure. In the circumstances, the management fee is considered to be reasonable, particularly given the historical difficulties of managing Horsham and Dorking Court.	As referred to in the body of this decision, the Tribunal has decided that, by reason of the breaches of the statutory consultation requirements, the management fees are already limited to £100 per year per flat and there is no further reduction to be made.
26	**Cost Heading: Accountancy Fees** No invoices have been provided for the combined sum of £720.00 shown in the accounts for the Year Ending 28th September 2011. This sum is therefore disputed.	Please see enclosed invoice. The Respondent maintains his claim for 100% of this cost.	The Tribunal could not locate the "enclosed invoice" in the three hearing bundles or additional papers but the accounts include a sum of £360 for 2011 which is reasonable for the production of such accounts.
27	**Cost Heading: Sundry** Please note the copy invoices provided amount to a total of £152.75. The combined total in the accounts for the Year Ending 28th September 2011 amount to a total of £3,152.76. No invoices have been provided for the remaining sum of £3000.01 which is therefore disputed.	It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £3,000.01 notwithstanding the fact that no invoices can be found.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
28	**Cost Heading: Insurance** Please note no copy invoices have been provided. The combined total in the accounts for the Year Ending 28th September 2011 amount to a total of £6,046.24. Given no evidence is provided this	Please see enclosed confirmation of the insurance premium paid. The Respondent maintains his	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence

	sum is disputed.	claim for 100% of this cost.	includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS and the Respondent's evidence as to how the insurance was arranged by him.

DISPUTED SERVICE CHARGES S/C YEARS ENDED 17th APRIL AND 14th MAY 2012

Case Reference: LON/00AP/LSC/2013/0565

Property: Dorking Court & Horsham Court, 86 Hampden Lane, London N17 0AT

No.	Item	Cost	Applicant's Comments	Respondent's Comments	Tribunal's comments
1	**Cost Heading: Cleaning** Please note the copy invoices provided amount to a total of £163.73. The combined total in the accounts for the Years Ending April/May 2012 amount to a total of £1,676.70. No invoices have been provided for the remaining sum of £1,512.97 which is therefore disputed.			Please see enclosed invoices which total £849.19. It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for £1,512.97 notwithstanding the fact that no invoices can be found.	See comments for 2006.
2	Greenclean Ltd Invoice 29610 2.9.11	£163.73	Leaseholders dispute that services provided were to standard given the ongoing state of the external areas. The Applicant will accept 50% of this cost.	Please see enclosed Contract. There are no contemporaneous complaints about the standard of cleaning. The Respondent maintains his claim for 100% of this cost.	
3	**Cost Heading: Repairs & Maintenance** Please note the copy invoices provided amount to a total of £89,362.66. The combined total in the accounts for the Years Ending April/May 2012 amount to a total of £126,738.40. No invoices have been provided for the remaining sum of £37,375.74 which is therefore disputed.			It is clear from the cheque stubs and bank statements that these sums were properly incurred and are due. The Respondent maintains its claim for for 100% of these costs notwithstanding the fact that no invoices can be found.	The items relating to Standish Mackintosh, Lordship Double Glazing, Heritage Home Counties and Yes Scaffolding have already been dealt with in the body of this decision.
4	Standish MacKintosh Ltd Invoice 12/21 19.7.12	£2076.90	Cost unreasonable for level of works undertaken. No copies of certification provided from either or the Council. These are not accepted.	This fee is based on a percentage of the costs of the major works, as is normal in this type of contract. Please see enclosed contract.	
5	Yes Scaffolding Ltd Invoice 0000100660 18.10.12	£4200.00	Cost unreasonable for level of works undertaken. These are not accepted.	The scaffolding remained in situ for longer than was anticipated because of the rate at which lessees made payment. Notwithstanding this, the total costs for scaffolding amounts to £41,800. The Respondent considered this to be reasonable and maintains his claim for 100% of the costs relating to	
6	Yes Scaffolding Ltd Invoice 0000100628 26.4.12	£5000.00			

7	Yes Scaffolding Ltd Invoice 0000100645 26.7.12	£1440.00		the scaffolding.	
8	Yes Scaffolding Ltd Invoice 0000100644 26.7.12	£8640.00			
9	Yes Scaffolding Ltd Invoice 0000100643 26.7.12	£5000.00			
10	Standish MacKintosh Ltd Invoice 12/19 18.6.12	£3220.00	Cost unreasonable for level of works undertaken. These are not accepted.	This fee is based on a percentage of the costs of the major works, as is normal in this type of contract.	
11	Standish MacKintosh Ltd Invoice 12/19 (duplicate of above) 26.6.12	£1610.00			
12	Standish MacKintosh Ltd Invoice 12/14 4.5.12	£4284.40			
13	Lordship Double Glazing Ltd No invoice identifier 7.12.11	£8800.00	Apparently accounted for within the 2011 accounts. Costs unreasonable. No FENSA certificates provided. These are not accepted.	SEM apparently instructed this contractor not to communicate with the previous managing agents and consequently, any requests for FENSA certificates have not been responded to. If SEM were to ask the contractor to provide them, we assume they would do so.	
14	Heritage Home Counties Ltd Invoice – Final Statement 18.7.12	£20769.00	Leaseholders dispute works completed to standard, no evidence available, no certification from Surveyors or Council. Costs disputed as being excessive.	Please see enclosed certificate of completion and compliance with Building Regulations. The Respondent maintains his claim for 100% of this cost.	
15	Heritage Home Counties Ltd Invoice – Completion 3	£19320.00			

	23.6.12				
16	Heritage Home Counties Ltd Invoice – Completion 24.5.12	£12567.00			
17	Romdrain Services	£80.00	Not a communal matter, internal to Flat 8. These are not accepted.	This relates to work to the communal drain. The managing agents confirm that Flat 8 provided access to the service provider because the blockage of the communal drain had blocked Flat 8's sink. The Respondent maintains his claim for 100% of this cost.	The Tribunal accepts that this is a communal matter, not limited to one flat and so has been properly incurred.
18	**Cost Heading: Electricity** No invoices have been provided for the combined sum of £137.96 shown in the accounts for the Years Ending April/May 2012. It is noted costs are now being split between both blocks.			Please see enclosed invoice for the sum of £91.73. The Respondent maintains his claim for 100% of the cost notwithstanding the fact that no invoices can be found for the remaining sum. The Respondent's agents have made enquiries which confirm that there is one electricity meter for both blocks and therefore the cost of services is to be split equally between Horsham Court and Dorking Court.	The Tribunal is satisfied from the evidence that the sums were actually incurred. The evidence includes not only the cheque stubs and bank statements but also Mr Seaton's evidence as to the service delivered by PSS.
19	**Cost Heading: Management Fees** Please note the copy invoices provided amount to a total of £14,940.81. The combined total in the accounts for the Years Ending April/May 2012 amount to a total of £23,821.44. No invoices have been provided for the remaining sum of £8,880.63. No breakdown is provided as to how this figure has been reached. The dilapidated state of the property indicates little or no proper management service, therefore this sum which equates to £661.71 per unit is disputed.			The management fees are calculated at £300 per flat plus 10% of expenditure. In the circumstances, the management fee is considered to be reasonable, particularly given the historical difficulties of managing Horsham and Dorking Court.	As referred to in the body of this decision, the Tribunal has decided that, by reason of the breaches of the statutory consultation requirements, the management fees are already limited to £100 per year per flat and there is no further reduction to be made.

20	**Cost Heading: Accountancy Fees** No invoices have been provided for the combined sum of £720.00 shown in the accounts for the Years Ending April/May 2012. This sum is therefore disputed.	Please see enclosed invoice. The Respondent maintains his claim for 100% of this cost.	The Tribunal could not locate the "enclosed invoice" in the three hearing bundles or additional papers but the accounts include a sum of £360 for 2012 which is reasonable for the production of such accounts.
21	**Cost Heading: Sundry** There is a disparity between the invoices provided for this section and the total cost within the certified accounts for the Years Ending April/May 2012, in that the invoices exceed the accounts by £97.60. No clarification has been provided.	This should be set off against the sundry claim at item 27 in the year end 2011 schedule.	This item has been conceded on behalf of the Respondent so no further comment is required.