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**FIRST - TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | : | **CAM/11UE/LIS/2014/0002** |
| **Property** | : | **Flat 6, Iver Lodge, Bangors Road South, Iver, Bucks SL0 0AW** |
| **Applicant** | : | **Sarah Loughlin** |
| **Representative** | : | **Miss Loughlin in person accompanied by Mr C Hain of Flat 2, Iver Lodge** |
| **Respondent** | : | **Iver Lodge Manor Management Limited** |
| **Representative** | : | **Mr T Crown of All Square Legal Limited, Solicitors** |
| **Type of Application** | : | **1. To determine reasonableness and payability of service charges**<br>**2. The appointment of a manager**<br>**3. Application for dispensation from the consulting requirements under Section 20 of the Landlord and Tenant Act 1985** |
| **Tribunal Members** | : | **Tribunal Judge Dutton**<br>**Mr D Barnden MRICS**<br>**Mrs N Bhatti** |
| **Date and venue of Hearing** | : | **Pinewood Hotel, George Green SL3 6AP on 9th and 10th July 2015** |
| **Date of Decision** | : | **17th August 2015** |

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**DECISION**

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## DECISION

1. The Tribunal makes the determinations as set out in the findings section of this decision and reduces the service charge payable by Miss Loughlin by her share of £827.54 as set out at paragraph 57 below.
2. The application for the appointment of a manager will be dealt with in due course.
3. The Respondent's application for costs under Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (the Rules) will be dealt with in due course.

## REASONS

### BACKGROUND

1. By application received at the Tribunal offices on 29th October 2014 the Applicant, Miss Sarah Loughlin, the owner of Flat 6, Iver Lodge, Bangors Road South, Iver made two applications to the Tribunal. The first was for a determination of the liability to pay and the reasonableness of service charges pursuant to Section 27A of the Landlord and Tenant Act 1985 (the 1985 Act). A second application received on the same day was made for the appointment of a manager, pursuant to s24 Landlord and Tenant Act 1987 (the 1987 Act) although no person was identified in the application as being the intended appointee. Directions were issued by the Tribunal on 5th November 2014 in respect of both cases setting out the steps that each party should take.

2. The matter originally came for hearing earlier in the year but could not proceed due to the state of the paperwork. As a result the matter was adjourned for hearing on 9th and 10th July 2015 intending to include both applications.

3. As a result of the late delivery of papers relating to the appointment of the manager and the lack of time following the hearing on 9th and 10th July, that application has had to be adjourned. It is right to record that Mr Thomas who was proposed by Miss Loughlin as the manager to be appointed has now declined to take on that role. Directions were issued following the hearing on 10th July but those have been slightly amended and it would be anticipated that the hearing in respect of the appointment of a manager and the Respondent's claim for costs under the Rules will be dealt with on the same date perhaps some time in October of this year.

4. This decision relates solely to the application under the 1985 Act, that is to say the reasonableness and payability of service charges, as well as an application made on 10th July by the Respondents for dispensation under Section 20ZA of the 1985 Act.

### DOCUMENTS

5. Sometime before the hearing Miss Loughlin had filed with the Tribunal a bundle of papers. However, matters progressed and that bundle it was thought had become redundant. Prior to the hearing she filed a further set of papers with the Tribunal comprising a bundle in two parts. The first contained, amongst other documents a Scott Schedule, various statements of witnesses, details of costs that Miss Loughlin sought to recover and correspondence with the Tribunal and with the solicitors for

the Respondent. In the second part of the bundle we had a copy of the lease for Miss Loughlin's property (6 Iver Lodge), the register of title and sundry documents, including what appeared to be an amended statement of claim. Not content with this just prior to the hearing we also received a further handwritten letter enclosing various other copy documents, for example invoices from Albert Huber Limited, emails and further invoices from J R Asphalt Limited. Because the parties had been unable to agree a single bundle of documents, the Respondent also filed two folders with us. These folders contained the Scott Schedule and copies of a number of supporting invoices, the Respondent's statement of case with various exhibits, witness statements of Dr Jordan and Mr Mason which were included in Miss Loughlin's papers and copies of the application, directions and correspondence.

6. As mentioned above, a Scott Schedule had been completed by Miss Loughlin. This ran to 23 pages containing some 233 entries. We understand that the Scott Schedule was created by Miss Loughlin relying on a schedule of expenditure which had been included in the original defunct bundle, which was not before us for the hearing. This had the double impact of relating to a document which we did not have and also relating to a schedule of expenditure which was somewhat indistinct and lacking in detail. We did have in the papers before us the accounts for the years in dispute which were for 2009/10 to 2013/14, the final accounts for year 2014/15 not yet being available.

7. The Respondents had endeavoured to retrieve invoices relevant to the various entries on the Scott Schedule but given the passage of time they indicated that some were not available and some did not appear to directly relate to the sums quoted by Miss Loughlin in the schedule.

## INSPECTION

8. Prior to the hearing we inspected the property at Iver Lodge in the presence of Miss Loughlin and Mr Hain as well as Mr Jordan, Mrs Rose and Mr Mason, owners or co-owners of Flats 3, 4 and 5. Mr Crown from All Square also attended the inspection as did Miss Sherwin of Hazelvine, the managing agents for the respondent company.

9. Iver Lodge is a Grade II listed two storey building of brick with sash windows and to the rear façade two full height bay windows. The property has been extended over the years and now provides six large flats. There are several acres of garden and amenity land. Part of the amenity land is apparently tended by a local farmer who uses it for growing hay. Within the gardens there are large trees and hedges as well as a tennis court. Our general impression was that the property and the gardens were in excellent order with one or two exceptions and the general ambience of the estate was one of affluence.

10. To the front there were extensive gravelled car parking areas, the entrance to the estate, if we may call it such, being guarded by electronically controlled gates. There were garages for each flat as well as a store area. There was external lighting to the car parks and to the entrance with the gravelled theme being followed through to the rear garden in respect of a path which ran round the extent of the mown grassed area. We noted on inspection that there appeared to be problems

with the soak away in the rear garden. A pump was in situ apparently powered from Miss Loughlin's garage and had been there for some while. It seems that the soak away was taking surface water but also it may well be collecting water from a well which was situated in the cellar of the property. This had been causing problems for a while.

11. We noted that the front door was in need of attention but apart from that the internal appearance was one of a cared for environment. The entrance hallway was a substantial stone floored vestibule leading to a carpeted area with stairs to the upper floor. We noted that there was some communal furniture including an oak table and two chairs. In addition there appeared to be a wardrobe in the common parts beyond the entrance hallway. There was lighting controlled on a timer. We inspected the cellar to the property which had allocated areas within it to be used by each owner. Miss Loughlin showed us the storage room for her flat which revealed that there was no plasterboard ceiling, apparently taken down by the previous resident, but it seems the room was not used by her to any extent. We were also able to view the well which was to be found in the cellar, which when the depth reached a certain height was emptied into the soak away by way of a pump. The cellar had a good ceiling height, perhaps 6ft 6in.

12. We also saw the electronic pedestrian and vehicle gate at the entrance to the estate, which was at the time of our inspection undergoing some servicing. It was also pointed out to us by Miss Loughlin that the window sills to one or two of the windows in her flat appeared to be in poor order.

**WRITTEN EVIDENCE**

13. In the papers provided there were a number of witness statements. The first was by Miss Loughlin which was undated but gave a history of her residence at Iver Lodge. She had apparently purchased her flat in 2006 and suggested that she had since that time been provided with service charge demands and unwarranted cash calls which she thought were "both excessive and unauthorised." She also complained that a number of items of expenditure were of a personal nature but paid for by the collective funds and that there was a "complete lack of transparency concerning the tendering and authorisation of the works at Iver Lodge." She indicated that she would be seeking the assistance of an accountant although no such evidence was put before us. The statement went on to query the amounts of the various service charges and complained about the manner in which the management company was run directing complaints in particular at Mr Peter Mason. There were various complaints made with regard to the lack of Section 20 consultation in relation to various items of expenditure, which we will return to in due course and complaints that some residents who were in arrears of service charges had carried out work and had offset those works against the service charge liabilities they allegedly had.

14. On 8th June 2015 Miss Loughlin filed a document headed Amended Particulars of Claim. Although it is entitled as such, it is not clear that there was ever an original particular of claim in this case. This set out the terms of the lease which she sought to rely upon and listed the demands made of her in respect of service charges, apparently from May 2008 onwards, totalling, she said, some £28,591.40 most of which she says she had paid. The particulars of claim then went on to

deny she had a liability to pay any sums due and that if that were correct she sought reimbursement of the totality of the amounts that she had paid over the years. It then went on to resemble a county court pleading seeking an account of all sums received by the defendant from May 2008 to September 2014; a declaration of what proportion of the £28,591.40 was due to the defendant if any; subject to the taking of account the return of £26,150.05 and finally a claim for interest under Section 69 of the County Courts Act 1984 or any other relevant statutory provision applicable to the First Tier Tribunal.

15. In addition to these documents we had a witness statement from Christian Hain, the owner of Flat 2, which was in the form of a letter confirming that what was said to be "true honest". This statement referred to the "endless number of instances of mismanagement, misrepresentation and false statement since I live at Iver Lodge" a selection of these allegations related to the budgeting, the soakaways, floods and state of repair of the front door, garden contractors, the behaviour of Mrs Rose, the incompetence of Hazelvine and finally in his conclusion an assessment that the budget was unfair, a concern that there was a majority rule in the property and a suggestion that having paid £13,000 to Hazelvine over the three and a half years he had lived at the property, he had nothing but a "constant feeling of failure, lies, damage to the house and grounds and constant demands for money." Finally, he suggested that the upkeep of Iver Lodge did not necessarily need a managing agent but a competent surveyor contact who could offer themselves when needed. Finally, he suggested that the currently Board of Directors "extensively wastes money."

16. We were also provided with a short statement from Colin Smith who did not attend the hearing and is not in fact a leaseholder but the owner of one of the houses that has certain access to the grounds. There was also a witness statement from a Mr Keith Strong, a chartered engineer, amongst other qualifications, of KRS Consulting Engineers. Unfortunately Mr Strong had died before the hearing started. In addition, if the statement were intended to be an expert's statement, which we understand it might well have been, no permission had been obtained for such an expert's report to be used. Accordingly we did not consider that which was contained therein.

17. For the Respondents there was an extensive statement of claim in the first folder. This contained a number of sub-headings including an introduction confirming that the property at Iver Lodge was a Grade II listed manor house dating from 1792. It also confirmed that there were five freehold houses located on adjoining land having rights of access and rights to enjoy the grounds known as the 'amenity land' which are approximately ten acres in total, as opposed to the lodge grounds exclusively for the use of the leaseholders of approximately four acres. The statement confirmed that the six flats were held on leases of identical terms of some 999 years and that the freehold of the property had been transferred to the Respondent in 2002. Reference was made to certain terms of the lease which we will refer to as necessary in this decision. The statement confirmed that the board of the respondent company was made up of one individual owner of each of the flats in the lodge building and that sometimes the business of the board was conducted formally, at other times somewhat informally. It appears that since the spring of 2013 and to date the relationship between Miss Loughlin and the other board members has become so strained that there has been no direct

communication between them. It seems that Hazelvine may have been used as a conduit. The statement also gave some background to the difficulties that have arisen at the property which we do not need to go into for the purposes of determining the matters before us. They do, however, impact on the reason why these applications have been made.

18. The statement told us that a copy of a document headed Iver Lodge Principles had been prepared some time in 2012 and this is the basis upon which the property is maintained.

19. Mention was made of Mr Smith being the owner of one of the houses and we were told in this statement that until 2011 there had been no contribution claimed from the house owners towards the upkeep of the amenity land. However, from 2011 this appears to have been corrected.

20. The statement then went on to address the Applicant's case, the Respondent's overview on matters and specific details relating to items in dispute, all of which we noted and have borne in mind in reaching the decision, which is set out in the findings section below. The statement of claim also briefly addressed Miss Loughlin's application under the 1987 Act and also raised the question of costs under the Rules in respect of the abortive hearing in March.

21. In addition to the statement of case on behalf of the Respondents there were two witness statements made by Dr Christopher Jordan of Flat 3 and Peter Mason of Flat 5.

22. Mr Jordan's witness statement gave a history of his occupancy indicating that he had lived there from August of 2010 with his wife and that his relationship with Miss Loughlin and her co-habitant, a Mr Greenhill, had been cordial. He told us of the issues that had arisen prior to his purchase when his surveyor had noted certain problems with the roof, which had resulted in the leaseholders having to contribute towards certain roofing works. The statement went on to record that the relationship with Miss Loughlin and her partner had deteriorated for reasons that were not really expanded upon other than in a comment where he says that the behaviour of Miss Loughlin and her co-habitant had unquestionably resulted in increased costs to all. The statement does not deal specifically with many items, although does make comment with regard to the Section 20 consultation procedures.

23. The second statement was made by Mr Peter Mason which seeks to explain the collective desire of the residents to keep the costs down and to deal with matters not always in a "proceduralised way." He told us that the owners of Flat 1, 3, 4 and 5 had a good relationship but that Miss Loughlin did not share their views. The statement then went on to list breaches of leases, obstruction, behaviour and personal accusations but in truth gave no real assistance to us in respect of the items of expenditure which were being challenged. It did, however, give further evidence to the fact that there was a good deal of antipathy between the parties.

## HEARING

24. The hearing started in 9th July and continued to 10th July. The persons in attendance for the Applicants were Miss Loughlin and Mr Hain and his partner. Mr Georgiou, an accountant attended on the first day but gave no evidence and Mr Thomas from Thomas Williams Group, the proposed managing agent attended on the second day. For the Respondents Mr Crown, the solicitor from All Square represented them and Mr Mason, Mrs Rose and Mr Jordan were in attendance as was Miss Sherwin from Hazelvine.

25. At the start Miss Loughlin posed the question "are the service charges reasonable and had she been consulted generally over day to day expenditure and consultation issues?" She indicated that she had wanted to obtain an audit as she thought funds had not been collected equally from each leaseholder and that some leaseholders had offset costs by carrying out work. She asked whether invoices were valid, particularly where work had been instructed by individual leaseholders or work done by leaseholders for which payment had been made. She thought the budgeting practices were not correct as there was no specifying or tendering for works and that there was a withholding of information and a lack of quotations and estimates. The imposing of the budget she said was not related to need. This had resulted in a large reserve fund accruing. No AGM had been held for some while to enable the accounts to be agreed, although she accepted she did get the accounts on an annual basis.

26. She then turned to the Scott Schedule which included some details of each item of expenditure, the comments that she had made, the landlord's comments and a further reply. There was a heading indicating whether any of the items could be agreed or not and as we have indicated above, the list ran to some 233 entries none of which it appeared Miss Loughlin was prepared to concede. We also understood that the Scott Schedule had been based upon a schedule of expenditure rather than accounts and invoices and accordingly some of the data shown on the schedule was either incorrect in part or wholly. The Respondents had endeavoured to recover those invoices they could but the complaint appeared to go back to 2008 notwithstanding that her application seemed to run from 2009/10 onwards.

27. In an attempt to control the proceedings we worked through the Scott Schedule as best we could but there were a number of items of expenditure which were common to each year and the first that we would propose to deal with the evidence upon was the gardening. In 2008 we were told that this was undertaken by Albert Huber Limited and a complaint made by Miss Loughlin was that these works had not been tendered and that Section 20 consultation should have applied. There was also a complaint that no service charge had been collected from the five houses and that this meant that the six flats should have to pay a larger contribution. She did not think that she should make any payment for these works. She thought the costs were too high and maintained this as an argument in respect of all gardening works except for those most recently carried out SCS Landscape Limited, although she still complains that those were too high and that there had been no consultation under Section 20 of the 1985 Act.

28. There was also complaint that Mr Hamza Mould had, without consultation, been retained to carry out garden maintenance works, as opposed to grass cutting and

other lighter duties, at the weekend. It appears that originally Mr Mould had been paid by Mrs Rose as there was no accounting arrangement set up with Hazelvine. Miss Loughlin considered that these costs were excessive and that in the case of Mr Mould he was incompetent. She asked us to review a quote that she had obtained from KB Services which was in her bundle at page 67. It was somewhat confusing but it appeared to indicate that if the residents purchased a petrol mower and strimmer as well as a hedge cutter and a shed for about £1,400, then the costs for grass cutting and maintaining the driveway would be £120 per week. If the contractors own equipment was used it was £192.30 per week. In addition, there was a fuel cost of £10 per week and if there was a requirement to cut, maintain and tend the bushes and flowerbeds for the year that would be a further £4,950. In addition, the Respondent would be responsible for obtaining insurance cover for the work and equipment and to provide the shed for storage.

29. Insofar as the engagement of Matties Gardening was concerned, again an allegation was made that there was no consultation and the costs were too high. It was suggested that there had been no invoices provided, no tendering, no consultation and excessive costs. Reviewing the invoices provided by the Respondents the accounts this indicated that the costs of gardening were somewhere between £7-10,000 per year with the exception of 2012 and that this showed an average of around £1,700 per flat per year for the maintenance of the area.

30. In response, the Respondents considered the costs were reasonable and the market rate. There had been no contemporaneous challenge made to the works and that certainly insofar as the SCS contract was concerned, a copy of which was produced, this confirmed that it was for a 12 months period payable on a monthly basis. Mr Mason told us that other quotations had been sought in 2009 from Mattie, Hoover and a company called Buggy and that Mattie was the cheapest and indeed the company who were used at that time. He told us that all information was circulated and indeed on an email dated 18th June 2009, which includes Miss Loughlin as a recipient, details were given as to the gardening costs and other issues.

31. Miss Loughlin complained that a quad bike had been purchased, which was not necessary and not with here agreement. It is recorded as having cost £2,000 but we were told by the Respondents that in fact it had been bought for £650 and was used by four out of six people for general garden works. It was not thought that the sum of £650 was an unreasonable amount. Mr Mason thought that the bike was used two or three times a month during the summer but certainly not for recreational purposes, merely to tow a trailer to "cart stuff" around the estate.

32. After the luncheon adjournment the question of personal expenditure was raised. In the Scott Schedule there were a number of entries, it seems from the summer of 2010 onwards, involving Mr and Mrs Rose and the acquisition of such items as quad bike repairs, weed killer, garden items, a ladder, certain works to the front entrance and door and various other items of this nature. These were objected to by Miss Loughlin as not being required for the upkeep of the building and perhaps had not in fact been incurred. She thought that residents just bought items and recovered the money without the approval of the other residents. Mrs Rose told us that items were indeed paid for by her and her husband but this was done with the

agreement of the remainder of the tenants. Issues had been raised concerning the initial payment of Hamza Mould and she confirmed with us that this had also been paid with the agreement of the other residents, apart from Miss Loughlin, and had been dealt with because Hazelvine appeared not to be able to settle costs for a contractor that did not have suitable professional indemnity cover. We then moved on to the non-collection of monies from previous leaseholders by Hazelvine and the allegation that they had been allowed to offset outstanding service charges for providing services to the property. In particular an allegation was made that Mr Wilkins, a former resident, had carried out works to the driveway which had been offset against his service charge liability. Mr Mason told us that Mr Wilkins had repaired the pot holes and put up fencing which he had offered to do over a period of time. He had supplied shingle and fence posts and Mr Mason knew nothing of any agreement relating to any offsetting of service charges. He confirmed that his opinion was that Mr Wilkins was a good handyman but accepted that no quotes had been obtained from anybody else.

33. The next item that was complained of by Miss Loughlin was the attendance by MRFS Group, the company that looked after the gates. There apparently had been some form of damage caused to the gates in a burglary at the subject premises and it was thought that the costs of repair had been claimed through the insurance, although nothing was shown in the accounts. Miss Loughlin did not appear to be querying the amount claimed by MRFS but she then went on to say that the installation of the new electric gates, which it appears had stopped the intended robbers from gaining vehicular access to the estate, had not been dealt with under the Section 20 consultation process. We will return to this item in due course.

34. There were then general items on the Scott Schedule which were specifically raised as inappropriate. These include some costs incurred by a Mr Brooks relating to various works in or about the property, the claim in respect of the cleaning of the tennis courts, some fencing and paving totalling £840, some roofing works which Mr Mason told us were as a result of snow build-up which had caused water to come through the roof, although Miss Loughlin denied any knowledge of this. There were further roof costs, servicing to the gates and works done to repair the tradesmen's button.

35. At the conclusion of the first day we asked Miss Loughlin to give consideration as to whether she still sought to challenge various items of works on the basis that there had been no consultation and we will return to those in due course. We were told by Mr Crown, the solicitor for the Respondent that they would make a formal application for dispensation under Section 20ZA of the 1985 Act and indeed on the morning of the second day arrived with a fully completed application and cheque in respect of same. Miss Loughlin took no issue with this preferring to deal with all matters relating to service charges in the two days allocated for the hearing. We had also asked Miss Loughlin to consider whether there were any items on the Scott Schedule which she could overnight consider as being acceptable. Initially she indicated that in reality she continued to dispute all items but as we worked through the Scott Schedule she did change her stance and certain items were no longer in dispute. We will deal with that in the findings section.

36. Mrs Rose was asked to confirm if there was any procedure that had been set up concerning her involvement with the garden. She told us that there had been a

mutual understanding that brambles and flowerbeds etc would be looked after by the tenants, complimentary to the works done by the employed gardeners and just as a pastime. As to the purchase of plants she told us would agree these with the other residents with whom she was talking and that she understood other residents had bought plants to go into the garden. She told us that the costs of same were by agreement to be passed through Hazelvine for reimbursement. Dr Jordan told us that Mrs Rose organised a garden watch where action would be agreed and we were provided with an example of the document prepared at the end of October 2011.

37. Miss Loughlin told us that she had spent money on flowers and other items but had not thought to claim it back and did not see why Mrs Rose should do so. She also complained that the work done by Mr Hamza Mould was inadequate and did not believe that he was in fact a gardener. At this point we were directed to certain documentation which appeared to show that Miss Loughlin had indeed been involved in the upkeep of the garden when matters had perhaps been more amenable and Mr Mason told us that up until 2012 they had adopted a somewhat informal system where they instructed the agents as to what was to be done. However, since 2012 they have tried to become more formal with a greater involvement of Hazelvine.

38. Mr Hain told us that he had moved into the building in December of 2011 and had become a director of the respondent company attending two meetings but not the AGM in 2014 because he was away. He was particularly concerned that there was no discussion about the accounts.

39. We were told on behalf of the Respondent that Mr Mould made approximately seven visits a year, which was for pruning and weeding as well as tree surgery and path tidying and attendance to the more overgrown areas. We were told he had been to horticultural college and that he had worked for Rose Property Services in charge of gardening although this was not a company with which Mrs Rose had any involvement. A list of items that needed to be done was left in the hall for him to deal with and they were happy with what was done and his charging rates. It seemed, according to Dr Jordan, that since Mr Mould had started there had been something of a transformation to the grounds, although Miss Loughlin argued that his treatment of some laurel hedges by the tennis courts indicated his lack of knowledge. We then had further evidence relating to works carried out by Mr Brooks, received confirmation that the reserve funds stood at some £35,000 and that there was expected expenditure in respect of the front door replacement, works to the guttering and fascias around the garage block all at a cost of some £15-20,000 as well as an engineer's report to resolve the problems with the soak away. Further evidence was taken on matters such as the lighting test, an invoice in respect of door repairs, further invoices from MRFS relating to gate works and works undertaken by Mr Brooks. There was also a general challenge made to the fees of Hazelvine since 2010, although somewhat confusingly Miss Loughlin thought that their fees were reasonable.

40. We then heard the Respondent's application for dispensation from the consultation requirements in respect of a number of items of major works. It was conceded by Mr Crown that there had been no consultation in respect of the following matters:-

- Works to the lodge roof completed in 2011 at a price of £7,600
- Works to the garden pathways in 2011 at a price of £5,325
- Works to the door entry phone system in 2011 at the sum of £4,620
- Works to the security gate in 2009 in the sum of £2,699.68 and
- External decorations recorded at £4,285 but shown as £6,000 in the accounts for the year 2009.

As we indicated above, Miss Loughlin was happy for the matter to be dealt with on he second day and the first matter we considered was the question of roofing works. These were brought to light as a result of Mr Jordan's proposed purchase of his flat. His surveyor went onto the roof and provided a report which was circulated. Apparently it had been agreed that the vendor of the flat would meet the share of the costs and in an extract of the report that was provided to us it records as follows *"Asphalt repairs are now needed to prevent complete failure and all flat-roofed surfaces should be repainted with more durable solar reflective paint. The lantern over the communal stairwell is in need of careful repair and redecoration together with additional protection to the projecting sills. Work to this area should form part of a regular routine maintenance plan."* The potential difficulties were conveyed to all residents and there are emails in the bundle provided by the Respondent showing that in May 2010 Miss Loughlin was included in an email from Mr Mason indicating that there may be a separate cash call for dealing with the works. Subsequently estimates were obtained from four companies details of which appear to have been provided to the residents. It was decided to proceed with JR Asphalt as it was felt they would provide the best works and their costs were consistent with other quotes obtained save for Uxbridge Roofing which was considerably higher.

41. It was put to Mr Mason that no independent survey had been carried out and he accepted this was the case and this indeed was the major concern of Miss Loughlin. It was not, therefore, on the part of Miss Loughlin so much the lack of the Section 20 consultation as the need for the works to be undertaken at all.

42. The next matter we dealt with was the cost of the new pathways which was £5,325. Apparently the issue was raised in a document headed Half Time Report 18.2.11 purportedly circulated to everybody and discussed at a meeting on 26th November 2011 which was not attended by Miss Loughlin or her partner Mr Greenhill. Again we were told that these minutes were circulated by email. Indeed we were told that the final estimate was sent to Miss Loughlin on 8th December 2011 showing a breakdown of the costs. In response Miss Loughlin said that she was deliberately excluded from the consultation and did not get any of the emails allegedly sent to her. Mr Hain said he did get the email but did not think that all were attached and sent to him. He, however, did not express any particular concerns as he has only moved into the flat in 2012. It appears from the invoices produced that the total costs of the works was not in fact £5,325 but £4,225 and this is the extent of the sum for which dispensation is claimed.

43. On the question of the external decorations for which the sum of £4,285 is mentioned in the application but the sum of £6,000 is shown on the accounts, we were told by Miss Loughlin that the quality was unacceptable. There had been no

consultation and she believed the works had been carried out by a resident, a Mr Bailey. The windows had been painted shut, there was no schedule of works and no preparation. For the Respondent it was confirmed that these works were carried out in 2008, there was no documentation and there had been two changes of managing agents since then. Mr Mason did not think Mr Bailey had done the work. They may however have been organised by Mr Bailey or by the then managing agent. Mr Mason accepted that works had not been done to a very good standard.

44. Miss Loughlin did not continue with her complaints in respect of the lack of consultation for the works to the door entry phone system or the security gate nor did she challenge the costs of same or the reasonableness of the works.

45. That concluded the evidence that Miss Loughlin wished to present. Mr Crown on behalf of the Respondents told us that the Respondent had changed its approach to management in the last two years and were not undertaking works at any time which were detrimental to the Applicant nor seeking to place the Applicant in a difficult financial position.

46. Insofar as the application for the appointment of a manager was concerned, we dealt with this in the directions issued following the hearing on 10th July when we also issued further directions for the questions of costs.

## THE LAW

47. The law applicable to this application is found in the appendix attached hereto.

## FINDINGS

48. We wish to make some general comments before we deal with specific items of expenditure.

49. In our view neither side has covered themselves in glory in these proceedings. It is not wholly clear from the evidence before us, either in written or oral form, what has caused this complete breakdown between Miss Loughlin and the other residents, now supported, for reasons that are not wholly clear, by Mr Hain. We understand Mr Hain has his own application, which is on hold pending the outcome of this case.

50. Insofar as Miss Loughlin is concerned, we must say that we have found the case put to us by her somewhat unrealistic and unreasonable. She based the Scott Schedule upon a schedule of expenditure which was not included in the papers before us. However, she was, a month or so before the hearing, provided with the Respondent's bundle of papers which contained a number of invoices which she should have reviewed and which she could then have taken cognisance of and perhaps reduced the number of items in dispute. She failed to do this, although we do record that during the course of the hearing, particularly on the second day, some concessions were made. It is unrealistic of her to expect this Tribunal to order a refund of all the monies that she has paid since 2008 which according to her amended particulars of claim, and subject to an account, would amount to some £26,150.05. This of course gives no concession to items of expenditure

which she has not in truth challenged such as the annual insurance. It does not appear that any complaint was made with regard to the running of the property or the costs incurred until around 2012. She appears to have gone back in time in an attempt to cause maximum inconvenience and concern to the other residents. She has produced little or no evidence to substantiate her challenge to the majority of the items shown on the Scott Schedule and has been lax in the production of paperwork which resulted in the first hearing in March having to be adjourned and the Appointment of a Manager application having to be put off to a later date. We are by and large unimpressed with her case.

51. That is not to say that the Respondent comes to these proceedings with clean hands. There may well have been a falling out between Miss Loughlin and certainly Mr Mason and it seems at least two of the other leaseholders, but that gives no excuse for the leaseholders to ignore Miss Loughlin in consideration of the works to be undertaken. There does appear to have been a more formal approach taken since 2012 but the repeated purchase of items by Mr and Mrs Rose and the reclaiming of same through the service charge accounts would, we suspect, annoy a leaseholder particularly if they were not involved in the 'clique' which appears to be running the property. We accept that works need to be dealt with and that in the absence of a full agreement then a majority rule would apply, the essence of democracy. However, that does not mean there should be no consultation with other leaseholders who may not agree with that course of action. We accept that Mr and Mrs Rose had acted honestly in the purchases that have been made and we accept that there is a passage of time issue in connection with the retention of invoices going back to 2008. Nonetheless, the informal approach which has been adopted certainly until 2012 can no longer be sustained and the involvement of Hazelvine or whoever may be managing the property should be engaged more appropriately and more often.

52. It is a great pity that a property, which we were impressed with on our inspection and which requires to be maintained at this standard to ensure that the capital values of the flats are also maintained, cannot lead to an amicable and pleasant life for all concerned. We accept it is easy for us to hand down homilies when we are not actually living at the property but it is to be hoped that if both sides were to stand back and review these proceedings and the reasons that they have arisen, it may be that some form of rapprochement could be achieved which could avoid further difficulties and lead to a more amenable existence.

53. We turn now to the items of expenditure and will deal firstly with the Respondents' application for dispensation under Section 20ZA. Miss Loughlin in a show of pragmatism and good sense accepted that the challenge in respect of the entry phone and security gate was not be maintained. We are left, therefore, with dealing with the dispensation for the roofing works, the pathways and the external decorations. Insofar as the roofing works were concerned it is quite clear that there were a number of emails sent to Miss Loughlin, although she does not admit receiving them. There was also the report that we saw from Dr Jordan's surveyor and the evidence given that there had been some issues in respect of the roof. It is also right to note that a number of quotes were obtained and the most appropriate one would seem on the face of the documents to have been proceeded with. Applying the judgment of Daejan v Benson from the Supreme Court, it seems to us that in this case and indeed in respect of the pathways and the external

decorations it cannot be said by Miss Loughlin, and indeed is not said by her in any particular format, has been prejudiced. This is a tenant-owned management company where the strictures of Section 20 may not perhaps apply strictly as they would for an independent commercial landlord, if the parties were as one. That is not to say, however, that Section 20 is no longer relevant and it is to be hoped that in the future the Respondent will adhere to the Section 20 consultation procedures. However, in the case of these three items of work we find that in respect of the roofing works the sum of £7,600 is properly claimed. We are satisfied that on the balance of probabilities that the roof required attention and given the quotations obtained and the email exchanges that show Miss Loughlin as being an addressee, we are satisfied that if the strict procedures for Section 20 consultation were not followed she was on our findings aware of what was intended and the costs and had the opportunity of instructing her own contractor if she had so wished.

54. In connection with the pathways we inspected those when we viewed the property and again we are satisfied that information relating to the costs and the proposed works were supplied to Miss Loughlin at the time. Although the Section 20ZA application refers to the works in the sum of £5,325 in fact the only amount for which dispensation is sought is £4,225 consistent with the invoices produced by Mr Mould. Although Mr Hain made some comments about the status of the pathway he did not give any clear direct evidence and of course is not a party to the proceedings. We are satisfied that the works are of a reasonable standard and there was no challenge produced to us by Miss Loughlin to show that the costs were excessive.

55. Finally, the question of the external decorative works. Both sides appear to accept that the works were not done terribly well but we are now dealing with works that are over seven years old. The problems with Miss Loughlin's window sill are for her to resolve as she is responsible for the window frames. The property probably now needs further external decorative work and it would be sensible to have that done once repairs have been carried out to the woodwork to windows that need it. The costs recorded in the accounts are £6,000. The dispensation is sought for a sum of £4,285 and it is unclear from where that figure has been acquired. We think it appropriate to deal with the amount that appears in the accounts and given the extent of the property and the passage of time since these works were completed and the lack of complaint until now, we are willing to grant dispensation in respect of same and find that the costs are now beyond challenge because of the period of time since the works were undertaken and the lack of evidence we have concerning who did the works and on what basis.

56. We turn then to some of the specific items in the Scott Schedule. We do not propose to go through these on an item by item basis. Miss Loughlin indicated that there certain matters that she would no longer challenge and we will therefore confine ourselves to making findings on those matters where we consider there should be some adjustment. We should say, however, at the outset that we do not consider the vast majority of the costs to be unreasonable. The gardening costs vary between £7-10,000 a year apart from 2012 and generally the average total service costs for each leaseholder of around £4-5,000 per annum is not in our findings an unreasonable sum. One has to bear in mind that the building is quite extensive as are the grounds and inevitably the upkeep of same is going to be

expensive. The property has the benefit of a tennis court, garages and very pleasant grounds in which to take ones leisure and in the round, therefore, we conclude that the costs for the years in dispute are in the main acceptable.

57. There one or two items, however, that we do question. The first is the purchase of the quad bike which was £650 and not £2,000 as recorded. Given that gardeners have been employed at all times doing both grass cutting and grounds maintenance in the case of Albert Huber Limited and subsequently grass cutting and maintenance either by Matties or SCS and Mr Mould, we wonder at the need to have a quad bike, which is used two or three times a month during the summer. However, the amount involved, just over £100 per flat and the upkeep of same which is nominal, persuades us that we should not interfere with this. Mention is made in the Scott Schedule of the reimbursement to Flat 1 for the purchase of furniture. However, there are conflicting emails on this point and Miss Loughlin did not appear to pursue this at the hearing. The same applies to entries relating to management commission and management fees to HML Shaw. We do, however, express some concern at some of the personal purchases made by Mr and Mrs Rose which were not technically personal but for the estate and which were passed through the service charge account. Items such as weed killer ought to be included in the costs of the gardener but to be frank the sum of £188 of which Miss Loughlin's share would be just over £30 is insignificant and does not warrant our intervention. There was no realistic challenge that any of these costs had not been incurred and were not intended for the benefit of the leaseholders as a group. The same could be said of the ladder which we did see in the entrance to the cellar and the purchase of the indoor planters. There is one item, number 117 in the Scott Schedule, where the sum of £827.54 has been expended for works that were unknown and which the Respondent could not respond to. This however reflects the difficulty in using the expenditure schedule as opposed to the invoices which were subsequently produced. We do think, however, that in 2011 invoices for an amount such as £827.54 should have been retained and be available. Hazelvine started the management in 2011 and accordingly invoices of this date should we think still be available. Accordingly in the absence of any evidence on the part of the Respondent as to what this sum was incurred for and why, we disallow the sum of £827.54 in the year ending 31st March 2011.

58. That is, however, the extent of the reduction we feel is appropriate in this case. As we have indicated above the somewhat informal running of the property insofar as the purchase of various items is concerned could legitimately give rise to concerns on the part of a leaseholder who is not involved in the management group. However, we are satisfied that these purchases were bona fide, although dealt with on a somewhat high handed basis. That does not, however, cause us to agree with Miss Loughlin that there should be any reduction in the sums that were spent. We also bear in mind of course that the Applicant is a member of the respondent company and has lived at the property since 2006 and that there appear to be no particular difficulties until perhaps 2011/12.

59. We should perhaps briefly comment on the Applicant's amended particulars of claim. Under clause 3 she refers to a number of alleged breaches of the lease by the management company which are not matters for us to deal with. If Miss Loughlin believes there have been such breaches then the County Court would be the appropriate place to go, although we do not seek to encourage her so to do. At

paragraph 9 Miss Loughlin refers to Section 21A of the Landlord and Tenant Act which is not yet in force. As far as paragraph ten is concerned, we are not wholly clear where Miss Loughlin has obtained this wording but she produces no evidence to suggest that any of the service charges are not relevant costs within the meaning of Section 18. Insofar as the request for documentation is concerned, she has been provided with copies of those invoices, which we understand exist and it is difficult to know what further information the Respondents could have provided. Under Section 12 it is accepted that there have been breaches of the regulations but there do not appear to be any long term qualifying agreements which would fall within the provisions of the Act. Insofar as paragraph 13 is concerned, it is not wholly clear what "unconnected contractor" she is referring to. Certainly it appears some residents have carried out some work at what would appear to be a lower than the market rate and it does not seem, therefore, unreasonable for that service to be utilised. Under paragraph 14 it appears that Miss Loughlin is referring to a tendering process for the instruction of Hazelvine Limited. In the bundle were copies of the HML Shaw Limited contract which appeared to be on an annual basis unless terminated by giving three months' notice and the Hazelvine terms of conditions refers to a 12 month period for the agreement rolling on thereafter. On the face of it, therefore, it would not appear that tendering was essential although perhaps on reflection it might have been undertaken. In any event the fees of Hazelvine are not challenged.

60. Insofar as paragraph 15 is concerned we were told that although the company may be classified as dormant it is because it is a management company owned by the residents and has different requirements.

61. That concludes our findings in respect of the applications under Section 27A and 20ZA of the 1985 Act. As we have indicated above the question of the appointment of a manager and Rule 13 costs will be dealt with at another hearing.

Judge: *Andrew Dutton*

A A Dutton

Date: 17th August 2015

## Appendix of relevant legislation

### Landlord and Tenant Act 1985 (as amended)

### Section 18

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

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

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

### Section 19

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

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

### Section 27A

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

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -

(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

**Section 20**

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

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

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

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

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

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

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

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

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

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

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