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FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**LON/00AM/LVM/2015/0009** **LON/00AM/LSC/2015/0287**
Property	:	**35 Nevill Road, London N16 8SW**
Applicant / s.27A Respondent	:	**Mary-Anne Bowring**
Representative	:	**Ringley Legal**
Respondents / s.27A and s.20C Applicants	:	**Ms J Wilson (Flat A)** **Ms S Page (Flat B)** **Ms A Andriessen and Mr A Deuchars (former tenants of flat B - Respondents / interested persons in s.27A/ s.20C applications)**
Representative	:	**Mr Madge Wilde, counsel for Ms Wilson**
Type of Application	:	**(1) Variation of order appointing a manager** **(2) Determination as to service charges payable** **(3) s.20 Costs**
Tribunal	:	**Judge Dickie** **H Bowers, MRICS** **S Wilby**
Date and venue of hearing	:	**11 February 2016** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**2 June 2016**

DECISION

Decisions of the tribunal

1. The tribunal makes the determinations and orders in respect of disputed service charges and administration charges as set out under the various headings in this decision.

2. The order of 1 June 2012 made under s.24 of the Landlord and Tenant Act 1987 is varied by the addition of the following terms:

"The Manager shall after the expiry of this order and without limit of time be able to:

(a) recover services charges, fees, costs and other sums due from the tenants as may have been incurred by or become due to the Manager during the term of this order and

(b) prosecute claims against the tenants / freeholders for the recovery of service charges, fees, costs or other sums as may have been incurred by or become due to the Manager in carrying out the duties imposes by this order or in enforcing their payment."

3. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that the only landlord's costs of the tribunal proceedings that may be passed to the lessees through any service charge are those determined to be reasonable in the decision below.

Background

4. The subject premises are a Victorian house known as 35 Nevill Road, London N16 8SW ("the Property") converted into two flats (A and B). By an order made on 1 June 2012 the tribunal (at that time the Leasehold Valuation Tribunal) appointed Ms Bowring ("the Manager"), pursuant to Section 24(1) of the Landlord and Tenant Act 1987 ("the 1987 Act), as manager of the Property for a period of 3 years commencing 30 days after the date of that order. The leaseholders and joint freeholders at the date of the order were Ms Wilson (Flat A) and Mr Deuchars and Ms Andriessen (Flat B), the latter pair having been the Applicants in those proceedings.

5. The order to appoint the Manager had been made by the tribunal in order to enable major works to the Property to be carried out. Relations between the freeholders of the two flats had deteriorated to such a degree that effective management of those works by them was not possible. Ms Wilson lives in her property with her partner Mr A. Knox, who has long term disabilities about which the tribunal has been appraised.

6. The works were envisaged by Ms Bowring to take six weeks. However, by the end of the period of her three year term of appointment the works were not yet complete, and payment by Ms Wilson of her service charge

contribution towards the expenditure was outstanding. By an application made on 17 June 2015 the Manager applied to the tribunal under s.24(9) of the 1987 Act to vary the order for her appointment. The variation that she sought was an extension to the term. The Respondents to the application were Ms Wilson, Mr Deuchars and Ms Andriessen.

7. The tribunal issued directions on the application on 19 June 2015 and on 25 June 2015 made an interim order extending the term of the order of 1 June 2012 for a period of six months, or until the final determination of this matter if sooner.

8. By applications made on 10 July 2015 Ms Wilson sought a determination of the tribunal under s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to service charges and administration charges payable for the period of the Manager's appointment. She also applied for an order under s.20C of the 1985 Act prohibiting the recovery of the Manager's costs of these proceedings through the service charge. The Manager seeks to recover charges from the leaseholders pursuant to the order for her appointment by the tribunal, and thus in fact such a determination is a necessary exercise of the tribunal's jurisdiction under s.24, in that all matters within the ambit of that appointment should be brought within and determined by this tribunal in order to ensure an efficient and proportionate resolution.

9. The tribunal issued further directions on the applications after case management hearings that took place on 31 July 2015 and 7 October 2015, by which later date according to the Manager the major works were complete.

10. Mr Deuchars and Ms Andriessen sold their leasehold interest in Flat B to Ms Page on 17 August 2015. They had not disputed their contribution to the major works service charges, which was paid before completion. Ms Page opposed the extension of the term of Ms Bowring's appointment. She was joined as a party to the s.27A and Schedule 11 applications on 25 September 2015 by order of the tribunal.

11. The terms of the leases require the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The leaseholders of Flat A are liable to pay 63% of the service charge and those of Flat B 37%. It is unnecessary to set out relevant lease terms.

The hearing

12. The Manager appeared in person at the hearing that took place on 11 February 2016 and Ms Wilson was represented by Mr Madge Wilde of counsel. Ms Page did not attend and was not represented, though she had attended the case management hearing that took place on 7 October 2015.

Ms Andriessen and Mr Deuchars did not participate in the proceedings, having expressed their neutrality in respect of the Manager's application. The Manager said that her solicitor, who had been representing her throughout the proceedings, had been too ill to attend the hearing. No adjournment was requested and the tribunal did not consider it appropriate to order one.

13. The tribunal consisted of the same members who made the decision dated 1 June 2012 to appoint the Manager. The tribunal had inspected the Property prior to making that order and did not do so again for the purposes of determining the present applications. It was provided with numerous photographs of the works carried out to the Property.

The jurisdiction issue

14. An issue arose as to the tribunal's jurisdiction to make the order sought by the Manager under the 1987 Act. Mr Madge Wilde submitted that it had no jurisdiction to extend the term of the order as by the date of the hearing it had already expired.

15. After the hearing, and pursuant to a direction, the Manager's solicitor produced a note of the case management hearing that took place on 7 October 2015 and a witness statement in support. These made it clear that it is not the Manager's case that she had sought a further interim extension of the order for her appointment prior to its expiry, or that it had been so extended. The tribunal accordingly finds that it has no power to extend the term of the order as it has expired (*Eaglesham Properties Limited v John Jeffrey* [2012] UKUT 157). The fact that the tribunal was not asked to and did not extend the order further pending the determination of the applications does not, as it is suggested on behalf of the Manager, fall within the meaning of an accidental slip or omission in the decision of the tribunal which could be corrected under Regulation 50 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

16. However, the Manager now seeks to vary the order under s.24(9) in other terms. The variation sought is not to extend the term of the order, but simply to amend its terms to allow the Manager, after the expiry of the order for her appointment, to recover administration charges and service charges in respect of sums expended on the building. After the hearing, the tribunal issued further directions as to any such application by the Manager to amend her application to seek a variation of the terms of the Order of 1 June 2012.

17. In fact, the Manager has used the tribunal's standard form to make a further application under s.24(9) to vary the order for her appointment, observing however in the covering letter that 'we are not sure if this is in fact necessary". The tribunal has treated the correspondence as an application to amend the application of 17 June 2015.

18. The terms of the variation now sought under s.24(9) would have the effect of allowing the Manager to recover sums expended on the building by way of service charges, her fees and costs, in spite of the expiry of the order for appointment of the Manager. Mr Madge Wilde opposed that application on the grounds that the tribunal had no jurisdiction to make such a variation now that the order had expired. He agreed that such a term could properly have been included in the original order appointing the Manager.

19. As at that date the need for such a provision in the order could not however have been foreseen. It was beyond the contemplation of any party or the tribunal that three years would be insufficient time for the completion of the major works and recovery of payment. Indeed, the tribunal intimated in paragraph 42 of its decision that application might be made to it to discharge the order once the works were complete, since it was considered that with the cooperation of the tenants the work could have been concluded quickly.

20. The application under s.24(9) to vary the order by extending the term was appropriately made at a time when the major works were not complete. Ms Bowring could not ensure the completion of the works unless she remained appointed as Manager. Her solicitor observed that s.24(5)(d) of the 1987 Act provides that an order under this s.24 may provide for the manager's functions to be exercisable by him either during a specified period or without limit of time.

21. Now that the works are complete, only the question of payment is outstanding. There is no longer a necessity to extend the term of the order, and indeed such an extension would have been undesirable. It was clear that the parties and the Manager did not in fact want an extension of the term of the original order now that the works were complete. It was desired by all that management should revert to the freeholders. Thus, by the date of the hearing the tribunal would not in any event have made such an order on the Manager's application, even if it had the jurisdiction to do so, and in light of the fact that the Manager's purpose, and the interests of justice, can best be served by granting the alternative amendment to the order now sought.

22. The need for the amendment now sought only arose because, the works having been complete, Ms Wilson's still challenges the service charges that the Manager claims are due. The additional preparation in respect of that application was the reason for the additional lapse of time before the matter could be listed for hearing. It would in the view of the tribunal be wholly inequitable to the Manager to deny her a variation of the order to obtain payment of charges owed to her during its currency.

23. Mr Madge Wilde sought to rely on the decision in *Eaglesham Properties* to resist the application for this variation, but the tribunal considers that authority is not on point. The terms of the variation now

sought do no offend any of the principles set out in that decision. The tribunal's lack of jurisdiction to extend the term of an order after its expiry is not at issue case. Accordingly, on the Manager's application, the tribunal makes the order set out in paragraph 2 above.

Applications in respect of service and administration charges

24. Ms Wilson qualified for a grant from the London Borough of Hackney under Article 3 of the Regulatory Reform Order 2002, payable in respect of some of the costs of the major works. Section 20(A)(1) of the Landlord and Tenant Act 1985 provides:

> *"Where relevant costs are incurred or to be incurred on the carrying out of works in respect of which a grant has been or is to be paid under[section 523 of the Housing Act 1985 (assistance for provision of separate service pipe for water supply) or any provision of Part I of the Housing Grants, Construction and Regeneration Act 1996 (grants, &c. for renewal of private sector housing) or any corresponding earlier enactment] [or article 3 of the Regulatory Reform (Housing Assistance) (England and Wales) Order 2002 (power of local housing authorities to provide assistance)], the amount of the grant shall be deducted from the costs and the amount of the service charge payable shall be reduced accordingly."*

25. Thus, the tribunal had no jurisdiction under s.27A of the 1985 Act in respect of the cost of the works covered by the local authority grant, as was acknowledged by the participating parties. The grant was approved on 8 April 2013. A payment of £9,000 (approximately 90% of the total grant payable of £10,094.33, was paid to Ms Wilson by the London Borough of Hackney on 17 December 2015.

26. The disputed service charges, payment for which was outstanding, are essentially for items of work which Ms Wilson considered fell under the terms of the grant and were paid for by the local authority with the grant and/or were costs associated with remedying poor workmanship or with the delay in completing the work. By the date of the hearing the tribunal understood the sum of £4,893.28 remained in dispute. The chronology of the progress of the works over approximately three years is complex. Only an overview is sketched in this decision. The tribunal heard oral evidence from Mr Paul McDonnell, the Private Sector Housing Officer for the London Borough of Hackney, as well as from Ms Wilson and from Ms Bowring.

27. The tribunal was provided by the Respondent and Mr Knox with copious documentation in relation to these applications, which included detailed minutes of numerous meetings attended by Mr Knox, often accompanied by Ms Wilson, as well as over 200 pages of emails, a 20 page Scott schedule, a chronology with approximately 500 entries, and around 200 photographs. It is clear to the tribunal that the amount of

documentation and correspondence, and the number of meetings, has lent an air of complexity to what began as straightforward works. The extent of the delays and disputes was totally disproportionate to the cost and nature of the works carried out. Each side blamed the other for a significant contribution to these problems. Effective relations had completely broken down. It was clear at the hearing that emotions ran high for those concerned.

28. Ms Bowring appointed George McCallum of Ringleys as contract manager for the works. He was replaced by Mr Jonathan Bowman from Ringleys. The works were originally contracted to Gilmartins and began on 28 October 2013. Numerous problems were experienced with this contractor, who walked off site and refused to finish the works. Ultimately the Manager terminated the contract. Ms Bowring was of the opinion that Mr Knox's behaviour was a contributory factor in Gilmartins action, but Ms Wilson and Mr Knox strenuously denied this and pointed to the lack of evidence that this was the case. Delay in payment of the grant appears to have contributed to Gilmartins stopping work, but the Grant Officer would not pay until the work was completed satisfactorily.

29. Both parties accepted that Gilmartins did not carry out the work to an acceptable standard. Ms Bowring had taken two County Court claims against them to recover costs and obtained default judgment in each.

30. There had been an issue over the appropriate construction method of the triangular panels of brickwork at the top of the rear elevation wall. In December 2013 Mr Knox said he wanted another solution for the front elevation. Ms. Wilson instructed Martin Cooper of Cooper Associates, structural engineers. He produced letters of advice dated 28 November and 6 December 2013, conducting an inspection and meetings on site. She said a sketch of the design had been made in the contractor's notebook on site, but that the contractor followed neither that nor Mr Cooper's design. Ms Wilson and Mr Knox raised concerns, work stopped, and the final elements of the structural work were completed in June 2014 upon the advice of another structural engineer instructed by Ms Bowring.

31. The scaffolding came down in August 2014, having been erected for much longer than anticipated, and at additional cost, without the works being complete. New scaffolding was erected and a second contractor, Blossom, came on site in May 2015 to carry out remedial works to those carried out by Gilmartins. NCA was then contracted to complete the works.

32. The Council Grant Officer Mr McDonnell inspected the Property on several occasions, throughout the project, agreeing to incorporate several additional items into the grant-aided work. He required remedial works before the grant would be paid and liaised with Ms Wilson and the contract manager.

33. The cause of the extreme overrun for the works was disputed. The Applicant says it is due to the unreasonable behaviour of the Respondent and or her partner and the Respondent blames the Applicant. Ms Bowring said she was met with opposition from Ms Wilson and Mr Knox at every turn. There were disputed allegations of refusal of access. Ms Wilson and Mr Knox were of the view that Ms Bowring's management of the works and her communication style had been chaotic and poor. Reference was made to criticism by the First Tier Tribunal of her conduct as Manager appointed under s.24 of the 1987 Act in respect of another property, in which communication between her and the lessees was described as extremely poor and that she seemed to have formed an animus against the lessees who opposed her appointment which in turn severely hindered her ability to communicate with them. Ms Wilson considered the same criticisms could be applied to Ms Bowring's conduct as Manager of this Property.

34. When considering the breakdown in the relationship between Ms Wilson, Mr Knox and the Manager, and the documents generated in relation to this matter, the tribunal sees clear parallels with its view of the evidence in the original application in 2012 to appoint a Manager and the breakdown of the relationship between the freeholders that necessitated that order. The tribunal said in its decision:

"36. Having considered the evidence the tribunal is clear that the mistrust between the parties is deeply rooted. Some work has been done on the house, and it is not the wish of the tribunal to apportion blame for the current situation, but relations having broken down and progress on the works cannot be made without a new approach...

38. The Respondent has appointed Mr Knox to act on her behalf in relation to the property repairs, and he has assumed responsibility for the project, including preparation of the schedule of works. He has been unable to deliver on this project, and having had the opportunity to consider the documentary evidence and hear from Ms Andriessen in person the tribunal is not persuaded that this failure is the result of a lack of willingness on the Applicants' part to agree and action the works.

39. In correspondence Mr Knox had expressed himself in excessive detail and excessive length to make a constructive contribution to progressing agreement as to the necessary works. For example, he dealt at length with scheduling availability of the parties and access and meeting arrangements. Correspondence from October 2010 has been difficult to follow ... The tribunal senses from the correspondence that the excessive detail has served to make agreement as to the works, whether by mediation or otherwise, practically impossible, and that further attempts at mediation would be fruitless."

35. The Manager did not produce any set of service charge accounts during the three years of her original appointment. Paragraph 4(b)(v) of the order for her appointment required her to do so not less than annually. Ms

Bowring said this was because of a lack of certainty about the amount of the local authority grant, which would determine the amount constituting the service charges in the account. However, she provided no draft accounts either until July 2015, did not support her position with an accountant's explanation, and gave no reason why service charge accounts excluding the major works could not have been produced. This failure undoubtedly caused much frustration to Ms Wilson and Ms Knox.

Disputed Items

36. In essence, Ms Wilson's position was that if Mr McDonnell had not covered an item with the grant payment, it was not expenditure reasonably incurred. The tribunal considered this argument too simplistic. Mr McDonnell was making a judgment based on his professional experience and according to his duties to the local authority. The Manager, in deciding to incur expenditure, had to have regard to her duties under the order for her appointment, and the lease obligations she had to discharge. Their perspectives and responsibilities are different, and it is seems unremarkable that in those circumstances the Grant Officer and the Manager have views which do not exactly coincide.

37. Of the cost expended, £7,309.57 is conceded as being payable. The balance of £4,893.28 is said to be in dispute (though the tribunal cannot reconcile this figure with the disputed items identified by the leaseholders). Having considered the evidence and submissions from the parties, the tribunal has made determinations on the disputed items of expenditure as set out below. Closing submissions were made by the parties in writing, but the tribunal has disregarded those parts of the Manager's representations which sought to introduce new evidence not adduced at the hearing.

Defective Brickwork £400

Decision - £90 allowed

38. Ms Wilson considered £40 to be a reasonable sum, the Manager £90. Mr McDonnell considered £400 unreasonable. He would have expected between £60-90 for removing an air brick and making good and proposed in oral evidence that £90 was a reasonable. The tribunal accepts his oral evidence and awards £90 as reasonable.

Additional Scaffolding £1,840.00

Decision - £920 allowed

39. The scaffolding was erected by Gilmartin' on 28 October 2013. It stayed up until 12 August 2014. The cost of the additional time for which Gilmartins' scaffolding was erected was not quantified as far as the

tribunal can tell. It is not clear the date from which it was charged. It appears that there were ongoing difficulties with the contractor throughout this period, and that the structural engineering issue was not the only problem which was concurrently causing a delay. The cost of this additional scaffolding was not the subject of either County Court claim against Gilmartins, (the claim which related to scaffolding was only for the cost of that erected by the new contractor) though there is evidence that they were refusing to attend the site and there was very little activity on site from January to August 2014.

40. The tribunal finds that owing to the lack of quantification of the additional scaffolding, the localised nature of the works to the front elevation, and the other reasons for additional scaffolding time in addition to the front elevation issue (which was itself dealt with appropriately but slowly) the reasonable figure for payment through the service charge of the additional scaffolding cost is 50%.

Engineer's fee £465.75

Decision - £465.75 allowed

41. The local authority grant was paid in respect of the costs of the Cooper's report paid by Ms Wilson and Mr McDonnell refused to pay the additional cost of the report obtained by Ms Bowring as he considered it unnecessary duplication. However, the tribunal is satisfied that it was reasonable and prudent for the Manager to obtain this report. She was responsible for ensuring appropriate works were carried out, and was entitled to take professional advice. The issue had become complicated and there was nothing irregular in Ms Bowring seeking her own advice. She had not instructed Cooper's, and may not have been able to establish that they owed her a duty of care.

Privacy screen £104

Decision - £104 allowed

42. The Manager's position was that this item had not been part of the original specification. Mr McDonnell said he had assumed that it would have been. The tribunal having seen the Gilmartins specification is satisfied that it was not and accepts the Manager's explanation that it was provided at the request of a neighbour or leaseholder. It was reasonable for the Manager to provide it. Though Mr McDonnell considered it was a "bit expensive" there was no persuasive evidence that it was outside of a reasonable range and the tribunal allows this item in full.

Cement fillet to front elevation £90

Decision – disallowed

43. Render protrudes out past the brickwork. This fillet was to prevent rainwater would pooling at one particular site and soaking into the brickwork and served to divert the water away. It was Ms Wilson's case that Mr Bowman had said in a meeting towards the latter end of the project that this would be provided free of charge. The tribunal does not see a good reason for this item having been left off the specification, which should have included such work minimal in nature. In any event the cost of the work at £90 was too high and was in fact of nominal value.

Cement shoulder to front parapet coping - £110

Decision – disallowed

44. This was provided for in the original specification. Gilmartins failed to complete the job, in that they left the coping stones six inches short and left the remainder cemented instead. This caused ponding and Blossom's renewed the cement, but it was a requirement of the Grant Officer that this cement be replaced with a coping stone as originally specified. The resulting work being only that first specified, the additional cost of inappropriately applied cement was not specified and is not reasonable.

Amend front parapet coping as grant officer requirement - £305

Decision – disallowed

45. As with the item above (cement shoulder to front parapet wall), the coping stone was originally specified. There was evidence from Mr Bowman as to why Blossom used cement instead (whether it was specified to them or not). It is not reasonable for the tenants to pay for this additional item. Though Mr McDonnell considered the original tender price for this coping item was low, the contract was for the whole tender and all the works in it for that price.

Amend rainwater goods arrangement at rear of building - £175

Decision - £175 allowed

46. Mr McDonnell considered that amending rainwater goods had already been included in two other items relating to overhauling gutters and water testing the waste stacks. However, the tribunal is satisfied that this was a reconfiguration of the guttering arrangement which was required in a specific location (Mr McDonnell described it as being to the hopper and pipe arrangement to the central valley gutter) and not covered by the overhaul and water testing of guttering. It was not a duplication and is reasonable in amount.

Hammer test, render and redecorate front elevation render panel - £149.75

Decision – disallowed.

47. The tribunal prefers Ms Wilson's position. Mr McDonnell's evidence was to the effect that this hammer testing, rendering and redecoration was required as a result of inadequate work by Gilmartins. The Manager disputed this, but did not produce evidence in support. Minutes of two meetings (1 and 30 June 2015) are supportive of the leaseholder's case. Since this work was duplication its cost is not reasonable.

Redecorate front masonry £2,346.00

Decision - £2,346.00 allowed

48. The leaseholders relied on the letter of Mr Finley MRICS of the 21 November 2013 that this cost is "considered to be on the high side". However, he caveats that in the last sentence when he said "It should be noted that the works have been tendered and therefore there is a valid argument that competitive prices have been obtained and individual prices therefore cannot be cherry picked for a reduction." The tribunal agrees entirely with the rationale of this caveat and there is no other evidence that this cost is unreasonable.

49. The leaseholders also rely on photographs to suggest that the works are not to a reasonable standard. These show only a very few areas of concern and that overall the work was carried out to a good standard.

Major Works Management Fees

50. Pursuant to directions issued after the hearing, the tribunal has received written representations from the parties regarding the Manager's reasonable management fees payable in respect of the major works. The tribunal was invited to make a determination in respect of these. The order for the Manager's appointment provided for at paragraph 5 an annual management charge and that "Additional charges shall be paid to her according to the Manager's Menu of Services and Charges set out in the Schedule to this Order". The total figure of £7,167.34 in fees that the Manager seeks is broken down as follows:

Section 20 consultation - £600

Decision - £600 allowed

51. This item was not challenged and is allowed in full.

Party Wall Work - £1,440

Decision - £1,440

52. This item was not challenged and is allowed in full.

Tender specification - £900
Tender analysis - £900
Major Works contract administration - £2,607.34

Decision – 15% of the contract cost

53. Ms Wilson drew attention to the Manager's invoices for a contract administration charge of 10%. She argued that this percentage should be charged on the sums payable, and not more. The five invoices for contract administration fees total £2,172.79 (as opposed to £2,607.34 as the Manager contended in the hearing). Ms Wilson considered that the Menu of Services and Charges indicates that fees for tender specification and analysis will be included in the major works contract administration. In any event, tender specification and analysis, and contract administration, were poor in her view and the charges are accordingly unreasonable - the tender was departed from regularly and did not include a number of additional items of work found to be necessary. The contract of the first contract administrator (George McCallum) had been terminated, allegedly due to poor performance (though Ms Bowring denied this was the reason).

54. It was observed for the Manager that the Menu of Services and Charges does not specify a 10%. fee for major works contract administration, and that Ms Bowring is entitled to appoint a contract administrator at market rates with smaller jobs attracting a higher percentage fee. She said tenders were analysed in accordance with industry standards, and tender specification and analysis was charged based on time spent.

55. Clause (l) of the Menu, provides:

"preparing specification for tender, supervising and measuring works the cost of which exceeds the specified expenditure limits and for non routine matters and where expenditure is in excess of the limits contained in the Landlord and Tenant Acts 1985 and 1987 or as subsequently amended; from 8-15% of the value of the works, chargeable £1000 for specification, £750 for tender analysis with balance drawn down as job milestones reached."

56. The tribunal finds that this Clause permits recovery of a total fee for tender specification, analysis and contract administration of 8-15%, and that separate fees for each which total more than 15% are not chargeable in excess of that percentage. This was a small contract which clearly involved disproportionate work from the Manager, not least because of the poor performance of a contractor, and the tendency of Mr Knox to over complicate matters with excess interference and correspondence (there were a total of over 1100 emails with the Manager in relation to matters he had raised). Accordingly the highest rate of contract administration charge is justifiable. The tribunal finds that an overall contract administration fee (including tender specification and analysis) is 15% of the reasonable and payable contract cost.

Liaising with grant officer - £720

Decision - £720 allowed

57. This was for four hours liaison with the Grant Officer at £150 per hour plus VAT. Ms Wilson argued that this is not allowed for in the menu of fees, the time spent with the Grant Officer was greatly increased owing to the poor standard of work.

58. The tribunal is satisfied that this cost is recoverable under clause (h) of the Manager's Menu of Services and Charges, which allows for the recovery of a fee for:

"dealing with local government matters including ... grant applications;" at an hourly rate of £80-£150.

59. In the tribunal's view, liaison with the Grant Officer is not a normal part of a major works contract and does not form part of the contract administration costs. In engaging with Mr McDonnell the Manager was seeking to get agreement for items of expenditure in order to ensure that the grant monies would be paid, and thus it was in the best interests of Ms Wilson that this additional liaison took place. Four hours is not a large amount of time to have charged for this work, given the evidence of substantial interaction between Ringleys and Mr McDonnell, and overall the sum of £600 plus VAT is not unreasonable.

Management fees - £6,216.72

Decision - £5,576.04 allowed

60. The order for the Manager's appointment provided for a standard management charge of £1,500 plus VAT per annum to be increased annually in line with changes to the RPI or by 5% for the duration of the appointment. The total management fees claimed for the period of the Manager's appointment were £6,216.72, but the tribunal has used a starting point of £6,195.43, being £1,500 increased by 5% per annum plus VAT for 3 years and 3 months for which a charge has been sought. Ms Wilson argued that the management fees were not reasonably incurred because the standard of management has been poor.

61. The tribunal determines that it is appropriate to deduct 10% per annum from the standard management fee for the unreasonable failure of the Manager to produce timely accounts in accordance with the terms of the lease, or even timely draft accounts. The standard management fee was separate to fees in respect of the major works. It was approved by the tribunal and, in respect of matters other than the major works Ms Wilson has not levelled sufficient substantiated criticism of Ms Bowring's management to justify any further reduction.

Legal Fees - £3,600

Allowed - £2,400

62. Notwithstanding the terms of the lease, such fees are payable under the terms of the order appointing a Manager.

63. The "Balance Sheet" for the period ending 28 September 2015 records "Tribunal costs" totalling £3,600. There are shown accruals of £360 for each of J Bowman, D Moloney and M A Bowring on 31 July 2015, and for M A Bowring, and D Moloney on 7 October 2015, plus £1,800 for "Leasehold Valuation Tribunal Litigation Accrual".

64. The Menu of Services and Charges permits

(e) initiating or responding to, conducting, negotiating with the parties, preparing evidence for and attending hearings or Leasehold Valuation Tribunal .. proceedings. ... for LVT ... hourly rate applies, from £80-£150 depending on grade of person attending".

65. The only invoice produced was issued 16 September 2015 for £1,250 plus VAT for Legal LVT work "finalising and issuing application to extend term, considering Ms Wilson's' applications, attending at hearing and complying with directions."

66. The tribunal could not reconcile the invoice dated 16 September 2015 with the timed entries from 1 September 2015 to 18 March 2016, which actually included two entries from 13 July 2015. In turn the tribunal could not reconcile this with the figures in the account which showed an accrual of £1,800 plus standard charges for hearing attendance for each person.

67. The tribunal therefore found it impossible to understand the legal fees which the Manager is seeking to charge and justify in these proceedings, and whether these would be sought as a service charge or an administration charge.

68. There is no doubt that the Manager can charge fees in respect of litigation under the Menu of Charges. The tribunal does not accept Ms Wilson's argument that the tribunal costs would have been completely unnecessary had Ms Bowring managed the major works programme properly. Whilst it is critical of certain aspects of Ms Bowring's management, her task was made much more difficult by Mr Knox's exasperating tendency to over scrutinise, over analyse and interfere.

69. The blame for the disastrous outcome of a straightforward programme of works does not lie solely with Gilmartins, or with either party. The tribunal expresses a certain respect for the determination of Ms Bowring to

have seen this project through to its conclusion in spite of so many obstacles. It clearly took a personal toll on her, as it did upon Ms Wilson and Mr Knox. However, her communication style has been poor, confusing and abrasive. The tribunal even experienced difficulty in following her explanation of her case during the hearing, (at which it acknowledges that she was unrepresented) though it was evidently a stressful experience for her at the end of an arduous saga. The tribunal does not accept Ms Wilson's argument that if accounts had been produced on time the litigation would not have taken place. She continued to dispute numerous items at the hearing.

70. Taking an objective viewpoint of these very different subjective positions on the necessity of these proceedings and the costs incurred, the tribunal considers that it was reasonable for the Manager to make the application to extend the terms of her appointment, and she had to respond to the leaseholders' applications. The conduct of this litigation has been deeply unsatisfactory however. Her solicitor Mr Moloney attended the December 2015 hearing, but there is little evidence of hearing preparation after that. A hearing bundle was prepared in respect of the s.24(9) application (Ms Wilson prepared the bundles in respect of her applications), but there was no witness statement from Mr Bowman, who attended the hearing intending to give evidence (though permission was refused by the tribunal), and no up to date statement from Ms Bowring.

71. The costs of the proceedings are not itemised in the way the tribunal would have expected and a bill was not produced. The tribunal has assessed the reasonable costs incurred by the Manager and her solicitor on the basis of the material before it. Clearly, attendance at the hearing itself would have been at least 7 hours for Ms Bowring. She attended and was represented at both case manager hearings. The tribunal takes the view that, taking into account the shortcomings in case preparation, £2,400 including VAT is reasonable for the work necessarily and reasonably carried out on behalf of the Manager in these proceedings.

Accountant Fees

Decision - £750 allowed

72. By virtue of Clause 5(1) of the lease the Manager is entitled to recover fees paid for the preparation of accounts. The tribunal accepts Ms Wilson's complaint however that these accounts were late and not produced annually. They were finally produced in the form of a single unsatisfactory document which represents a single accounting exercise, it would appear. The entry in the accounts for accountancy fee is £250 for 2013 and 2014, and in the balance sheet for 2015 shows a liability for accounts of £1,200.. The tribunal considers that the sum of £750 in total in respect of accountancy is reasonable and payable.

Application under s.20C and refund of fees

73. Ms Wilson applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Manager may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge other than those determined above as being reasonable.

Name: F. Dickie **Date:** 2 June 2016

Appendix of relevant legislation

Section 24 Appointment of manager by a tribunal

(9) The appropriate tribunal may, on the application of any person interested, vary or discharge (whether conditionally or unconditionally) an order made under this section; and if the order has been protected by an entry registered under the Land Charges Act 1972 or the Land Registration Act 2002, the tribunal may by order direct that the entry shall be cancelled.
(9A) The [tribunal] shall not vary or discharge an order under subsection (9) on the application of any relevant person] unless it is satisfied—
(a) that the variation or discharge of the order will not result in a recurrence of the circumstances which led to the order being made, and
(b) that it is just and convenient in all the circumstances of the case to vary or discharge the order.

Landlord and Tenant Act 1985

Section 18

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

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

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

Section 19

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

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the

relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

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

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

(3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
(a) the person by whom it would be payable,
(b) the person to whom it would be payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—

(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

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

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

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

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

Schedule 11, paragraph 2

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

Schedule 11, paragraph 5

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

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

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

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

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

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).