9760

		**FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)**
Case Reference	:	**LON/OOBK/LAM/2013/0031**
Property	:	**22-23 Hyde Park Place, London W2 2LP**
Applicant	:	**David Renton**
Representative	:	**None notified**
Respondent	:	**22-23 Hyde Park Place RTM Co. Ltd.**
Representative	:	**Jaffe Porter Crossick LLP,Solicitors**
Type of Application	:	**Appointment of Manager**
Tribunal Members	:	**Judge Goulden** **Mrs T W Sennett MA FCIEH** **Mrs L L Hart**
Date and venue of Hearing	:	**20 and 21 January 2014** **10 Alfred Place, London WC1E 7LR**
Date of Decision	:	**21 February 2014**

REF: LON/OOBK/LAM/2013/0031

PROPERTY: 22/23 HYDE PARK PLACE, LONDON W2 2LP

Decisions of the Tribunal

(1) The Tribunal determines that the S22 Notice under the Act is invalid

(2) The Tribunal declines to exercise its powers under S24(7) of the Act

(3) The Tribunal declines to make an Order for appointment of a Manager under S24 of the Landlord and Tenant Act 1987

(4) The Tribunal declines to make an Order under S20C of the Landlord and Tenant Act.

The application

1. The Tribunal is dealing with an application dated 4 October 2013 (and received by the Tribunal on 8 October 2013) for the appointment of a manager under S24 of the Landlord and Tenant Act 1987 ("the Act"). The application followed the service of a Notice under S22 of the Act served by the Applicant on the Respondent and the freehold company on 18 September 2013 (see paragraph 6 below). An application was also made to limit landlord's costs of proceedings under S20C of the Landlord and Tenant Act 1985 ("the 1985 Act")

2. The application relates to 22-23 Hyde Park Place, London W2 2LP ("the property") which was stated in the application to be a *"purpose built mansion block constructed around 1900 consisting of a basement, ground floor and four upper floors. The top floor flat was constructed around 1960 under a mansard roof. The building comprises 11 self contained flats".*

4.The Applicant is Mr David Renton, the tenant of Flat 4 at the property. The Respondent is 22 -23 Hyde Park Place RTM Company Ltd.

5. A copy of the lease of Flat 4, the Applicant's lease, at the property was provided to the Tribunal.This lease was dated 24 May 1995 and was made between Lakinmount Ltd. (1) and Dorothy Iris Harrison (2) and was for a term commencing on 24 May 1995 and expiring on 2 January 2101 at the rising rents and subject to the terms and conditions therein contained. The Applicant had purchased Flat 4 in 1997 but, save for short periods, he does not live at the property.

Background

6. A Pre Trial Review was held on 29 October 2013 and the Tribunal's Directions were issued on the same date. In those Directions, the Tribunal

identified (Direction 1) the issues to be determined, one of which was, inter alia, *"Is the preliminary notice compliant with section 22 of the Act and/or if the preliminary notice is wanting, should the tribunal still make an order in exercise of its powers under section 24(7) of the Act?"*.

7. The Directions of the Tribunal did not make provision for an inspection before the hearing, but at the written request of the parties, inspection by the members of the Tribunal took place on 20 January 2014 before the hearing commenced.

Inspection

8. The Tribunal inspected the property on the morning of 20 January 2014 in the presence of Mr and Mrs D Renton (Flat 4), Miss G Renton, Mr C Fain of Counsel and Mr C Devlin (Flat B).

9. The property was as described in the application. The Tribunal was invited to inspect part of the interiors of Flats 4 and 5 and the roof area. In Flat 4, evidence of damp penetration, both recent and historic, was noted in the reception room fronting Bayswater Road. The Tribunal was also invited to inspect the kitchen of Flat 4 where the Tribunal was asked to note slight evidence of water penetration said to have occurred the previous day. No staining was noted. Flat 5 was immediately above Flat 4, and in the reception/kitchen, which also fronted Bayswater Road, the Tribunal was shown a lead lined box gutter along the interior to the front wall to the flat, which had been enclosed. A plastic pipe with rodding eyes had been inserted within this original lead lined gutter, into which roof drainage from the front of the building discharged. The Tribunal was also shown two radiators which ran along the same wall at skirting level.

10. The roof was felt covered with some promenade tiles. There were four small areas to the façade between the decorative upstands with outlets for discharge of water, some of which were partially blocked at the time of inspection. The Tribunal noted other drainage channels on the roof where a build up of leaves was seen. The Tribunal was asked to note the terraces to Flats 4 and 5 at the rear of the property from roof level. Both terraces had wooden decking which drained to rainwater goods to the rear of the property.

Hearing

11. The hearing took place on 20 and 21 January 2014. The Applicant, Mr D Renton, appeared in person and was unrepresented. He is a practising solicitor working out of Hong Kong. Mr Renton was accompanied by his wife on both days, by his daughter on the first day and his son on the second day, none of whom gave evidence. Oral evidence for the Applicant was provided by Mr Renton and by Mrs A Mooney MRIPM, Westbury Residential Ltd., the proposed Manager. The Respondent, 22-23 Hyde Park Place RTM Co. Ltd., was represented by Mr C Fain of Counsel and Mr J Mead of JPC Law LLP, Solicitors. Evidence for the Respondent was provided by Mr C Devlin (Flat B). Miss G Feld and Mr S Burns (Flat A) appeared during the hearing, but neither gave evidence. Mr Devlin and Mr Burns are two of four Directors of the

Respondent company, the others being Mrs P Singh (Flat 3) and Mr I Ezekial, as representative of the tenant of Flat 2. Neither Mrs Singh nor Mr Ezekial appeared

12. It was decided, after discussion with the parties, that the S22 Notice would be dealt with as a preliminary issue. It was also decided by the Tribunal that, notwithstanding its Determination on the issue relating to the S22 Notice, even if the Tribunal determined that the S22 Notice was not valid and, in the event, would not have exercised its powers under S22(7) of the Act, it would go on to deal with the other issues in order to assist the parties. Both sides before the Tribunal were grateful for this indication.

13. As a further issue, the Tribunal discussed with the parties the S20C application. It was agreed that the Tribunal would give a determination on this application as a matter of principle but, if the application was successful, the Tribunal would not make a decision on quantum. The parties were given permission to submit written representations, if they wished to do so, on the S20C application and also closing submissions after the close of the hearing in order to save costs and Tribunal time.

14. Although the Tribunal afforded the parties the opportunity to have further discussion, this was considered to be fruitless.

Validity of the S22 Notice

15. The S22 Notice under the Act was dated 18 September 2013 and stated that it was the intention of the Applicant to make an application for an Order under S24 of the Act. The grounds relied on were (a) there had been a breach of an obligation owed to the Applicant in relation to the management of the property, (b) unreasonable service charges had been made or were proposed or likely to be made and (c) there had been a failure to comply with any relevant code of practice and, in respect of all three grounds, it was just and reasonable to make the Order.

16. Paragraph 5 of the S22 Notice stated *"the right to manage under the Commonhold and Leasehold Reform Act 2002 having already been exercised, the matters complained of in the Schedule are not capable of being remedied by the Landlord. The RTM Company is also incapable of paying for the necessary remedial measures because the leases for the Property do not permit these costs to be recovered as service charges".*

17. The Respondent's case was that the S22 Notice was invalid in that it did not provide the Respondent with any period *"let alone reasonable"* to take steps for the purpose of remedying the matters complained of. It was contended that the Notice failed to comply with S22 (2)(b) and (d) of the Act.

18.Mr Fain said that there was no authority on this point in respect of a Preliminary Notice to appoint a Manager, but cited **Wildsmith v Arrowgame Ltd [2012]EWHC 3315 (Ch)** which related to a Preliminary Notice for an acquisition order under the Act where it was held that the Notice would be invalid if all the alleged grounds were capable of remedy. Mr

Fain drew the Tribunal's attention to certain paragraphs of the transcript of the Determination. He contended that the wording of the relevant subsection was materially the same. He maintained *"All of the matters complained of (which are denied in any event) are capable of remedy.....the Preliminary Notice is thus invalid and the application should be dismissed".*

19. With regard to the grounds as set out in paragraph 15 above, Mr Fain said that the first ground could be remedied by the Respondent complying with the repairing obligations under the lease; the second ground could be remedied by the Respondent providing a credit to the Applicant's service charge account and the third ground could be remedied by the Respondent complying with the relevant paragraphs of the RICS Residential Service Charge Management Code.

20. Mr D Renton, the tenant of Flat 4, gave evidence under this head and said that the matters complained of in the S22 Notice were not capable of remedy in that he had suffered *"persistent leaking"* into Flat 4 since before the Respondent had taken over responsibility for maintaining the building in 2009. In his statement of case he said, inter alia *"the leaking into Flat 4 is now as severe as and even more frequent than it has ever been. The Respondent claims not to know how to stop the leaking".* Further details were provided by Mr Renton. He said the Respondent must have known what caused the leak *"and chose not to do anything about it".* He said on that basis a S22 Notice had no purpose.

21. Mr Renton said that the case cited on behalf of the Respondent actually supported his view that no remedy was possible.

The Tribunal's Decision

22. The S22 Notice is a precursor to an application under S24 of the Act. The Notice in this case was dated 18 September 2013 and the application was dated 4 October 2013 and was received by the Tribunal on 8 October 2013.

23.Under S22 (2) of the Act, the Notice (subject to subsection (3)) **must** set out those matters referred to in S22 (2) (a) to (e) as follows:-

(a) **"specify the tenant's name, the address of his flat and an address in England and Wales (which may be the address of his flat) at which the landlord may serve notices, including notices in proceedings, on him in connection with this Part;**

(b) **" state that the tenant intends to make an application for an order under section 24 to be made by [a leasehold valuation tribunal] in respect of such premises to which this Part applies as are specified in the notice, but (if paragraph (d) is applicable) that he will not do so if the [requirement specified in pursuance of that paragraph is complied with];**

(c) **"specify the grounds on which [the tribunal] would be asked to make such an order and the matters that would be relied on by the tenant for the purpose of establishing those grounds;;**

(d) **"where those matters are capable of being remedied by [any person on whom the notice is served, require him], within such reasonable period as is specified in the notice, to take such steps for the purpose of remedying them as are so specified;"**

(e) **"contain such information (if any) as the Secretary of State may by regulations prescribe".**

24. The Applicant contended that S22 (d) was not applicable in the circumstances of this case as no remedy was possible. It follows from that, that the Applicant also contended that there had been no breach of S22 (b). In his closing submissions he said *"no purpose would have been served by giving the Respondent another chance to mend its ways"*. These contentions are rejected by the Tribunal. The issue related to water ingress into the Applicant's flat and the Tribunal cannot accept that no remedy was possible. In this case, the Applicant accepted that the leak had now ceased. On that basis the Tribunal is of the view that a reasonable period of time should have been inserted in the S22 Notice giving the landlord time to remedy the breach.

25.The Tribunal determines that the S22 Notice is, prima facie, invalid.

26. The Tribunal then considered whether to exercise its discretion under S24(7) of the Act which states:

"In a case where an application for an order under this section was preceded by the service of a notice under section 22 [the tribunal] may, if it thinks fit, make such an order notwithstanding –
(a) that any period specified in the notice in pursuance of subsection (2)(d) of that section was not a reasonable period, or
(b) that the notice failed in any other respect to comply with any requirement contained in subsection (2) of that section or in any regulations applying to the notice under section 54(3)"

27. In his closing submissions, Mr Renton said *"if there were deficiencies in the Applicant's preliminary notice, they were not material. Correcting them would not have made any difference to the Respondent's position"*. The Tribunal disagrees. The potential problems were identified with the parties at the Case Management Conference which was held on 29 October 2013, and identified in the Tribunal's Directions which had been issued on the same date. Mr Renton had therefore been put on notice that the validity of the S22 Notice might well have been raised by the Respondent. He chose not to correct possible deficiencies by withdrawing the original S22 Notice and the Tribunal, for the reasons as set out above, does not consider the deficiencies immaterial. The statutory criteria has not been met.

28. No Notice in pursuance of subsection 2(d) had been given at all and therefore there was a failure to comply with S24(7)(a).

29. For the reasons as set out in paragraph 24 above, the Tribunal declines to exercise its discretion under S24(7) of the Act.

30. The determinations of the Tribunal in respect of the S22 Notice are set out above. However, for the reasons as set out in paragraph 12 above, if the S22 Notice had been valid (which is not the case here) the Tribunal will now indicate whether it would have appointed a Manager. Although the Tribunal does not intend to set out all the evidence at length (since, as stated above, the Tribunal has determined that the S22 Notice is invalid), it sets out in general the salient parts of the evidence below.

31. Mr Renton's statement of case was attached as an appendix to his witness statement of 15 November 2013, and set out the grounds for seeking a Management Order.

32. Mr Renton said that the Respondent was in breach of its maintenance obligations under the lease, in that it had failed to maintain and keep in good and substantial repair and condition the main structure of the building and *"when it rains, water seeps into the building, damaging the ceiling and cornice of Flat 4 between the two bay windows of the living room"* which was becoming worse, was depressing the rental value of his flat, and in respect of which the Respondent had been put on notice since July 2011. Mr Renton contended that *"for more than two years, the Respondent has frustrated all attempts to discover the true cause of the leaking"* and full particulars of this were set out. He said that he had refused to allow the Respondent to cut a hole in the ceiling of his flat since this would not identify the cause of the leak and *"given the frequency with which my flat had suffered leaks in the past, I did not want to create a precedent that leaks from above my ceiling should automatically be investigated by opening up my flat. This was not the first time the Respondent had asked for permission to conduct a speculative search for the source of a leak by opening up the walls or ceiling of my flat".*

33. Mr Renton also stated that unreasonable service charges had been made or were proposed or likely to be made. In his opinion, the manner in which the Respondent had handled the problem of persistent leaking into his flat had resulted in unreasonable service charges being incurred. He referred to the increase in the insurance premium, the provision of £2,000 to cover the deductible portion of water damage claims in the latest service charge budget, alleged wasted expenditure in respect of the height of the lead lining of parapet gutters, clearing gutters three times a year, and the provision of £2,706 in legal fees which he maintained should be borne by insurers.

34. Mr Renton also stated that the Respondent had failed to comply with relevant codes of management practice as set out in the RICS Residential Service Charge Management Code. In particular, he contended, inter alia, that there were no written policies or procedures and the Respondent left all such matters to Mr Devlin, who had no written management agreement and was not familiar with the leases or the terms therein or was aware that he was required to have a copy. Mr Devlin had no indemnity insurance policy and Mr Renton doubted that Mr Devlin would be covered by Directors and Officers

liability insurance. Property managers have a duty to take reasonable care to keep people reasonably safe and persistent leaking into Flat 4 posed a safety risk to subtenants and their young children. In Mr Renton's view *"with no written policies and procedures and weak governance, Mr Devlin is effectively the judge of his own conduct".*

35. Mr Renton accepted that in considering whether it was just and convenient to make an Order, the Tribunal must consider the position of the other flat owners in the building, who he conceded were *"strongly supportive"* of the Respondent and Mr Devlin as its managing agent, but he pointed out that their flats had not suffered from ongoing leaking problems. In his view, and in order to address the poor service which he said that he had received, the appointment of a Manager, Mrs A Mooney, would benefit everyone in the building at no extra cost. He added *"justice and convenience requires that flat owners to* (sic) *receive the same level of management services. That clearly does not happen at 22/23 Hyde Park Place. I respectfully submit that justice and convenience requires the Respondent to be replaced by a professional manager".*

36. The Respondent denied all the grounds as set out by Mr Renton and maintained that all the matters were capable of remedy. It was contended that the Respondent *"has and is taking all appropriate and necessary actions to investigate the water ingress into the Applicant's flat and repair the same. The actions of the Applicant...have prevented the Respondent from being able to properly investigate the cause of the water ingress",* the cost of which will fall within the service charge provisions in the lease, if within the Respondent's obligations.

37. It was contended that the Respondent was maintaining the main structure of the building. It was believed that any water ingress may have been caused by a leaking internal pipe, but the Applicant had refused to allow the Respondent access to Flat 4 in order to investigate the cause by cutting a hole in the ceiling, even though this course of action had been recommended by the Applicant's own surveyor.

38. Although it was accepted that the Respondent had no written policies or procedures for dealing with management matters, it was contended that there was no requirement in the RICS Code that such policies or procedures should be in writing. In any event , in such a small building of only 11 flats where the Right to Manage has been acquired, this was considered unnecessary. Mr Devlin was paid a fixed fee with no additional charges. Mr Devlin's insurance cover was set out.

39. It was contended that the Respondent had used experienced building consultants/specialists and had relied on surveyors, including surveyors instructed by the Applicant and *"it has been the Applicant's unreasonable refusal that has caused extra expense to be incurred by the Respondent and the water ingress to continue".*

40. The Respondent's view was that it would not be just and convenient to appoint a Manager. The remaining lessees were not supportive of the

application, and a copy of responses from some lessees was provided to the Tribunal. It was stated *"as for the treatment of the other lessees who have also suffered, the difference is simply the Applicant's intransigent behaviour as detailed above. The Applicant is the author of his own misfortune. The Respondent has and continues to attempt to resolve the issue, but the Applicant's behaviour.....has caused delay and extra cost without the issue being resolved. It appears that this application is motivated by personal feelings towards Mr Devlin by the Applicant rather than whether a manager should be appointed".*

41. Although it was contended in the Respondent's original statement of case that if a Manager were to be appointed, Mrs Mooney would be an appropriate person, the Respondent, in closing submissions dated 3 February 2014, resiled from that view having heard her oral evidence. The Respondent did not now consider that she would be an appropriate Manager. In closing submissions the Respondent set out eleven points where the Respondent was critical of the evidence of Mrs Mooney. It was argued that such appointment would be significantly more expensive for the Building, and further details were supplied as to the suggested increased expenditure. Since Mr Devlin lived in the building, and was a tenant, he had the same interest as the Applicant in maintaining the building and the service charges being reasonably incurred.

42. S24 of the Act states, inter alia,

(1) A leasehold valuation tribunal may, on an application for an order under this section, by order (whether interlocutory or final) appoint a manager to carry out in relation to any premises to which this Part applies-

(a) such functions in connection with the management of the premises, or
(b) such functions of a receiver,

or both, as the tribunal thinks fit.

(2) A leasehold valuation tribunal may only make an order under this section in the following circumstances, namely-

(a)where the tribunal is satisfied-
(i) that any relevant person either is in breach of any obligation owed by him to the tenant under his tenancy and relating to the management of the premises in question or any part of them or (in the case of an obligation dependent on notice) would be in breach of any such obligation but for the fact that it has not been reasonably practicable to the tenant to give him the appropriate notice, and
(ii) .....
(iii) that it is just and convenient to make the order in all the circumstances of the case;

43. Thus, the Applicant in this case must persuade the Tribunal not only that the landlord is in breach of an obligation or obligations under the lease relating to the management of the property but also that it would be just and convenient in all the circumstances to make an order. As a general premise, and as explained to the parties at the hearing, it is the view of the Tribunal that a decision of the Tribunal to, in effect, strip the landlord of its right to maintain the building, is draconian and not to be invoked lightly. The threshold is high.

44. In the Court of Appeal case of **Maunder Taylor v Blaquiere (2002)** it was held that the purpose of Part II of the Act was to make provision for the appointment of a manager who would carry out duties required by the Court or Tribunal. Accordingly, the Manager's functions were those of a court appointed official rather than those of the landlord, and therefore were not confined to either carrying out the lease terms or the landlord's obligations under the lease. Accordingly, any Manager appointed by the Tribunal does not and cannot be considered as stepping into the shoes of the landlord.

45.A Manager appointed by the Tribunal is not appointed to favour the tenants nor to carry out the functions of the landlord under the lease. The Manager is appointed to oversee a scheme of management and acts independently of the parties.

46. In considering whether or not to appoint a Manager, the Tribunal must go through a four stage process as laid down in the case of **Cawsand Fort Management Co. Ltd v Stafford and others [2007] EWCA Civ 1187; [2007] 48EG 145** as follows:-

(a) the Tribunal must be satisfied that the applicants are entitled to have a Manager appointed and that the property is one in respect of which a Manager may be appointed;
(b) it must consider whether the statutory criteria for the appointment of a Manager are met and whether or not to exercise its discretionary power to appoint a manager in those circumstances;
(c) it must identify the scope of the property over which the manager is to be appointed;
(d) it must determine what function to confer upon the Manager

47. The Tribunal is critical of both sides in this matter.

48. Mr Renton had suffered the inconvenience of water ingress into his flat for a considerable length of time, and clearly this could or did jeopardise the sub tenancies which were, he said, the main reason why the flat had been purchased in the first instance. The cause of water ingress can be very hard to ascertain, and the Tribunal rejects Mr Renton's contention that a resolution could have been found earlier. Mr Renton called no expert evidence in support. The Respondent had tried to ascertain the causes of the leak, without earlier success. Mr Renton's position was somewhat entrenched, and he and Mr Devlin, from comments made by both during the hearing, appear to have an unhappy relationship, which Mr Renton in closing submissions described as

"difficult". In Mr Renton's statement of case, he said, in relation to management *"the Respondent has no written policies and procedures for dealing with such matters. It leaves such matters entirely to Mr Devlin, who* (sic) *response depends on his personal relationship with the person who has raised a management matter. Even visitors to the building have noticed Mr Devlin's strong bias against me and my family"*.

49. Mr Devlin, who lives in the basement, manages the block. He is however also one of the four Directors of the Respondent company and there may be a perception, real or implied, of conflict of interest in that type of situation. He is therefore a tenant, a Director and the managing agent. There is no doubt that he cares for the building, as both a Director of the Respondent company and as a tenant, but the Tribunal are not convinced that he carries out the functions expected of a managing agent. For example, there is no written management agreement, he was unable to explain how (or if) the cleaners were monitored, on what basis they were paid, specific details of regular inspections of the property, how he would check with his assertion that the porter of another block would deal with an emergency in the subject block in the event (which he considered unlikely) that he was not able to be contacted. He appeared unsure of his responsibilities under the RICS Code. The Tribunal is of the view that the property is not being managed strictly in accordance with the RICS Code.

50. Mr Devlin's relationship with Mr Renton was difficult and the email exchanges between the two were sometimes acrimonious. In his witness statement he said that the only person who had complained about his role as managing agent was Mr Renton *"and his only complaint has been in connection with leaks into his Flat"*. It is quite understandable that Mr Renton should complain about water ingress into his flat for a considerable length of time.

51. Although Mr Devlin set out the duties which he said he carried out, there was a lack of persuasive evidence in support. Apparently, all his records in his role as managing agent are stored on his computer, but this will not suffice. With regard to his annual fee, he said that this was agreed by the remaining three Directors whilst he left the room. A letter was sent to all the Directors (of which he was one) in June asking for other nominations as managing agent and setting out the proposed management fee. This arrangement did not appear in the company minutes and is considered unsatisfactory.

52. Having carefully considered the evidence on both sides, the Tribunal, if it had not found that the S22 Notice was invalid, would be of the view that the high threshold would not have been met in this case. As stated above, the water ingress into the Applicant's flat appears to have been addressed. Whilst the Tribunal is critical of the way in which Mr Devlin manages the building, the Tribunal is not satisfied that the property has been neglected and, from the tribunal's inspection, it did not appear that the building was in poor order or one which was in poor repair. The Applicant has not persuaded this Tribunal that a Manager should be appointed. On that basis, the Tribunal is not proposing to give a view as to whether or not Mrs Mooney would be an appropriate person to be appointed as Manager.

53. However, the Tribunal feels that the Respondent company should consider carefully whether it might be more appropriate to appoint an external managing agent on a formal basis. Mr Renton commented, in an email to the Directors of the Respondent company dated 15 September 2013, *"the RTM company is now so conflicted that it should be wound up and let a court appoint a new manager who is capable of doing its job properly"*. Although the Tribunal does not agree with this assessment, an external managing agent, who would not be either a Director or tenant might be an appropriate solution.

Section 20C application

54. In respect of the S20C application under the 1985 Act (limitation of landlord's costs of proceedings before the Tribunal), the position as at the close of the hearing was as stated in paragraph 13 above.

55. However, in closing submissions by Counsel for the Respondent dated 3 February 2014, it was stated *"R will not put the costs of this application through the service charge and therefore there is no need for the Tribunal to consider whether or not to make a S20C order. This is not to be taken that R is not so entitled, but that the insurers who have funded the defence of this application do not require the costs incurred to be recovered through the service charge against the lessees"*.

56. In closing submissions by Mr Renton dated 28 January 2014, it was stated inter alia, *"The Applicant asks the Tribunal to determine whether the Respondent is entitled to pass its legal costs of defending this case through the service charge and, if it is, to exercise its discretion ...to disallow all such costs, or such portion of them as the Tribunal considers just.....in the Applicant's submission, it is unnecessary for the Tribunal to consider how it would exercise its discretion under section 20C. However, if the Tribunal thinks otherwise, it is urged to disallow the recovery of these costs under section 20C as a matter of discretion on the ground that the legal defence costs ought to have been covered by professional indemnity insurance"*

The Tribunal's determination

57. In view of the Respondent's assurance that the Respondent does not intend to place the costs of proceedings before the Tribunal on the service charge account, it is not necessary to consider the arguments for and against the application under S20C of the 1985 Act.

58. However, since there is a live application before the Tribunal, the Tribunal formally determines that it is just and equitable that the costs incurred by the Respondent in connection with proceedings before this Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable.

S27A (3) of the 1985 Act

59. In his closing submissions dated 28 January 2014, Mr Renton requested the Tribunal to consider making a determination under S27A (3) of the 1985 Act in respect of certain fees. The Tribunal will not do so. No such application is before the Tribunal and therefore the Tribunal has no jurisdiction.

Name:	J Goulden	**Date:**	21 February 2014