9917

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/OOFF/LSC/2013/0127**
Property	:	**13 Merchant Exchange, 2 Bridge Street, York, YO 1 6LT**
Applicant	:	**Merchant Exchange Management Company Limited**
Representative	:	**Mr Nick Warren of Watson Property Management**
Respondent	:	**Mr Peter James Bucklitsch and Mrs Rosalyn Celia Bucklitsch**
Representative	:	**In person**
Type of Application	:	**Section 27A Landlord and Tenant Act 1985 – Service charges Commonhold and Leasehold Reform Act 2002-Schedule 11, Paragraph 5 –administration charges**
Tribunal Members	:	**Mrs J. E. Oliver** **Ms J. A. Jacobs**
Date of Determination	:	**31st March and 30th May 2014**
Date of Decision	:	**14yth June 2014**

DECISION

Decision

1. The Applicant did not undertake the necessary consultation for the major works carries out in 2008. The Respondents are to be refunded the sum of £15.71.
2. The contracts awarded by the Applicant for window cleaning, management, cleaning, pest control, general maintenance, electricity, water charges, building insurance and legal fees are not long term qualifying agreements within the meaning of s20 and s 20ZA of the Landlord & Tenant Act 1985.
3. The service charges for the years 2006-2012 are reasonable and are payable by the Respondents.
4. The administration charges of £221 are payable by the Respondents
5. No order for costs is made against either party.

Reasons

Introduction

6. This is a matter transferred from Tunbridge Wells County Court by District Judge Lethem on 24th July 2013 for a determination of the service charges and administration charges (if any) payable by Peter James and Rosalyn Bucklitsch (the Respondents) in respect of 13 Merchant Exchange 2 Bridge Street York (the Property).
7. Merchant Exchange Management Company Limited (the Applicant) issued proceedings to recover arrears of service charges and "associated administration charges" relating to the Property. The proceedings were issued on 8th May 2013. The claim was for the sum of £800.84 in respect of service charges and £279 for unpaid administration charges, in the total sum of £1079.84 plus costs and interest.
8. The Respondents filed a defence to the application challenging payments made in respect of the Property since 2006 after which the matter was transferred to the First-tier Tribunal for determination as referred to above.
9. Directions were issued on 16th October 2013 providing for the filing of statements and bundles. The deadline for the filing of evidence was subsequently extended. On 12th February 2014 permission was given to the Respondents to file expert evidence.
10. A hearing was listed for 31st March 2014 at which the Tribunal gave directions for the filing of further evidence and submissions. The Tribunal reconvened on 30th May 2014, without the parties, to determine the issues.

Inspection

11. The Tribunal inspected the common parts of Merchant Exchange, 2 Bridge Street in the presence of Mr Bucklitsch and representatives of Watson Property Management.
12. The Property is a second floor flat in a converted building in the centre of York comprising 22 flats. The building itself comprises four floors and a basement. The ground floor has two commercial premises, one

an office and the other a restaurant. The first to the third floors comprise the residential apartments. The entrance to the apartments is on 2 Bridge Street and comprises a large foyer in which there is a lift to access the upper floors. The entrance to the commercial premises is 1 Bridge Street. The basement has two adjacent car parks each of which has an electrically operated door and which is used by both the residential and commercial premises. At the inspection both parties acknowledged that one of the doors had been repaired on a number of occasions because of inappropriate usage by some of the leaseholders or their tenants.

13. The development has a courtyard/garden within its centre.

The Lease

14. The Lease under which the Property is held is made between the Applicant (1) Helmsley Securities Limited (2) and the Respondents (3).
15. The provisions relating to the payment of service charges are as follows:

- "the reserved Property" is described in Schedule 2 of the Lease and includes, amongst others, all the common parts of Merchant Exchange used by both the residential and commercial owners
- "the services" are those provided by or on behalf of the Landlord as described in Schedule 7
- Schedule 7 details the Landlord's covenants and, in particular, the requirement for insurance, maintenance of fixtures and fittings and cleaning in the Reserved Property
- Clause 22 provides that "the Tenant shall contribute to and shall keep the Landlord indemnified against a fair and reasonable proportion (as determined by the Head Landlord's surveyor, acting reasonably and impartially) of all costs and expenses incurred by the Landlord in carrying out its obligations and giving effect to the provisions of Schedule 7"

The Issues

16. The Respondent provided the Tribunal with a Scott schedule identifying those items in dispute. The years in dispute are 2006-2012.
17. The items in dispute for each of the years are the charges made for cleaning, electricity, maintenance, door entry system, building repairs, legal fees and the reserve fund.
18. The Respondent objected to the apportionment of the service charges between the residential and commercial properties
19. The Respondent raised objections to the cost of major works undertaken in 2008 and also the contracts for the provision of cleaning stating that the Applicant had not complied with s20 of the Landlord & Tenant Act 1985 (the Act).
20. The Respondent sought to rely upon **Phillips and others v Francis [2012]EWHC 3650(Ch)** stating that the judgment in this case provides that "all service charge costs should be based upon the total

cost of maintenance in the period". If this sum then exceeds the statutory limit...then the s 20 consultations are required".

21. The Respondent requested that the Tribunal consider the appointment of a manager for the Property.

The Law

22. (1) Section 27A(1) of the 1985 Act provides:

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.

23. The Tribunal has jurisdiction to make a determination under section 27A of the 1985 Act whether or not any payment has been made.

24. The meaning of the expression "service charge" is set out in section 18(1) of the 1985 Act. It 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.

25. In making any determination under section 27A, the Tribunal must have regard to section 19 of the 1985 Act, subsection (1) of which provides:

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 provision 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.

26. "Relevant costs" are defined for these purposes by section 18(2) of the 1985 Act as:

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

27. The Tribunal must also have regard to any limitation on the demand of the payment of any service charge as provided for by section 20B of the Act that provides as follows:

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before any demand for payment of the service charge is served on the tenant, the(subject to subsection (2), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would be subsequently be required under the terms of his lease to contribute to them by payment of a service charge.

The Hearing

28. At the hearing the Respondent, Mr Bucklitsch attended in person. Mr Warren and Mr Ormant attended on behalf of Watson Property Management representing the Applicant.

29. The Tribunal was advised that the allocation for the payment of the service charge within the development was based upon the floor area of each flat. The allocation for the Property was 4.215%. This was not in dispute.

Major works and long term agreements

30. The Respondents advised that although the Applicant had said, within their statement, there were 23 flats within the development there were only 22 flats. Flats 2 and 11 within the complex are one apartment, on two floors. Thus, the calculation for any s20 consultation is affected by reason of their share of the service charge.

31. In their statement of 7th November 2013 the Applicant confirmed that in 2008 there were two items of major works. These were internal decorations and repainting of the courtyard area. The Applicant calculated the s.20 limit by multiplying the largest contribution of 6.587% and multiplying that by £250, thus setting a level of £3795.35 for any major works. The works cost £6303.88 for the internal decorations and £4453.25 for the courtyard. In 2008 the level for major works was incorrectly calculated, Mr Warren believing the limit to be set by multiplying the number of units by £250, thus giving a figure of £5750.

32.The Applicant conceded that no s.20 consultation had been undertaken for either of the major works and consequently any charge for each of these items would be limited to £250

33. The Applicant advised that the Respondents had been charged £265.71 for the internal decorations and £187.70 for the courtyard. It was therefore accepted that the Respondents were entitled to a refund for the internal decorations in the sum of £15.71. Since they had paid less than £250 for the repainting of the courtyard no refund was due for this item.
34. The Respondents submitted that the contracts under which the Applicant provided services to the development were long terms qualifying agreements and, as such, were subject to the consultation process required by s.20 of the Act. In the event the requisite consultation is not carried out then the maximum contribution from each leaseholder is £100 in any one year.
35. The Respondents stated that this was applicable to the contracts for the provision of water charges, cleaning, general maintenance, lift maintenance, buildings insurance, legal and management fees. The amounts charges for each of these items in the years in dispute were considerable and no s.20 consultation had been undertaken.
36. In their written submissions to the Tribunal the Respondents said

"A qualifying long-term agreement is an agreement entered into by the Landlord with a wholly independent organisation or contractor for a period of more than 12 months. (Agreements before 31st October 2003 are exempt.) Although it is not spelt out in the Act, it is safest to assume that this would include ongoing contracts with no specific termination date.
Landlords must consult where the amount payable by anyone contributing leaseholder under the agreement in any accounting period exceeds £100.
Thus, in a property with unequal service charges, the landlord must consult all leaseholders if any one of them would have to pay more than £100 in any one year."

37. In reply the Applicant stated

" the Applicant operates services by way of three types of contract: (i) annual contracts that can be determined prior to the end of twelve months usually by the giving of one month's notice and will relate to services such as cleaning, window cleaning, pest control and caretaking services;(ii) annual contracts whereby notice cannot be given to terminate the contract prior to the end of the first year. These types of contracts apply to services such as lift maintenance and fire alarm maintenance, (iii) annual contracts whereby three months' notice is required to terminate otherwise the contract will default for a further year. The only service where this type of contract applies is for the provision of electricity which is reviewed annually in all events"

38. The Respondent also sought to rely upon the judgment in **Phillips and others v Francis [2102]** stating from the judgment

"As the contributions are payable on an annual basis then the limit is

applied to the proportion of the qualifying works carried out in that year. Under this legislation there is no "triviality threshold" in relation to qualifying works; all the qualifying works must be entered into the calculation unless the landlord is prepared to carry out any excess cost himself"

39. The Applicant did not accept that any of the contracts were long term qualifying agreements requiring consultation. They were each annual contracts. If all the works were qualifying works then there would be a significant uplift in service charge to the leaseholders because of the additional costs involved in the consultation process.
40. Mr Ormant advised the Applicant undertakes a full inspection at the development four times each year. Each October the board of directors review the contracts. Recently, the window cleaners have changed in order to offer an improved service. There is no re-tendering process. If the Applicant is satisfied with the service provided then the contract is renewed. However, the Applicant does not only consider the cost but also the quality of the service provided. The development is very desirable and high standards are required.
41. The Respondent submitted that the Applicant should enter into longer contracts to make them more competitive. Mr Ormant advised that if there were longer contracts, that would not only require consultation but that if the work was not satisfactory then the contract would have to be terminated. In having annual contracts it keeps the contractors " on their toes"

<u>Apportionment of charges between residential and commercial properties</u>

42. The Respondents raised an issue regarding re-charges to the commercial premises in 2006-2007 and again in 2012 for electricity and they queried why this had not been applied in other years?
43. The Applicant advised that some of the facilities are shared between the residential and commercial properties. These include caretaker services, some of the general repairs, pest control, fire alarm, car park services (including garage doors) and electricity services. The allocation between the two is based on net areas and thus the residential properties pay 68.93%, the offices 9.32% and the restaurant 21.75%. The Respondents consider the apportionment between the residential and commercial properties to be unfair.
44. In the early years of the management Watson Property Management incorrectly charged the full charge of the services to the residential properties and then remedied this by way of a refund. Since their knowledge of the development has improved there have been less errors and consequently there has not be a need for the adjustments seen in early years.
45. In 2007 the Head Landlord of both 1 & 2 Bridge Street introduced a service charge for repairs and maintenance in the sum of £1880 per annum and subsequently threatened court proceedings for recovery. The Applicant sought Counsel's opinion upon liability for this charge and following which no further demands have been made. The

Applicant advised that, to date, demands have been received for a contribution towards external redecorations and repairs to which the Applicant has contributed 35%. Counsel had indicated any contribution could be 50%.

46. The services that are exclusively residential are the lift, indoor lighting, window cleaning, internal decoration and the courtyard lighting and cleaning.

Electricity/Electrical lights

47. The Respondents stated the charges made for electricity were excessive and submitted that, taking into account the number of lights in each of the common parts, the maximum charge should be £2400 per annum. The charges in 2007-08 were £4690 increasing in future years to over £5000. There was a reduction in 2011 to £2820.
48. The Applicant advised that electricity was supplied on a commercial rate; a broker reviewed the charges annually. In order to reduce costs the supply is on an annual contract.
49. The element of electricity payable by the commercial premises was re-charged to the commercial premises although the Respondents stated this was not clear from the accounts provided. At the hearing it was said that the electricity supply was only subject to VAT at 5% and no climate change levy was being paid. However, in later submissions the Applicant confirmed this was incorrect and VAT was charged at the standard rate and the climate change levy was also payable.
50. The Respondents claim the charges made for the maintenance of the lights in the common parts are excessive. All the light fittings should be changed to LED to make them more economical.
51. The Applicant advised that initially the light fittings were checked by the cleaners and replaced as necessary. The electrician employed to undertake a bi-annual check then replaced those not easily accessible. The Applicant subsequently became aware that where light fittings had broken bulbs, electricity was still being consumed. Therefore, in 2012 the Applicant changed the system and the caretaker assumed responsibility for replacing defective bulbs. In addition, those failing bulbs are now replaced with LED lights to improve efficiency. If the fittings require replacement then that is also done. The caretaker is suitably qualified to replace the light bulbs and the Applicant specifies which bulbs have to be used.
52. The Respondents maintained that this item should cost no more than £825 per annum taking into account the number of fittings in the common parts.

Cleaning/Flood damage repairs/fire and smoke alarms

53. The Respondents' issue regarding these items was their miscoding in the accounts, making it difficult to properly assess the true cost of these expenses. For example, in 2011 it appeared there had been seven quarterly fire inspections. Furthermore there appeared to have been two fire risk assessments in the same year, these only being required every five years.

54. The Applicant accepted that these items had an incorrect narrative within the accounts. However, there are two maintenance contracts within the charges being a quarterly contract for the fire alarm system and a bi-annual contract for the service of the emergency lighting. The seventh item within the year was for a fire risk assessment. The two assessments carried out in the sale year were the fire risk assessment and a health and safety assessment.
55. The Respondents considered the costs for the cleaning of the common parts to be excessive. The Respondents stated that when the contractors were changed in 2007 to SPACO the costs increased significantly for no evident reason. The award of the contracts required consultation given the annual charges amounted to greater than £4600.
56. The Applicant advised that when they took over responsibility for the management of the development the cleaning standards were not high. The Applicant awarded the contract to the present company not only because of the cost, but also, because of the high specification to their contract. The Applicant did not consider that a smaller company could necessarily cope with the high standards required for this development.
57. The Respondents expressed concern that the companies responsible for the cleaning and window cleaning are in fact the same company, having the same shareholders.
58. The Respondents obtained a quote from Minster Cleaning Services seeking to admit that as an expert report for the purposes of the application. The costs quoted were less than those of the current contractor. The Tribunal noted that the report had not been prepared for the benefit of the Tribunal but to obtain work. The Tribunal did not accept it as an expert report. The Applicant expressed concern that it was unclear whether the quote was an introductory offer and whether the quote was to the same specification as the existing contractor.
59. The Applicant advised that it was happy with the standard of work provided by the current contractors. It was perhaps not the cheapest contractor available but they were reliable and produced a high standard of work. There were large common areas that required cleaning which increased costs.
60. The Respondents referred to the item in the accounts as external maintenance of the car parks undertaken by CMS. The Respondents were unable to identify to what this related. The Applicant confirmed that this was the cleaning of the car park areas that commenced in 2008. The cost is £71.07 per month of which the sum of £58.75 per month is charged to the residential properties. The charges reduced in 2009 but this was likely to be due to flooding when the car park areas were inaccessible.
61. At the hearing the Respondents did not seek to challenge the costs associated with cleaning the car parks after flooding.

Garage doors

62. The Respondents challenged the costs relating to the maintenance of the garage doors, stating that the average annual cost was £2400. They considered it would be cheaper to replace the doors rather than

continue to repair them at a cost of £1000 for a new door would be reasonable. If new doors are required then that would require a s20-consultation.

63. The Applicant explained that the doors had been a source of lot of work, largely caused by misuse either by the leaseholders of their tenants. Various parts of the doors had been replaced over time so that, effectively, the doors were now new. The maintenance contractors for the doors had been replaced on three occasions to try and ensure that an efficient service. Recently the contractor had changed because the previous contractor was not offering an efficient call out system. The doors are continually monitored but they are always vulnerable from flooding.

64. The Applicant did not accept that the door could be replaced for the costs stated by the Respondents; they would not be of a sufficient standard to provide security for the development.

Door entry systems

65. The Respondents submitted that the costs for this item are excessive stating that the sum of £400 is paid annually to the contractor ESS. In addition there is an annual contract payment of £450. By comparison, a door entry system can be obtained online for £122 with each fob costing £2.35.

66. The Applicant confirmed that a higher fee is paid to the contractor to ensure an out of hours service. The contractor was replaced in 2012. The costs quoted by the Respondent were inaccurate and the costs were between £498.24 and £838.24. Additional costs had been incurred because of the supply of a new system that held a greater number of fobs.

Building repairs

67. The Respondents queried the cost of remedial repairs and the fact that work appeared to have been charged for twice.

68. The Applicant advised that the repair work had been necessary following a leaking roof at 23 Merchant Exchange. The roof was repaired but this did not remedy the problem and, following further inspection, it was found the flat roof on the balcony was faulty. It was accepted that this was for the same fault but that it had been difficult to locate the leak. No claim had been from NHBC because the excess under the policy was £16-£17000 and so exceeded the cost of the repair. Similarly no claim could be made under the buildings insurance policy.

Caretaking

69. The Respondents advised that the caretaking costs, initially in the sum of £20 was not excessive. This was for dealing with refuse bins and testing the fire alarm. However the costs increased when the caretaker had the responsibility of reading the meters, for which there was a charge of £45 per month. Upon the basis this would only take an

additional 5 minutes the Respondent said this was an excessive charge.

70. The Applicant confirmed that the caretaker no longer had the responsibility of reading the meters, each of the leaseholders now having their own key to the meter cupboard.

Legal fees

71. The Respondents highlighted legal fees, which, from 2007 to 2012, were in excess of £9600. This expenditure should not have been incurred without the leaseholders' approval.

72. The Applicant stated that under paragraph 10 of Schedule 7 of the Lease the Landlord may employ such servants and agents as it considers necessary in order to perform its obligations under the Lease. The largest charges were in 2009 for £5800 which were the costs incurred when obtaining counsel's opinion regarding the further service charge to be imposed by the Head Landlord as referred to in paragraph 42 above. In 2007 further costs had been incurred in respect of proceedings before the LVT regarding one of the properties within the development although those charges had subsequently been recharged to the leaseholder concerned.

Reserve Fund

73. The Respondents expressed concern that it was unclear what is in the Reserve Fund and how it is used. Reference was made to the RICS Code of Practice 9.1 that allows a Reserve Fund to be used on a temporary basis. A sum of £1984 was used in 2012 to cover major expenditure whilst in earlier years the expenditure was funded thorough the service charge. There is no clear reasoning behind the use of the fund. Any funds used should be replaced but there appears to be nothing in place to do this.

74. The Applicant confirmed that each year its directors meet with Watson Property Management to agree the budgets including the amount to be set aside for the Reserve Fund. In 2012 the Board agreed to use £82228.22 for the Fund thereby reducing the amount held within it to £16752.16. This was done to mitigate the cost to the leaseholders given their contribution to major works over previous years.

75. Mr Ormant advised that the Board would aim for a Fund of £20,000. The directors take the view that large items of expenditure should be taken from the Reserve Fund and then collections made to replace those monies spent. The directors are looking at expenditure over a ten year period. Mr Ormant agreed that the current level of the Fund is low for a development having 22 apartments.

Appointment of a Manager

76. In their written submissions to the Tribunal the Respondents sought the appointment of a manager. The Tribunal advised that this was not an issue for determination in the application before it and no further evidence was heard upon this issue.

Administration charges

77. The Applicant included within the Respondents' service charge administration charges for reminder letters sent out prior to the issue of court proceedings in 2013, together with further charges for office copy entries and for a letter sent to the mortgagee. The amount claimed within the court application was £279. In 2013 after the issue of the court proceedings, further charges had been added including £672.90 for the preparation of the bundles relating to the Tribunal proceedings. The Respondents advised that the non-payment of their service charge was a rebellion against the amounts levied which they considered to be unreasonable. They had not sought to bring their own application to the Tribunal due to the costs involved. They had no issue with the amounts actually charged. The action taken had been justified in order to obtain the information supplied to the Tribunal that, prior to the current action, had not been forthcoming.

Costs

78. The Respondents confirmed that they sought an order for costs. The hourly charge was £80 per hour and for the hearing totaled £800 plus VAT and travelling. In addition there was the hearing fee and preparation. The total amount claimed was in the sum of £1748.90. This was in addition to the administration fee already charged to the service charge account of £672.90.
79. The Respondents confirmed that they also sought an order for costs but that had not been quantified. Consequently, at the conclusion of the hearing further directions were given for the filing of additional information and submissions upon the issue of costs.
80. At the conclusion of the hearing it was agreed by all parties that, following the filing of further evidence/submission a determination would be made without a further hearing.

Directions/Further submissions

81. The Respondents were directed to file further details regarding the cost of electricity for the period 2008-2009. It was explained that VAT was charged at the standard rate because the supply was linked to commercial as well as residential premises. The Applicant had challenged this but this had not been successful.
82. In response to the further information supplied by the Applicant, the Respondents criticized the method of accounting in respect of the electricity charges. After further analysis, however, the Respondents stated-

"The balance on the Accrual Account (electricity) is -£2076.46 at the end of 2012 for the years 2007-2012, which means that the cost of electricity has been understated. However £1319.92 can probably be applied to the last quarter of 2011 and the balance deducted from the payment of £32374.17 to Npower closing in 2012."

83. In further submissions the Respondents produced a table to show that it was unfair for the residential properties to bear 69% of the electricity charges when their actual use was 44% and requested that the Tribunal find the apportionment to be unreasonable.
84. The Respondents provided further detailed information regarding the electricity usage at the development and comparables between the costs using the existing lighting and LED bulbs. The Respondent also submitted that the use of PIR in the garages was more expensive than allowing fluorescent lights to remain on. The Tribunal considered these further submissions were beyond what it had directed the parties to file and was returning to matters already raised at the hearing. The Applicant did not have the opportunity to respond further. The Tribunal determined that these further submissions would not be considered.
85. The Respondents sought costs from the Applicant in the sum of £6107.10.

Determination

86. The Tribunal considered the apportionment of those services common to the residential and commercial premises. The Respondents confirmed the apportionment was based upon the floor areas of each of the premises. The Tribunal did not find this to be unreasonable. The Tribunal noted counsel's opinion dated 20th November 2008 as referred to in paragraph 42 above but noted that the main purpose of this was not to determine the apportionment between the residential and commercial premises but to address the issue of liability by the Applicant in respect of 2 Bridge Street under the terms of the Head Lease. Counsel did touch upon the issue of apportionment between the residential and commercial premises and noted:

" *Under the Restaurant Lease and the Scott Wilson Railways Lease, the lessees covenanted to pay by way of service charge "a fair and reasonable proportion as determined by the Landlord acting reasonably and impartially of the Expenditure properly attributable to the Premises based on the net internal floor area of the Premises in relation to the total net floor areas of the lettable parts of the Building but excluding the Expenditure exclusively attributable to the residential parts of the Building"*

Counsel then further added that for other reasons-

"...it may well be to MEM's favour for the apportionment as it is presently proposed to continue"

87. The Tribunal considered the Respondent's submissions that the all contracts awarded by the Applicant for general upkeep of the development were long term qualifying agreements requiring s 20 consultation. It should also follow **Phillips and others v Francis [2012]** in determining that all works in any one period should require the consultation process.

88. The Tribunal noted that the decision in **Phillips and others v Francis** was given in December 2012. The years in issue within the application were to December 2012. Given the decision is not retrospective the Tribunal did not consider the judgment to be relevant in determining the issues in this case. All the service charges had been incurred before this decision and it would be manifestly unfair to impose upon the Applicant a judgment of which it had no knowledge.
89. The Tribunal did accept that the major works undertaken in 2008 were works requiring the consultation required by s20 of the Act. In the event there was no consultation carried out the Applicant was limited to the amount claimed from the Respondents to £250 for each item of work. This point had been conceded by the Applicant at the outset at the hearing and for which the Respondents were entitled to a refund of £15.71.
90. The Tribunal did not accept the Respondents' contention that all the other contracts awarded by the Applicant were long term qualifying agreements requiring compliance with s.20.
91. The Tribunal noted the decision in **Paddington Walk Management Ltd v Governors of the Peabody Trust [2009] EGLR 123** which determined that (i) a contract for an initial period of 12 months and then from year to year subject to termination by notice was not an agreement for a term of "more than" 12 months as defined by s20ZA(2) and (ii) qualifying works are works on a building or other premises, comprising matters that would naturally be regarded as building works. In that particular case the Court determined that window cleaning is not "qualifying works." It therefore follows that those contracts referred to in paragraph 34 above are not qualifying works requiring consultation.
92. The Tribunal considered the electricity charges and the complex calculations provided by the Respondents to show them to be unreasonable. The Tribunal noted that the Applicant went to the market annually through a broker to obtain the best price. It had used its best endeavours to obtain a reduction to the VAT chargeable and to avoid the Climate Change Levy but, without success. The Tribunal also took note of the submissions that the Applicant was doing insufficient to reduce energy consumption by not being proactive in replacing all bulbs with LED bulbs and/or fittings. The Tribunal did not consider the Applicant's current programme of replacement to be unreasonable and for this reason determined the charges for electricity and the maintenance of the fittings/bulbs to be reasonable.
93. The Tribunal considered the other items in dispute, namely the maintenance of the garage doors, building works, door entry system, cleaning, caretaking legal fees and the Reserve Fund. It considered all the charges for these items to be reasonable In determining those issues the Tribunal noted

- the maintenance of the garage doors-the Applicant had demonstrated that the garage doors were problematical but that they closely monitored the services provided by their contractors and changed them when necessary. This was done to provide a good quality of service to the leaseholders and to minimize any disruption. Whilst the

Respondents had obtained a quote for replacement doors it was not clear these would be a sufficient standard to those already in place.

- the building works caused by the roof leak had caused problems in that the original source of the leak could not be located. However, there was nothing in the evidence to show that those charges had been incurred unreasonably. Whilst the Respondents considered a claim should have ben made under the NHBC agreement, the Applicant had shown that this was not possible.
- the door entry system had to be maintained and improved as necessary. The system had recently been up-graded to allow for more fobs to be available to the leaseholders. The Respondents had failed to show that these charges were unreasonable
- the charges for cleaning were reasonable. The Respondents had obtained an alternative quote but the Tribunal was not satisfied that this was a directly comparable quote. It was clear from the documentation that the quote had been given in order to obtain work. The Tribunal accepted that the development is maintained to a high standard and that a cheaper quote may not necessarily be in the leaseholders' best interests.
- the caretaking fees were reasonable. Again the Tribunal noted the Respondents' concerns, especially with regard to the charges made for reading the meters. In the earlier years the caretaker was responsible for sorting the refuse bins for collection. This was now a more onerous task because of the responsibility for recycling. Over the period in question the caretaking costs had not increased significantly and any reduction for meter reading would be de minimis. The Tribunal found it difficult to accept the Respondent's concerns regarding electricity usage and the need for that to be monitored, when then criticizing the further costs for employing the caretaker to read the meters, a service provided to ensure any charges were correct.
- The legal fees were deemed to be reasonable. The Applicant was entitled, under the terms of the lease to obtain legal advice. The charges incurred in obtaining counsel's opinion had in fact saved the Applicant from additional service charges imposed by the Head Landlord. Whilst the Applicant had charged legal fees relating to one particular tenant to the service charge account, that had been subsequently rectified and charged properly to the tenant in question.

94. The Respondents had raised issues with how the Reserve Fund was used and the amounts held within it. The Tribunal agreed that the amount held within in appeared low for the development, especially given the high standard to which it was maintained. It was clear from the evidence that this was a matter decided by the Board and not Watson Property Management. It appeared a matter more suitable to be raised at the AGM.

95. The Tribunal considered the administration charges and noted that only those claimed in the court proceedings were for consideration by the Tribunal, this being from 2006 to 26th April 2013. The Tribunal could not reconcile the amount of £279 claimed in the court proceedings with the Respondents' statement of account showing the sum of £231 charged. Those were deemed to be reasonable and had

been properly incurred. Other amounts charged were for court fees that would be claimed within the court costs. In order to avoid the potential for further dispute, the Tribunal would observe that those subsequently charged by the Applicant were reasonable, save for those proposed for the filing of further information following the hearing, in the sum of £100-£150. The additional information clarified issues relating to the electricity and those should have been available in the original bundle.

96. The Tribunal considered the application for costs made by both parties. The Respondents had not succeeded in their application, other than on one minor point and therefore it would be unreasonable for the Applicant to pay their costs. No order for costs is therefore made.
97. In considering the Respondents' claim for costs the Tribunal noted the provisions of section 13 of The Tribunal Procedure (First–tier Tribunal) (Property Chamber) Rules 2013 which governs any proceedings brought before the Tribunal after 1st July 2013. It provides that an order for costs can only be made where "a person has acted unreasonably in bringing, defending or conducting proceedings in ..a residential property case"
98. The Tribunal did not find the Respondents to have acted unreasonably. One of the Respondents main complaints had been the Applicant's method of accounting and not correctly identifying the categories into which items had been charged, thus making it difficult for the Respondent to identify the charges to determine their reasonableness. The Tribunal concluded that this was largely due to each party's perceptions as to what was the best accounting method rather than anything being wrong within the accounts. It would perhaps have been better for all parties had the Respondents issued earlier proceeding to resolve their concerns rather than being the subject of court proceedings These had been taken due to their failure to pay, which in turn, had happened because of their concerns over the level of the charges. Consequently no order for costs is made against the Respondents.
99. There was no application made by the Respondents for an order pursuant to s20C of the Act. However, if such an application had been made it would not have been successful, given the Respondents limited success in the matters raised.