

7361

London Leasehold Valuation Tribunal File Ref No.

LON/00AX/LSC/2011/0220

Her Majesty's Courts and Tribunals Service

Leasehold Valuation Tribunal: reasons

Landlord and Tenant Act 1985 sections 27A and 20C

Address of Premises

The Committee members were

Charter Quay,

Mr Adrian Jack

Wadbrook Street,

Mr John Barlow FRICS

Kingston-upon-Thames KT1 1HS

Mrs Judith Hawkins MSc

The Landlord: Charter Quay Ltd

The Tenant: Mr D Winsor and others

Procedural

1. By an application made on 29th March 2011 a large number of tenants headed by Mr D Winsor, the chairman of the Charter Quay Residents' Association, sought determination of the tenants' liability for service charges in 2008 and 2009.
2. The estate has previously been the subject of two hard-fought applications in the Leasehold Valuation Tribunal. The first (action number LON/00AX/LAM/2008/0018) sought the appointment of a manager under section 24 of the Landlord and Tenant Act 1987. By a decision of 16th June 2009 (Mr Dutton, Mr Geddes and Mrs Dalal) the Tribunal directed that Alan John Coates of HML Andertons be appointed as manager under that section with effect from 17th August 2009.
3. The second application was made under section 27A of the Landlord and Tenant Act 1985 under action number LON/00AX/LSC/2009/0215 for the determination of service charges payable in 2003 to 2007 and the budgeted figures for 2008 and 2009. This matter was determined by a Tribunal comprising Mr Mohabir, Mr Kane FRICS and Mr Miller by a decision dated 27th July 2010.
4. Directions in the current application were given on 4th May 2011. These involved the holding of a preliminary hearing on 27th July 2011 to determine whether the Tribunal had jurisdiction to order the landlord to repay monies representing additional charges incurred by Mr Coates as a result of the landlord's alleged management failings in 2009. The Tribunal will return to this point below.
5. The Tribunal inspected the estate on the morning of 11th October 2011. The hearing commenced later that day and continued over the succeeding days until it concluded in

the late afternoon on 14th October 2011.

6. The tenants were represented by Mr Martin Boyd, one of the tenants. He called Mr Coates, the section 24 manager; Mr Hamilton Comeley, a senior property manager working for HML with day-to-day management of the estate; and Mr Brian Cheetham, one of the tenants who is also a chartered engineer.
7. The landlord was represented by Mr Adrian Carr of counsel. He was attended by Ms Claire Banwell-Spencer, the landlord's in-house solicitor. He called Mr Paul, an in-house accountant; Ms Sarah Belsham, the property manager from about May 2009 until the handover to Mr Coates; Mr Charles Bettinson, head of insurance for Estates and Management Ltd; Mrs Beth Lancaster, the estate manager until Ms Belsham took over (Mrs Lancaster also appears in the documentation as Ms English, her maiden name); and Mr Sean Doherty, an in-house accountant.
8. In late submissions on 14th October (the last day listed for the four day hearing) the parties started to dispute a number of matters, which the Tribunal had understood to have been agreed concerning what has been described as Issue 12. In consequence the Tribunal gave directions for the filing of a Scott Schedule, so that the Tribunal could consider the matter when it reconvened to consider its determination. The directions for a Scott Schedule were complied with and the Tribunal was able to consider the Schedule when it reconvened on 31st October 2011. Neither party sought a further oral hearing.

The law

9. The Landlord and Tenant Act 1985 as amended by the Housing Act 1996 and the Commonhold and Leasehold Reform Act 2002 provides as follows:

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, improvement 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 of 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 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 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.

- (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.”

10. Section 20B of the 1985 Act requires demands for service charges (or notification that such demands would be made) to be served within 18 months of the landlord incurring the costs on pain of irrecoverability.

The inspection

11. The estate is described in paragraph 7 of the Tribunal’s decision of 27th July 2010 and the current Tribunal gratefully adopts that description. On our inspection there had been some recent refurbishment of the concierge facilities in Garrick House so as to permit the installation of a small office for the estate manager. We were also shown samples of cabling run through the basement of Garrick House.
12. In the basement car park under Stevens House we were shown an area in the car parking area about four feet lower than the surrounding car park. This was where the problem of sewage flooding was said to have arisen. Nearby there was a lift shaft, the base of which was said to have been flooded with sewage. The area was immediately below Brown’s Restaurant (the premises which had earlier been the Ha Ha Bar). We also saw the pipes which came down from the premises above.

The Tschenguiz companies

13. Very many of the companies which are mentioned in this decision were during the period with which we are concerned owned or controlled by the Tschenguiz family. The precise company structure was in dispute, but the “family tree” of companies at Page F/92 of the bundles gives a flavour of the structure. At the top of the tree is the Tschenguiz family trust. It is in turn owned Euro Investments Overseas, a British Virgin Island company. Euro Investments Overseas in turn owned Rochell Ventures Ltd, another BVI company, which owned Aztec OpCo (No 2) Ltd, an English company. This owned Aztec CBG OpCo Ltd and Roadweald Ltd. Aztec CBG OpCo Ltd owned Sonata Group Ltd, which in turn owned County Estate Management, the estate managers replaced by Mr Coates. Roadweald Ltd owned Interphone Security Ltd, which owned Interphone Ltd, the company which provided intercom and CCTV services on the estate. By a separate trunk of companies also descending in quasi-Biblical fashion from Euro Investments Overseas, the family trust owned Charter Quay Ltd, the landlord.
14. Estates and Management Ltd is another Tschenguiz company. It was responsible for arranging the insurance on the estate, although the insurance was in fact placed through Locktons, a non-Tschenguiz company which is a wholesale insurance broker.
15. We were told that the Tschenguiz family, or parts of it, have fallen into financial difficulties and that various of the companies have been the subject of administration and other insolvency procedures. However, this post-dates the events with which we are concerned.

The issues

16. Mr Boyd and Mr Carr both prepared skeleton arguments which helpfully set out the issues under 13 heads, as follows:
 - Issue 1: Whether the balancing payments for 2008 were demanded out of time under section 20B of the Landlord and Tenant Act 1985.
 - Issue 2: Whether additional costs were incurred by the manner of the handover to Mr Coates by County Estates Management.
 - Issue 3: Whether sums claimed in respect of the Interphone contracts stood to be reduced.
 - Issue 4: Whether the management agreement with County Estates Management was a long term agreement which required a consultation under section 20 of the 1985 Act.
 - Issue 5: Whether the concierge costs stood to be reduced.
 - Issue 6: Whether the insurance contribution demanded was reasonable and properly apportioned.
 - Issue 7: Whether the reserve funds were properly used.

Issue 8: Whether the management fees of County Estate Management were reasonable.

Issue 9: Whether the amount incurred in relation to drains was reasonably incurred.

Issue 10: Whether various professional fees stand to be reduced.

Issue 11: Whether the cost of window cleaning was reasonable.

Issue 12: Whether various items of general repairs were reasonably incurred.

Issue 13: Whether some allowance should be made for the use of the estate's facilities by the residential boat owners moored on the river beside the premises.

Issue 1: Section 20B

17. In the event the tenants conceded that section 20B demands had been made by the landlord, so that this ground of objection fell away.

Issues 2 and 4: Additional cost of handover and management fees

18. These issues overlap with Issue 8 and we consider it under Issue 8 near the conclusion of this decision.

Issue 3: Interphone contracts

19. The estate had the benefit of a modern intercom system for admitting visitors to individual flats. It also had extensive CCTV coverage, which was monitored in the concierge area.
20. The majority of the contracts for the repair and maintenance of the intercom and CCTV were entered into when the estate was built in 2000-2003. We were told that at that stage Interphone Ltd was not a Tschenguiz company, although it had become so by 2007 at the latest. The bulk of the contracts appeared to pre-date the grant of the leases, so section 20 would not have applied in any event.
21. In any event these contracts were the subject of the decision of the Tribunal dated 27th July 2010. The Tribunal held that the sums due under these old contracts were reasonable and payable in full. Before us, the tenants conceded that they could not reopen the question of the recoverability of monies due under these old contracts.
22. Instead the tenants attacked County Estate's decision to enter two newer contracts with Interphone Ltd, one dated 28th September 2007, which appears at page A1/256, and another dated 5th March 2008, which appears at page D/51. Although the 2007 contract was entered into in the 2007 service charge year, which was the subject of the 2010 Tribunal decision, no issues about this particular contract were discussed or decided in the earlier Tribunal decision. No issue of estoppel therefore arises in our judgment and indeed the landlord did not seek to argue the contrary.
23. Both of these contracts are extremely onerous. Clause 7a (in identical terms) provides

that the duration of the contract should be for the period ending 31st December after signing and the following fourteen years. The annual rental payable under the 2007 contract was £12,982 plus VAT and under the 2008 contract £1,245 plus VAT, in each case increasing in line with the retail price index.

24. Clause 8 of the contracts gave the customer a right to terminate earlier, but on terms that the customer should pay to Interphone:

”all monies then due and a capital sum equal to the total of the rentals payable under this Contract, at the rent prevailing at the time of the said termination, for the remainder of the term less an allowance of 20% off such capital sum in lieu of maintenance and, from the resultant figure, a further allowance 3.5% of such resultant figure multiplied by the number of complete years then still due to run under the Contract shall be deducted, but the Subscriber’s liability shall at no time during the term of Contract exceed a sum equal to five year prevailing rent.”

25. It should be noted that the intercom equipment and the satellite TV and radio distribution system which were the subject of the 2007 agreement were described as “existing equipment”.

26. Mrs Lancaster, who signed these contracts on behalf of the landlord in her capacity as property manager with County Estate, told us:

- (a) that she had not read the contracts;
- (b) that she had not obtained quotations from other contractors;
- (c) that she has made no attempt to negotiate the terms of the contract.

In effect she simply signed what Interphone put in front of her.

27. Mrs Lancaster said that she was unaware that Interphone was a Tschenguiz company, but it is clear that there were people at County Estate who knew that. Indeed it was Mr Doherty, an in-house accountant with County Estate, who produced the “family tree” of Tschenguiz companies. It is astonishing that County Estate had no system in place to warn employees that if they were going to enter contracts with other Tschenguiz companies they needed to ensure that the terms were reasonable.

28. The result of entering these contracts has been extremely damaging financially, because the break clauses are so onerous. Mr Coates and Mr Comeley have been in heavy negotiations with Interphone to end the contracts on significantly better terms. The simple fact is, however, that in our judgment the 2007 and 2008 contracts should never have been entered on those terms.

29. Whilst it is true that the tenants have had the benefit of the repair and maintenance provisions in the two contracts, those benefits have been completely wiped out by the termination provisions. In these circumstances we disallow the monies claimed under these two contracts in the service charge years in question.

Issue 5: Concierge

30. This issue was not really pursued by the tenants. No evidence was adduced to show that staff worked excessive amounts of overtime or that costs had increased due to excessive staff turnover. In these circumstances we disallow nothing.

Issue 6: Insurance

31. Although a number of issues were ventilated in the skeleton arguments, at the hearing the issues on insurance were reduced to two: Were the insurance commissions excessive? And should a leak in the Ha Ha Bar have been claimed against insurance?
32. On the first question, there is an agreed document at F/82 and F/83 which shows the remuneration received. It will be recalled that the insurance was placed first through Estates and Management Ltd, a Tschenguiz company, who in turn placed it through Locktons. The remuneration shown on F/82 has £83,744.77 as the cost of insurance to which Estates and Management Ltd's commission of £26,969.53 and Lockton's commission of £4,012.95 needed to be added. The respective figures on F/83 were: £78,764.84, £11,203.95 and £3,963.31.
33. The evidence of Mr Bettinson of Estates and Management Ltd is that the landlord receives the commission payable via Estates and Management Ltd. Estates and Management Ltd did some work for their commission as set out in paragraph 12 of Mr Bettinson's witness statement. It did claims handling and supervised Locktons. There is, however, no evidence that any attempt was made to test the market for brokerage services. (There is no complaint of Locktons' testing the market for the underlying insurance.)
34. Estates and Management Ltd's commission was just under 23½ per cent, whereas Locktons' commission was 4.8 per cent.
35. Since the arrangement between Estates and Management Ltd on the one hand and Charter Quay Ltd on the other were not at arms' length, because both were Tschenguiz companies, it cannot be assumed that Estates and Management Ltd's commission represented a market rate. The landlord adduced no evidence to show that it was.
36. In our judgment, applying our own knowledge, such a rate was excessive. The most which we consider reasonable is 10 per cent. (For the avoidance of doubt, this is in addition to Locktons' commission, which was not challenged.)
37. So far as the leak into the Ha Ha Bar is concerned, the position is that over the bar is a flat roof which incorporates a garden for tenants. Mrs Lancaster, who was the property manager at the time, was not cross-examined on her reasons for not making an insurance claim. In these circumstances there is in our judgment no adequate evidence that an insurance claim could or should have been brought. The works may well have been treated by the insurers as a repair, so that (if a claim had been made) it would have been rejected. We see no evidence that the allocation of this expense was incorrect.

Issue 7: The reserve fund

38. The tenants' real complaint in respect of the reserve fund is that County Estate, the day before the handover of the estate to Mr Coates, made a large number of payments. This is not, however, the way the matter was addressed to us under this heading. Insofar as there were payments which should not have been made, these are the subject of separate headings. The point made by Mr Boyd on the reserve fund is that the reserve fund should only have been used for the purposes for which the monies were gathered, namely for defined elements of future major works.
39. In our judgment this is not correct. Although for accounting purposes a reserve fund is established separately, and indeed often the monies in a reserve fund are kept in a separate bank account, this does not mean that they are therefore necessarily held on some separate trust solely for major works. It may be possible as a matter of law to set up a reserve fund so that the monies in it are held for some special purpose and only for such special purpose. In general, however, the monies in a reserve fund are merely service charge monies, which are held on trust for the purpose of payment of properly incurred expenses recoverable under the service charge provisions.
40. In the current case there is no evidence in our judgment that the reserve fund monies were impressed with some other special purpose. The mere fact that the monies have been gathered in order to fund estimates of the cost of future works is not in our judgment sufficient to show that they cannot be used for other legitimate service charge purposes.
41. The tenants sought to rely on the Court of Appeal decision in St Mary's Mansions Ltd v Limegate Investment Co Ltd [2002] EWCA Civ 1491. The case, however, is concerned with the procedure to be adopted under the leases in issue in that case for using surpluses on the "ordinary" service charge demands to fund future works. It is not authority for the proposition that monies collected to a reserve fund can only be used for the major works for which they were collected.
42. Accordingly under this head we disallow nothing.

Issue 9: Drains

43. The blocking of drains had been a continuing problem since at least 2004. The problem has multiple causes. One was the discharge of grease into the sewerage system by the commercial premises (most of whom were restaurants). Another was the breaking down of the pumps needed to raise the foul waste from the pipes in the car park. This caused the lowest part of the car park to flood and in turn resulted in raw sewage escaping into the bottom of the adjacent lift shaft.
44. After the handover of management to Mr Coates, Mr Comeley has been able to deal with the problem reasonably simply. It appears that grease was not the only problem. Instead there seems to have been some structural problem when the sewerage pipes were originally installed. This resulted in shale being found in the pipes, which in turn caused the pumps to seize. The problem was solved quickly, once the true issue had been identified, at a cost of £22,000.

45. There is no reason in our judgment why County Estate could not have carried out these investigations at a much earlier stage. County Estate did cause some works to be carried out, such as the installation of a bio-digester. When it was apparent the problem was continuing, however, it should have taken a more active role, such as that undertaken by Mr Comeley.
46. The landlord conceded that £15,440 should be disallowed in 2008 and this was accepted by the tenants.
47. In 2009, we consider that some further amount should be disallowed. The tenants suggested £4,327 and in our judgment that is reasonable.
48. Accordingly we disallow £15,440 in 2008 and £4,327 in 2009.

Issue 10: Professional fees

49. The issue of professional fees related to three heads: the fees of Mr Paice, a surveyor; those of Leitch & Co, solicitors; and the additional costs associated with the section 24 appointment.
50. So far as Mr Paice is concerned, he described his firm as “building surveying consultants – project managers.” He himself appears to have had no professional qualifications. Instead he had a large amount of practical experience in building surveying. Mrs Lancaster said that she had used him on a variety of estates, both big and small, and that he had a good reputation. His hourly rate in 2008 was £95.
51. The tenants criticised the use of Mr Paice on the basis that he was not properly qualified to act on some of the matters for which he was appointed by County Estate, in particular they identified (a) the “railings” project, (b) the major works estimate, (c) the drains and (d) the Rose Theatre leak.
52. In our judgment it is perfectly appropriate to use an experienced but unqualified man in appropriate circumstances. In particular men such as Mr Paice are considerably cheaper than fully qualified professionals. However, a managing agent needs to apply his or her mind to whether the unqualified man is suitable for particular work.
53. In the current case, it was not in our judgment appropriate to use Mr Paice on the “railings” project. The background of this is that the Ha Ha Bar was next to the river, separated from the Thames by a walkway running the length of the river. The walkway had a sheer drop of perhaps 3½ or 4 feet to the floating pontoons. At a similar establishment some distance down the river there had been a tragic accident where a patron had fallen in the river and drowned. The landlord considered that there was a risk of a similar accident befalling a, possibly raucous, patron of the Ha Ha Bar, so that railings should be installed outside the Bar.
54. In order to install the railings it was necessary to obtain planning consent and because of the sensitivity of the site next to the Thames a full risk assessment was needed to justify the installation. Such a risk assessment is, to the Tribunal’s knowledge, a specialised undertaking, not least because some forms of railing or barrier can actually increase the

risk of someone falling in. In our judgment Mr Paice was not suitable for the making of the planning application or the risk assessment. He had no specialised knowledge or experience in this area of practice. The planning application was refused, one of the grounds being the poor risk assessment.

55. Accordingly we disallow £1,468.75, Mr Paice's fees in respect of the "railings" project.
56. Mr Paice was instructed to prepare an estimate of the cost of future major works, so as to form the basis of demands for contributions to the reserve fund. The tenants were so dissatisfied with his work that they instructed their own firm of surveyors, TFT, to do the same work with markedly different results. The Tribunal in considering the section 24 application was damning of the appointment of Mr Paice, which it said [paragraph 19] showed "a lack of concern in protecting the residents' welfare in respect of future costs... [T]his is not a picture of cumulative failings, but systematic ones."
57. In these circumstances we disallow Mr Paice's fees of £3,708.35 and £2,620.25 in respect of the major works estimate.
58. Mr Paice was instructed to investigate the problem with the drains to which we have alluded above. In our judgment he was not competent to do so. By 2008-09 the problem of drains had been continuing for several years. Ordinary measures to reduce the blockages had failed. It was incumbent on the managing agents to get a specialist in, not an unqualified man like Mr Paice. The money spent on him was completely wasted. He did not even make a report. We disallow £470.44.
59. Mr Paice was also instructed to investigate a water leak in to the Rose Theatre. This he appears to have done competently and indeed such relatively straightforward matters are precisely those for which it is appropriate to instruct someone like Mr Paice rather than a more expensive specialist. Accordingly we disallow nothing under this head. (We note, however, that his fee note for £1,056.54 is arithmetically incorrect: the correct figure is £1,066.54.)
60. Mr Paice's fee note for £223.25 which appears at A1/365 was conceded by the landlord, so we disallow that figure.
61. Leitch & Co were a firm of solicitors instructed for debt-collecting work against tenant. The landlord conceded that £1,822.50 of the firm's fees should be recovered against individual tenants and should not go on the service charge. We disallow that sum accordingly.
62. The landlord originally included £8,596.25 in the service charge as part of the costs of the section 24 application. Before us the landlord conceded this figure and we therefore disallow it.
63. The tenants also sought to have disallowed the cost of lights on the bridge and bollards. These matters were not pursued before us. The tenants also suggested that Mr Fawcett, the estate manager, had spent ten days preparing for the section 24 hearing. There was no evidence to support this and accordingly we disallow nothing in respect of these items.

Issue 11: Window cleaning

64. The service charges include a figure for the window cleaning of the theatre block. The amount claimed by the landlord was £6,641 in 2008 and £3,250 in 2009. The tenants took two points on this. Firstly they suggested that the window cleaning was let on a long-term qualifying contract. Secondly they argued that the cost was excessive.
65. So far as the first point is concerned, in our judgment there is no evidence that there was any contract with the window cleaning company for more than one year. The Tribunal accepts the evidence of the landlord that the window cleaners were instructed on an as-and-when basis.
66. The second point is in our judgment a valid one. The amount paid for window cleaning in 2008 was for three visits by men abseiling down the side of the building. The figure for 2009 was for one visit by abseilers. After the transfer of management to Mr Coates, window cleaning was done without any need for abseiling at a cost of £294 per visit. Having seen the property, the Tribunal is satisfied that there was never any need for abseiling. Accordingly in our judgment only £882 is recoverable in 2008 (being three visits at £294) and £294 in 2009, in each case with VAT at the appropriate rate, if applicable.

Issue 12: General repairs

67. There were thirty items in dispute, but many of these were agreed. The agreed figures and the figures still in dispute were as follows:

Item	Agreed/disputed
1.	£367.78 disallowed
2.	£42.30 disallowed
3.	£51.38 disallowed
4.	£1,150.00 disallowed
5.	£94.00 disallowed
6.	£233.00 in dispute
7.	In dispute (part of Item 6)
8.	£70.00 disallowed
9.	£204.92 disallowed
10.	Nil agreed
11.	£373.75 in dispute
12.	£293.25 in dispute

13.	£42.30 disallowed
14.	£197.40 in dispute
15.	£528.75 in dispute
16.	£176.26 in dispute
17.	£569.88 in dispute
18.	£70.50 in dispute
19.	£44.00 disallowed
20.	£2,417.00 in dispute
21.	£709.10 disallowed
22.	£40.00 disallowed
23.	£278.00 disallowed
24.	Nil agreed
25.	£50.00 disallowed
26.	£50.00 disallowed
27.	£100.23 disallowed
28.	£450.00 disallowed
29.	£491.00 disallowed
30.	£521.00 disallowed

68. Turning to the items in dispute. The issue on Items 6 and 7 concerns double-counting of the same invoice in 2008 and 2009. The invoice from R W Broome, who were locksmiths, showed £128.00 being charged in respect of a visit on 20th December 2008 and £105.00 on 13th January 2009. The combined cost of £233.00 appears in both service charge years. Accordingly we disallow £105.00 in 2008 and £128.00 in 2009.
69. Items 11 and 12 concern work done to the interior of Flat 60 in Stevens House. It was common ground that no insurance claim could have been made. Accordingly the work should have been recharged to the individual tenant, not put through the service charge account. We disallow £373.75 and £293.25.
70. Items 14 to 18 concern invoices raised by contractors in 2007 which the landlord sought to charge in the 2008 accounts. The tenants raise two points on these. Firstly they point out that there is no evidence that the 2007 invoices were not included in the 2007 accounts, as they should have been. Secondly, if they were rightly included in the 2008 account, they say that no demand was made in respect of them until the 2008 accounts

were published on 24th February 2010, so that the demands fell foul of the 18 month period for raising in invoices in section 20B of the 1985 Act.

71. In our judgment these points are well made. The landlord did adduce no evidence to show that the invoices were not included in the 2007 accounts. Given the methods adopted by County Estate in processing invoices (which we discuss below), the Tribunal has no confidence whatsoever that the invoices were not also processed in the 2007 accounts. The paperwork equally shows that, even if we were wrong on double-counting, the 2007 invoices would only have been demanded when the 2008 accounts were served in 2010. The demands would therefore have been out of time in any event. Accordingly we disallow items 14 to 18.
72. Item 20 concerns lift maintenance. The landlord has conceded that the five year lift maintenance contract was a qualifying long term agreement and that no section 20 consultation has been carried out, but the amount of the concession in 2009 was only £27.61, being the pro rata sum up to 17th August 2009, when the transfer of management to Mr Coates took place. The tenants say that the disallowance should be for the whole of the year. We agree. The total to be disallowed in 2009 is the total for that year: the date of a handover of management is irrelevant. We accept the revised figures put forward by the tenants (which strips out the telephone costs, the irrecoverability of which the landlord disputed), so as to disallow £2,116.20.

Issue 13: The moorings

73. The point here arose from the use made by boat-dwellers of the private facilities of the estate. (As members of the public they were of course entitled to use the public facilities, like the shops and restaurants, without any question of charging them arising.) It will be recalled that on the river there were moorings which were used for the mooring of residential boats, often on more or less permanent basis. The moorings themselves were run by a joint venture of St George's (the original developer) and the Royal Borough of Kingston upon Thames. The moorings had nothing to do with the current freeholder of Charter Quay and were managed separately by a different company.
74. Those dwelling on the residential boats in fact used the services of the estate extensively. Water, sewerage and electricity came from the estate. The residential boat owners deposited rubbish in the communal rubbish storage in Garrick House and collected mail from the post room next to the Concierge's office. We were advised that at least one residential boat owner also used the gym and the roof-terraces.
75. In these circumstances the tenants argued that the landlord should have extracted some payment from the residential boat owners which would then have reduced the total service charge bill. St George's and the Council resolutely refused to make any payment, except for electricity (which was on a separate meter). The tenants suggested that, if County Estate had taken a tough line, it could have extracted some ransom payment from the residential boat owners or from St George's and Kingston Council.
76. The difficulty with this argument in our judgment is that the tenants were perfectly

happy to allow the residential boat owners to use the estate in the way that they have been. The post room, for example, was opened to them with the full agreement of the tenants. Likewise the use of the gym and roof-terrace. We were given no evidence of the cost incurred by extending the estate's private facilities to the residential boat owners. This cost may well have been negligible.

77. In our judgment the landlord cannot be criticised for not demanding some ransom payment and on this ground alone we disallow nothing. It is not therefore necessary to consider the other interesting legal arguments raised by the landlord as to whether sums which might have been extracted from the residential boat owners would in fact go to reduce the service charge bill.

Issues 2, 4 and 8: Management fees

78. The tenants argued firstly that County Estate had been appointed under a qualifying long term agreement without any section 20 consultation having been conducted, and secondly that County Estate's management fees should be reduced in any event to reflect the poor quality of management and the additional costs caused thereby on the handover to Mr Coates.
79. In our judgment there is no evidence that County Estate were appointed under a contract lasting more than a year. There appears to have been no formal written contract appointing them at all. Both County and Charter Quay were Tschenguiz companies and it would be unusual for companies in joint ownership to have a formal agreement lasting more than a year. The evidence is very strong that the management agreement would have been terminable on reasonable notice, which would be very much less than one year. Accordingly in our judgment the contract with County Estate was not a qualifying long term agreement and the limit in section 20 of the 1985 Act and the regulations made under it do not apply.
80. As to the quality of management, we have commented at various points on serious management defects. In addition there is no doubt that the handover by County Estate to Mr Coates was handled extremely badly indeed by County Estate with a gross disregard for ensuring continuity and avoiding unnecessary expense on the part of the new managing agent.
81. One particularly glaring failure concerned the handover of accounting materials. County Estate had introduced a system of keeping electronic records. Under this, invoices payable under the service charge were scanned into a computer. Approval of a particular invoice by the relevant person at County Estate and its allocation among the various schedules of service charge were given electronically. Thus the invoice itself was not (as would be usual in a manual system) marked with a note of its approval and the accounting treatment of it.
82. Because Charter Quay is a complicated estate, there are some twelve schedules, or categories of expenditure, which stand to be divided differently between commercial and residential premises and between different blocks. Where there are so many different schedules it is often difficult from examination of the invoice alone to know to

which schedule the invoice needs to be allocated. It is in these circumstances necessary for the property manager him or herself (knowing what the expenditure represented by the invoice actually was) to allocate the expenditure. In fact, often such decision seem to have been left to the accounts department.

83. Further on the handover, County Estate did not give the electronic records to Mr Coates and his team. Instead they passed over piecemeal the invoices. For the reasons we have outlined, without the electronic record it is very difficult for the incoming manager to know which invoices have been approved and paid and how the invoices should be divided between schedules.
84. We accept the evidence of Mr Coates and Mr Comeley that County Estate made no attempt in the weeks leading up to the handover on 17th August 2009 to make arrangements for a satisfactory handover. County Estate's behaviour in our judgment was disgraceful. We strongly suspect that they made a deliberate decision to be unco-operative, because of their dissatisfaction at being replaced by an LVT-appointed manager.
85. The result of this unacceptable behaviour was greatly increased work on the part of Mr Coates. In fact, however, Mr Coates has not sought to recover any additional fees in respect of the additional work caused to the employees of his own firm. Accordingly there is nothing which can be off-set against County Estate's fees.
86. The situation is different in respect of the fees of the accountants, Simpson Wreford, who were instructed by Mr Coates to bring the accounts up-to-date. The tenants claimed a reduction of £7,214. They have produced a calculation which shows the time spent in different years and in our judgment it justifies the figure of £7,214. Paragraphs 16 and 17 of the Tribunal's decision on the preliminary issue (E2/214 of the bundles) supports the tenants' case that this figure should properly come off whatever we allow for County Estate's services.
87. In our judgment the tenants have had some benefit from the services of the managing agents, but County Estate's fees should be reduced substantially. Indeed Mr Carr conceded that there was "some defect" in County Estate's management.
88. Looking at matters in the round, in our judgment a 50 per cent deduction in 2008 is appropriate and a 75 per cent deduction in 2009. It is from this latter figure (i.e. after the 75 per cent deduction) that the £7,214 stands to be reduced.

Individual liabilities

89. The Tribunal was not asked to determine the liability of individual tenants. Until the question of recoverability was determined as above, it has not been possible to adjust figures. The parties will thus have to enter the appropriate figures in a spreadsheet so as to determine individuals' liabilities.

Costs

90. The Tribunal has a discretion as to who should bear the cost of the fees payable to the


Tribunal. These comprise an application fee of £350 and a hearing fee of £150. In our judgment the landlord has lost overall and we accordingly order that the landlord should reimburse the tenants for that amount of £500.

91. The tenants apply for an order under section 20C of the 1985 Act to prevent the landlord recovering its costs of the proceedings in this Tribunal. The Tribunal will not lightly interfere with a landlord's contractual rights, but in the current case the landlord has substantially lost and it would in our judgment be unjust for the landlord to be able to recover its costs through the service charge account or against the individual tenants, the applicants in this matter. Accordingly in the exercise of our discretion we make an order under section 20C.

DECISION

The Tribunal accordingly determines:

- a. that the sums set out above be disallowed in the service charge accounts;**
- b. that the landlord to reimburse the tenants £500 in respect of the fees payable to the Tribunal; and**
- c. that pursuant to section 20C of the Landlord and Tenant Act 1985 the landlord be prevented from recovering its costs of and in the current proceedings through the service charge or against individual applicants.**



Adrian Jack, chairman

22 November 2011