7132

HM Courts & Tribunals Service

Residential Property TRIBUNAL SERVICE

Case reference: LON/00BA/LSC/2010/0873

DECISION OF THE LONDON LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION UNDER SECTION 27A OF THE LANDLORD AND TENANT ACT 1985

Re:	**Vista House, Prospect House and Independence House, Chapter Way, London SW19**
Applicants:	William Rose and others
Respondent:	Ground Rents (Regisport) Limited
Date heard:	14 and 15 June 2011
Appearances:	William Rose, Hamish Dowlen and Andrew Greene for the applicants Stephen Murch, instructed by BTMK, solicitors, for the respondent
Tribunal:	Margaret Wilson Michael Taylor FRICS Rosemary Turner JP

Date of the tribunal's decision: 6 September 2011

Introduction

1. This is an application under section 27A of the Landlord and Tenant Act 1985 ("the Act") to determine the liability of the applicant leaseholders ("the tenants"') to pay service charges to the landlord for the years 2005 to 2010.

2. The application was made initially by three tenants, William Rose, who holds a lease of a flat in Independence House, Hamish Dowlen, who holds a lease of a flat in Vista House, and Andrew Greene, who holds a lease of a flat in Prospect House. At the time the application was made the tenants of a further 92 flats in those blocks had expressed the wish to be joined as applicants. They and others have subsequently been joined as applicants at their request and, at the date of the hearing, the leaseholders of some 145 flats of the 164 on the development had been joined as applicants at their request.

Background

3. Vista House, Prospect House and Independence House are three similar blocks of flats in a modern development in Merton known as Abbey Mills. The development also comprises 120 undercroft parking spaces and 51 external parking spaces. The building of the development, begun in or about 2003, was undertaken by Countryside Properties (UK) Limited ("CPL"), the then freeholder, or an associated company. By an agreement dated 30 September 2004 CPL agreed to sell the freehold of the development to Ground Rents (Regisport) Limited ("Regisport") or an associated company. Under the Agreement, which we have not seen, the freehold of the development was to be transferred to Regisport within one month of the completion of the grant of

the last lease of a flat in the development. Some of the flats were first occupied from about July 2005. The development was completed and the last flat sold in September 2006 and the freehold was transferred to Regisport on 1 October 2006.

4. The leases of the flats are in common form. They provide that the tenant will pay service charges half yearly in advance in accordance with the fourth schedule and that the landlord will carry out the works and provide the services specified in the fifth and sixth schedules, which include, at paragraph 7 of part 1 of the sixth schedule *water supply*. Clause 5.1.4 of the lease provides that *if at any time the Lessor shall reasonably consider that it would be in the general interest of the lessees of the properties on the Estate to do so the lessor shall have the power to discontinue any of the matters specified in Fifth Schedule or in the Sixth Schedule which in its opinion shall have become impractical obsolete unnecessary or excessively costly provided that in deciding whether or not to discontinue any such matter the Lessor shall consider the views and wishes of the majority of the lessees of the properties on the Estate.* The *block* for the purpose of each lease comprises Vista House, Prospect House and Independence House and also the undercroft and external parking spaces.

5. Until 2006 the management of the blocks was undertaken by CPM Limited, part of the Erinaceous Group, as agent for the freeholder. Johnson Cooper Limited, also part of the Erinaceous Group, was then appointed managing agent until 2007, when RMG Limited, also part of the Erinaceous Group, became the managing agent. From 1 October 2008 the managing agent was, and remains, Countrywide Estate Management ("Countrywide").

6. At the hearing on 14 and 15 June 2011 all the tenants were represented by Mr Rose, Mr Dowlen and Mr Greene, each of whom made careful and helpful submissions and gave evidence. Regisport was represented by Stephen Murch, counsel, instructed by BTMK, solicitors, who called Daniel Harrison LLB AIRPM of Pier Management Limited, a company associated with Regisport, but formerly employed by Countrywide as property manager of the

development, and Sarah Moon, of Countrywide, to give evidence. It was agreed that it was unnecessary for the tribunal to inspect the development.

7. The tenants had raised three issues: their liability to contribute to arrears of charges incurred for the supply of water, their liability to pay management fees, and their liability to pay for postage and bank charges. Mr Murch agreed that the landlord would not seek to recover the cost of postage and bank charges from the tenants in view of the small sums involved and we indicated that in those circumstances we considered that it would not be appropriate to seek to recover those charges from the leaseholders who were not applicants. In these circumstances that issue was not pursued. In relation to the water charges, Regisport in 2010 entered into an agreement for the payment of the arrears by instalments. Mr Murch agreed that that agreement was a qualifying long term agreement within the meaning of section 20ZA(2) of the Act which required prior consultation with the leaseholders in accordance with Schedule 1 to the Service Charge (Consultation Requirements) England Regulations 2003 ("the Consultation Regulations") and he asked for dispensation under section 20ZA of the Act from compliance with those regulations. The tenants did not object to our considering the request for dispensation, but opposed the grant of dispensation.

The issues

i. Water charges

8. The facts which we find are as follows:

i. On 25 February 2004 Thames Water Utilities Limited ("Thames") entered into a Common Billing Agreement ("the Agreement") with Countryside Properties (Merton Abbey Mills) Limited, a company associated with CPL, described in the Agreement as "the consumer". The Agreement provided that Thames would provide bulk metered water supplies to the three blocks of flats, described in the agreement as Blocks B, C and D (Block B is Vista

House, Block C is Prospect House and Block D is Independence House), with the intention that the consumer would be responsible to Thames for the payment of all water and sewerage services and the consumer would recover the charges from the occupiers of the flats. The Agreement provided that the consumer could not assign its interest in the Agreement without first obtaining the written consent of Thames which could not be unreasonably withheld.

ii. In pursuance of the Agreement Thames installed three meters, one in each block near to a pump room for that block, to record the consumption of water by the occupants of that block. Each meter was installed in a cupboard in the same position in each of the three blocks, and Thames supplied water to the blocks under the Agreement from 1 June 2005.

iii. When CPL assigned its interest in the development to Regisport it appears that it did not assign its interest in the Agreement, nor did it ask for Thames's written consent to such assignment.

iv. On the transfer of its interest to Regisport CPL passed to Regisport's managing agent the Operations and Maintenance Manuals relating to the provision of services to the development, together with detailed technical plans of the development. The Operations and Maintenance Manuals cannot be found and appear to have been lost by one or other of the managing agents.

v. Both CPL and Regisport entrusted their managing agent for the time being with the management of the blocks and the arrangements for the provision of and payment for services.

vi. Between the date when the water was first supplied to the blocks in or about June 2005 and about March 2010 the freeholders' managing agents failed to realise that each of the three blocks had its own meter to record the consumption of water in that block, or, if they did appreciate it, they did not notice or were not made aware that no bills were being paid for the water

consumption by the occupants of Prospect House and Independence House recorded by the meters in those blocks.

vii. From the date when water was first supplied by Thames until Thames terminated the Agreement in early 2011 the managing agents incorrectly assumed that the bills for the supply of water to Vista House were intended to cover the supply of water to the three blocks and accordingly divided the bills for Vista House between the three blocks and included only the water bills for Vista House in the service charges demanded of the leaseholders of all three blocks.

viii. The bills for water supplied to Prospect House and Independence House between June 2005 and 2010 were left unpaid and substantial arrears accumulated. Thames sent reminders and demands for payment to CPL as party to the Common Billing Agreement but it is not known whether these were forwarded to Regisport or were simply ignored. No evidence was given by any of the managing agents other than the present managing agent and the reason for the confusion is not known.

ix. The precise amount of the arrears is not clear. Countrywide has informed the leaseholders that the arrears amount to £79,167, but in the draft particulars of claim which Thames has indicated that it proposes to issue against CPL the arrears are said to be £65,299.06 as at 20 April 2011. It is understood that the lower figure may take account of an adjusted figure for VAT.

x. Property inspection reports produced by Regisport at the hearing showed that Mr Harrison, then an employee of Countrywide, inspected all three blocks on 13 May 2009 and 13 July 2009 and ticked "meters" as having been inspected.

xi. At an inspection of the blocks in April 2010 in the company of an electrical contractor Mr Harrison noticed that there was a water meter in each of the three blocks. When he returned to his office he reviewed the water bills and

observed that each of them appeared to relate only to Vista House. He said that he had previously assumed that Thames had made errors in the invoices or was unable to fit the names of all three blocks on the bills.

xii. On 25 May 2010 Mr Harrison emailed Thames offering on behalf of Regisport to pay the arrears from 1 October 2006, the date when it purchased the freehold, but reserving the right to argue that the arrears had arisen because of the negligence of Thames in failing to pursue them at an earlier date.

xiii. In or about June 2010 Countrywide reached an agreement with Thames that the arrears would be paid over a period of 24 months by standing order, Thames reserving the right to cancel the agreement if the payments were not made (see email from Thames to Mr Harrison dated 2 June 2010).

xiv. At a meeting of the informal residents' association in June 2010 Mr Harrison informed the tenants of the position and said that Countrywide proposed to include the arrears in the service charge budget for 2010/2011 which would form the basis of the demand for service charges on account for that year. At the meeting the tenants present disputed their liability to pay any water charges incurred more than 18 months before a demand for payment was issued to them.

xv. On or about 30 June 2010 Countrywide sent to the tenants a demand for service charges which included the arrears of water charges.

xvi. Countrywide did not put in place the standing order agreed with Thames in June 2010 and by a letter dated 10 September 2010 Thames revoked its offer to accept the arrears over 24 months and said that unless Regisport paid the arrears within twelve months it would issue legal proceedings to recover them.

xvii. By letters dated 26 January 2011 Thames informed the leaseholders that with effect from 14 January 2011 the bulk water meters would no longer be

used as the basis of water charges, which Thames would thereafter invoice individually to each leaseholder. It is not disputed that such a method of charging will result in water charges which are significantly higher for each leaseholder than they would have been had water been provided by the landlord as a service in accordance with the leases.

xviii. On 21 April 2011 Thames sent CPL a letter before action, accompanied by draft particulars of claim, seeking payment of the arrears due under the Agreement.

The relevant statutory provisions

8. By section 27A of the Act an application may be made to the tribunal to determine whether a service charge is payable and, if it is, the amount which is payable. A "service charge" is defined by section 18(1) of the Act as *"an amount payable by the 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"*. Relevant costs are defined by section 18(2) and (3). By 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"*. By section 19(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 of subsequent charges or otherwise"*.

9. Section 20B of the Act provides:

(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 a demand for payment of the service charge is served on the tenant, then (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 subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

10. By section 20ZA(1) of the Act:

Where an application is made to a leasehold valuation tribunal for a determination to dispense with all or any of the consultation requirements in relation to any ... qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

And by section 20ZA(2), "qualifying long term agreement" means (subject to subsection (3)):

an agreement entered into, by or on behalf of a landlord or a superior landlord, for a term of more than twelve months.

The application of section 20B: the arguments and evidence

11. Mr Rose submitted on behalf of the tenants that the costs for the provision of water were "incurred" when the bills were submitted by Thames to CPL for payment, and that by virtue of section 20B of the Act the tenants were liable to pay only those arrears due for payment within 18 months of the demands made of the leaseholders on or about 30 June 2010. He said that it

was to be assumed that when Regisport entered into the agreement to acquire the freehold it would have exercised due diligence in respect of contracts to which it would become subject, and that it had had a long period between the agreement to acquire the freehold and the transfer of the freehold to make all necessary enquiries. He submitted that it was obvious that technical drawings which would have shown that there was a separate water meter for each block were supplied to Regisport when it acquired the freehold and the drawings should have been studied carefully by the landlord and its managing agent in order to provide a reasonable estimate of the service charges to be demanded of the tenants. The failure of Regisport and its various managing agents to do so amounted, he submitted, to negligence on the part of all of them.

12. Mr Rose submitted that it was quite apparent that the various managing agents should have realised the true position at an early stage and that by their negligent failure to do so they had allowed the arrears to accumulate to the detriment of the tenants. He said that by not paying the water charges, with the consequence that Thames had brought the Agreement to an end, the landlord had not only broken its contractual obligations to the tenants under their leases to provide water as a service, but had also caused them financial loss because the water charges they were to be required to pay on an individual basis were significantly higher than the charges they would be expected to incur from a commercial meter under the Agreement. He said that in any case it was not at this stage clear whether Regis was liable to Thames for the arrears in question, and that unless and until that question was answered it was not appropriate for Regis to pursue the tenants for the arrears.

13. Mr Rose said that the tenants had been advised that it was also arguable that an estoppel by convention had arisen because they and the landlord had been under a common mistake of fact as to the number of water meters in the development. He said that the tenants would suffer detriment as a result of departure by Regisport from the assumption, shared with the tenants, that the

water bills for Vista House showed the water consumption for all three blocks, and that Regisport could not withdraw from the common assumption.

14. Mr Murch submitted that the costs of water supplied under the Agreement had not yet been incurred by Regisport because Thames was pursuing CPL for them, so that the 18 months' limitation period had not yet begun. He said that in any event the costs forming the arrears could not have been incurred by Regisport earlier than September 2010 when Thames demanded payment from Regisport. Relying on the decision of the President of the Lands Tribunal in *Nicholas Hyams and Emma Anderson v Wilfred East Housing Co-Operative Limited* (LRX/102/2005, at paragraph 30), which followed a decision of His Honour Judge Paul Baker QC, sitting as a judge of the High Court, in *Capital and Counties Freehold Equity Trust Limited* [1987] 2 EGLR 49, he submitted that the costs would be incurred by Regis if and when it became liable to pay them, which could not be earlier than the date when the invoice was presented to it in its own name in September 2010. He accepted that the President's observation in *Jean-Paul v The Mayor and Burgesses of the London Borough of Southwark* [2011] UKUT, LRX/133/2009, at paragraph 17, that "costs were only 'incurred' by the landlord within the meaning of section 20B when payment is made" could not stand in face of *Hyams.*

15. In answer to questions from the tribunal, Mr Murch said that he accepted that a landlord should know its own block and that it was legally responsible for the incompetence of its managing agents

16. Of the tenants' subsidiary argument based on estoppel by convention, Mr Murch said that the law permitted the party relying on such an estoppel a limited time within which to protect itself from the consequences of discovering the true legal and factual position, and that, if such an estoppel was relevant at all, the key question was whether it would be inequitable for Regisport to depart from the common assumption which, he submitted it was not, because the tenants had used the water services and it was only fair that they should pay for them.

17. Mr Harrison gave evidence. He said that he had become the property manager responsible for the management of the blocks in October 2008 when Countrywide took over the management, and had left the employment of Countrywide in December 2010 and taken employment with one of Regisport's associated companies, whereupon Sasha Keedwell, and, subsequently, Claire Hamilton, had replaced him as property manager. He said that he could speak only of the period when he was concerned with the management of the blocks and could not give evidence as to the position when the blocks were managed by previous managing agents.

18. He said that the water invoices from Thames were checked and signed off and he had not considered it significant that they were all headed "Vista House", because it was not uncommon for utility companies to get addresses incorrect. He said that when Countrywide took over from Johnson Cooper Limited as managing agent a "vast portfolio" with about 5000 units was transferred. He said that it had taken several months for information to be passed to Countrywide by Johnson Cooper and that "not that much information" had been received. He said that Countrywide "did not necessarily receive the handover notes" relating to the Abbey Mills development, and that there "may have been some notes supplied on this property" but "certainly not a complete bible on how to manage this property". He said "I believe we were in receipt of owner manuals for some of the developments but for BCD [ie Vista House, Prospect House and Independence House] I don't believe we got the operations and maintenance manual. It would have been nice." He said that he had not carried out a survey of the development when he became property manager, although each property manager had instructions to attend the property for which he or she was responsible and to make a note of the services provided. He said that a survey was "not undertaken on each and every property" and that this property was "quite large". He said that the meters were all in separate cupboards and "it was not possible for me to check every single cupboard" and he did not "check to see how many water meters there were in every single block in every single cupboard." He said he had no reason to question

that there was only one water meter in Vista House which recorded water consumption in all three blocks.

19. In answer to questions from the tribunal he said "you would expect the previous property managers to have looked into whether there were additional water meters. Somebody should have looked into it" and "it's arguably your responsibility if you employ a bad agent". He said that Countrywide had not received the Common Billing Agreement until it received a copy of the draft particulars of claim in the proposed proceedings by Thames against CPL and, asked by the tribunal how he saw fit to pay the bills without sight of the Agreement, he said "no-one could be reasonably expected to check each and every contractor", although he agreed that checks needed to be made. Asked how he came to tick boxes applicable to meters on property inspection forms without noticing the existence of three water meters, he said that the ticks "merely indicated checks of all meters within my knowledge" and "checking that all doors were locked and safe and secure" and that there was "no need to check 300 cupboards for a meter that I did not know existed', although he agreed that he had not counted them. He said that he was not sure whether it was the duty of a property manager to check the meters against the bills to see that the readings corresponded with the bills. Put to him by the tribunal that the water bills for Vista House had been very significantly lower than one would reasonably expect for all three blocks combined, he said that he would "not completely agree" and "there was nothing to indicate" that the level of charges was inadequate.

Decision

20. We are satisfied that the tenants are entitled to the benefit of a limitation period of 18 months prior to the demand of them for payment of the arrears on or about 30 June 2010. We are satisfied that, as a matter of law, costs are "incurred" within the meaning of section 20B of the Act when the landlord becomes liable to pay them, which is normally, and is in this case, when the bill in question is first presented for payment to the landlord for the time being.

It seems to us that nothing can deprive the tenants of the benefit of that limitation period (in the absence of proper notification under section 20B(2)) which is there for their protection, and rightly so, and that no decision by a freeholder to sell its interest can deprive them of that protection. As Etherton J, as he then was, said in *Gilje v Charlgrove Securities Limited* [2004] 1 All ER 91 at paragraph 27, *"the policy behind section 20B of the Act is that the tenant should not be faced with a bill for expenditure of which he or she was not sufficiently warned to set aside provision".* We consider that this policy is relevant to these arrears.

21. The tenants do not, in our view, have to show that Regisport, the current landlord, rather than CPL, the previous landlord, is at fault in failing to draw the arrears to their attention and demand a service charge in respect of them, but, as it happens, they can show that both of them, by their managing agents, were at fault. It is elementary that the managing agents should obtain the relevant records and information relating to the property which they manage and that they should inspect them, keep them up to date, and generally satisfy themselves that the charges made by utility companies are correct and are duly paid. There seems to us to be very little doubt but that the manuals and plans which would have been provided by the developers should have been and almost certainly were handed to the managing agents whom the landlords throughout entrusted with the management of the development and changed on an annual basis, and that these documents, which have been lost, would have shown that there was a water meter adjacent to the pump room in each of the three blocks. Each of the successive property managers should not only have obtained possession of the relevant manuals and plans but should also have inspected the blocks with reasonable care in order to ensure that he or she was familiar with the mechanisms whereby the consumption of water and other services was recorded, if only to ensure that the consumption was recorded accurately. It is clear that none of this happened. Mr Harrison did not inspect the block until about 18 months after his management began and then he failed to see the water meters next to the pump rooms until April 2010. In addition, the fact that, as we are satisfied, the charges made for water between 2005 and 2010

were unusually low, and the fact that the water bills received by the managing agents appeared to relate only to Vista House, should have put any competent managing agent on notice that something was amiss.

22. In these circumstances it is clear that, whether or not Regisport is ultimately held liable to pay the arrears for which CPL is being pursued by Thames, the tenants ought not to be prejudiced, and that they are not liable for any water charges incurred, which is to say first billed, prior to 30 January 2009. The tenants have conceded that they are liable for water charges first billed between 30 January 2009 and January 2011, when Thames decided to terminate the Common Billing Agreement and to bill them direct The bills for the three blocks are pooled for service charge purposes and they are therefore each liable to pay the percentage of the total water charges for the 18 month period prior to 30 June 2010, less the amounts they have already paid.

23. In the circumstances it is unnecessary to deal with the tenants' argument based on estoppel by convention which was not fully argued and which we did not consider at length. If we had been obliged to do so we would have been inclined to the view that it does not assist the tenants because, if Regisport was under a misapprehension about the number of water meters, the law affords it a reasonable opportunity to resile from the consequences of its misapprehension once it discovered the true position.

24. The tenants have asked us to determine whether that they can claim against Regisport for the additional charges which they will have to bear arising from Thames's decision to terminate the Common Billing Agreement with effect from 14 January 2011 which has caused a breach of the landlord's covenant to provide water as a service. That is not an issue which is within our limited jurisdiction under section 27A of the Act. It could conceivably be the subject of an equitable set off against future service charges for which the tenants appear to have an arguable case since they are clearly financially prejudiced by the termination of the Agreement.

The landlord's application under section 20ZA

25. Mr Murch rightly conceded that Regisport's agreement in June 2010 with Thames to pay the arrears of water charges over 24 months was a qualifying long term agreement within the meaning of section 20 and of the widely drawn 20ZA of the Act and that it therefore required consultation with the leaseholders in accordance with Schedule 1 to the Consultation Regulations. In support of Regisport's request for dispensation from the consultation requirements he submitted that the width of the definition of a qualifying long term agreement was in itself a reason for the grant of dispensation, and that in the present case the agreement in question was not an agreement for the future provision of services but an agreement for the payment of a debt. He submitted that there would have been no useful purpose to be served by consultation with the leaseholders because the options for the provision of water were limited by the fact that there was only one possible provider of water and that it was relevant that the tenants had consumed the water the charges for which were the subject of the arrears.

26. Mr Harrison gave evidence that he had been "roughly aware" of the Consultation Regulations relating to long term agreements but that they had not crossed his mind when he negotiated with Thames. He said that the reason why Regisport had not complied with the agreement he had negotiated with Thames to pay the arrears over 24 months was that most of the leaseholders had refused to pay that part of the service charges referable to the arrears, although he agreed that Regisport had a very large portfolio of over 20,000 units of accommodation.

27. Mr Rose submitted that the landlord should have consulted the leaseholders before it reached the agreement for the payment of the arrears, and, had it done so, the leaseholders would have advised against reaching the agreement until it was established whether Regisport rather than CPL was responsible to Thames for the arrears in question.

Decision

28. This application is of only academic interest, not only because of our decision as to the application of section 20B, but also because the agreement was rescinded within three months of its making. However, if we had had to decide it we would have concluded that dispensation should have been granted for the reasons advanced by Mr Murch.

ii. Management fees

29. The fees which appear to have been charged by the respective managing agents were, according to the accounts, as follows:

- £25,677 was charged in 2005, equivalent to an average of £156.57 per flat, including VAT
- £14,460, was charged in 2006, equivalent to an average of £88.17 per flat, including VAT
- £26,230 was charged in 2007, equivalent to an average of £159.94 per flat, including VAT
- £34,610.40 was charged in 2008, equivalent to an average of £211.04 per flat, including VAT
- £37,526.18 was charged in 2009, equivalent to an average of £228.82 per flat, including VAT, plus £5 for each parking space
- £37,854 was charged in 2010, equivalent to an average of £230.82 per flat, including VAT

30. The tenants asked us to bear in mind the significant increases in the fees for management over the years which were out of line with and much greater than the increases in the costs over the years in question. They said that they had obtained alternative quotations for professional management, one of them at £175 per flat per year plus £25 per parking space, and the other at £149 per flat with no additional charge per parking space. They also relied on decisions of leasehold valuation tribunals from which it appeared that Sarah

Moon of Countrywide considered that £175 per flat was a reasonable fee for management.

31. However their case was based mainly on the poor standard of management over the years. In this connection they relied principally on:

- the way in which water charges had been dealt with
- failure to pay not only water bills but also bills for other utilities such as electricity and the lift safety telephone equipment which as a result had not been operable for three years
- charging excessive premiums for insurance by placing the insurance through one of Regisport's associated companies which charged excessive commission
- failure to deal adequately with defects in the building, including drainage problems and defective lighting, for which CPL and the NHBC would have been responsible had the defects been reported promptly
- failure to deal adequately with dangerous falling concrete in the undercroft parking areas with danger to public health and safety
- failure to have regard to security problems arising from faulty locks to entrance doors
- allowing commercial vehicles to park in car parking areas in which they were not entitled to be parked

32. The tenants produced photographs and utility bills in support of their case in respect of the standard of management and gave evidence in support of their case. They submitted that Ms Hamilton was over-loaded, with too many properties for a single person to manage.

33. For the landlord, Sarah Moon gave evidence in the absence of Claire Hamilton who was not available. She said that Ms Hamilton was in sole charge of the development and was a member of the Institute of Residential Property Managers but had no other qualifications, although she had ten years' experience. Ms Hamilton managed, she said, about 800 units in all.

Although Ms Moon did her best to help the tribunal her evidence was of limited assistance because she did not know the development.

34. Mr Murch submitted that the level of performance was adequate for the relatively low level of charges.

Decision

35. We accept the tenants' evidence on this issue, and we are satisfied that the level of management was well below the standard which both the landlord and the tenants were entitled to expect. We take the view that the managing agents took on too much and were over-loaded with work with the result that they did not manage the development with reasonable care and skill. The landlords' decisions to change their managing agents with such frequency, apparently without first ensuring that the new agents had either the skill, or the capacity, or the documents required to deal satisfactorily with the task contributed to the wholly inadequate management which seems to have been in place from the start. Doing the best we can, we conclude that a fee of £120 per unit plus VAT would be a reasonable fee throughout the period from 2005 to the date of the hearing.

Costs

36. Mr Murch invited us, and we agreed, to defer until after the parties have considered this decision consideration of the tenants' applications for the reimbursement of the fees they have paid in connection with these proceedings and of their request for an order under section 20C of the Act to prevent the landlord from placing any of its costs in connection with the proceedings on any service charge. Any representations they wish to make on these issues may be in writing and must be exchanged, and copied to the tribunal, within three weeks of the date of this decision.

CHAIRMAN.....

DATE: 6 September 2011