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LONDON RENT ASSESSMENT PANEL

**DECISION OF THE LEASEHOLD VALUATION TRIBUNAL ON AN APPLICATION
UNDER SECTIONS 27A, 20C & 20ZA OF THE LANDLORD AND TENANT ACT
1985 AND SECTION 35 OF THE LANDLORD AND TENANT ACT 1987**

Case Reference: LON/00AG/LSC/2012/0564
LON/00AG/LDC/2013/0020 (S20ZA)

Premises: Ground Floor Flat, 3 Arlington Road, London
NW1 7ER

Applicant(s): Mr Mark Harrop
Miss Cushla Barry

Representative: Mr Harrop & Miss Barry on the first day of the
Hearing
Miss L Mattsson, Counsel on the second day of
the Hearing

Respondent(s): Redcourt Limited

Representative: Mr A Kramer, Solicitor
Mr L Kaufman
Mr R Gurvits, Managing Agent of Eagerstates
Limited on the first day of the Hearing only

**Date Application
Received:** 13th August 2012

Date of Directions: 11th September 2012

Date of Hearing: 29th November 2012
21st February 2013

Date of meeting: 15th April 2013

**Leasehold Valuation
Tribunal:** Mr A A Dutton – chair
Mr P S Roberts Dip Arch RIBA
Mrs R J Turner

Date of decision: 30th April 2013

DECISION

The tribunal determines that the amount payable in respect of the insurance premium for the property is allowed at £696.85. The tribunal determines that the management fee for the period in dispute should be £123. The tribunal determines that dispensation is to be granted under Section 20ZA on the terms set out below.

The tribunal determines that the Applicants must pay the sum of £8,400 towards the major works undertaken at the property. However, as a term of granting dispensation from the consultation requirements the tribunal awards to the Applicants the sum of £1,000 as a contribution towards their costs thus reducing the sum to be paid to £7,400

The tribunal determines that it would be just and equitable to make an order under Section 20C of the Act for the reasons set out below.

The tribunal determines that the Respondent shall repay to the Applicant the application and hearing fee of £350 which sum may be deducted by the Applicants from the sum of £7,400. The total sum due and owing by the Applicants is therefore £7,869.85.

REASONS

Background

1. There were three applications that we were required to deal with in the course of these proceedings. The first was an application under Section 27A and Section 20C of the 1985 Act in which the Applicants challenged their liability to contribute towards a major works to the property, the management fee for the period 2012/2013 and the sum payable in respect of the insurance premium for the period January 2012 for 12 months.
2. In addition the Applicants had made an application to the Tribunal seeking to vary the terms of their lease under Section 35 of the Landlord and Tenant Act 1987.
3. During the course of the Hearing the Respondents made an application under Section 20ZA seeking dispensation from the consultation requirements under Section 20 of the Act in respect of the major works at the subject premises which were the basis of the claim by the Applicants under their Section 27A application.
4. We propose to deal briefly with the application under Section 35 of the Landlord and Tenant Act 1987 as we found that this was not a matter that could proceed. In March 2011 the Applicants acquired the leasehold interest in the property at auction. A term of the lease requires the tenant to make a

payment of 50% of the expenses and outgoings mentioned in the fourth schedule to the lease. It is right to note that the lease held by the Applicants is the only long lease at the property. The other units are one bedroomed flats remaining in the ownership of the landlord and let on assured short hold tenancies. There is a history to the creation of these units but this is not relevant to the application under Section 35 of the 1987 Act.

5. The Applicants' concern was that the size of their flat when compared to other residential units in the property was such that they calculated it only represented some 37.8% of the total internal floor area. They therefore considered that the requirement in their lease for them to pay 50% of the costs and expenses of the landlord was unreasonable. They had obtained some expert evidence to confirm the calculation. However, there is no suggestion that any of the provisions of Section 35(2) have been met. In particular, the provisions of Section 35(2)(f) were not made out when one considered the provisions of Section 35(4) of the Act. It may well be that the 50% provision contained in the Applicants' lease does not accurately reflect the floor area of their flat in relation to those other residential units in the property. However, the bargain struck was 50% and there is no evidence before us that more than 100% of the service charge costs are being collected. Indeed that cannot be the case because there is only the Applicants' flat which makes a contribution, the remaining 50% being borne by the landlord. In those circumstances we determine that there was no merit to the application to vary and the matter was withdrawn by the Applicants.

6. We return then to the Section 27A application and the resultant Section 20ZA application made by the Respondents at the reconvened hearing. The background to the matter is as follows. It appears that in March of 2010 the Respondents attempted to serve the first stage of the consultation notice on the then owner of the property, Mr and Mrs Mallender. They followed that with the second stage containing estimates on 28th April 2010. It seems, however, that both notices were sent to the wrong address. Accordingly the Respondents started again on 28th June 2010. It is agreed that a correct notice under the consultation process (stage 1) was sent to Mr and Mrs Mallender. They commented upon same and indeed put forward the names of a couple contractors who could give estimates. It seems that the Respondents attempted to follow up some of these contacts but without success. In any event, on 6th September 2010 it is said by the Respondents that they served Mr and Mrs Mallender at the correct address with the stage 2 consultation setting out the identity of three contractors, their estimates, and the one that they proposed to proceed with, Novapride, whose estimate was £38,450. There is some doubt as to whether this second stage notice was received by the Mallenders. In Mr Mallender's statement of 1st November 2012 produced at the behest of Mr Harrop in these proceedings, he said as follows at paragraph 5 *"Mr Harrop has also passed me a letter from Eagerstates dated 6th September 2010. Although I was in correspondence with Eagerstates around this Section 20 process during that summer, to the best of my recollections I never received this letter."*

7. Mr Mallender then decided to sell the flat. It was purchased by the Applicants at auction at the end of March 2011. Almost immediately Mr Harrop engaged with Eagerstates to see whether or not he could nominate his own contractor and was informed in writing on 31st March that he could put forward a nominated contractor to enable Eagerstates Limited to obtain a quote. Mr Harrop did more than that as he instructed Goldmajor Builders to review the works and they wrote to Eagerstates Limited on 7th April sending an estimate dated 3rd April 2011 with a figure of £30,950 but including a number of PC sums in particular with respect to roofing repairs, electrical installations and railing repairs.
8. It is not clear whether there was any response from Eagerstates to Goldmajor but certainly on 19th May 2011 Eagerstates wrote to Mr Harrop asking him to make a payment of £20,000 being his estimated share of the costs of the works to the common parts. He refused and there was then some correspondence between the parties. It should be noted that prior to the completion of the Applicants' purchase they had seen a quote from Novapride who appeared to be the Respondent's preferred contractor and accordingly purchased the property with knowledge that there were major works to be undertaken to the property at around £38,000.
9. It appears that on or about 11th July 2011 KRP Builders Limited (KRP) provided an estimate to Redcourt Limited for the conversion of the first, second and top floor flats at a total cost if all works were carried out together of £70,000. It appears that that estimate was accepted by the Respondents. Subsequently it appears that the Respondents asked KRP to also provide an estimate in respect of the works to the common parts which had been previously estimated by Novapride and by Goldmajor. This estimate was dated 9th September 2011 and showed a cost of £28,200. This estimate was not provided to the Applicants until 30th November 2011 although the Kaufman on behalf of the Respondents did attempt to give the estimate to Mr Harrop a few days earlier but it was refused by Mr Harrop. In the event it appears that works commenced at the property in August 2011.
10. In the intervening period it appears that Mr Harrop gave detailed observations on the Novapride quotation which he assumed at this stage was the one which would be relevant. An email dated 26th September 2011 refers to the observations being sent. Those observations were in the bundle before us.
11. Following the delivery of the estimate from KRP Mr Harrop went through a similar procedure in which he commented on the various items, this being sent under a letter dated 20th December 2011 which for reasons are somewhat unclear is marked without prejudice. Nonetheless, it clearly relates to the KRP estimate as it refers to the lower figures from those on the Novapride estimate. It should be noted also that the response records the fact that the mains operated fire detection system and the hacking out of plaster in the common parts with redecorating had by and large been completed. It also records that there had been partial re-carpeting. It is in the light of this history that the

Applicants made their applications to the Tribunal to determine the reasonableness of service charges under Section 27A of the 1985 Act.

Documentation

12. Prior to the Hearing we had received a substantial bundle of papers from the Applicant which contained the application and some 13 exhibits covering the chain of correspondence with the previous owner, the observations which we have referred to above, the quotes and some planning documentation albeit somewhat dated. Within the bundle was the Respondent's first statement of case, the Applicants' response thereto, the Respondent's revision of their statement of case with the Applicants' response thereto, some witness statements and the lease. It is appropriate to record that there was a certain urgency for dealing with the works to the other units of residential accommodation within the building and indeed in part to the Applicants' flat because notices under the Housing Act 2004 had been served by the local authority in April 2009 listing some category 1 hazards the details of which are not strictly speaking relevant to these proceedings. On the morning of the first day of the Hearing we were also provided with a witness statement by Mr Ronnie Gurvits who is the Office Manager for Eagerstates and a statement by Mr Leo Kaufman, a representative of the landlord company. These had various exhibits attached which we noted. Having carried out the inspection on the first day of the Hearing we were not able to conclude the evidence and the matter was therefore adjourned to be reconvened on 21st February.
13. On 21st February 2013 Miss Mattsson, now representing the Applicants provided submissions as to the impact of Section 20 on the case with a number of authorities which she sought to rely upon. These were:
 - Daejan Investments Limited v Benson and Others [2011]EWCA Civ 38
 - London Borough of Camden and the leaseholders at 30-40 Grafton Way LRX/185/2006
 - Mayor and Burgesses of the London Borough of Newham v Mr H Hannan and others [2011]UKUT406(LC)
14. Miss Mattsson had not been present on the first day of the Hearing held on 29th November 2012.

Hearing - 29th November 2012

15. On the first day of the Hearing we heard from Mr Kaufman who confirmed that he ran Redcourt Limited but was not a Director or a shareholder. There were some initial skirmishes between Mr Kramer and Mr Harrop concerning the admissibility of without prejudice correspondence which in truth were not

helpful to us. We also dealt with the question of the variation of the lease as referred to above.

16. Mr Harrop gave evidence first and confirmed that he and Miss Barry had purchased the property on 21st March 2011 fully aware that Section 20 notices had been initiated. He told us that he had been seeking clarification for some time as to the works to be undertaken and had indeed nominated his own contractor. He said that he had never seen any statement of estimates and that the works had been done poorly and in some cases not at all. He confirmed that he knew prior to the purchase that the estimated cost of the works was going to be in the region of £38,000 and that they fully supported the fact that these works were required. The key point, however, was that he was not consulted on the actual works that were undertaken although accepted that if the Section 20 procedures had been concluded prior to the flat purchase he could not challenge them. At this point Mr Kramer indicated that they would be making an application for dispensation under Section 20ZA but it has to be recorded that that was not done until midway through the reconvened hearing on 21st February 2013.
17. Mr Kramer called Mr Gurvits to give evidence as to the service of notices in relation to the works. He confirmed that a notice of intention was sent to Mr Mallender on 28th June 2010 by first class post. Subsequently a statement of estimates from his company was again sent by first class post on 6th September 2010. He told us he had no cause to believe it had not been received and it had not been returned by the Post Office. It was not wholly clear, however, whether the letters sent by Eagerstates actually carried a return address. He told us that he was experienced in preparing and issuing Section 20 notices but accepted that none of the companies who appeared on the second stage notice allegedly served in September of 2011 were instructed to carry out the works to the property. He told us that most of the management for the property was left to Mr Kaufman and that he had had no involvement in the snagging or the final payments and had not been to the property to check the works which were based upon Mr Kaufman's assessment. He did confirm with us that the specification for the works to the common parts was based upon the Council's notices served under the 2004 Act but he could not recall whether he had sent a specification to KRP. In cross examination he told us that he thought that the Section 20 consultation period had expired but he had agreed that further estimates could be produced by Mr Harrop as he wished to try and work together. He did not, however, accept that the additional estimate meant that the Section 20 procedures had not been fully complied with. He did not know when the works started and accepted that there was no formal contract in place for these works.
18. When Mr Harrop gave evidence he stated that he thought that he had been severely prejudiced by not having sight of the estimate from KRP until after works to the property had commenced. If he had he said he could have challenged whether the contractor was appropriate and also could have challenged the costs and the liability for some of the works. In cross

examination he told us that Goldmajor Builders who were known to him having done some works on another property in which he was a tenant had requested access to the subject premises but had not received a response. They did carry out some internal inspection and had inspected the front of the building. He confirmed also that at the time of the purchase the solicitors instructed had carried out some searches and he knew that improvement notices had been issued and that an estimate existed from Novapride showing the potential costs.

19. Mr Kaufman was then called by Mr Kramer to give evidence on behalf of the Respondent. He told us that he had not dealt with the Section 20 procedures but he recalled that the Auctioneer's details contained the copies of the second stage notice and the estimates that had been obtained at that time. Apparently the relationship he had with Mr Mallender the previous owner was not good and that they were not on speaking terms. We were referred to a previous Tribunal's decision on an appeal against the improvement notice, a copy of which was in the bundle, but does not really relate to these proceedings.
20. Mr Kaufman told us that KRP had been instructed to carry out the renovation of the flats and that he had paid he thought about £60,000 for the works to the flats themselves and in total £100,000 for the interior and exterior works. He agreed to provide us with copies of the estimate in relation to the flats at the reconvened hearing which he did. Mr Kaufman supervised the works therefore avoiding any supervision fee but it was unclear how often he attended site. He was not aware he said of any builder being refused access to inspect for the purposes of any estimation but that he had had no dealings with Goldmajor in the past unlike Novapride who had done work before. However, he was not wholly happy with Novapride and it was for this reason that KRP were asked to quote, the more so as they were carrying out the renovation works to the flats. We then proceeded to examine the various items of work that had been undertaken to the property and the costs of same. We shall refer to these in more detail in the "Findings" section of this decision. We had carried out an inspection prior to the commencement of the hearing which is referred to later in these reasons and there was clear evidence that some items of work had not been done at all or had been done poorly. Mr Kaufman seemed to have a limited knowledge as to the extent of the works that had been undertaken and accepted that there had been no external decoration to much of the Respondent's flat and accordingly any contribution made should be reduced, withdrew certain items and accepted that other items of work were not worth the monies which had been demanded by the builder. He told us, however, that he had paid the builders in full and in the statement produced on the morning of the hearing it appears from a purportedly receipted invoice dated 9th June 2012 that the total cost was £27,750. We will return to this invoice in due course.
21. At the conclusion of the first day's hearing Mr Harrop confirmed that he considered that he had been severely prejudiced by the swap to another contractor, which did not in his view, fit in with the consultation process. Miss

Barry told us that they had tried to have an on-going dialogue with the Respondents and wanted to renovate their own property but did not know what to do or when to do it and were concerned at the expense of the various items. They accepted that they had got benefit from some matters such as the fire warning systems, emergency lighting and door entry phone although there was a suggestion as to whether or not these in fact constituted improvements and were not recoverable. When asked whether Mr Kaufman had a figure that he could suggest might lead to a compromise he said he did not and that he thought that the Applicants should pay 50% of the costs that he had expended.

Reconvened Hearing - 21st February 2013

22. On the 21st February 2013 Mr Harrop was represented by Miss Mattsson of Counsel and Mr Kramer attended with Mr Kaufman. We gave Mr Kramer some time to consider Miss Mattsson's submissions the more so as he said he was not feeling very well. On the reconvene after an hour or so for Mr Kramer to consider the papers it was agreed that he would make an application under Section 20ZA and gave undertakings to pay the fee. In fact such an application was issued and is under reference LON/OOAG/LDC/2013/0020.
23. We heard from Mr Kaufman concerning the insurance arrangements. He confirmed that he instructed brokers Kruskal Insurance who he believed tested the market on a regular basis although he himself from time to time did make alternative checks just to see if the premiums being asked were reasonable. He told us there had been some claims at the property and that indeed Mr Harrop himself had enquired about making a claim although it seems it was not proceeded with.
24. On the question of management fees he told us that the agents Eager Estates corresponded with leaseholders as they were the preferred point of contract, they also dealt with payment of insurance and the recovery of ground rent. In cross examination he confirmed that the landlord received no commission in respect of the insurance but that this was earned by the brokers who carried out any claims handling. He was asked about the level of insurance cover in respect of public liability and gave details of the present usage of the property.
25. On the question of management fees he refused to say how many properties that he owned or was involved in but told us that Eagerstates managed two properties and that he had a management contract but apparently was not as far as he can recall on a fee paying basis. The minimum fee payable to Eagerstates was £205 plus VAT per flat.
26. In respect of the major works Mr Kaufman produced a copy of the estimate from KRP Builders in respect of the refurbishment and told us that he had paid around £104,000 for the costs of the renovation of the flats and the works to the common parts. Some suggestion was made that in fact he had not paid this money although the invoice from KRP was receipted.

27. Mr Harrop then gave some further evidence in which he confirmed, as he had on the first day of the hearing, that he knew major works were to be undertaken and had spoken with the previous owner who had given him an indication that they could be in the region of £20,000. However, he accepted that he had seen the Novapride estimate before the purchase completed and he had as a result requested and been given permission to obtain his own estimate. He confirmed, however, that it was not until November that he saw the KRP estimate. When asked what would have happened if he had seen the KRP estimate earlier he told us that he would have been able to check to see what was to be done, when they were starting and how they were intending to carry out the work and to have been more involved in the general management. As he said cheapest was not always the best and he was concerned to ensure that the standard of works would be acceptable for this listed building. He said that he would not necessarily have objected to KRP being involved but he had not been able to raise objections until after some works had been undertaken and the landlord had in any event failed to take those objections into account. In cross examination he confirmed that he did not have any experience of Section 20 issues before he purchased the property but had undertaken detailed research prior to buying at auction so that he knew what the position was.
28. On the question of the insurance he referred to the estimate that he himself had obtained which related to a property owned by his brother. When asked why he had not obtained an actual quotation for the subject premises he told us that he had not had time.
29. On the question of management whilst he accepted that the landlord was entitled to instruct an agent, he did not think he should pay more than half the amount that they were seeking as so little management was required. In questions from the Tribunal he confirmed that no survey had been carried out prior to his purchase and he had no idea as to any management fees that might be charged. He knew nothing about KRP but prior to the auction had thought the costs might be in the region of £20,000. He did think that some of the works might have been improvements and therefore would not be payable and when he had received the Novapride quote he had been surprised at the level of costs. He accepted that the KRP invoice was not out of line with the estimate he had got from Goldmajor but of course that included a number of PC elements. His main concern was the standard of works and his non-involvement in ensuring that the right works were done.
30. Miss Mattsson then made submissions to us and submitted that if the consultation process was in error a new tenant coming to that was not bound by same. You could not, she said, circumvent the procedures by using contractors who were not included in the stage 2 consultation. She referred us to the various cases and reasserted that the Applicants had been unable to make observations in respect of the KRP estimate, such observations if they had been able to put in were after much of the work had been undertaken and that they were the subject of enormous prejudice in being unable to get more detailed quotes and comment in any detail on the works to be done. Indeed it

was suggested that the landlord had paid for works which had not been undertaken and that this showed the prejudice to the client in not being involved in the consultation process. She reminded us that the prejudice we had to consider was not only about the cost of the works and that the prejudice caused to her clients was substantial.

31. She made submissions on the question of insurance and management fees which we noted and on the question of costs told us that in her view the lease makes no provision for the recovery of costs and that if we find in favour of the Applicants we should also agree to reimbursement of the fees.
32. Mr Kramer on behalf of the Respondents reminded us of the evidence that we had received from Mr Gurvits and Mr Kaufman and in his view he thought that the Section 20 procedures had been fully complied with. Mr Mallender had been able to put forward two builders to provide estimates and Mr Harrop one. At the previous hearing there had been no mention by Mr Harrop of the concern of the status of the builders or lack of references but that the matter had suddenly come to light in more detail at these proceedings. He did not think that the Applicants had suffered prejudice and that in fact this was an opportunistic attempt to take advantage of the Section 20 requirements. He reminded us that the landlord had offered to meet with Mr Harrop in the August of 2011 but that that had been declined.
33. On the question of costs, he thought that the lease did make provision for the costs to be recoverable and referred us to clauses 6(a) and (b) of the lease, 6(b) being the one he thought which was most appropriate.

Inspection

34. We had inspected the subject premises prior to the first hearing in November. The property is a three storey mid-terraced house with, at top floor level a mansard roof. It is apparently a Grade II Listed Building with the Applicants' flat on the ground floor and above that five self-contained studio flats let on private leases. The external decorations to the front of the property were untidy. There were on our counting seven windows to the front and the entrance door and we noted that the door entry phone had been installed. There was some replacement brickwork to the parapet at the mansard level but this was not matching and there was evidence of flaking to the masonry paint which suggested poor preparation. There was no new front door. In addition no work had been carried out to the front wall of the property, some new slabs however had been laid but the pillar brick pier at the front wall was loose and in our view in a dangerous condition. We doubted whether the balconies to the front had been painted. Internally the decorations were reasonable and we saw that there was a new carpet, fire and a smoke alarm control panel was in place and the lighting seemed to work. To the rear we were able to gain access to the balcony to the second floor level which is apparently only used by the flats at the second and third floor. No painting had been undertaken to the balcony railings and the decorating to the door to the balcony was very poor. We gained access to the top floor flat and were

able to view the parapet guttering which was clogged with various domestic items, and the surrounding roof areas. There was no evidence of any work having been carried out to the roof. Generally, we were left with the view that the external works had been poorly done or not done at all but the internal works were of a better standard.

Submissions following Daejan Investments Limited v Benson and Others
[2013]UKSC14 (The Supreme Court Case)

35. Following the conclusion of the Hearing in February we invited the parties to make submissions as to their perceived impact of the ruling of the Supreme Court in the case of Daejan Investments and Benson. We received one set of submissions from Miss Mattson on behalf of Mr Harrop and Miss Barry and two submissions on behalf of Redcourt who are strictly speaking the Applicants to the Section 20ZA application. The first submission on behalf of Redcourt essentially indicated that the Section 20 procedures had been fully complied with before Mr Harrop and Miss Barry acquired an interest in the property and that had there been any breaches, which was not admitted, they would have been in respect of the predecessor in title and not Mr Harrop and Miss Barry. The submission went on to refer to a number of paragraphs from the Supreme Court judgment in particular paragraphs 44, 45, 57, 59 and 60. Although erroneously referring to Lord Neuberger as Neuberger LJ the submission set out the Applicant's view on the question of prejudice. We were reminded that the leaseholder had been invited to meet with the Landlord and the proposed contractor but had declined such an invitation, that the leaseholders had been invited to submit their own quotation which had been reviewed and that therefore there was no prejudice suffered by Mr Harrop and Miss Barry and the dispensation should be granted without penalties or conditions.
36. We then considered the submission on behalf of Mr Harrop and Miss Barry. This sought to argue that they had suffered prejudice as a result of the Landlord's failure to obtain estimates for carrying out the works and to make them available for inspection and further did not invite written observations or have regard to those. As with the Landlord, reference was made to various paragraphs of the Supreme Court case of Daejan and the approach we should adopt in considering whether Mr Harrop and Miss Barry had suffered prejudice. It was said that such prejudice was not being able to submit observations, not having those observations taken into account, being required to pay for unnecessary work and to pay more than they should have done for those works. The submission then went on to deal with a number of the specific aspects of the works that were undertaken of which there were some 13 sub-headings, the contents of which were noted. It was also reaffirmed that it was considered that some of the works were improvements and therefore not necessary or recoverable. It was accepted that the opportunity for Mr Harrop and Miss Barry to have made observations would not have guaranteed that KPR, the final contractors, would not have undertaken the works or that they would have necessarily carried them out to a reasonable standard. It is, however, suggested that those observations

would have prevented unnecessary works from being undertaken as a detailed breakdown of proposed works would have allowed them to carry out an analysis of the necessity of same.

37. The submission then addressed terms upon which any dispensation could be granted which included the right for the Applicant to recover costs, both for representation by lawyers and through a surveyor and a reduction in the costs recoverable in effect under Section 27A. The submission then commented upon the Respondent's submissions, that is to say the Landlord's, and concluded that *"it will be impossible to fully compensate A for the prejudice he has suffered as a result of R's failure to consult and the LVT should accordingly not exercise its discretion to dispense with the requirement. If dispensation is granted it should be granted on the terms proposed above."*
38. The Respondent's further submissions to this document, it has to be said, are in part unintelligible. We quote for example from the second paragraph of page 2 of the submissions which verbatim says as follows:- *"it is noted that a Tribunal invited submissions simply in relation to the decision of the Supreme Court and not for wholesale have make submissions that were made in entirely different format at first hearing, and well come to be remarried at the second chairing, when Tribunal refused to get them."* The submission then went on to deal with the specific items of works mirroring the matters raised by Miss Mattson in her submission. Again this was partly unintelligible. Under the heading "Scaffolding" the following wording is found:- *"It scaffolding with you will not use the subject of dispute. What is not in dispute is that there was a requirement for the scaffolding."* Under "Roof Repairs" we had the following submission:- *"As already mentioned there is no entitlement under the legislation was paying party request a surveyor. Quality of work is entirely distinct crushed as the Tribunal had been at pains to point out on numerous occasions."* With respect to the person who presented this final submission if they are using a computerised dictating system it needs to be revisited but in any event it would as a matter of respect been appropriate if whoever had prepared it had read what had been typed.

The Law

39. The law applicable to this matter is set out below.

Findings

40. We propose to deal firstly with the question of dispensation. We should say that we were in two minds as to whether or not dispensation should be granted before the Supreme Court issued their decision in Benson. Both parties have quoted paragraph 44 of Lord Neuberger's judgment and it is perhaps worth repeating that in these reasons.
44. *Given that the purpose of the requirements is to ensure that the tenants are protected from (i) paying for inappropriate works or (ii) paying more*

than would be appropriate, it seems to me that the issue on which the LVT should focus when entertaining an application by a landlord under Section 20ZA(1) must be the extent, if any, to which the tenants were prejudiced in either respect by the failure of the landlord to comply with the requirements.

The judgment went on at paragraph 46 to express the view that dispensation should not be refused solely because the landlord has seriously breached or departed from the requirements.

46. *“That view could only be justified on the grounds that adherence to the requirements was an end in itself, or that the dispensing jurisdiction was a punitive or exemplary exercise. The requirements are a means to an end, not an end in themselves and the end to which they are directed is the protection of the tenants in relation to service charges to the extent identified above. After all the requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by and what amount is to be paid for them.”*

41. In this case it seems to us that there is no doubt that works were required to be done to the property. The Applicants, Mr Harrop and Miss Barry accept that the property was in a poor state of repair and that works were needed. Furthermore, improvement notices had been served by the local authority and these include a number of issues particularly relating to emergency provisions. The notices also specifically referred to the Applicants' flat. In those circumstances it seems to us there can be no doubt that the Applicants were aware that works were to be done, knew that they were required, and prior to their purchase of the property had been given an indication as to what those costs would be. Subsequently the Respondents agreed to entertain a further estimate from Mr Harrop in the form of the Goldmajor estimation which although not utilised seems to us to have had an effect on the Respondents in that it resulted in a reduced estimation from KPR.
42. Where the Landlord has let itself down is that having received the Goldmajor quote and acted upon it, it did not tell Mr Harrop until almost the end of 2011 that a fresh estimate had been obtained in line with the figures that he had got and that those works were to be carried out by the same firm of builders that were carrying out the refurbishment works to the flats owned by the landlord. It would have been simple enough for the landlord to have contacted Mr Harrop when they received the initial estimate which is dated in September 2011 and to have provided this immediately to Mr Harrop rather than waiting until the end of November 2011. By that time Mr Harrop had already given observations on the basis that the works were to be undertaken by Novapride and then had to make further observations in respect of the KRP estimation. It is not ideal. However, bearing in mind the Supreme Court's view that the breach of the requirements is not intended to provide a punitive or exemplary punishment and the comments made concerning the landlord's right to continue to use whomsoever they wish to carry out the works, we come to the conclusion, albeit not without some

concern, that dispensation should be granted. However, we consider that such dispensation should be granted on the terms that the Landlord should make a contribution towards the costs of Mr Harrop and Miss Barry particularly in instructing Counsel to deal with the Section 20ZA point. In the submissions made by Miss Mattsson she indicates that the legal costs were some £2,350 plus VAT which included attendance at the Hearing in February. This fee also included solicitors' costs, although it is not clear to what extent. We think that doing the best we can it is reasonable for us to make an allowance of £1,000 to go towards Mr Harrop and Miss Barry's costs. That £1,000 we believe should be deducted by them from the sum of money which we have found is payable in respect of the works that were undertaken at the property.

43. It seems to us that the real justice in this case can be met by granting dispensation on the terms that there is a responsibility to contribute towards costs and instead considering the standard of the work that was undertaken at the property and which we had inspected prior to the commencement of the Hearing. We propose to use the invoice which Mr Kaufman produced on first Hearing as the basis for considering the works that were done and the costs that should be allowed in respect of same. We bear in mind the evidence we had from Mr Kaufman at the Hearing and also bear in mind the estimation that Mr Harrop obtained from Goldmajor Builders dated 3rd April 2011 which had been sent to Eagerstates.
44. By an invoice from KRP Builders which is dated 9th June 2012 it appears the total costs for the work were some £27,750. This invoice lists some 15 items of work and we will deal with those in the order listed on the invoice. We have had to use our knowledge and experience in respect of the costings together with the Goldmajor estimate obtained by Mr Harrop
45. The first two items relate to the erection of scaffolding to the front and the rear of the property. The evidence we had was that a tower was used to the rear not full scaffolding and given the limited amount of work that appears to have been done to the front it seems to us that a total claim of £2,900 for scaffolding is too high. We have considered the Goldmajor quotation which allows for a figure of £2,450 but to the erection of full scaffolding to the front and rear. We conclude that an appropriate amount to be allowed for the scaffolding for the property is £1,700.
46. At items 3 on the invoice reference is made to repair works to the roof and mansards and the box gutter to "leave in wind and waterproof condition" with a figure of £3,000. On our inspection there was no evidence that such work had been undertaken and Mr Kaufman was unable to say what had been done. In the absence of evidence as to the work that was done and from our inspection, which indicated that the gutters still remained chocked with domestic detritus, we are not prepared to allow any sum for this item.
47. We then turn to items 4, 5 and 6 which were the installation of a fire detection and warning system, emergency lighting and an intercom system. In the Goldmajor invoice they had estimated figures respectively of £3,500, £2,250

and £1,500. The invoice from KRP Builders listed respectively a figure of £3,900 for the fire detection system, £2,000 for the emergency lighting and £1,250 for the entry phone. We appreciate that Mr Harrop had gone online and had obtained cheaper quotes for the equipment. However, we were not satisfied that there was any real evidence apart from the Goldmajor invoice as to the costs of installing these items and although it may be possible to hunt the internet to find them more cheaply it does not seem to us that there is an onus on the Landlord to do so. The estimate from Goldmajor is close to the costs claimed by KRP Builders and in those circumstances we are prepared to allow item 4 at £3,900 as per the invoice, item 5 at £2,000 as per the invoice and item 6 the intercom system at £1,250 as per the invoice.

48. We then turn to item 7 on the invoice which is the repair and make good of damaged masonry to both elevations. Our inspection indicated that there had been some repointing but not to any great extent and most to the rear of the property. We could not therefore see that there were works to the sum of £1,500 which had been carried out and we allow the sum of £500 for this item.
49. Item 8 related to the external decoration of the elevations for which a figure of £2,000 was claimed, as against an estimate by Goldmajor of £4,000. There is a substantial difference and this was reflected in the poor standard of work that was undertaken by KRP Builders. In addition also, it seems that no redecorating work had been carried out to the bulk of the Applicants' property and Mr Kaufman himself had indicated that the costs should be reduced by one eighth. This seems to us to be an insufficient reduction. The extension that forms the bulk of the ground floor property is perhaps the equivalent of one third in area of the totality. This therefore gives a starting point of around £1,300 for the works. However, the works that had been done are of a poor quality and we do not think that an allowance of more than £1,000 should be made and that is the sum that is allowed.
50. We then turn to the works to the internal common parts relating to plaster work, redecorating etc. at a cost of £4,000 as claimed. The Goldmajor estimation for this was £3,500. We were satisfied that the works to the common parts had been done to a reasonable standard. It was not clear how much plaster work had to be hacked out, although there was evidence that there had been some, and the overall finish was not unreasonable. Indeed there was no real complaint about this item of work by the Applicant. We therefore allow the sum of £4,000 for the internal common parts decoration.
51. Item 10, repair to railings, had been withdrawn by Mr Kaufman thus removing £750 from the invoice.
52. The next item was item 11, the overhaul of the rear back door and frame to the common balcony and the fitting of a new thumb twist lock. Our inspection of this door revealed that it was in a poor state, had been poorly decorated, if at all, and was to all intents and purposes substandard. It seems that a new lock may have been fitted but it was unclear. Generally the works to this door were of no value and we disallow the sum claimed of £1,200.

53. Item 12 related to the repair of the main ground floor entrance door. This again had been poorly done. It appears that a self-closing fitting had been included and the door had been decorated. The sum claimed was £500 and we allow £200.
54. Item 13 related to repair and replacement of stair-treads, balustrades and handrails. We had limited evidence as to the extent of the work that had been done. Given that limited evidence but accepting that some works had been done as this was not challenged to any great degree by the Applicants, we allow the sum of £500 against the £900 claimed.
55. The penultimate item of work was the fitting of a new carpet which we were told was Wilton. No invoice from the carpet contractor was produced. Goldmajor on its estimate had given a figure of £1,750. That seems to us to be a reasonable amount to allow and accordingly we reduce the £2,500 sought by the Landlord to £1,750.
56. The final item of works relates to the repair and upgrade to the front brick garden wall and tidying and repairing the paved area. A sum of £1,800 was claimed. Our inspection indicated that no works had been carried out to the front wall, the front pier was left in a dangerous state and the only paving works that had been done was to obscure a flower bed which might have provided some aesthetic enhancement to the property if planted out. We cannot see that these works had any value whatsoever to the leaseholder and we disallow them in full.
57. This totals, by our calculation £16,800, instead of the £27,750 said to have been paid. The Applicants are required to pay 50% of this giving a figure of £8,400. However, as we have indicated above, we believe that sum should be further reduced by £1,000 to recompense the Applicants for the costs of having to deal with the Section 20ZA application.
58. We found that the insurance sums as claimed by the Landlord should be allowed. There was in truth no comparable evidence produced by Mr Harrop to challenge the premium payable. The use of an insurance policy relating to another property owned by his brother as evidence as to the level of premiums is not of help to us. We accepted the evidence of Mr Kaufman that brokers were utilised for the purposes of settling the insurance arrangements and the sum claimed is therefore recoverable. If Mr Harrop wishes to challenge the insurance for the future years, he needs to obtain comparable quotes which are based upon the property, its claims history and the fact that the property is a grade II listed building.
59. Insofar as the management is concerned, there seemed to be little of this. No management agreement was produced and doing the best we can we conclude that the management fee should be no more than half the amount which the Landlord thought and we therefore limit this to the sum of £123 inclusive of VAT.

60. On the question of costs we agree with Miss Mattsson's view that the lease does not include the provision for costs to be recoverable in these circumstances. Mr Kramer referred to clause 2(6)(a) and (b) of the lease. Clause 6(a) relates to the recovery of costs associated with the service of notices under Section 146 of the Law of Property Act 1925 which we now find does not apply in this case. Clause 6(b) refers to the costs incurred by the Landlord through solicitors' fees incidental to the service of any notices or schedules for want of repair. Again, that does not apply to this case. Accordingly in our view the lease does not allow the recovery of the costs of these proceedings. If we are wrong in that regard we find that in any event an order under Section 20C should be made as a result of our findings in respect of the costings of the major works. We were concerned that the Respondent appears to have paid the sum to the builder without any attempt to check the standard of works or to indeed check whether the works have been undertaken. We could not draw conclusions from this as to whether there had been any loading of these works to ameliorate the costs of refurbishing the Landlord's property as was suggested by Mr Harrop but we can understand why he might have taken that view.
61. The other issue was the question as to whether or not some of the works were improvements. It seems to us that paragraph nine of the fourth schedule deals with this point. The wording to be found there is as follows:-

9. *"The cost of taking all steps deemed desirable or expedient by the Landlord for complying with, making representations against or otherwise contesting the instance of the provisions or any legislation or orders or statutory requirements thereunder concerning town planning, public health, highways, street drainage or any other matters relating to or alleged to relate to the building for which the tenant is not directly liable hereunder."*

It seems clear that the notices served under the Housing Act requiring the Landlord to undertake works, certainly in relation to the installation of fire and emergency lighting and the door entry phone, are matters to which the Landlord had to take steps to deal with. It was indeed these items from which Mr Harrop and Miss Barry accepted they had derived benefit. In those circumstances it does not seem to us that these are improvements for which it would be inappropriate to recover the costs as they are without doubt required for complying with the improvement notices.

62. Finally, we consider whether or not there should be any reimbursements of the fees paid by the Applicants in this matter. The application fee appears to be £200 and the hearing fee would have been a further £150. We order that the Respondents should reimburse these costs and that accordingly a further sum of £350 could be deducted by the Applicants from the final sum of £7,400 which is payable in respect of these building works. This means that the sum found due and owing to the Respondents is £7,869.85. This sum should be paid by the Applicants within the next 56 days or subject to agreement between the parties such further period as can be negotiated.

Chairman: Andrew Dutton
A A Dutton

Date: 30th April 2013

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a Tenant of a dwelling as part of or in addition to the rent -
 - (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the Landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the Landlord, or a superior Landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a Leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,

- (c) the amount which is payable,
 - (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a Leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the Tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the Tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20B

- (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.

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;

- (b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
 - (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

S20ZA Consultation requirements: supplementary

- (1) 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 works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
- (2) In section 20 and this section—
 "qualifying works" means works on a building or any other premises, and
 "qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
- (3) The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
 (a) if it is an agreement of a description prescribed by the regulations, or
 (b) in any circumstances so prescribed.
- (4) In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
- (5) Regulations under subsection (4) may in particular include provision requiring the landlord—
 (a) to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
 (b) to obtain estimates for proposed works or agreements,
 (c) to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
 (d) to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
 (e) to give reasons in prescribed circumstances for carrying out works or entering into agreements.
- (6) Regulations under section 20 or this section—
 (a) may make provision generally or only in relation to specific cases, and
 (b) may make different provision for different purposes.
- (7) Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament

Leasehold Valuation Tribunals (Fees)(England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).