



**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case reference : LON/00AG/LSC/2012/0791

Property : 4767 (now 4677) "Type B" & "Type C" leasehold properties in Camden

Applicant : London Borough of Camden

Representative : Ms E Gibbons, counsel

Respondents : The "Type B" & "Type C" leaseholders of properties set out in Appendix 1 to the application

Representative : Various leaseholders in person & Ms P Napier, counsel

Type of application : Applications under sections 27A & 20C Landlord and Tenant Act 1985

Tribunal members : Judge Timothy Powell
Mrs H Bowers MSc MRICS
Mr O Miller

Date of hearing : 17, 18 & 19 March 2014

Venue : Hamilton House, Mabledon Place,
London WC1H 9BD

Date of decision : 7 July 2014

DECISION

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SUMMARY OF THE TRIBUNAL'S DETERMINATIONS

- (1) The tribunal determines that in respect of the Type B and Type C leases, for the service charge year 2013/2014 and for future years, there is nothing to prevent Camden council from abandoning its former practice of charging 10% of other service charges as its management fee, but instead relying upon the respective terms of the Type B and Type C leases as an alternative method of calculating its management fee;
- (2) The tribunal did not consider that the cost of managing major works projects should be included within the day-to-day management charges subject to this application; and considered that it could reach a determination on Camden's "actual costs" of "managing and administering the totality of its leasehold portfolio" without having further information about the management charges in respect of major works;
- (3) Despite the numerous criticisms of the methodology used by the council to apportion time, in particular between tenanted and leasehold properties, the tribunal is happy to accept the time and cost calculations for the purpose of the estimated management charge;
- (4) While acknowledging Mr Wickenden's criticisms, the tribunal is happy to accept the methodology used by Camden in allocating its CSS costs to the HRA account and, from there, on to individual costs centres that go to make up the leasehold management charge;
- (5) The tribunal determines that for the purpose of the estimated management charge the sums claimed by Camden for administration and management time (within HMS) should be disallowed as separate items, but they should be reallocated to all housing management activities, including those not recharged to leaseholders;
- (6) The tribunal determines that the sum of **£235** per Type B leaseholder is the reasonable amount to be charged for the estimated advance management charge for 2013/14 (see the individual sections of the decision and the Summary of Sums Allowed and Disallowed annexed to for the costs elements that make up this figure);
- (7) For Type C leases, no advance management charge is payable, now or in the future;
- (8) The tribunal makes an order under section 20C of the 1985 Act in respect of the Type C leases, but declines to do so for the Type B leases.

Any numbers in square brackets in this decision is a reference to the page number in the hearing bundles.

BACKGROUND

1. The applicant is a local authority and a freehold owner of various residential properties within the London Borough of Camden, a proportion of which are let on long leases. The applicant seeks a determination under section 27A of the Landlord and Tenant Act 1985 ("the Act") as to whether an estimated advance service charge of £283.82 per leasehold unit is payable in respect of the applicant's management and administration fees for the current year, 2013/2014.
2. The relevant leasehold properties are let on different forms of long lease which, for the purposes of this application, were divided into three categories: Type A, Type B and Type C. This application only concerns those leaseholders with a Type B or Type C lease.
3. The application was originally made in respect of some 4,767 leaseholders but, by the date of the eventual hearing, this had reduced to 4,677 leaseholders.
4. The application was received by the tribunal on 28 November 2012. Due to the enormous interest from leaseholders generated by the application, it took some time to arrange an oral pre-trial review ("PTR") at a venue that could accommodate the numbers of likely participants. Eventually, an oral PTR took place on 16 April 2013 at the Camden Centre, Bidborough Street, London WC1H 9AU. The PTR lasted two hours and it was attended by about 110 leaseholders. Directions were drawn up in consultation with those attending, although some of the dates discussed had to be adjusted to accommodate the needs of the parties and the availability of the Camden Centre for the eventual hearing. Amongst other things, the directions provided for the service of witness statements by the council in support of the application, the inspection of documents by leaseholders and the service of statements of case, evidence and documents by leaseholders.
5. The inspection of documents took place during the period 13 August 2013 to 17 September 2013 and the council provided electronic and paper copies of many of those documents.
6. A dozen leaseholders filed and served a statement of case in opposition to the council's application, mostly on their own behalf but sometimes jointly with others. So, for example, the "Independent Steering Group" represented some 18 named leaseholders.
7. Not only did the participating respondent leaseholders strongly oppose the council's application but, from the outset, they sought an order under section 20C of the Act that all or part of the costs incurred by the landlord arising from the application should not be included in the service charges to leaseholders in the borough. At the PTR in April 2013, Camden estimated that its costs for this application would be in the region of £30,000, which was said to equate to about £3 per leaseholder (there being a total of about 9,220 Type A, Type B and Type

C leaseholders in the borough). However, the final estimate of the legal costs is higher (and is dealt with later in the decision).

8. The original directions provided for a Case Management Conference ("CMC"), which was held on 17 February 2014, also at the Camden Centre.
9. In advance of the CMC, in accordance with the directions given at the PTR, Camden produced a core bundle of documents for the final hearing, which comprised two lever arch files: essentially, one volume for the council's case and one volume for the respondent leaseholders' case.
10. At the CMC, Camden circulated amongst the 20 or so leaseholders present a second statement of one of its witnesses, Ms Geraldine Littlechild, and other relevant documents. The CMC lasted two hours and dealt with outstanding procedural matters and the draft timetable for the eventual hearing in March. The further directions gave the participating respondent leaseholders time to respond to the new documents, to submit further documents upon which they wished to rely and, in one case, to resubmit a statement of case.
11. The eventual hearing took place on the 17, 18 and 19 March 2014 at a different venue, Hamilton House, Mabledon Place, London WC1H 9BD. Between about a dozen to 20 leaseholders attended some or all of the hearing. At the conclusion of the third day, when all of the evidence had been taken, the parties were invited to submit written closing statements on the issues which had been raised. By 2 April 2014, the tribunal had received some eight written closing statements from leaseholders, most of which also dealt with the application under section 20C of the Act. By the 16 April deadline, the tribunal also received a detailed closing statement from the council, with copies of various legal authorities.

Scope of the application

12. Until the service charge year 2013/2014, the council charged a management fee to each leaseholder in an amount equal to 10% of all other items included in the particular leaseholder's service charge. This method of charging a management fee is an express term in paragraph 13 of Fifth Schedule of the Type A leases [157], but it does not appear in the Type B or Type C leases. While in the past the council has calculated its management and administration fee as 10% of other service charges, from 1 April 2013 it proposes to change the basis of calculation. Instead, the council proposes to charge Type B and Type C leaseholders "a sum fairly representing the Tenant's proportion of the actual costs to the Landlord in managing and administering the totality of its leaseholder portfolio", being the wording which appears in all three versions of the Type B leases [203, 245 and 295] - but not in the Type C leases, as to which, see below.

13. In practice, this means that the council would calculate what it says are the total management costs associated with the whole leasehold portfolio, and then divide it by the total number of leasehold properties in the borough. That would result in a single flat management fee for each leaseholder property.
14. From the figures provided by the council, the flat management fee will generally be significantly higher for the leaseholders than hitherto. However, Type A leaseholders will still benefit from the express provisions of their leases, in effect receiving a 10% "cap" on the higher flat management fee. The council gave assurances that it would bear any shortfall between the Type A "cap" and the actual management fee that would otherwise be applicable to Type A properties. Accordingly, Camden confirmed that there would be no cross-subsidy from Type B or Type C leaseholders to cover the shortfall in respect of Type A leaseholders.
15. The council's application is about the estimated management and administration fee to be charged by the council in advance, for the 2013/2014 service charge year. The amount originally sought in the application was £314 per flat, though, as mentioned above, by the eventual hearing in March 2014 this had reduced to £283.82 per flat (though slight variations on the precise amount were mentioned from time to time).
16. As the tribunal made clear both at the PTR and CMC, this case is not about the actual management charge for the 2013/2014 service charge year, nor about the cost of providing or the standard or quality of the services provided by council to leaseholders. The application is about the framework for charging future management charges, that is to say (a) whether or not Camden could depart from the previous arrangement of charging a management fee of 10% of other service charges and, if so, (b) which cost elements should go into the calculation of Camden's management and administration charge.
17. The actual service charges and management fee for 2013/2014 will be known later and these can themselves be subject to challenge by leaseholders, if they were felt to be unreasonable for any reason.

The hearing

18. At the hearing on 17, 18 and 19 March 2014 the applicant was represented by Ms Ellodie Gibbons of counsel instructed by Ms Lauran Bush of Camden Leaseholder Services. Evidence was heard from the following witnesses:
 - (a) Ms Geraldine Littlechild, the Finance and Income Manager in Camden's Leaseholder Services department;
 - (b) Ms Angela Spooner, Head of Housing Management Services;

- (c) Mr David Higgins, a self-employed public sector accountant with responsibility for the housing management element of the Housing Revenue Account;
 - (d) Ms Dawn Hayes, the Tenant and Leaseholder Engagement Manager;
 - (e) Mr Julian Coutts, the Community Intervention Manager; and
 - (f) Mr Gavin Haynes, Head of Commissioning and Quality Assurance in the council's Repairs and Improvement Division.
19. The participating respondent leaseholders mostly represented themselves, speaking to their statements of case and cross-examining the counsel's witnesses with one exception, namely that members of the Independent Steering Group including Ms Lisa-Marie Bowles, Ms Rosemary Ibrahim and Ms Kate Spillane, were represented by Ms Patricia Napier a non-practising barrister. Otherwise, the individual participating leaseholders included: Mr Clem Alford, Ms Orna Neumann, Mr Chris Tarpey, Mr Anthony Wallenda (on behalf of himself and his mother), Dr and Mrs A Nader, Mr Justin Turner, Mr Karl Vaughan, Mr Peter Wickenden, Ms Diane Astin, Ms Josette Guedes and Dr Gunnar Beck.
20. At the beginning of the hearing and throughout, a small number of additional documents, some updating those previously served, were filed with the tribunal and copies given to the other party or parties. It was agreed by those present that such documents should be accepted into the proceedings and should not disrupt the continuation of the hearing. Where necessary, responses were permitted to be filed on the following day.
21. The first part of the hearing (day 1 and the first 50 minutes of day 2) dealt with submissions and legal argument as to whether or not Camden could depart from the previous arrangement whereby the management and administration fee was calculated as 10% of a leaseholder's other charges. The second part of the hearing (the bulk of day 2 and all of day 3) was devoted to the cross-examination of the council's witnesses (whose written statements were taken as evidence in chief), with a view to establishing which cost elements should go into the management and administration charge, if Camden were permitted to depart from the previous 10% "limit" on its management and administration fee.
22. Although the cross-examination of witnesses took longer than expected, on day 3 the tribunal curtailed the lunch break and extended the hearing day to ensure that leaseholders were able to put their questions to the witnesses. As mentioned above, directions were given at the end of the hearing for both sides to submit written closing statements, summarising the evidence that they had heard and making such submissions on the issues as they felt necessary.

The leases

23. The hearing bundle contained a sample Type A Right to Buy lease [127-161], three varieties of Type B Right to Buy leases [165-207, 209-251, and 253-299] and one sample Type C lease (being a non-Right to Buy lease) [301-339].
24. The Type A lease was of a type used by the council in respect of its Right to Buy sales until 1995/1996, when it introduced the Type B leases.
25. Under the Type A and Type B leases, the service charge year (the "Specified Annual Period") runs from 1 April to 31 March in each year and, in each case, pursuant clause 3.3, the tenant covenants to pay the landlord "such sum quarterly in advance on account of the Service Charge as Landlord shall specify in its sole discretion to be a fair and reasonable interim payment (herein referred to as the "On-Account Payment")."

Type A leases

26. The costs recoverable by the service charge in the Type A leases include:
 - (a) At paragraph 8 of the Fifth Schedule: "all fees and costs incurred in respect of the annual certificate and of accounts kept and audits made for the purpose thereof"; and
 - (b) At paragraph 13 of the Fifth Schedule: "the Landlord's management charges for the Estate in an amount equal to ten percent of all other items included in the Service Charge."

Type B leases

27. So far as service charges are concerned, by clause 3.2.1 of the Type B leases, the Tenant covenants [177]:

"To pay to the Landlord on demand by way of further additional rent subject to the restrictions set out below at Clauses 3.2.2 and 3.2.3 the Service Cost"

Or, in other Type B leases [265]:

"To pay to the Landlord on demand by way of further additional rent subject to the restrictions set out below at Clauses 3.2.2 and 3.2.3 representing the specified portion calculated in accordance with the Fourth Schedule of the reasonable costs, overheads, expenses and outgoings of the Landlord whether incurred or to be incurred and including interest charges incurred in connection with the funding and performance of any of the Landlord's obligations in connection with the repair and maintenance, renewal, decoration and insurance and management of the building and the provision of services

therein and the other heads of expenditures at the same are set out in the Fifth Schedule.”

28. “Service Cost” is defined at clause 1.1. as being “the amount payable by the Tenant being the Specified Proportion of the Service Charge.” In some of the leases, the “Specified Proportion” is not defined, though a method for calculating it can be found in clause 4 of the Fourth Schedule. In other leases, “Specified Proportion” is defined at clause 1.1 as being “The proportion of the Service Charge payable in any relevant year by the Tenant calculated in accordance with the Fourth Schedule.”

29. “Service Charge” is also defined at clause 1.1. as being:

“All those reasonable costs overheads and expenses and outgoings incurred or to be incurred by the Landlord in connection with:

(a) the management and maintenance of the Building

(b) the carrying out of the Landlords obligations and duties and providing all such services as are required or appropriate to be provided by the Landlord under the terms of the Lease and:

(c) the repair and maintenance, renewal, decoration insurance and management of the Building

including all such matters set out in the Fifth Schedule.”

Or, in other Type B leases:

“All those costs and expenses incurred or to be incurred by the Landlord in connection with the management and maintenance of the Estate and the carrying out of the Landlords obligations and duties and providing all such services as are required to be provided by the Landlord under the terms of the Lease including where relevant the following:

- Category A Services
- Category B Repairs
- Category C Improvements

and without prejudice to the generality thereof all such matters set out in the Fifth Schedule.”

30. The landlord’s covenants are set out in clause 4 of the lease and include the usual covenants to maintain, repair, redecorate and renew the structure of the building, the sewers and drains, the boilers and heating and hot water apparatus, the lifts, passages, landings, staircases, and boundary walls and fences. Where there is a communal system, the

landlord has obligations to supply hot water and heating. The landlord is also under obligation to insure the flat and the building and, by clause 4.6 (or clause 4.5 in some leases):

“if so required by the Tenant to enforce the Tenant’s covenants similar to those contained in the Lease which are or may be entered into by the tenants of other flats in the Building so far as they affect the Premises provided the Tenant indemnifies the Landlord against all costs and expenses of such enforcement.”

31. The costs recoverable via the service charge (“Items of Expenditure”) are set out in the Fifth Schedule of the lease. As would be expected, these include the expenses of maintaining, repairing, redecorating and renewing the building, the cost of maintaining the heating and the domestic hot water system, pipes and cables, the cost of fuel, the cost of effecting and maintaining insurance, employing and accommodating a caretaker, carpeting and decorating the common parts, all charges, assessments and other outgoings payable by the landlord in respect of the building, the cost of repairing and maintaining roads, pavements, sewers, drains, party walls and fences, maintaining and repairing telephone aerials, the upkeep of gardens roadways and pathways, etc.

32. At paragraph 8 of the Fifth Schedule in most (but not all) of the Type B leases, the costs recoverable via the service charge include:

“8. All fees and costs incurred in respect of the annual certificate and of accounts kept and audits made for the purpose thereof.”

33. At paragraph 12 (paragraph 11 in some leases) of the Fifth Schedule, the recoverable costs include:

“12. The cost of taking all steps deemed desirable or expedient by the Landlord for complying with making representations against or otherwise contesting the incidence of the provisions of any legislation or orders or statutory requirements thereunder concerning town planning public health highways streets drainage or other matters relating or alleged to relate to the Building for which the Tenant is not directly liable hereunder.”

34. At paragraph 13 (paragraph 12 in some leases) of the Fifth Schedule, the recoverable costs include (the underlined words do not appear in some of the Type B leases):

“13. The Landlord’s reasonable management and administrative charges in a sum fairly representing the Tenant’s proportion of the actual costs to the Landlord in managing and administering the totality of its leasehold portfolio and for the avoidance of doubt the totality of its leasehold portfolio shall be construed as comprising all properties in respect of which extant Leases have been granted by the Landlord or its predecessors in title under “The Right to Buy” legislation in the Housing Act 1980 or the Housing Act 1985 (or any subsequent amendment thereto or re-

enactments thereof) and the Tenant's proportion of the Landlord's management and administrative costs shall be calculated in accordance with paragraph 13.2 of this Schedule.

13.1 The Landlord's management and administrative costs shall include but shall not be limited to the actual cost in terms of staff time and central establishment costs of undertaking the following:

- (a) An enquiries service to leaseholders including the cost of salaries and attributable overheads and essential support functions.
- (b) Billing for service charges including for the cost of repairs and decorations and all costs incidental to the service of any notices served pursuant to the terms of leases or pursuant to any statutory requirements.
- (c) The administration of all other activities which directly support the services that leaseholders receive with the exception of those items set out in paragraph 4 of this Schedule.

13.2 The Tenant's proportion of the Landlord's management and administrative costs shall be calculated by dividing the total of such costs by the total number of properties (as at the commencement of the relevant Specified Annual Period) in respect of which extant leases have been granted by the Landlord or its predecessors in title under the "Right to Buy" legislation in the Housing Act 1980 or the Housing Act 1985 (or any subsequent amendments thereto or enactments thereof)."

35. As submitted in Camden's amended statement of case "in short, the Type B leases provide for the recovery of the Applicant's reasonable management and administrative costs in a sum fairly representing the tenant's proportion of the actual costs to the Applicant in managing and administering the totality of its leasehold portfolio. Whereas, the Type A leases provide for recovery of such costs in an amount equal to 10% of all other items included in the Service Charge."

Type C leases

36. The specimen Type C lease at pages 303-316 of the bundle is somewhat different, in that it is essentially a private-sector long lease, granted long before the Right to Buy legislation, where the freehold reversion was subsequently acquired by the council at some time in the past. By clause 3(1)(c):

"3(1) The Tenant hereby covenants with the Lessor that the Tenant and all persons deriving title under him will through out the said term hereby granted: ...

(c) half yearly on the twenty fourth day of June and the twenty fifth day of December in every year

(i) pay a sum equivalent to the fee of the Managing Agent for the management of the demised premises [though the term "Managing Agent" is not defined elsewhere in the lease]

(ii) contribute and pay one fourth part of the costs expenses outgoings and matters referred to in Part I of the Fourth Schedule hereto

(iii) contribute and pay one-eighth of the costs and expenses referred to in Part II of the Fourth Schedule hereto

(iv) contribute and pay one-half part of the costs and expenses referred to in Part III of the Fourth Schedule hereto which shall have been paid or incurred during the half year expiring on the immediately proceeding thirty first day of May and thirtieth day of November (as the case maybe)".

37. The lessor's covenants with the tenants are contained within clause 4 of the lease and include insuring the building, keeping garden areas in good order and condition, maintaining and keeping in good and substantial repair and condition the main structure of the building, pipes and drains, and paths, together with the supply of hot water, the decoration of the exterior of the building and maintenance of the entrance door and steps to the premises.
38. By clause 4(7), the lessor intends to impose similar covenants in leases or tenancies of adjoining or neighbouring flats and that "... upon any reasonable written complaint made by the Tenant to the Lessor the Lessor will at the cost of the Tenant enforce the observance and performance of such covenants on the part of the Tenant Lessee occupier or owner of any such adjoining adjacent or neighbouring flats".
39. The Fourth Schedule sets out the costs, expenses, outgoings and matters in respect of which the tenant is to contribute. Part I relates to the lessor's costs under clause 4(3) (garden, main structure, pipe and drains and paths). Part II relates to the lessor's costs in relation to clause 4(4) and (5) (supplying hot water, including fuel, and the decoration of the exterior of the buildings). Part III relates to the lessor's costs in connection with the obligations under clause 4(6) (maintaining and repairing the entrance door and steps).

The charge for Camden's management and administration costs

40. Historically, and despite the express terms of the Type B and Type C leases, in respect of its management and administration costs Camden has charged all leaseholders no more than an amount equal to 10% of all other items included in the service charge. Within that 10% charge, Camden included the fees and costs that it incurred "in respect of the

annual certificate and of accounts kept and audit made for the purpose thereof". According to Camden, "this has led to a significant under-recovery of the Applicant's costs of management and administration" and that "for the year 2011/2012 the shortfall was £2.3m", though it should be said that the extent of the alleged shortfall, or indeed the existence of any shortfall at all, was strongly disputed by leaseholders.

41. In order to reduce the amount of the alleged under-recovery, from 1 April 2012 the council removed from the 10% management charge the fees and costs it had incurred in respect of the annual certificate, accounts and audits, and charged those fees and costs as a separate item, as provided for and in accordance with paragraph 8 of the Fifth Schedule to the Type A leases and to the vast bulk of the Type B leases. Furthermore, Camden resolved that from 1 April 2013 it would begin to charge all the Type B and Type C leaseholders "a sum fairly representing the Tenant's proportion of the actual costs to the Landlord in managing and administering the totality of its leasehold portfolio" as per paragraph 13 (or sometimes paragraph 12) of the Fifth Schedule of the Type B leases.
42. As a result of the proposed change, for the year 2013/2014, Camden submitted that for those leaseholders with a Type A lease, management costs would be calculated and included within the service charge in the same way they had been calculated and charged for in the year 2012/2013. However, for the Type B and Type C leaseholders, management costs would be charged by dividing the total of such costs by the total number of long leasehold properties in the borough (of whatever type) and then applying the resultant flat fee to each leasehold unit.
43. In order to calculate the estimated expenditure of the council in respect of management costs for 2013/2014, the council looked to recover a sum equal to the amount of what it said was the actual rechargeable management costs incurred two years previously, namely in the year 2011/2012. Dividing those actual costs by the total number of leasehold properties in the borough, resulted in a proposed estimated management charge of approximately £314 per leaseholder. As indicated above, this new figure would not be charged to the Type A leaseholders, who would still only pay an estimated 10% of their other service charges, in accordance with the express terms of their lease. However, the new management charge would be levied as an estimated charge to the Type B and Type C leaseholders, in replacement for the historic 10% charge.

The council's application

44. The application made by Camden council under section 27A of the Landlord and Tenant Act 1985 was for a determination of the payability of the service charge that would be payable by the Type B and Type C leaseholders, in respect of the council's estimated management and administration costs for the year 2013/2014, in the sum of £314. As

indicated above, by the date of the hearing in March 2014, the proposed estimated charge had reduced to £283.82 per leaseholder.

45. The issues at the hearing were therefore:
- (i) whether the council was entitled to make the change from a 10% charge to a flat fee based on an estimate of the “actual” costs of management that would be incurred; and, if so
 - (ii) whether the method of calculation of the management charge – that is, the cost elements to be included and the calculation of any apportionments between the leaseholders and other residents of the borough, notably tenants – was reasonable.

METHOD OF CALCULATION OF THE MANAGEMENT CHARGE

46. The first issue was whether there was anything to prevent Camden from changing the method of calculation of its management charge for the Type B and Type C leases.

Overview of the leaseholders’ submissions

47. Several of the participating leaseholders made submissions as to why Camden should not be permitted to increase management charges from 10% of other service charges to a flat rate based on the alleged actual costs to the council in managing and administering the totality of its leasehold portfolio. Some leaseholders claimed that it was simply unfair to allow the change, because of the very large percentage increase in management charges that would result. Others relied upon the fact that the 10% charge was an industry-standard percentage, had been accepted by Camden and leaseholders alike through custom and practice over many years, and had been established within the borough as a norm. Others argued forcibly that the doctrine of estoppel applied, so that the council was effectively prevented from making any change. Yet others argued against the change because in the future there could be no effective scrutiny of the level of the management charge under the proposed new regime, because of the complexity of the accounting arrangements necessary to calculate it.
48. Some leaseholders were silent on the issue, relying on the efforts of others. Two of the participating leaseholders took the opposite view. Ms Astin, for example, accepted that, as regards her lease, the council was not obliged to apply a cap of 10% on the charge for management and administration, and she concentrated her fire on the cost elements that might be included in a flat charge. Equally, in his closing statement, Mr Turner went further stating “I cannot see any reason why the applicant is legally entitled to charge a 10% management fee” given the specific wording of paragraph 13 of the Fifth Schedule of the lease, and other clauses in the lease.
49. It was an oft-repeated theme of the leaseholders’ submissions that the council was acting unreasonably in seeking to make the change at all.

While the council's motivation for seeking a change was to recover an alleged shortfall in management costs, leaseholders denied that there was any such shortfall and, to the contrary, highlighted what they saw as serious failings in the efficiency and cost-effectiveness of the provision of services by the council. Reference was made, in particular, to the damning comments and conclusions of the Report of the Leaseholder Recharges Scrutiny Panel dated 30 October 2012.

50. In relation to these general points, Ms Gibbons emphasised in the council's Reply that the standard of the management service provided by the council was not an issue in this application and that the tribunal, in her submission, had no jurisdiction to determine whether or not it was reasonable for a landlord to rely on the terms of its leases, or (save perhaps in relation to costs) whether or not the application was reasonable. However, Ms Gibbons did engage directly with and seek to answer those submissions which, she said, most closely amounted to a defence based on promissory estoppel or estoppel by convention.

Leaseholders' specific submissions

51. In his statement of case, Mr Alford doubted that the proposed management fee increase could be implemented fairly and reasonably, because it would see his neighbour getting exactly the same caretaker service, but they would be charged at a rate 400% less than him. He felt that the 10% had been in place "for quite some years until now and has not been contested" so that it had become accepted as the norm throughout the borough. Ms Neumann was also concerned about the significant "hike" that the new charge would represent and she emphasised that the previous 10% management charge offered a direct relation between the actual cost of services provided to the leaseholder and the management charges in relation to them. She considered that the 10% charge provided "an accounting procedure which is understandable and transparent" and one which "can be fairly recoverable if [the service] charges are successfully challenged."
52. Mr Wallenda submitted that the council "had freely decided to utilise and publicise the 10% method of calculation for its own purposes and in full knowledge of the reasons why it had decided to change its draft lease from the Type A wording to the Type B wording and it would be unfair to allow it to unilaterally change this now."
53. In his closing statement, Mr Vaughan considered that a 10% charge was an industry-standard management charge and that "anything beyond that is unheard of. It is either mismanagement or pure incompetence."
54. In his opening statement, Mr Wickenden stated that "the first and most important argument against the application is the fact that Camden has not levied the management charge in accordance with the terms of the Type B of the lease for the 14 years since it was first introduced. Camden has never alerted Type B leaseholders to this practice nor informed them in writing that it reserved the right to act in accordance

with [the] lease at some time in the future. Custom and practice established over this length of time should be not be changed.”

55. Ms Napier on behalf of the Independent Steering Group argued that to impose a flat rate “would neither be reasonable nor fair” and referred to a meeting of the Camden Leaseholders Forum on 20 April 2013 where the Cabinet Member for Housing, Councillor Julian Fulbrook, apparently said “that he thought Leaseholder Services should be able to cover the cost of running their services within the 10% management charge as other businesses were able to do.” She argued that the fact the applicant had consistently demanded and leaseholders had paid the 10% as a proportion of their service charge amounted to “custom and practice” and that the respondent leaseholders “do not consider it to be fair or reasonable for Type B and C leaseholders and Type A leaseholders to be paying different levels of management charge, with different methods of calculating these figures for the same service.”
56. Both Ms Neumann and Mr Wickenden opposed the change because the proposed new method of calculating the management charge would be too complex for the leaseholders to understand and analyse on an annual basis, with the result that there would be no effective annual scrutiny of the calculation of the [new] management charge by the leaseholders in the future and therefore no effective limit on the sum charged by the council. Ms Guedes submitted that “Any departure from previous practice ... ought to be investigated by a firm of forensic accountants” and called “for an independent scrutiny of Camden’s Housing Revenue Account.”
57. The arguments in relation to estoppel were led by Mr Tarpey and supported, in particular, by Mr Wallenda and Ms Napier of the Independent Steering Group. Mr Tarpey initially relied upon the doctrine of estoppel by laches, which he developed in his statement of case. However, in the Reply that she drafted for the council, Ms Gibbons pointed out that this was not a doctrine found in English law, but it was thought to be a doctrine of law found in various American states. Nonetheless, she went on to deal with the argument advanced by Mr Tarpey, which she said most closely amounted to a defence based on promissory estoppel or estoppel by convention.
58. In the light of Ms Gibbons’ comments, Mr Tarpey revised his arguments and submitted a fresh written statement of case on the first day of the tribunal hearing on 17 March 2014, relying on the doctrine of estoppel by representation of fact. In essence, he said that when he purchased his flat under the Right to Buy legislation, he received a notice under section 125 of the Housing Act 1985 which stated that the management charge was 10% of other service charges. Mr Tarpey said that this notice, or “side-letter”, overrode the service charge provisions in the lease, that he took the 10% into account in finalising his decision to buy the lease, that Camden wanted him or expected him to do so on that basis and that “I acted to my detriment in allowing myself to be a party to a contract where one pricing element could be tripled by the

other party". He also relied upon the fact that an increase in the management charge would have a detrimental effect on the capital value of his flat, if he wished to sell it. Although he provided calculations to show that his flat became worth £4,000 less on the day that the council's application was made to the tribunal, he provided no expert valuation evidence to substantiate his claim.

59. Mr Wallenda supported Mr Tarpey, in particular in his closing statement. He also drew on the discrepancy between the lease provisions and the section 125 notice, stating that he had not been aware that Camden had decided to change the wording of their Right to Buy leases 3 years prior to his Right to Buy application. He felt that Camden should have taken steps to clarify the information set out in the section 125 notice. The fact that they did not do so in his case and that they were still not doing so in further Right to Buy applications up to April 2014, meant that paragraph 13 of the Fifth Schedule of the Type B leases "is tainted by misrepresentation". The remedies available for misrepresentation were not limited to rescission of the contract, but damages were also available. Mr Wallenda therefore submitted "that it would not be fair to allow Camden to now rely on a clause to levy a charge which forms the basis of the damages to be claimed."
60. Alternatively, Mr Wallenda claimed that by charging a 10% management fee in the past leaseholders had acted to their detriment, for the purposes of estoppel, by not exercising rights they may have been entitled to, to ask Camden to provide an accurate figure for management charges under paragraph 13 of the Fifth Schedule of the lease.

The tribunal's decision

61. The tribunal determines that in respect of the Type B and Type C leases, for the service charge year 2013/2014 and for future years, there is nothing to prevent Camden council from abandoning its former practice of charging 10% of other service charges as its management fee, but instead relying upon the respective terms of the Type B and Type C leases as an alternative method of calculating its management fee.

The reasons for the tribunal's decision

62. At the hearing, Ms Gibbons provided leaseholders and the tribunal with a copy of Chapter 12 of Snell's *Equity*, which covered the modern law of estoppel, from which it is clear that, in order for Mr Tarpey to succeed in his claim for estoppel, the following conditions would have to be satisfied:
- (i) At the time any representation was made, there must have been a legal relationship between Mr Tarpey and the council giving rise to rights and duties between himself and Camden;
 - (ii) By words or conduct, Camden must have made to Mr Tarpey a clear and unequivocal promise or assurance that Camden would

not insist on its strict legal rights (i.e. to calculate the management charge in accordance with paragraph 13 of the Fifth Schedule of the lease);

- (iii) That promise or assurance must have been intended by Camden to affect the legal relations between the council and Mr Tarpey, or have been reasonably understood by Mr Tarpey to have that effect; and
 - (iv) Before the promise or assurance was withdrawn, Mr Tarpey must have acted upon it to his detriment, altering his position, so that it would be inequitable (unjust or unconscionable) to permit Camden to withdraw the promise.
63. In Mr Tarpey's case there is currently a legal relationship between him and the council, namely that of landlord and long leaseholder, which gives rise to the right of the council to recover service charges and an obligation on the part of Mr Tarpey to pay them. However, that legal relationship only arose once the lease had been entered into. Before that, Mr Tarpey was in a different relationship with the council, namely one of landlord and secure tenant, which gave rise to a different set of rights and obligations. The representation upon which he relies was contained in the section 125 notice provided by the council to him at the time he exercised the Right to Buy. Examples of section 125 notices are found at pages 1047-1051 of the second trial bundle. Paragraph 3 of the guidance notes to the section 125 notice states that "you will be required to pay an annual service charge and a charge for repair and improvements works. The average amounts (at current prices) which the council estimates will be payable together with the reference period adopted are specified in Appendices A & B. Further details are contained in the lease or transfer enclosed."
64. Appendix A at page 1051 was attached to a section 125 notice and is dated 31 May 1996. It states that: "Set out below are the relevant details forming the basis of the estimated charge for services for the year 1996/97. The figures are quoted on a full year basis and will be reduced proportionately depending on the date the sale is completed. After sale, charges are adjusted when actual costs are known. The estimated charges are as follows ... 10% management charge..."
65. On the face of Appendix A, this was a representation that for the year in which the Right to Buy was exercised the management charge would amount of 10% of other service charges. At best, the 10% might be said to extend for the period of the "reference period" of the lease, defined in clause 1.1 as being a period of five years. However, it is not a clear and unequivocal representation, promise or assurance that the management charge would be 10% of other service charges for all time, nor that it was intended to affect the legal relations between the council and the prospective leaseholder, nor that it overrode the express provisions in paragraph 13 of the Fifth Schedule of the lease with regard to the method of calculation of the management charge. At most, it was the intimation of a temporary concession on the part of the

council and, given the clear terms of the lease, it was not reasonable for Mr Tarpey to rely on such a representation to say otherwise.

66. Moreover, there is no evidence that Mr Tarpey, or any other leaseholder in a similar position, acted to his detriment in reliance upon the council charging a management charge equal to 10% of all of other costs, so as to make it inequitable to permit the council to resile from its position (i.e. to abandon the 10% cap and to revert to the express charging clause in the lease). Entering into the lease, whether with a discount upon the exercise of the Right to Buy or at full market value on a subsequent sale and purchase, does not amount to a "detriment" and nor is the payment of a 10% management charge, whether it be in the year that the lease was granted or in any of the subsequent years during which the council charged 10%.
67. If anything, it would appear from the evidence that the tribunal heard, that many leaseholders have benefited from apparently low management charges for many years, rather than acting to their detriment.
68. The tribunal's view is therefore that the doctrine of estoppel does not arise in the present case and is of no assistance to Mr Tarpey or any of the leaseholders. In any event, even if the doctrine were to apply, its effects can be no more than temporary in nature and, having given reasonable notice of its intention to change its method of calculating the management charge, the council is entitled to do so. There is nothing that makes it inequitable or unconscionable for the council to make this change.
69. In relation to the submissions about misrepresentation made by Mr Wallenda, a leaseholder would have to show that the representation made was not true, that any misrepresentation was at least made negligently, that any representation influenced the mind of the leaseholder, and that the leaseholder was not himself contributorily negligent in failing to read and/or take proper advice on the terms of the lease.
70. As indicated above, the section 125 notices in the bundle all represented no more than that a charge for management was being made at the rate of 10% of all other costs in the year to which the section 125 notice related, or arguably for the 5-year "reference period" thereafter, (which was true), and none represented that this was how the management charge would be calculated after that, or for all time.
71. Given that the provisions of the lease for calculating the management charge are clear, the lease cannot be "tainted by misrepresentation" as submitted by Mr Wallenda, and any leaseholder reading those provisions would and should have understood the contractual basis for calculating the management charge to which he or she would be agreeing by signing the lease or taking an assignment of it. Furthermore, as became clear during the hearing, leaseholders were

represented by solicitors on the acquisition of their leasehold interests and the inference must be that they would or should have received proper legal advice about the lease terms at that stage.

72. With regard to the other points raised by leaseholders, for example dealing with the fairness of any change, the apparent discrepancy in charges between Type A and Type B leases that would result and the fact that a 10% charge was "industry-standard", these are dealt with simply by acknowledging that the leaseholders have agreed to the express terms of paragraph 13 (or in some cases paragraph 12) of the Fifth Schedule of their leases and that these clear contractual terms override their concerns.

THE COST ELEMENTS & APPORTIONMENTS WITHIN THE MANAGEMENT CHARGE

73. Once a decision has been made that Camden can change the method of calculating its management charge, the second issue is what cost elements is it reasonable to include in the charge, and is the proposed calculation of those elements reasonable?

Component parts of the proposed management charge

74. As indicated above, the proposed estimated management charge for 2013/14 was based on the actual management charge for 2011/12, as calculated by Camden council on the basis of its alleged actual expenditure figures for that period. The breakdown of the 2011/2012 management charge was introduced by Geraldine Littlechild in her witness statement dated 19 June 2013. Ms Littlechild is employed by Camden as the Finance and Income Manager in its Leaseholder Services department. In her exhibit GL2, the leaseholder management charge was calculated at £270.88 and comprised four distinct elements which were (with their then percentages of the total charge): Leaseholder Services (52.7%), Housing Management Services (37.3%), Renewals (1.4%) and Tenant Participation (8.6%).
75. The component costs for the management charge in respect of Housing Management Services ("HMS") were dealt with in the witness statement of Angela Spooner, Camden's Head of Housing Management Services, dated 13 June 2013, in particular in her exhibit AS3.
76. Before and during the hearing, the calculations of the component parts of the council's management charge for 2011/2012, on which the current application was based, were refined and varied. In particular, in her second witness statement dated 12 February 2014, Ms Littlechild made corrections to Ms Spooner's exhibit AS3 and recalculated, in her exhibit GL12, the management charge in respect of HMS. The new total management charge was £283.82, broken down as follows (incorporating calculations made by Mr Wickenden, one of the leaseholders):

Breakdown of Proposed Management Charge				
Services/Task	Cost per leaseholder			
	Exhibits GL2/ GL12	As calculated from exhibit AS3 by Mr Wickenden	Approx. %	Approx. %
Leaseholder Services	£142.75			50.25%
Housing Management Services (HMS):	£113.95			40%
Tenants participation (housing management)		£9.76	3.5%	
Child protection conferences		£6.50	2%	
Communal repairs		£10.30	4%	
Storage and removals		£1.57	1%	
Tenancy management		£29.44	10%	
Anti-social behaviour		£47.12	16.5%	
Community Intervention Team (ASB), charged to HMS		£9.22	3%	
Tenant & leaseholder engagement	£23.33			8.25%
Repairs & improvements	£3.79			1.5%
Totals:	£283.82			100%

77. As it will be seen from the above table, there is a management charge for the ASB functions of HMS, plus an additional management charge for the services of the Community Intervention Team also in relation to ASB, being £47.12 and £9.22 respectively. Thus, a total of £56.34, or about 20% of the entire management charge relates to ASB functions.
78. Similarly, there is a charge for tenant participation in the HMS management charge, plus an additional management charge for "Tenant & leaseholder engagement", being £9.76 and £23.33 respectively, making a total of £33.09, or about 12% of the overall management charge.
79. The bulk of the management costs were associated with a specific service provided by the council to leaseholders. However, as Mr Higgins explained in his witness statement [581], within the costs reviewed by Ms Littlechild were the costs of Central Support Services ("CSS"), which "generally provide services to other departments within Camden rather than directly to the public." Those CSS costs had been recharged to all departments in Camden, including to Leaseholder Services, HMS, Repairs and Improvements, and Tenant and Leaseholder Engagement. These central administration costs represented between 20.25% (Miss Gibbons in her closing statement)

and 22% (Mr Wickenden in his) of the management charge to leaseholders.

Leaseholders' challenges to the proposed management charge

80. The challenges to the management charge and its component parts came in many forms. A number of leaseholders, but in particular Ms Astin, submitted that the tribunal was simply not in a position to approve Camden's methodology or the "hypothetical" quantum of the management charge based on the evidence provided by the council. This was because the council had excluded from consideration information about management charges received in relation to high-cost repairs that it carries out, i.e. those repair works that would cost an individual leaseholder £250 or more, where Camden continues to apply a 10% management charge (on the cost of those works).
81. Other leaseholders, but including Ms Astin as well, concentrated on challenging those costs which they claimed did not "directly support the services that leaseholders receive" referred to in paragraph 13.1(c) (paragraph 12.1(c) in some leases) of the Fifth Schedule of the Type B leases. In particular, challenges were made to leaseholders having to pay a management charge in respect of Camden's activities in the fields of the child protection, anti-social behaviour, tenant engagement, communal repairs, the decanting of leaseholders and storage of their possessions, and general tenancy management – although it must be stressed that, in general, the leaseholders were very supportive of the council conducting these activities as part of its local authority functions, paid for by council tax.
82. Challenges were also made to the methodology used by the council in arriving at the costs to be included in the leaseholder management charge, the way that time-recording, for example, had been carried out and (where there were mixed services) the apportionment of costs as between leaseholders and tenants.
83. Similar challenges were made to the certification, accounting and audit ("CA&A") charge, which covers the cost of the accounting required to construct the annual service charges by the Leasehold Revenue Accounting Team, and the cost of auditing and of certifying those accounts. These costs had previously been included within the council's management and administration costs. However, as mentioned above, in April 2012 Camden introduced a new CA&A charge for Type A leases and the majority of Type B leases, where paragraph 8 of the Fifth Schedule to those leases permitted a separate charge for "all fees and costs incurred in respect of the annual certificate and of accounts kept and audits made for the purpose thereof." In so far as these charges were now separate, they did not form part of the current application. Mr Wickenden paid particular attention to the recharging of CSS costs in the overall leaseholder management charge.

84. There were a number of recurring themes in the witness statements and submissions of most, if not all, the leaseholders and in the questions raised at the hearing. Leaseholders were concerned and made allegations about waste, inefficiency and “historic mismanagement” on the part of the council. It was said that the services which the council provided to the leaseholders were not of a reasonable standard, that it was trying to pass costs onto leaseholders that had nothing to do with the management of the buildings, but everything to do with “social engineering” and that such services as were provided to leaseholders were not of a reasonable standard. Complaints were made about the methods adopted by the council to calculate the management charge, which were seen as overly complex, flawed, lacking in transparency and preventing effective scrutiny by leaseholders.
85. The various challenges to the component parts of the service charges are dealt with below, under separate headings.

Management charge in respect of major works

86. Although touched upon by Dr Beck in his closing submissions (and pursued by him in his cross-examination of witnesses), the main challenge to the application under this head came from Ms Astin. In her opening statement of case, she said: “I submit that neither the Respondents nor the Tribunal can properly satisfy themselves that the charges being levied are either fair or reasonable when no evidence of the amounts paid by leaseholders by way of management charges for ‘major works’ is being disclosed by the Applicant.” She complained that while the council sought to change the basis of charging leaseholders for management costs because the previous imposition of a 10% “cap” allegedly produced an “under-recovery”, the council continued to apply a 10% charge to the cost of major works (those which cost each leaseholder £250 or more). She said that the council artificially separated the management charges for high-value repairs and there were no provision for this to happen in the leases.
87. In her closing submissions, Ms Astin stated: “I submit that it is not open to Camden to exclude such significant sums recovered as management charges when purporting to establish to the Tribunal its actual costs of managing the leasehold portfolio and the alleged shortfall in recovery.” She had a concern that even if there were an “over-recovery” in relation to the management fees for major works, Camden would fail to set this off against the alleged under-recovery in relation to the management fees for “day-to-day” services. In her words: “this cannot be right; the Applicant is artificially maintaining that the two types of the management charge are distinct when the lease does not make such provision.”
88. She was also concerned that there may be an element of “double-counting” for example, if the 10% charge applied to major works covered, say, the cost of the functions of the Asset Management and

Business Planning Team, part of the costs of which were included in the day-to-day management charge. As that team's functions included stock condition surveys and other property-related tasks, which all related to the carrying out of major works, Ms Astin submitted that there was a risk of "double-recovery" and "without any evidence being provided, the tribunal cannot be satisfied that there is not."

89. Ms Astin also submitted that, if the council had an over-recovery in relation to the management charges it receives for major works (charged at 10%), it was bound to apply that surplus to any shortfall as a result of the alleged under-recovery of the day-to-day management charges (when they were based on the charge of 10%).

The tribunal's decision on major works management charges

90. The tribunal did not consider that the cost of managing major works projects should be included within the day-to-day management charges subject to this application; and considered that it could reach a determination on Camden's "actual costs" of "managing and administering the totality of its leasehold portfolio" without having further information about the management charges in respect of major works.

The reasons for the tribunal's decision

91. Camden's motivation for bringing the application was its perception that there was an "under-recovery" of management charges from leaseholders in respect of the services that they received, an allegation that was strongly challenged by leaseholders. Although Camden presented figures which appeared to show that there was an under-recovery, the figures were not conclusive, nor was it clear that there was an over-recovery in respect of the management charges levied in respect of major works projects. Indeed, in her closing submissions, Ms Gibbons on behalf of the council suggested that there may be under-recovery in respect of those as well, and the council was currently looking into the calculation of its management fee in respect of major works.
92. Whatever the position may be, Camden "appreciates that were there to be a challenge to this charge [the management fee for major works], it would need to justify it [at any future hearing]. To know whether there is an under-recovery or over-recovery requires a forensic examination of the Housing Revenue Account and other matters, which are beyond this tribunal." Certainly, it is not necessary for us to know, in order for us to make our decision about the application before us.
93. The tribunal bundle contained three varieties of Type B lease at pages 165, 209 and 253. In each case, the Fifth Schedule of the Type B leases sets out the items of expenditure which form part of the service charge. Paragraph 1 of the Fifth Schedule includes "the expenses of maintaining, repairing, redecorating and renewing ..." the Building or the Estate, as the case maybe "... including those items described in

clauses 4.2 and 4.3". Clause 4.2 refers to the landlord's covenants to maintain repair, decorate and renew the structure of the building, the sewers and drains, boilers and heating and hot water apparatus, and boundary walls and fences. Clause 4.3 in two of the Type B leases refers to a communal system for the supply of heating and hot water to the flat. In the third Type B lease, clause 4.3 refers to the landlord's covenant to keep clean and lighted passages and other parts of the managed buildings, and to tend and keep tidy and generally to maintain the gardens.

94. Paragraph 2 of the Fifth Schedule in each case relates to the cost of periodically inspecting, maintaining, overhauling, repairing and when necessary replacing the heating and domestic hot water systems and the gas, electricity and water pipes and cables serving the building or the estate, as appropriate, and the lifts machinery, if any.
95. With regard to the lift, Ms Littlechild said in evidence that the cost of the maintenance of lifts included the cost of managing the lift service. In her first witness statement, she also indicated that the costs of HMS only included those costs which were not referable to specific properties. So, for example, a number of costs were not included in the day-to-day management charge to the leaseholders, for example, the costs of managing repairs and maintenance of the gardens and grounds, rechargeable works, various legal fees and community project costs.
96. The point was made and the tribunal accepts that by rolling up the management charges within the cost of the service itself, the costs passed on to leaseholders are more reflective of what has been provided to them and the services they have received. The same applies to the cost of major works; so that a block which gets a new roof would pay a greater management charge than a block that had a new front door. The difference is that, in the case of lifts, the cost of the service is not separately itemised, as it is in the case of major works.
97. In her closing submissions, Ms Gibbons on behalf of the council said that the council "seeks to recover the cost of managing major works as part of the costs of those works, such costs being recoverable under the provisions of the applicant's leases." She relied upon the case of *Paul Matthew Palley v London Borough of Camden* [2010] UKUT 469(LC), and included a copy of the decision with her closing submissions. Although that case concerned Camden's Type A leases, in which the calculation of the management charge differs from the Type B leases under consideration in this application, *Palley* is nonetheless authority for the proposition that the council is entitled to recover a management fee that comprises indirect costs and overheads (including management costs) as part of the cost of major works, in addition to the (day-to-day) management charge under paragraph 13 of the Fifth Schedule. Indeed, the Fifth Schedule makes a distinction with regard to works of maintenance and repair to buildings and plant in paragraphs 1 and 2,

and the management and administrative charges relating to central services in paragraph 13.

98. Ms Gibbons also made the point in her closing submissions, and again the tribunal agrees, that the cost of managing major works projects – which will be specific to one or a number of buildings or estates – are not part of the “actual costs to the landlord in managing and administering the totality of its leasehold portfolio”, as referred to in paragraph 13 of the Fifth Schedule, “... not least because major works are not undertaken across the whole of the Applicant’s housing stock at any one time or in any one year and because such works vary in terms of their nature and extent and therefore the level of management involved.” As Ms Gibbons pointed out, the case of *Palley* followed a number of previous similar decisions and it has been followed subsequently. Paragraph 13 then is aimed squarely at the day-to-day management costs of managing and administering the leasehold portfolio, not of any management costs in relation to major works or other service charge items.
99. With regard to the risk of double-counting, Mr Gavin Haynes gave evidence in his witness statement of 25 November 2013 about the activities of the Asset Management and Business Planning Team, which concerned Ms Astin. Mr Haynes is employed by Camden in its Repairs and Improvements Division as the Head of Commissioning and Quality Assurance. He said that the functions of the team were “fully rechargeable” as part of the leaseholder management charge, and the tribunal accepts his evidence. However, Camden must of course ensure that no costs which relate to the management of major works or any other services should be included in the cost of managing and administering central services, which are shared by all leaseholders.
100. During the hearing, there was comment on both sides about the comparable position in the private sector, that is to say where the freeholder was not a local authority. While most leases make provision for a management fee to be payable, which would commonly cover services provided and major works, the usual arrangement is for a managing agent to charge a unit fee for the management of day-to-day, recurring services and a percentage fee for major works which occur from time to time.
101. To summarise, the tribunal does not need full information about management charges that are levied in respect of major works within the borough, because these are building-, block- and estate-specific costs and the assessment of management charges for providing those services are charged to those properties or estates. They are not costs to be spread across the totality of the portfolio. The tribunal is reinforced in its view that this must be the correct interpretation of the lease, because the result is that those leaseholders that receive these specific services pay for them and for the management charges relating to them.

THE POSITION OF THE TYPE C LEASES

102. Before moving on to consider the costs elements that might be included in the proposed management charge, the very different position of the Type C leases falls to be considered.

The tenant's covenants in the Type C leases

103. A sample copy Type C lease was found at page 303 of the bundle and the wording of the tenant's covenants in clause 3(1)(c) to pay costs and expenses, including "(i) the fee of the Managing Agent for the management of the demised premises...", are set out in the paragraphs above.
104. Type C leases were not granted under the Right to Buy provisions of the Housing Acts 1980 or 1985. The example at page 303 of the bundle is a lease of a flat granted on the 3 July 1972. It is a private-sector lease where, by the Fourth Schedule, the lessee is to contribute to the "cost and expenses incurred by the lessor" in the three Parts to the schedule. In the amended statement of case, Camden relies upon clause 3(1)(c)(i) of the Type C leases to enable it to charge Type C leaseholders for all of the management costs that it seeks to recover against Type B leases under paragraph 13 of the Fifth Schedule of the Type B leases. However, the wording of paragraph 13 in the Type B leases (which were granted by Camden under the Right to Buy legislation) is far wider than the equivalent charging clause in the Type C leases.

The tribunal's decision

105. The tribunal determines that for Type C leases, no advance management charge is payable, now or in the future; but, in any event, if an advance charge were payable, the £283.82 claimed is not a reasonable sum.

The reasons for the tribunal's decision

106. The current application concerned a proposed estimated management fee to be paid in advance, but the wording of paragraph 3(1)(c) and of the Fourth Schedule of the Type C lease, both of which refer to costs that "have been paid" or "incurred", suggest strongly that the lessee's contributions to service charges, including the managing agent's fee, are to be paid in arrear.
107. If the tribunal were found to be wrong about that, it is not satisfied that the amount claimed is a reasonable sum for the following reasons.
108. In the Type C leases, the lessor can only charge for costs that are directly related to the building itself or, to the estate, which in the case of the sample lease appears to comprise a building or buildings containing only eight flats.

109. The management charge can only be raised “for the management of the demised premises” themselves. It is not possible for Camden unilaterally to extend that provision to a proportion of the landlord’s costs “in managing and administering the totality of its leasehold portfolio”, or to the council’s central establishment costs of an enquiries service or to the administration “of all other activities which directly support the services that leaseholders receive” as appear in the Type B leases; nor is it for this tribunal to do so through this application. This is not a surprising result, given that it cannot have been in the contemplation of the parties to a private-sector lease granted in 1972 that either the local authority would become the landlord at some time in the future, or that the lessee would become liable to pay towards the whole gamut of services provided by a local authority landlord.
110. With regard to amount of any managing agent’s fee, there was no evidence of the level or cost of services provided, or that would be provided, by managing agents in the private sector in respect of any Type C leasehold property. In the tribunal’s considerable experience of these matters, managing agents’ fees in the private sector have a direct relationship to the type of property being managed, the extent of the common parts and the landlord’s obligations in the lease. Where there are minimal or no common parts, and the landlord’s day-to-day obligations are essentially only to insure the property, the management fee will be very low indeed.
111. Rather than speculate as to an appropriate management fee for Type C leases, the tribunal approached the issue in the context of the questions posed in the application. As with Type B leases, there is nothing in the Type C leases to limit the managing agent’s fee to 10% of other service charges. As to what should be included in a management fee, the tribunal determines that only the costs relating to those matters expressly provided for in clause 3(1)(c) and the Fourth Schedule of the Type C leases are to be included. Since the £283.82 claimed relates to other matters which do not fall to be charged to the Type C leases, the tribunal cannot be satisfied that the amount claimed is a reasonable sum (whether claimed in advance or in arrear). In order to charge a management fee to the Type C leaseholders, Camden would have to propose a management fee for each Type C property that was individually tailored to that property.

The effect of the tribunal’s decision

112. Although few in number, such Type C leases as exist must be removed from the total number of leasehold properties considered when calculating the Type B leasehold management charge, as paragraphs 13.2, 13.3 or 12.2 (as the case maybe) of the Fifth Schedule of the Type B leases specifically limits the properties under consideration to those “in respect of which extant leases of residential properties have been granted by the landlord or its predecessors entitled under the “Right to Buy” legislation in the Housing Act 1980 or the Housing Act 1985 (or any subsequent amendment thereto or re-enactments thereof).”

113. It follows from the above that the rest of this decision (save as to costs, at the end) relates to Type B leases and the component items of expenditure that may be included within the management charge for Type B leaseholders.

THE MANAGEMENT CHARGE FOR TYPE B LEASES

114. Having raised general arguments against allowing Camden to change the way it charges a day-to-day management fee, the leaseholders went on, in the alternative, to challenge the individual items that might be comprised the proposed management charge.
115. Specifically, the challenged activities were those which leaseholders said were not costs to the landlord "in managing and administering the totality of its leasehold portfolio" (which was the test); and more widely, were not costs which "directly support" the services that leaseholders received (which was one of the indicative costs in paragraph 13.1(c) of the Fifth Schedule). Leaseholders drew a distinction between those functions which Camden carried out in its capacity as landlord, in its capacity as a housing authority and in its capacity as a local authority, claiming that only the costs relating to the first of those functions should be rechargeable to the leaseholders as part of the leasehold management charge. The leaseholders also challenged the methods of calculation and apportionment of the various costs, primarily salaries, within the management costs being recharged.
116. For most leaseholders, the essential issue was which of the costs fell within the leasehold management fee and were therefore properly rechargeable, and which should instead be paid for elsewhere and by other means, for example by council tax receipts?
117. The tribunal will deal with each of the cost elements of the management charge in turn. However, first, it will deal with the issue of the methodology employed by the council in calculating the management costs to be included in the leasehold management fee.

Criticism of the council's methodology

118. In relation to all the leasehold management costs (but especially in relation to the HMS costs), a number of leaseholders challenged the council's methodology of time-recording, calculating time and salaries and apportioning costs between teams and tenures.
119. For example, at paragraph 71 of his opening statement, Mr Tarpey stated: "Angela Spooner says in her statement that she had asked her officers to estimate how much of their time they spent on various issues. Ms Spooner is a talented manager, one with whom I have liaised for a dozen years. But she is adrift if she thinks that a survey will substitute for a proper accounting. If she cannot demonstrate much, much stronger evidence for the time her officers have spent on particular functions she cannot properly calculate a rate of recharge to

leaseholders. Custom and the law require her to prove the cost and expenses, not to guess or take a survey.”

120. Mr Tarpey was supported by other leaseholders including Mr Turner, who described the accounts as “raw and difficult to fully comprehend” and Mr Wickenden, who considered that “the staff time spent on management and administration should be allocated pro-rata across all housing management activities, including those that are not recharged to leaseholders” (demonstrating that, by doing so, the cost to leaseholders would be reduced). Ms Astin said at paragraph 27 of her opening statement that: “Without sight of the records made by the Ward Housing Managers and further information about the number of staff interviewed, I do not accept that the estimates are accurate.”
121. In her closing submissions on behalf of the Independent Steering Group, Ms Napier also cast doubts on Camden’s methodology and the credibility of its accounting practices. With regard to the time management analysis she complained that: “there was no evidence of time sheets provided, no explanation which wards were included in the study and no identification of what specifically the officers had been doing Ms Spooner said that no research had been done as to how the time analysis should be conducted and she could not confirm that it had been carried out correctly this “analysis” was apparently spread over six weeks last summer; it is unsupported by proper evidence and has little evidential value.”
122. Finally, Dr Beck complained that the council “did not seek the assistance of an independent company to identify the cost of services attributable to leaseholders ... It is submitted that the task of allocating several million pounds worth of costs cannot be justified without independent scrutiny.” He reflected a concern that Ms Napier had raised in her closing submissions that the council “cannot accurately calculate the revenue from leaseholders when it does not know how many leaseholders there are and it cannot determine their appropriate share of the total costs if there is uncertainty about the total number of Council properties and the number of Council tenants.”

The tribunal’s decision in relation to the methodology

123. Despite the numerous criticisms of the methodology used by the council to apportion time, in particular between tenanted and leasehold properties, the tribunal is content to accept the time and cost calculations for the purpose of the estimated management charge.

The reasons for the tribunal’s decision

124. All of the spreadsheets exhibited to the witness statements reflected the allocation of time spent by council staff. By accepting the capture of staff time, its allocation to the various teams and its apportionment between tenanted and leasehold properties, the tribunal is not endorsing the time analysis but, equally, it is not over-criticising it. The

time analysis undertaken does give an indication of the respective time spent and no analysis will be perfect.

125. At this point, the tribunal accepts that the council has made a genuine attempt to analyse and apportion the time spent by its staff as regards leaseholder matters. In reaching this conclusion, the tribunal is conscious that the calculations were undertaken to produce an estimated management fee. However, Camden should strive for a more accurate analysis for the actual management charge, which will be based on the actual time spent by staff during 2013-2014.
126. This should then set the base for at least the next couple of years, at which point the analysis of time should be subject to further review, perhaps by an independent body, bearing in mind that no doubt there will be continuing improvement in the keeping of time records. By such a process longer term benefits will be delivered to leaseholders in the calculation of their management charge.
127. The tribunal welcomes the comment by Ms Littlechild in her second witness statement, in which she confirms “that it is Camden’s intention to carry out a time analysis each year prior to calculating the actual costs for inclusion in the management charge and to use this analysis in the way I have done to calculate those costs.”
128. Having dealt with this generic issue, which affects all heads of management cost, tribunal now goes on to deal with the individual cost items. The sums per leaseholder specified in the headings below are taken from those claimed by the council and set out in Ms Littlechild’s revised exhibit GL12 (marked GL12A), being her response dated 18 March 2014 to Mr Wickenden’s calculations in his further statement dated 17 March. However, it should be said that leaseholders did not necessarily accept the figures before, during or after the hearing.

Treatment of Central Support Services (“CSS”) costs

129. CSS costs are the council’s central administration costs for services which support other departments of the council. As mentioned above, such costs are recharged to other council departments including to Leaseholder Services, HMS, Repairs and Improvements, and Tenant and Leaseholder Engagement. In Camden’s case, the allocation of central costs is made according to the “Recharge Process and Model for Central Support Services”, attached as Appendix 1 to Mr Wickenden’s closing statement.
130. Although the detail is complex, in simple terms, the council allocates its central expenditure to a number of “costs centres” that correspond to different council activities; certain costs are identified and removed from the calculations; the remainder are then allocated to each directorate of the council according to a formula (known as the “AGE” or “aggregated gross expenditure” model); then reallocated again to specific departments (using a combination of AGE and relative salary costs for the different departments).

131. Mr Wickenden gave examples of the reallocation process in his closing statement and made two main criticisms. First, he said it was not reasonable to load the central corporate costs of a new ICT system onto leaseholders; and, secondly, there were “major discrepancies” between the raw data relating to the reallocation of central costs and the recharge figures to in GL4 and GL7, such that Camden could not rely on its methodology “to produce a reasonable account of the “*central establishment costs*” of leasehold management.”

The tribunal's decision in relation to CSS costs

132. While acknowledging Mr Wickenden's criticisms, the tribunal is content to accept the methodology used by Camden in allocating its CSS costs to the HRA account and, from there, onto individual costs centres that go to make up the leasehold management charge.

The reasons for the tribunal's decision

133. As the “Recharge Process and Model” document states: “The AGE model [for calculating and allocating central costs across the council] reduces officer time on allocating charges and collating data.”
134. While Ms Gibbons in her closing statement accepts that Mr Wickenden “is technically correct” in relation to one aspect of the ICT costs, namely the costs of other systems being allocated to the HRA, this is balanced by some of the HRA-specific ICT costs being apportioned to other directorates.
135. No system of calculation and apportionment is perfect, but in Ms Gibbons' words: “the use of the AGE system is easier and less expensive to maintain than using a more complicated system with a wider range of allocation factors including time recording, headcount, computer numbers, access to systems, number of invoices processed and debtor accounts raised.”
136. It is noteworthy that the council publishes its accounts annually, that they are in a standard, internationally-recognised format, they are independently audited each year (with local electors having an opportunity to raise questions) and that, since the council's introduction of the AGE method for allocating CSS costs in 2010/11, “the independent auditor has made no reference to AGE being an unreasonable or unreliable method for calculation.”
137. Although the discrepancies identified by Mr Wickenden call for an explanation from the council, in particular when the final management charge is claimed, for the purposes of an estimated advance management charge, the tribunal considers that leaseholders are charged for their use of CSS on a fair and reasonable basis, and it has decided to make no adjustment to such costs.

Leaseholder Services

138. The cost per leasehold unit for Leaseholder Services was said by Camden to be £142.75.
139. In her first witness statement, Geraldine Littlechild explains the work carried out by the Leaseholder Services department and how the costs have been calculated for the purposes of the management charge, at paragraphs 10 to 22 of her statement. The Leaseholder Services department comprises: (a) a Collections Team, which is responsible for collecting service charge debt, and answering queries and resolving disputes from leaseholders, (b) a Debtors' Team, which issues invoices and reconciles customer accounts, (c) an Assignment and Sales Team, which deals with the sale of the properties, including the Right to Buy, and assignment of leases, (d) a Leasehold Administration Team, which provides general advice to all leaseholders on lease matters, and (e) a Court Team. The costs of managing and administering these teams are included in the proposed management charge to leaseholders. In addition, there is a Leasehold Revenue and Accountancy Team and Consultation and Final Accounts Team, whose costs are not recovered via the management charge.
140. Exhibit GL8 sets out the salaries of the relevant staff members in each of the teams. In some cases, where a fee is charged for work undertaken by the teams, the majority of the costs of them have not been recovered by the management charge. In other cases, staff were asked to estimate the percentage of their time they spent on work relating to particular properties and that relating to the leasehold portfolio as a whole, and salaries were then split in accordance with the various proportions.
141. A total salary bill was therefore calculated for each team, to which were added the salaries of agency staff employed by Leaseholder Services which were apportioned in exactly the same way as the salaries of the permanent staff. In addition, a proportion of the salaries of the Business Support Group, a central administration support team which provides two staff members to work within Leaseholder Services, were added to the total salary bill. Details of the calculations appear in the other exhibits referred to by Ms Littlechild, with the result that a total cost of £142.75 per leaseholder was arrived at, being the management charge in respect of services provided by the Leaseholder Services department.
142. Few of the leaseholders challenged this particular item of management cost to any significant degree. However, it is worth including the comments of Mr Wickenden in his second witness statement dated 17 March 2014. With regard to paragraph 13 of the Fifth Schedule of the Type B leases, in particular (a) an enquiry service to leaseholders and (b) billing for service charges, he said at paragraph 3: "the activities listed in (a) and (b) above are undertaken within Leaseholder Services. I cannot be assured that the appropriate costs have been identified in

Exhibit GL2, because their derivation required the manual apportionment and computer analysis of the salaries of 66 in-house staff and 51 agency staff (Exhibits GL8 & GL11), and the manual allocation of about 50 cost codes. However, I accept that the costs from this service should be included in the flat rate management charge.”

143. In her closing submissions, Ms Astin said at paragraph 23: “I accept that those services described under para 13.1, (a) and (b) are recoverable on an actual costs basis” though she goes on to challenge other costs claimed under (c).
144. Mr Turner also agreed that, at paragraph 14 of his closing statement: “The only costs, therefore, that completely match the description made in paragraph 13, are costs of enquiries provided by leaseholder services.”
145. However, a note of concern about the allocation of costs to Leaseholder Services was raised by Dr and Mrs Nader, who pointed to the risk of cross subsidization between local council functions and the leaseholder service function. They saw this as a very difficult area to monitor, even if there was transparency, and said that in order to ensure inefficiencies did not result in higher costs “cost reduction targets would need to be agreed for the future years.”

The tribunal’s decision

146. The tribunal determines that the cost of Leaseholder Services should form part of the management charge to leaseholders with Type B leases and that the sum of £142.75 should be included in the estimated charge.

The reasons for the tribunal’s decision

147. There was general agreement among leaseholders that these costs were valid costs to pass on to leaseholders through the management charge. The description of the activities of Leaseholder Services by Ms Littlechild all fell within the definition of paragraphs 12 and 13 of the Fifth Schedule of the Type B leases and the calculations of the costs and their apportionment, while not an exact cost, appeared to be reasonable and certainly sufficient for the purpose of an estimated charge. When it comes to calculating the costs and apportioning them for the purpose of the actual management charge, it is hoped that the council will adopt at least as rigorous a methodology of calculating and apportioning such costs, and the council will be able to demonstrate its calculations in a straightforward and transparent way, to any leaseholder who should seek assurance about the calculations.

Housing Management Services

148. The total cost per leasehold unit for Housing Management Services (“HMS”) (excluding the Community Intervention Team) was said by Camden to be £104.73, but Mr Wickenden in his closing statement re-

allocated the staff management time across all heads, including those not recharged to leaseholders, to produce a reduced leaseholder charge of £92.03 (this issue is dealt with under the next heading).

149. The work of the HMS department is set out in the witness statement of Angela Spooner who is the head of that department. Geraldine Littlechild sets out the HMS costs in her exhibit GL5 and she also explains in her witness statement which costs are not being recharged to leaseholders, and which additional costs are included in respect of the work of the central Community Intervention Team.
150. Angela Spooner explains that HMS is the first point of contact for Camden's residential tenants, whether they are secure tenants or leaseholder owners, for any issues relating to the ownership or occupation of their properties, other than accounting issues. Ms Spooner manages a team of nine ward housing managers, who is each responsible for a different geographical section of the borough. In turn, each of the ward housing managers manages a team of between three and six estate officers, of whom there are 40 in total.
151. In order to calculate the actual costs to Camden in managing and administering HMS, Ms Spooner engaged the help of her ward housing managers to list all of the activities their staff were involved in and to identify the percentage of staff time spent on each activity and whether that activity related to tenants or leaseholders. The result was produced in the spread sheet at exhibit AS3, which Ms Spooner was satisfied was a true reflection of the time spent by her department on the management of leasehold properties.
152. The original exhibit AS3 contained an error in the calculations. It stated that the total cost per leaseholder for housing management was £111.01. This error was corrected by Ms Littlechild in her second witness statement dated 12 February 2014, and the figures were further revised following a further time analysis exercise. The actual figure claimed by Camden for housing management time was set out in Exhibit GL12 exhibited to Ms Littlechild's second witness statement. The total cost per leaseholder for housing management now came to £113.95, comprising housing management time of £104.73 and a contribution to the cost of the central Community Intervention Team of £9.22. The changes were explained in Ms Littlechild's second witness statement and are not repeated here.

Other & staff management

153. Although the question of "Others" time - by which was meant team meetings, IT enquiries and the like - and staff management time arose late in the day, the tribunal deals with it first, because its decision on this issue has a bearing on all other HMS cost issues that follow.
154. Between Ms Littlechild's first witness statement on 19 June 2013 and her second statement on 12 February 2014, she said: "Ms Spooner has provided me with the results of a time analysis exercise carried out by

the Housing Management Services Department. The purpose of the exercise was to more accurately determine the amount of time the Housing Management Services Department spend on each of their various tasks.”

155. Using this information, Ms Littlechild recalculated the amount payable by leaseholders for HMS services and she put her new calculations in a coloured exhibit GL12, comparing the original percentages of staff time identified by ward housing managers and reviewed by Ms Spooner and the Assistant Director of Housing (which were originally included in exhibit AS3), with the new proportions of time spent, as revealed by the subsequent time analysis completed by HMS.
156. Some of the percentages were very similar: ASB was 23% before and 22.78 after, and tenancy management was 15% before and 14.23% after. However, some varied dramatically: tenants’ and residents’ participation went from 15% to 4.72%, and storages from 4% to 0.76%. Perhaps more significantly, two new categories appeared from the recalculation: “Others - Team Meetings, IT enquiries, etc” and “Staff Management (Managers only)” which now accounted for 18.65% and 2.69% of HMS staff time, respectively. Overall, the recalculation had the effect of increasing the HMS management charge to leaseholders from £98.40 to £104.73.
157. Perhaps anticipating the concern of leaseholders, Ms Littlechild stated in paragraph 7 of her second witness statement: “I confirm that it is Camden’s intention to carry out a time analysis each year prior to calculating the actual costs for inclusion in the Management Charge and to use this analysis in the way I have done to calculate those costs.”
158. Mr Wickenden produced a second witness statement in which he “attempted to incorporate the substantial modification in time analysis of housing management staff presented in Ms Littlechild’s second statement” and during the hearing Ms Littlechild produced a response to Mr Wickenden, in the form of a revised GL12, marked GL12A.
159. However, Mr Wickenden was not satisfied and, in his closing submissions, he criticised the 21.34% (18.65 plus 2.69%) of officer time spent on team meetings and staff management, which he said was equivalent to £32.34 of the management charge. He said: “This is not a sensible approach. In all other activities, e.g. tenant participation, the management costs are included within the total cost of the activity” and “In my view, staff time spent on management and administration should be allocated pro-rata across all housing management activities, including those not recharged to leaseholders.”
160. In paragraph 13 of his closing statement, Mr Wickenden re-allocates HMS administration and management time in the way he suggests, leading to an increase in the individual costs items recharged to leaseholders (and in the cost items allocated to tenants), but an overall reduction in the total cost per leaseholder from £104.73 to £92.03.

161. Ms Gibbons responded to this in paragraph 19 of her closing statement, where she said: “Mr Wickenden’s revised allocation of the time spent on Team Meetings and Staff Management of the services assumes that those management costs are incurred in proportion to the activities or tasks that are undertaken. This may not be the case, so, in determining the amount that should be charged to leaseholders, those costs were allocated to all residents.”

The tribunal’s decision

162. The tribunal determines that for the purpose of the estimated management charge the sums claimed by Camden for administration and management time (within HMS) should be disallowed as separate items, but they should be reallocated to all housing management activities, including those not recharged to leaseholders.

The reasons for the tribunal’s decision

163. The officer time spent on team meetings and staff management appeared high and the tribunal saw force in the arguments raised by Mr Wickenden.
164. It appears self-evident that HMS staff time spent on management and administration should be allocated pro-rata across all housing management activities, including those not recharged to leaseholders. In Exhibit GL12, staff time for management and administration was only allocated to those services that ultimately are apportioned between leaseholders and tenants (the blue column), but the services whose costs are not recharged to leaseholders should also bear their share of those management and administration costs.
165. The non-rechargeable activities include “void sign-ups and 6-weekly visits”, “succession and assignments”, “illegal occupancy and squatters” and “transfer requests advice”. It is inconceivable that these activities would be carried out without the additional support of management and administration time, involving team meetings, dealing with IT queries, the management of staff and the like.
166. Therefore, the tribunal accepts Mr Wickenden’s approach and considers that the costs relating to HMS management and administration should not be separated out as they have been by Camden, but should be allocated across all HMS services, in proportion to the other costs involved.
167. The consequences of this decision are that: Camden will still be able to recover the bulk of the management costs through the leasehold management charge, the individual HMS costs rechargeable to leaseholders will increase from the figures proposed by Camden, but the overall cost of HMS to leaseholders will decrease (by that element of management costs reallocated to non-rechargeable activities).

168. The tribunal now turns to the specific activities within HMS giving rise to a potential management charge to leaseholders.

Child protection

169. Child protection was one of the cost elements in the HMS management charge. The cost per leasehold unit for Child Protection was said by Camden to be £4.76 per leaseholder and by Mr Wickenden, with a re-allocation of management time, to be £6.05.
170. While leaseholders were at pains to support Camden's activities in the field of child protection, they were united in opposing the recharge of the costs of management of this service to leaseholders through the leasehold management charge. A common theme was that child protection was a function that Camden carried out in its capacity as a local authority, not as a landlord or freeholder. It was said that the carrying out of these tasks were part of Camden's "social care duties" and that the cost "should be allocated to the relevant non-housing account" (Mr Wickenden), and that this was not a function "that can properly be described as part of management and administration of the whole of the leasehold portfolio" (Ms Astin).
171. A more detailed description of the child protection function was set out in paragraph 11 of Ms Spooner's witness statement. She said that "the second activity listed [i.e. that the HMS staff were engaged in] is attending child protection conferences. Estate officers attend meetings and assist Social Services in dealing with children who are living in properties owned by Camden and thought to be at risk. It is estimated that 6% of staff time is spent doing this. Whilst the majority of these children are the children of Tenants, some reside in leasehold owned properties and even if Camden is not the direct landlord, for example, because the property is sub-let by a leaseholder, Camden can nonetheless be required to become involved."
172. In her Reply to the leaseholders' concerns, Ms Gibbons on behalf of the council stated (specifically in response to comments by Dr and Mrs Nader) that "the cost of the applicant's "child protection function" i.e. social services, is not being recharged to leaseholders. The re-charge relates to the cost of estate officers attending child protection conferences. This cost is not funded by central government or local council tax and, as set out at paragraph 11 of Angela Spooner's witness statement, is referable to the applicant's interest in the property in which the child is residing, rather than the fact that the applicant is the local authority."
173. During cross-examination by Dr Beck, Ms Spooner elaborated that Camden housing staff were invited to child protection meetings because Camden is providing a landlord function. The purpose is to share with Social Services any information Camden has about the family concerned as tenants or leaseholders; about whether Camden is aware, as a landlord, of any issues affecting the family. For example,

there may be a re-housing issue that may need to be addressed and to that extent, she said, it was a landlord function.

174. In later cross-examination, Ms Astin put it to Ms Spooner that Camden's activities in relation to child protection were not because it was being a good landlord, but because it was being a good housing authority. She said it was not a function of housing management. Ms Spooner said that she understood the point being made, "but it helps our landlord functions to take part."
175. In their closing submissions, leaseholders developed their arguments. Ms Astin stated at paragraph 33 that: "the attendance of housing officers at child protection conferences is not referable to the Applicant's freehold interest in the property but rather to the Applicant's role as a Local Authority which, as a unitary authority, has both housing and social services functions." She reviewed the duties on a local authority under the Children Act 1989 and accepted that as a unitary authority, Camden's family/children's services department could request assistance from its housing department. The cost of attendance for housing officers at children protection conferences should not be rechargeable to leaseholders but rather "it could properly be charged to the relevant social services budget."
176. Ms Gibbons dealt with this and other points relating to child protection in her closing submissions. She said that the management of the property "necessarily involves the management of its occupants." She accepted that this cost may not be incurred by a private landlord but pointed out that the applicant "is not a private landlord" and the meaning of "managing and administering" in paragraph 13 of the Fifth Schedule of the leases has to be interpreted in this context. "Simply because the function a landlord performs is statutory duty does not mean that it is not a function of management. All landlords are subject to a great many duties, for example under the Landlord and Tenant Act 1985. However, it is generally accepted that complying with these duties is function of management."

The tribunal's decision

177. The tribunal determines that the cost of Housing Management Services in respect of child protection should not be included within the management costs recharged to leaseholders.

The reasons for the tribunal's decision

178. It is accepted that staff within HMS attend child protection conferences and that their time is not funded by central government or local council tax. However, the issue of funding is irrelevant to the question whether such cost can be recharged to leaseholders as part of the leasehold management charge. In order to decide that, the terms of the lease have to be considered. The question is whether under paragraph 13 of the Fifth Schedule child protection is an activity that is one of the "costs

to the Landlord in managing and administering the totality of its leasehold portfolio.”

179. In the tribunal’s view, child protection is a function that Camden carries out because it is a local authority, not because it is a landlord. Insofar as child protection issues may involve re-housing people, that is a mixed local authority/ housing authority function of the council. However, the activity of child protection is not part of the landlord’s “managing and administering the totality of its leasehold portfolio” because Camden is responsible for child protection throughout the borough, regardless of the housing tenure of its residents.
180. The tribunal’s view is strengthened by the indicative wording of paragraph 13.1(c) of the Type B leases, which refers to “the administration of all other activities which directly support the services that leaseholders receive...”. When considering which “services” leaseholders “receive”, reference must be made to the landlord’s covenants in clause 4 of the Type B lease (which are the landlord’s covenants to maintain and repair aspects of the building and to insure the premises) and the other items of expenditure in the Fifth Schedule of the lease. Those items of expenditure reflect the landlord’s covenants, but also include some additional matters such as employing a caretaker and providing carpeting.
181. In the tribunal’s view, child protection does not fall within any of the “services that leaseholders receive.” Insofar as the sweep-up clause in paragraph 12 of the Fifth Schedule is concerned (see earlier in this decision), while the activity of child protection relates to occupants, it does not relate “to the Building.”
182. If the tribunal were found to be wrong on this point, then the tribunal rejects an apportionment of the costs incurred on the basis of the ratio of leasehold properties to tenanted properties. If Camden wishes to argue that the cost is referable to its interest in the property in which a particular child is residing, it could and should provide evidence as to the number of leasehold properties which have children at risk living in them, requiring attendance at children protection conferences. As Mr Tarpey pointed out in his statement of case, the demographic of most leaseholders is such that they are much less likely to have children potentially in the need of protection. Having said this, one estimate is that a third of all leasehold properties in the borough are sub-let to short-term tenants, who may of course be younger and more likely to have children and who may, in some instances, give rise to child protection issues. Either way, it is incumbent on Camden to examine its records and come up with a numerically precise figure, before it seeks to pass such costs onto leaseholders.

Anti-social behaviour

183. As will be seen, the management charge for dealing with anti-social behaviour (“ASB”) comprises two components. First, there is the work

carried out by HMS staff dealing with ASB and harassment complaints from tenants and leaseholders and, secondly, the additional time spent by the central Community Intervention Team ("CIT") providing extra support.

184. Ms Spooner deals with the former in detail in her witness statement and Mr Julian Coutts, Community Intervention Manager, deals with the latter in detail in his.
185. While the parties agreed on the amount of £9.22 for the CIT (but not its inclusion in the management charge), Camden's estimate of £34.52 for the HMS ASB costs was lower than Mr Wickenden's estimate of £43.88, once staff management costs had been re-allocated (dealt with above).

HMS ASB team

186. Ms Spooner explained that dealing with ASB is "a key area of work" for HMS staff. ASB encompasses all kinds of neighbour disputes, noise nuisance, domestic violence, vandalism, harassment, drunken behaviour and other criminal activities. At paragraph 20 of her statement, Ms Spooner said that: "We recognise that anti-social behaviour can seriously impact on residents' enjoyment of their home and our aim is to take swift action to nip problems in the bud."
187. Ms Spooner explained that staff investigate all complaints by following one of four "anti-social behaviour ladders" (which she exhibited), depending on which is more appropriate in the circumstances of the case. Investigation includes: interviewing complainants and alleged perpetrators, carrying out home visits, writing letters to both parties, working with the council's Community Safety team and the police, and in some cases making referrals to mediation. Where it can, Camden looks to make voluntary arrangements but since "Camden has an obligation to enforce the terms of its tenancy agreements and leases" where a complaint has been substantiated and the behaviour continues "we will take action to enforce the lease or tenancy terms."
188. As at April 2013, there were 756 recorded allegations of ASB, ranging from dropping litter to serious youth disorder, and it was estimated that staff spent 23% of their time dealing with ASB. "However, as complaints come from both Tenants and Leaseholders and relate to the occupants of both tenanted and leasehold owned properties, it is not possible to subdivide the amount time spent."
189. As a result, the 23% of HMS time spent on ASB was apportioned as to 27% (later 29%) to leaseholders and 73% (later 71%) to tenants, being their respective proportions within the borough.

The Community Intervention Team

190. Mr Coutts is employed by Camden in its Community Safety Service, having had a long history working in different posts within the housing

department. From 2011 until now, he managed and he still manages ten community interventions officers.

191. His Community Intervention Team ("CIT") sits within the Community Safety Service, which has responsibility for reducing crime and ASB in Camden, and for making the borough safer. The Community Safety Service consists of three inter-linked strands: community information, intervention and presence; and the work includes: safety interventions, offender management, youth disorder, serious youth violence and the CIT. Mr Coutts said that: "Whilst all officers in Community Safety have varying degrees of interaction, directly and indirectly with Housing Management, the main links are through the Community Intervention Officers (CIOs)."
192. The CIOs work across all tenure types and often deal with complex cases involving neighbour disputes. They "will often lead or support housing officers ... in seeking more direct interventions." They have also been involved in obtaining ASB injunctions in a number of housing cases. CIOs are based at the town hall but spend some of their time working at housing estate offices, and other locations. A number of CIOs have past experience in housing management and all CIOs regularly have close liaison with local housing officers. Mr Coutt's witness statement contains a long list of all of the activities in which CIOs are involved and he gave several examples of CIOs working closely with local housing officers following residents' complaints and long-standing neighbour disputes.
193. According to Angela Spooner, this central team received 50% of its funding from the Housing Revenue Account ("HRA"). Like the ASB functions of HMS, the rechargeable cost to the HRA in respect of this central team was apportioned between tenants and leaseholders on the basis of the ratio of tenanted properties to leasehold properties.

Leaseholders' challenges to the ASB costs

194. According to Mr Wickenden's analysis in his second witness statement, the HMS ASB cost amounted to £47.12 (not £34.52) per leaseholder and the cost of the central CIT was a further £9.22 (the latter figure also appearing in the revised costings in exhibit GL12), making he said a total of £56.34 per leaseholder.
195. As with child protection, leaseholders challenged the recharging of the ASB costs to leaseholders through the HMS management charge, and for similar reasons. In general terms, it was said that ASB was a borough-wide problem affecting all residents, and the cost of dealing with it should be funded through taxes, fees and government grants, and not as part of a management charge for services which were not authorised by the lease.
196. In her witness statement, Ms Astin challenged both the apportionment of staff time spent on ASB and the application of those costs to the leasehold management charge. With regard to the former, she said at

paragraph 37 that: "given that new tenancies are only granted to new applicants with high levels of social need, I think it is likely that complaints of anti-social behaviour both by and against occupants of council property are far more likely to involve tenanted properties than leasehold properties."

197. However, she goes on to say that while she would accept that "some of the housing management staff time is spent dealing with anti-social behaviour that is directly related to Camden's housing management functions", she would expect that a great deal is "more a function of the local authority's role in maintaining a safe environment for all of its residents, the vast majority of whom do not live in properties owned or managed by Camden council."
198. With regard to the involvement of the CIT, Ms Astin said that Mr Coutts' statement "describes a service ... that is not about the management of the leasehold portfolio but about community safety issues. The fact that the team is partially funded from the Housing Revenue Account does not of itself mean that that team is carrying out housing management functions. I question whether any of these costs are properly rechargeable to leaseholders; rather, they are functions concerning community safety for which all of the residents of Camden should pay, by way of the council tax."
199. The theme that the services of the CIT team should be regarded as a public service and not a rechargeable service charge was continued in closing statements by Mr Turner and Mr Wickenden, amongst others.
200. As Ms Napier pointed out in her closing submissions, in the case of leaseholders there is specific provision in clause 3.6 of the Type B leases that individual leaseholders should directly "pay all costs and charges and expenses incurred by the Landlord in abating any nuisance in the Premises and executing all such works as may be necessary for abating any nuisance in the Premises in obedience to a notice served by a local authority". Furthermore, in the case of a neighbour dispute, by clause 4.6, the landlord covenanted: "If so required by the Tenant to enforce the Tenant's covenants similar to those contained in the Lease which are or maybe entered into by the tenants of other flats in the Building so far as they affect the Premises provided the Tenant indemnifies the Landlord against all costs and expenses of such enforcement."
201. Mr Wickenden pointed out that leaseholders pay a service charge for the mobile security patrol, which is a related activity, in addition to the management charge, so that the total costs to leaseholders of ASB are very high. He asked why the CIT costs were not allocated to the specific housing estates to which call outs were made; alternatively, if it is a central policy unit, then it is a corporate function that Camden merely finds it convenient to 50% fund from the HRA. With regard to the HMS ASB costs: "there needs to be a disaggregation of responses between tenanted and leasehold properties and the apportionment of

time spent in inter agency coordination meetings. This element should not be included in the management charge.”

202. He also argued that HMS ASB costs should only be allowed in the management charge after a rigorous analysis of staff time that differentiates between services to leasehold properties, residents and sub-tenants.

Camden's response

203. In her closing submissions on behalf of Camden, Ms Gibbons makes reference to the Crime and Disorder Act 1998, where social landlords are “relevant authorities”, and to the Anti-Social Behaviour Act 2003, which inserted various provisions into the Housing Act 1996, thereby introducing the anti-social behaviour injunction. She describes that as being an injunction preventing “housing-related” anti-social conduct, where “housing-related” means directly or indirectly relating to or affecting the housing management functions of a relevant landlord.
204. She states at paragraph 63 of her closing submissions that: “From the legislative context, it can be seen that the focus in tackling anti-social behaviour is on landlords and therefore local authorities as landlords rather than simply as local authorities. Consistent with is this Mr Coutts’ and members of his team’s background in housing management.”
205. At paragraph 64, Ms Gibbons states: “Consequently, whilst some of the work of the Community Intervention Team is a function of the Applicant’s powers and duties as a local authority and benefits all the borough’s residents, part of its work is carried out by virtue of the fact that the Applicant is a landlord, albeit a social landlord, and is a function of the Applicant’s management and administration of its housing, including its leasehold, portfolio. Whilst such work may not be the function of a non-social landlord’s management and administration of its portfolio, as set out above, the leases have not been entered into with a non-social landlord and do not fall to be interpreted as such.”

The tribunal's decision

206. The tribunal determines that the costs of the central Community Intervention Team should not form part of the leasehold management charge, but that the costs of the HMS ASB team, in the sum of £43.88 per leaseholder is allowable and should be included within the estimated advance management fee.

The reasons for the tribunal's decision

207. Anti-social behaviour affects all residents in the borough, regardless of housing tenure, just as it affects visitors to the borough and those merely passing through. Housing officers or CIOs may receive complaints about ASB from tenants or leaseholders, but much of the

action that Camden takes will be in its capacity as a local authority, on behalf of everyone who might be affected.

208. However, it is not sufficient for leaseholders to say that they should not have to pay for any ASB services. Where ASB arises and where neighbour disputes arise, leaseholders would naturally expect their landlord to take action. That many have not yet had to call on the council's service is also not sufficient: it is there for when the need arises and it can and should benefit any leaseholder with an ASB problem.
209. Neighbour disputes can be very serious and the solution may well involve the council enforcing covenants in leases or tenancy agreements, both of which are functions of a landlord. Although the leases contain provisions to recover costs directly from leaseholders, either due to default or due to taking action on the leaseholder's behalf, it is often not cost-efficient or practical to pursue what may end up being relatively small sums.
210. The argument that tenants may be a greater cause of ASB than leaseholders, while perhaps a widespread belief, is not supported by evidence and, in any event, is undermined by the fact that perhaps a third of all leasehold properties are sub-let to short-term tenants.
211. Having said all that, the amount charged to leaseholders for Camden's ASB services appears to be high. The picture that the council paints is that HMS and the CIT are two arms of the same service: HMS dealing with the investigation and handling of day-to-day complaints, sometimes over a long period of time, and the CIT dealing with the more serious and complex cases. So far as HMS is concerned, some at least of the problems are, or ought to be, dealt with by caretakers and property managers, which have their own service charge (with management costs included); in addition, there is the cost of the Mobile Security Patrol to which leaseholders contribute. Altogether, this is a formidable array of services to deal with ASB, but at a considerable cost to leaseholders.
212. The reliance of the council on the powers given and the duties imposed by the Crime and Disorder Act 1998 and the Anti-Social Behaviour Act 2003 is not helpful. These Acts clearly relate to Camden's "housing" function in the sense of providing social housing to tenants, not to leaseholders. The tribunal's view in this regard is strengthened by the remedies available, in particular under the 2003 Act, where provision is made for possession proceedings to be brought against tenants under the Housing Act 1985 and the demotion of tenancies because of ASB. Further, the Explanatory Notes to the 2003 Act make clear at paragraph 5 that: "The Act also provides powers for local authorities and those working with them to tackle anti-social behaviour in local communities. It extends landlords' powers to deal with anti-social behaviour in social housing, including developing the use of injunctions and demoted tenancies." [emphasis added].

213. "Social housing" is quite different from the provision of accommodation on long leases, albeit that Camden can be classified as a "non-private" landlord. However, that classification does not turn Camden into being a "social landlord" with regard to long leaseholders.
214. So far as the CIT is concerned, this is a specialist central ASB team with a borough-wide remit. It is not part of HMS, though the tribunal accepts there is a lot of inter-action with HMS with, consequently, much scope for overlap and duplication of work. Notwithstanding that it deals with some complex housing-related ASB matters, the tribunal considers that the activities of the CIT fall within the wider functions of the council as a local authority, rather than in its capacity as a landlord. It is far from clear that the cost to the council of the CIT falls within "the actual costs to the landlord in managing and administering the totality of its leasehold portfolio" but, where it might do so, given the seriousness of the issues dealt with, they are far more likely to warrant action to recover costs directly from leaseholders affected through clauses 3.6 and 4.6 of the lease. For these reasons, the cost of the CIT is not considered to form part of the leasehold management charge, because it is managing and administering anti-social behaviour within the borough at large, rather than the leasehold portfolio, albeit that some of those affected by or benefiting from the council's activities in this field will be leaseholders.
215. Turning to HMS, mention has already been made of the ability for some issues to be dealt with by caretakers and property managers, for which leaseholders already pay a substantial service charge (£126.60 and £210.55 for block and estate caretaking services, respectively, for one property for the year ended 31 March 2013 [1053]), and it is noted that paragraph 5 of the Fifth Schedule to the Type B leases makes specific provision for the employment of caretakers.
216. In so far as ASB is caused by tenants or leaseholders, we agree with the statement by Angela Spooner at paragraph 21 of her witness statement that "Camden has an obligation to enforce the terms of its tenancy agreements and leases" and it is noted that the lease makes provision for this. In so far as leaseholders are affected by ASB by other tenants or leaseholders, again there is provision in the leases for the council to take action. Therefore, the HMS ASB services must fall within the council's functions as a landlord.
217. As to how much time and cost should be passed to leaseholders with regard to HMS ASB services, the tribunal is satisfied that the 23% of staff time spent in the HMS (or, if the tribunal is found to be wrong in its finding relating to the CIT above, of the 50% of cost of the CIT) have been properly apportioned in the ratio of leasehold properties to tenanted properties (i.e. 27:73).
218. In short, leaseholders benefit from HMS ASB services either directly or as a result of Camden dealing with the ASB of others, including tenants, in their building or block, or on their estate.

Tenant & leaseholder engagement

219. The management charge for dealing with tenant and leaseholder engagement ("T&LE") comprises two components. First, there is the work carried out by the central T&LE team, headed up by Ms Dawn Hayes. According to her witness statement, she heads up a team of five staff with responsibility for delivering the council's T&LE Strategy 2012-15. Secondly, there is the time spent by HMS staff encouraging and facilitating T&LE, as explained by Ms Spooner in paragraphs 7 to 10 of her witness statement.
220. While the parties agreed on the amount of £23.33 for the central T&LE team (but not its inclusion in the management charge), Camden's estimate of £7.15 for the HMS T&LE costs was lower than Mr Wickenden's estimate of £9.09, once staff management costs had been re-allocated (dealt with above).
221. Engagement involves developing and supporting groups of tenants and leaseholders, communicating with them, providing ongoing advice and support to residents' associations, attending monthly Leaseholder Forum meetings and consulting residents through District Management Committees ("DMCs"). Ms Spooner estimated that the HMS staff spent 15% of their time on T&LE, but since the various groups referred to include both tenants and leaseholders, it was not possible to further subdivide this time.

Challenges by leaseholders

222. Several leaseholders challenged the inclusion of a management charge for leaseholder engagement. Ms Neumann said that: "In reality this kind of charge lies outside issues relating to the physical management of buildings" and that local government provision of "a civil social infrastructure" is paid for "through Council Tax and general taxation, it has no place in leaseholder charges." Mr Tarpey said that: "Tenant Participation is another "service" [that has] nothing to do with the property contract that I have entered into with Camden. No private landlord would set up either of these "services" and expect its leaseholders to pay for them." He goes on to say that tenant participation is not authorised by his lease and that "This shows Camden is engaging in a social engineering agenda here, not the provision of services to leaseholders." Dr and Mrs Nader made a similar point, as did other leaseholders. Several also challenged the apportionment of time spent, as between tenants and leaseholders.
223. In his closing statement, Mr Turner objected to tenant participation as "it appears that the charges relate to the formation and management of organisations which also appear to be quasi political organisations. I cannot, therefore, see how these costs could be reasonably recovered under the terms of my lease."

The council's obligation to consult

224. In its Reply, Camden submitted that it “has a statutory obligation to consult both tenants and leaseholders about the way it delivers services to their homes, in particular, the Localism Act 2011 imposes requirements on landlords in respect of tenant and leaseholder engagement.”
225. Ms Hayes, Camden’s T&LE Manager explained further that: “The introduction of [the] Localism Act made the tenant and leaseholder engagement services a regulatory requirement for social landlords to meet (appendix 1 The Regulatory Housing Framework for England April 2012). How they provide the service is determined by each local authority. Social landlords are now expected to provide a comprehensive approach to resident involvement. Camden is committed to providing residents with a range of opportunities to be involved in publishing its service standards and is providing a range of discretionary service activities which supports the Council in fulfilling its regulatory requirements. We have included leaseholders in all our engagement processes including taking part in the scrutiny of the Council’s performance in housing.”
226. The council had consulted leaseholders as to its engagement strategy through a variety of means, including via the Camden Leasehold Form and DMCs. Several of the participating respondents in the application were named as having been in attendance at the meeting of the Camden Leaseholder Form on 15 December 2011, where the strategy was discussed, and this evidence was not disputed at the hearing.
227. As Ms Gibbons emphasised, “the result of the consultation was that leaseholders wanted to be included within the strategy” and, in so far as the purpose of the engagement strategy can be summarised as enabling leaseholders to be involved in the management of their properties, “this is clearly a function of managing and administering a leasehold portfolio.”
228. However, in their closing submissions, Mr Wickenden and Ms Astin both made the point that leaseholders are in fact excluded from the statutory framework brought in by the Localism Act 2011, a point picked up and dealt with by Ms Gibbons in her closing submissions on behalf of Camden.
229. Ms Gibbons accepted that the term “tenant” in the “Regulatory Framework for Social Housing in England from 2012” expressly does not include leaseholders (as appears from the fourth bullet point and footnote 2 on the third page of the framework document, at page 648 of the hearing bundle). However, she went on to say that “in respect of a mixed tenure portfolio, meeting the “Tenant Involvement and Empowerment standard” will necessarily involve leaseholders.” In support of this, she made reference to the duty to support tenants in

exercising their right to manage on page 18 of the framework document.

230. Ms Gibbons also suggested that a private landlord engaging leaseholders in management decisions would be able to recover the cost of doing so under the terms of the private sector lease; and similarly such costs would be recoverable under the Type B leases.

The tribunal's decision

231. The tribunal determines the cost of the central T&LE team should not be recoverable as part of the management fee, but the costs of tenant participation within HMS at £9.09 per leaseholder should be included.

The reasons for the tribunal's decision

232. The council's central T&LE team is engaged primarily in the delivery of the council's engagement strategy 2012-15, which is a response to the framework established under the Localism Act 2011. However, it is clear that the framework is limited to "social housing" functions of a local authority, i.e. related to its social tenants. Not only are leaseholders expressly excluded from the definition of "tenant" in the framework agreement, but the submissions relating to the right to manage are misplaced: while it is correct that right to manage is only available to tenants under long leases, premises owned by local housing authorities are expressly excluded from the right to manage, by paragraph 4 of Schedule 6 to the Commonhold and Leasehold Reform Act 2002.
233. A landlord, including Camden, can administer a leasehold portfolio without the very extensive degree of engagement described by Ms Hayes, the T&LE Manager. While the work undertaken by Camden centrally in this area no doubt has a small benefit to a minority of leaseholders, the tribunal considers that it goes way beyond what is necessary for the management of its leasehold portfolio and the cost of the central service (£23.33 per leasehold unit) should not be recharged to leaseholders as part of the management charge.
234. However, the position with regard to HMS and its charge for tenants' participation is different. The tribunal accepts Ms Gibbons' submission that a private landlord engaging leaseholders in management decisions would be able to recover the cost of doing so under the terms of the private sector lease; and a council landlord administering a Type B lease should be in no worse position. Some of the work undertaken by HMS for this purpose will have a direct benefit to leaseholders, such as helping to set up and then support tenants' and residents' associations ("TRAs") and staff attending the monthly Leaseholder Forum meetings.
235. The tribunal considers that this more limited leaseholder engagement more closely mirrors the degree of engagement in the private sector and, as such, it is capable of forming part of "the actual costs to the landlord in managing and administering the totality of its leasehold

portfolio”, in a way that cannot be said for the much greater work of the centrally-driven T&LE team, in delivering the framework strategy under the Localism Act.

236. So far as the allocation of work between tenanted and leasehold properties is concerned, the tribunal accepts that it has not been possible to subdivide the time further, especially when it relates to TRAs with representatives of both tenures. This is not to say, however, that no future attempt should not be made to try and allocate time more accurately between the tenures.

Communal repairs

237. The cost of communal repairs was another of the elements in the HMS management charge. The cost per leasehold unit for communal repairs was said by Camden to be £3.24 per leaseholder and by Mr Wickenden, with a re-allocation of management time, to be £4.12.
238. Angela Spooner estimated that 5% officer time in the HMS was occupied dealing with communal repairs. Most leaseholders made no comment about this cost though, in her opening submissions, Ms Astin questioned whether the same apportionment should be made for leaseholders who live in street properties as for those who live in estate-based properties. In her closing submissions, Ms Astin repeated an earlier complaint that without evidence of the recovery by way of a 10% management charge for major works, it is impossible to know whether this would result in double-charging.
239. Dr Beck disputed this cost in so far as he felt that disrepair affecting individual properties should not have been included among leaseholder services at all.

The tribunal's decision

240. The tribunal determines that the £4.12 cost of managing communal repairs is an allowable element in the management charge to leaseholders.

The reasons for the tribunal's decision

241. As set out in paragraph 28 of Ms Littlechild's witness statement, the costs that have been included in the management charge in respect of repairs and improvements are those which are not referable to specific works and therefore included within the cost of those works. As Ms Spooner sets out in paragraph 13 of her witness statement, HMS in the form of the estate officers, are usually the first point of contact for residents, who wish to raise concerns regarding communal repairs.
242. The carrying out of repairs is a service to leaseholders and one of the landlord's obligations under the lease, and it clearly forms part of “the actual costs to the landlord in managing and administering the totality of its leasehold portfolio” within the meaning paragraph 13 of the Fifth

Schedule. There is no evidence of double-counting and therefore these overhead costs are allowed.

Decanting leaseholders and storage

243. The cost per leasehold unit for decanting leaseholders and storage was said by Camden to be £1.15 per leaseholder and by Mr Wickenden, with a re-allocation of management time, to be £1.46.
244. As Ms Spooner makes clear at paragraph 15 of her witness statement, this activity relates to decanting tenants or leaseholders from their properties for essential repairs to be carried out and dealing with storage of their possessions. The amount of HMS officer time involved in this activity is slight, 1% in Ms Spooner's statement and 0.76% in the revised exhibit GL12.
245. In her closing statement, Ms Gibbons relied on the "Essential Repairs Transfer" policy document in exhibit AS8 [549] and explained that the management charge arose from the staff time spent dealing with leaseholders who needed to move out, explaining the council's policy in this regard and liaising with them while they are out of the property. Since Camden regarded these as costs of facilitating rather than managing works, they are not included within the cost of works themselves.
246. Few leaseholders challenged this element, though Ms Astin made a strong case for saying that the only reason Camden would have a policy about the decanting of tenants or leaseholders "is because of its role as a local housing authority in relation to vulnerable individuals who need accommodation." She doubted that leaseholders would require alternative accommodation pending works because Camden's repairing obligations under the lease do not include most internal works. In addition, leaseholders who are to be decanted are usually expected to pay for this themselves and she found it almost impossible to imagine a situation in which leaseholders would be required to move out of their homes to facilitate works to the value of less than £250 – the limit for major works.

The tribunal's decision

247. The tribunal determines these costs do not come within the "actual costs to the landlord in managing and administering the totality of its leasehold portfolio" and the cost claimed should not be included within the management charge to the leaseholders.

The reasons for the tribunal's decision

248. According to Camden's own policy document "Essential Repairs Transfers" [549]: "Under common law, the Council is under no obligation to pay for temporary accommodation for leaseholders who need to move out for essential repair work to be carried out." The policy also makes clear that "If the lease does not refer to any

contractual obligation of the Council to pay for alternative accommodation [and no such provision was drawn to the tribunal's attention in the Type B leases] and the repair is not one that would be covered by building insurance, then the leaseholder is obliged to find and pay for their own alternative accommodation."

249. The tribunal agrees with Ms Astin's submission, that the only reason the council would have a policy on decanting tenants/leaseholders is because of its role as a local housing authority in relation to vulnerable individuals who need accommodation. So much is clear from the ERT policy document. This is a local authority function, not a service in order to manage the leasehold portfolio.

General tenancy management

250. The cost per leasehold unit for general tenancy management was said by Camden to be £21.56 per leaseholder and by Mr Wickenden, with a re-allocation of management time, to be £27.41.
251. According to Miss Spooner's witness statement (paragraph 16), general tenancy management involves: "dealing in the first instance with any queries or complaints. As regard leasehold properties, Housing Management Services staff deal with general enquiries from leaseholders, their agents and prospective purchasers regarding the local area and their rights and responsibilities under the leases. When necessary, staff take action to ensure that the covenants in the leases are complied with, for example, in relation to unauthorised alterations, breaches of restrictions as to use, a failure to allow access or a failure to repair. This often involves staff visiting and corresponding with the leaseholders or their representative until the matter is resolved." She estimated that 15% of staff time was spent on general management but "as this activity is of a general nature, it is not possible to subdivide that time."
252. At paragraph 12 of Ms Littlechild's statement, she confirmed that where a fee was charged for the majority of the work, the cost was not recovered via the management charge. The Head of Leaseholder Services had spoken with staff to ascertain how much time they spend on case-specific work and how much time they spend on general management and administration. The leasehold administration teams estimated that they spent 25% of their time on work relating to the leasehold portfolio as a whole. Accordingly, 25% of their salaries have been recharged to leaseholders through the management charge.
253. In her witness statement, at paragraph 35, Miss Astin questioned the apportionment of the 15% of staff time on the basis of a 27:73 split between leaseholders and tenants. She said: "I question this apportionment. Tenancy agreements contain many more conditions than leases do and I would expect that much more staff time is taken up with tenancy-related issues than issues relating to the enforcement of

leases. Again, without further evidence from Camden, I do not accept this estimate/apportionment.”

254. However, having heard the evidence and in her closing submissions, Ms Astin seemed to challenge the charge altogether because the answering of queries by prospective purchasers neither directly supports the services that leaseholders receive, nor did it relate to the management of the leasehold portfolio. Insofar as charges were incurred in relation to breaches by individual leaseholders of their leases, the council’s evidence was that it usually did not choose to make use of the right to claim an indemnity for such costs; accordingly, Ms Astin submitted that the council was not entitled to charge all leaseholders for such costs that it was entitled to charge to specific leaseholders in default.
255. Mr Turner also objected to paying this charge because he believed the day-to-day management of estates and blocks was mostly carried out by tenants and caretakers. Leaseholders already paid a proportion of the caretaking costs, which itself carried a caretaking management charge within it. Mr Wickenden joined in previous criticism of the inadequacy of the methods used to apportionment management time to functions, believing that “an equal allocation of time to tenanted and leasehold properties clearly needs to be proved.”

The tribunal’s decision

256. The tribunal determines the costs of general tenancy management in the sum of £27.41 per leaseholder is allowable should be included within the estimated advance management fee.

The reasons for the tribunal’s decision

257. The tribunal accepts Ms Gibbons’ submissions in her closing statement that this service covers those general enquiries that any landlord or managing agent would have to answer on a day-to-day basis.
258. While a number of the services which fall under the heading of “general tenancy management” are already charged for under the lease - for example, the registration of assignments (clause 3.25) and the enforcement of covenants in other leases (clause 4.6) - it appears that the council has already taken these into account in its calculations.
259. Where low-level enforcement action is taken by the council, the tribunal accepts that it is a function of general management and that it would not be cost-effective to seek an indemnity from a leaseholder in every case (for example, before a letter was sent to a neighbour). Nonetheless, the council must still ensure that a full recovery of costs and fees is achieved, where appropriate.
260. The tribunal also accepts that an allocation of time in the ratio of leaseholders to tenants is a reasonable approach to these costs, it being both simple to understand and to administer, and cost-effective.

However, for the final, actual management charge the tribunal would hope that the council will carry out a more accurate analysis and calculation of how this time is spent, in order to separate out that time for which fees are charged or which should be recharged to individual leaseholders, and to demonstrate that a proper allocation as between tenanted and leasehold properties has been made.

SUMMARY OF THE SUMS ALLOWED AND DISALLOWED

261. The tribunal determines that the sum of **£235** per Type B leaseholder is the reasonable amount to be charged for the estimated management charge for 2013/14, calculated as set out in the Summary of the Sums Allowed and Disallowed, annexed to this decision.
262. For the reasons given above, the tribunal does not allow any estimated management charge in respect of the Type C leases.

Cross-check against benchmarking figures

263. On the start of the third day of the hearing, Ms Gibbons circulated three pages of "Leasehold management charge Benchmarking" figures, showing the management fee and methods being used in 2012/13 by other London boroughs and ALMOs (Arms Length Management Organisations). The data apparently related to benchmarking done in April 2013 and the point was made that authorities will have uplifted costs for recent years.
264. Of those that used actual costs and a time analysis, as in the present application, City West Homes charged an average management fee of £287 (in a range between £261 and £328) with 9,300 leaseholders; Tower Hamlets charged a flat fee of £330, with 9,000 leaseholders. Others, that used a combination of actual-based costs, percentages and flat fees, had a wide range of differing management charges. Those that charged a "Flat fee, Actual based" ranged from £200 by Lewisham Homes with 5,111 leaseholders, to £235 by Hackney Homes, with 8,676 leaseholders.
265. In paragraph 6 of her closing statement, Ms Astin criticised the benchmarking figures, as the information concerning what went into the management charges was incomplete. She said that the tribunal did "not have sufficient information ... to draw any inferences with regard to the level of the fees charged by the Applicant compared with those charged by other similar landlords. Further, the Respondents have insufficient information to respond to the 'benchmarking' document."
266. The tribunal tends to agree with Ms Astin, and it does not draw any such inferences from the benchmarking figures. However, they do have a use by providing a yardstick against which the tribunal can compare its estimated advance management fee of £235 is payable, to see whether or not its determination is broadly in line with other similar landlords, or wildly out of kilter with them.

267. The tribunal's only conclusion from the benchmarking figures is that its determination is within the range of other similar management charges.
268. Furthermore, although there was no evidence of private sector management charges, in the tribunal's experience a fee of £235 per unit would not be in excess of, and would generally be within, the range of reasonable management charges in the private sector.

SECTION 20C APPLICATION

269. Several of the leaseholders made an application under section 20C of the Landlord and Tenant Act 1985 which, if granted, would have the effect of preventing the council from passing its costs of this application through the service charge. A number of other leaseholders, who did not submit written statements or participate in the hearings in any way, nonetheless wrote to the tribunal asking for their names to be associated with and to join in the application made under section 20C.
270. At the initial pre-trial review held on 16 April 2013, Camden estimated that its costs would be in the region of £30,000, which was said to equate to about £3 per leaseholder. However, the final costs were higher, being counsel's fees of £43,080 and the unspecified printing and postage costs incurred by the council.

The leaseholders' application

271. Mr Turner prepared a separate document putting forward his application for an order under section 20C. He felt that all of the costs of the proceedings had ultimately arisen from the landlord's decisions alone, namely: the decision to change leases from Type A to Type B, and then not to enforce the new methodology for calculating the management charge; by making the application without notice or consultation with leaseholders; and by delaying any application until it actually applied the changes. As leaseholders "did nothing wrong" and could do nothing to avoid the costs of the application "it would be unjust to make the leaseholders pay the landlord's costs."
272. Dr Beck criticised the voluminous documentation produced by Camden which, except for the witness statements and financial information, "has proved largely irrelevant to these proceedings." He contrasted the fragmented position of leaseholders who were almost entirely laymen with the financial strength and power of the council that was able "to engage a highly regarded experienced specialist barrister in the field." He felt that this unequal power relationship meant that the recovery of the council's costs through the service charge would not be fair and equitable.
273. Miss Napier on behalf of the Independent Steering Group also addressed the issue of costs in her closing submissions. She complained about the complexity of the spreadsheets used by Camden to support its application and the fact that "leaseholders spent weeks trying to

fathom the intricacies of financial information provided, identifying cost areas which do not relate directly to leaseholders and others where Camden had not been able to differentiate between services to leaseholders and social housing tenants.”

274. She also criticised the repeated references made by Camden officers to their statutory obligations under the Localism Act 2011, when those obligations were with regard to council tenants not leaseholders. “There has been no clarity between services provided to fulfil a legal requirement to leaseholders and those which Camden has opted to provide. Further, there is no clear line drawn by Camden between costs that relate to its role as Local Authority, Housing Authority or as Landlord. Camden provided no documents or witness statements to support clear delineation of costs directly related to leasehold services outside of the leasehold services team.” Her parting shot was that “...by making the application in the first place Camden has brought any such costs upon itself and these should not therefore be recharged to leaseholders.”

Camden’s response

275. For the council, Ms Gibbons dealt with the issue of costs in her Reply dated 10 February 2014 (at paragraph 76), and she amplified her comments substantially in her closing submissions (paragraphs 74-80). She accepted that Camden could have consulted leaseholders, but that would have incurred its own cost and it would not have resulted in a determination that was binding on all leaseholders; consequently, an application to the tribunal would have been made in any event. Had the council not brought its own application, it would likely have been faced by a number of separate applications by leaseholders. By bringing the application, Camden has provided leaseholders with an opportunity to pool resources and knowledge. She challenged Dr Beck’s assertion that the voluminous documentation in the first hearing bundle was “largely irrelevant”, pointing out that it contained copies of all the various leases, all of the council’s witness statements and numerous spreadsheets by way of exhibits.
276. With regard to the allegation that there was an inequality of arms as between the parties, Ms Gibbons contrasted “a local authority with limited resources” on the one side and “4,677 owners of property in central London” on the other side. Leaseholders could have pooled resources and obtained proper advice eliminating the need for multiple statements of case and closing submissions, and reducing the length of the hearing. She criticised leaseholders for failing to coordinate their response and for choosing, in the main, to present their cases individually, taking points that she said had little merit, making submissions which paid no regard to the evidence that was given at the hearing and repeating the submissions of others. She blamed the leaseholders for increasing the costs, pointing out that preparing a Reply and closing submissions in response to 12 statements in response and eight sets of submissions drafted by leaseholders was necessarily

significantly more expensive than responding to one, co-ordinated set of submissions.

277. Finally, Ms Gibbons took issue with the suggestion that the leaseholders had been obliged to defend the proceedings. "They were not. 4,648 respondents have chosen to take no part in these proceedings and if those that have taken part had taken legal advice, they may have chosen not to do so either, or may have done so to a more limited extent or in a more efficient way." While she considered that the cost of the proceedings are costs of managing and administering the council's leasehold portfolio (so that they could be recoverable through the management charge), in any event the costs should be recoverable through the service charge "to reflect the increase in the costs the Applicant has incurred as a result of the manner in which Respondents have chosen to respond to the application."

The tribunal's decision

278. The tribunal determines that it is just and equitable to make an order under section 20C of the 1985 Act in respect of the Type C leaseholders only.

The reasons for the tribunal's decision

279. Given that no estimated management charge was found payable in respect of the Type C leaseholders, the tribunal makes an order under section 20C in respect of the costs that would otherwise be passed on to the Type C leaseholders.
280. To a large extent, the application was made by the council for its own benefit, to obtain a binding decision as against all of its Type B and Type C leaseholders that it was entitled to change the method of calculating the management charge, and as to the costs elements to be included in any new charge. The council might have taken a different approach, signalling the change and waiting for individual challenges, but that might have produced an unwieldy outcome, with the risk of an unnecessary duplication of costs.
281. Having made the application, the council used the proceedings as an extended consultation process with leaseholders, taking the opportunity to disclose vast amounts of financial information to explain the calculation of time and the apportionment of costs that went into the new management charge. Leaseholders have clearly benefited enormously from this and they now have an insight into the complexity of financing the activities of a local authority landlord, which would be unheard of in the private sector.
282. The council won on the principle as to whether or not it should be allowed to change the method of calculating the management charge for the Type B and Type C leases, something that was never really in doubt given the express terms of the leases. Indeed, some participants

identified this challenge as a weakness on the leaseholders' part and chose to concede the point from the outset.

283. The council also won on the bulk of the cost items that it wished to put through the new management charge, though there were of course a number of cost elements where the tribunal accepted that the costs should not be included in the management charge.
284. The tribunal accepts the explanation given for the increase in the council's costs from the estimate given at the pre-trial review. Each participating leaseholder had the undeniable right to present their individual case in the best way they sought fit. However, there is no doubt that the failure of leaseholders to pool resources to a greater extent and for individuals to do so in the way they did increased the costs of the case. Having said that, the council's costs per leasehold unit is modest: from the figures given, the tribunal estimates that they will be somewhere in the region of £4.50 to £6.00 per leaseholder for 2013/14.
285. When deciding whether or not to make an order under section 20C with regard to the Type B leaseholders, the tribunal is mindful of the words of the Deputy President of the Upper Tribunal, Martin Rodger QC, in *SCMLLA (Freehold) Limited v A number of lessees of Southwold and Cleveland Mansions* [2014] UKUT 58 (LC), LRX 110 & 111/2012, where at paragraph 19 he said:

"It is clear from section 20C(3) that the LVT has a wide discretion to make "such order on the application as it considers just and equitable in the circumstances". In *Tenants of Langford Court (Sherbani) v Doren Limited* LRX/37/2000 (at paragraph 28) the Lands Tribunal (Judge Rich QC) identified the "only principle upon which the discretion should be exercised" as being "to have regard to what is just and equitable in all the circumstances". He went on, at paragraph 31, to state that:

"In my judgment the primary consideration that the LVT should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that make its use unjust."

286. At paragraph 27 of *SCMLLA*, the Deputy President said:

"An order under section 20C interferes with the parties' contractual rights and obligations, and for that reason ought not to be made lightly or as a matter of course, but only after considering the consequences of the order for all of those affected by it and all other relevant circumstances"

287. In *Conway v Jam Factory Freehold Limited* [2013] UKUT 0592 (LC), LRX/36/2012, a case where an application was brought by a small

group representing only 13 flats out of a total of 194, the Deputy President said at paragraph 75:

“In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make.”

288. In that case, at paragraph 77, he went on to say:

“I am satisfied that this is not a case in which an order relieving the appellants from all responsibility for contributing towards the relevant costs through the service charge would be just and equitable. I reach that conclusion largely because the appellants failed in their application for the appointment of a manager and I can see no reason why they should be in a privileged position as compared to their neighbours who will contribute.” (Though, for other reasons, he went to omit 10% of the costs from the service charge of the applicant leaseholders.)

289. Standing back in this case, the tribunal does not consider that it is just and equitable to make a section 20C order in respect of the Type B leaseholders, for all the following reasons: the council’s proposed management fee was not manifestly excessive and lay within the range of fees charged by similar landlords, the gains by leaseholders from their opposition to the application were insufficiently great to justify depriving the council of its costs, the amount of costs per leasehold unit are extremely modest and, in the tribunal’s view, it would be wholly disproportionate in terms of the council’s time and costs to require it to undertake an accounting exercise that would benefit participating Type B leaseholders by ensuring such small sums were not included in the service charge for the year.

290. If the tribunal were found to be wrong in its approach to the section 20C application for participating leaseholders, it would make two further points.

291. First, the applications under section 20C referred generally to “leaseholders” without making any distinction between those participating leaseholders who had challenged the management charge and the vast majority who took no part. It is not clear that the participating leaseholders were seeking to include all leaseholders in their section 20C application but, even assuming that they were, the tribunal does not consider it just and equitable to make any order in respect of the roughly 97% of leaseholders who did not object or participate in any form, given that the council was largely successful in its application, the need for certainty in the light of the change in practice after many years and the injustice that would be caused to the council’s council tax payers and/or tenants who would otherwise have to foot the bill if an order under section 20C were made.

292. Secondly, if an order should have been made in respect of the participating Type B leaseholders, including those whose names had been notified to the tribunal before the conclusion of the hearing, the tribunal finds it hard to see how it could be for more than 20% of the council's costs, given the financial implications of the decision, which would raise even greater concerns about the proportionality of implementing the decision.

RIGHTS OF APPEAL

293. Any of the parties have a right to appeal to the Upper Tribunal (Lands Chamber) against any part of this decision. While full details are to be found in the tribunal's Guidance on Appeals, any party wishing to appeal must apply to this tribunal for permission to appeal, within 28 days of the tribunal sending this decision to the parties.



Name: Judge Timothy Powell **Date:** 7 July 2014

Annexed: SUMMARY OF THE SUMS ALLOWED AND DISALLOWED

Annex to the Decision

SUMMARY OF THE SUMS ALLOWED AND DISALLOWED

294. The tribunal determines that the sum of **£235** per Type B leaseholder is the reasonable amount to be charged for the estimated management charge for 2013-14, calculated as set out in the Summary of the Sums Allowed and Disallowed, below:

Housing management task	Costs per l/hldr (AS3 & PW3) £	Costs per l/hldr (GL12) £	Costs per l/hldr (GL12 & PW closing statmt) £*	Costs per l/hldr allowed by the tribunal £
Leaseholder services	142.75	142.75	142.75	142.75
Housing management services				
- Tenant participation (hsg mangmt)	22.73	7.15	9.09	9.09
- Child protection	5.25	4.76	6.05	0.00
- Communal repairs	7.58	3.24	4.12	4.12
- Storage & removals	5.25	1.15	1.46	0.00
- Tenancy management	22.73	21.56	27.41	27.41
- Anti-social behaviour	34.85	34.52	43.88	43.88
- Others – team meetings, IT enquiries	n/a	28.26	n/a	0.00
- Staff management	n/a	4.08	n/a	0.00
Community intervention team (ASB)	8.60	9.22	9.22	0.00
Tenant & leaseholder engagement	23.33	23.33	23.33	0.00
Repairs & improvements	3.79	3.79	3.79	3.79
Totals	276.84	283.82	273.13	231.04
			Say:	235.00

* Note: In the asterisked column, the costs that had been allocated to the “Others – team meetings” and “Staff management” tasks, were re-allocated by Mr Wickenden (in his closing statement) to the other activities on a pro-rata basis, including those that are not recharged to leaseholders.