



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

**Case reference** : **LON/00BG/LVT/2020/0006**

**HMCTS** : **Hybrid: In Person/V: CVPREMOTE**

**Property** : **Medland House and Berglen Court,  
Branch Road, Limehouse, London E14.**

**Applicants** : **1. Limehouse West Freehold Company  
Limited;  
2. Limehouse West Management  
Limited  
3. The leaseholders listed in Schedules 1  
annexed to the application as  
subsequently amended**

**Representative** : **Galina Ward (Counsel)**

**Respondents** : **The leaseholders listed in Schedules 2  
and added subsequently**

**Representative** : **Edward Blakeney (Counsel) appeared  
for Mr Williamson;  
Other leaseholders appeared in person**

**Type of application** : **Application for variation of a lease  
under Part IV of the Landlord and  
Tenant Act 1987**

**Tribunal members** : **Judge Robert Latham  
Marina Krisco FRICS  
Lucy West**

**Date and venue of  
determination** : **1, 2, 3, and 4 June 2021 at  
10 Alfred Place, London WC1E 7LR**

**Date of decision** : **6 July 2021**

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**DECISION**

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## **Covid-19 pandemic: description of hearing**

This has been a hybrid hearing. Three representatives of each party attended in person. Other parties joined by V: CVPREMOTE. It was not practical for all the parties to be present at the hearing. The parties provided a Bundle of Documents which totalled 1056 pages. Both Counsel provided Skeleton Arguments and a number of authorities to which reference is made in this decision.

### **Decision**

The Tribunal makes an Order pursuant to section 37 of the Landlord and Tenant Act 1987 varying all the residential leases in respect of Medland House and Berglen Court (the particulars of which are set out in its Order):

(i) The Plan at Appendix 1 is to replace Plan 3 in respect of all the residential leases in respect of Medland House.

(ii) The Plan at Appendix 2 is to replace Plan 3 in respect of all the residential leases in respect of Berglen Court.

(iii) The “Relevant Percentage” in each residential lease is to be replaced by the Part A and Part B proportions which are specified in Appendix 3.

(iv) The variations are to be backdated to 1 April 2012 for all residential leases, save for 81 Medland House. The variations are to be backdated to 1 April 2013 in respect of the lease for 81 Medland House.

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## **1. Introduction**

1. Medland House and Berglen Court are part of the Limehouse West Development which was completed between 1999 and 2001. Medland House and Berglen Court each have their own foundations and are built above underground carparks. The development looks out over the Limehouse Basin and there are water features within the estate.
2. Medland House was built first and consists of three blocks in two separate buildings. Blocks A1 and A2 are in the same building and share a common flat roof, but each have their own entrances, lift and staircase. A1 has 25 flats (Nos. 1-25). There are commercial premises, the Chandlery, on the ground floor. A2 has 20 flats (Nos. 26-45). A3, in a separate building has 38 flats (Nos.46-83). It was envisaged that Flat 46A would be used as a caretaker's flat which would contribute to the service charge. In practice, it has been used as a "porter's lodge" which has been used by estate staff. All residents have a carparking space in the underground car park below Medland House. The space demised to the tenant is not necessarily below their block. However, in each block, a lift and staircase descend into the carpark.
3. Berglen Court consists of six blocks in four separate buildings. B1 is a separate building with 34 flats (Nos. 84-117). B2 and B3 are in the same building and share a common flat roof. The same applies to B4 and B5. Again, each block has its own entrance, lift and staircase. B2 has 29 flats (Nos.118-146); B3 has 36 flats (Nos. 147-182); B4 has 28 flats (Nos. 183-210); and B5 has 31 flats (Nos.211-241). There are commercial premises on the ground floor of B5. B6 is a separate structure with 21 flats (Nos. 242-262). These flats are larger than the others on the estate and the construction incorporates glass which requires a cooling system. The Berglen Court car park is constructed beneath the whole of Berglen Court with a single entrance and exit gate beneath Block B2. There is a drive through (under the upper floors of Block B1) leading to the automated car park gate. The car park has two underground levels in part. The upper level car park is constructed under Blocks B2, B3, B4 and B6 and the lower level is constructed beneath Blocks B2, B3, B4, B5 and B6. The car parking spaces for the lessees of Block B1 are distributed beneath Blocks B2 to B6. There are six unsecured parking spaces beneath Block B1 retained for use by the freeholder.
4. All flats have been leased to lessees who hold terms of 200 years. Each is required to pay a service charge in respect of Part A "building costs" and Part B "estate costs". "The Building" is defined as "the building shown for identification only edged green on Plan 3 containing residential flats of which the Demised Premises forms part". Each lease also specifies the "Relevant Percentage" for the "Part A Proportion" and the "Part B Proportion". The percentage is computed on the basis of the floor area of each flat.
5. This system would work well were there to be consistency between the 262 leases, all of which are otherwise drafted using a similar template. All leases are consistent as to the "Part B estate costs". The problem relates to the

meaning of “the Building”. There could have been a number of equally rational schemes:

(i) In Medland House, “the Building” could refer to (a) A1, A2 and A3, each being treated as separate “Buildings”; (b) A1-A3 as single “Building”; or (c) A1-A2 (which are joined) and A3;

(ii) In Berglen Court there are a larger number of options: (a) B1, B2, B3, B4, B5, and B6, each being treated as separate “Buildings”; (b) B1 as a “Building” and B2–B6 being treated as a single “Building”; (c) B1, B2-B3, B4-B5, and B6; (d) B1, B2-B3, B4, B5, and B6; or (e) B1, B2, B3, B4-B5, and B6 as “Buildings”.

Different schemes could be devised for Medland House and Berglen Court.

6. A number of different schemes have been proposed, of which either the 3-Schedules or the 10-Schedules schemes afford the greatest consistency across the estate:

(i) “3-Schedules”: (a) one for the estate charges and (b) two for the block charges (Medland House (A1-A3) and Berglen Court (B1-6)).

(ii) “5-Schedules”: (a) one for the estate charges and (b) four for the block charges (A1, A2, A3, B1-B6).

(iii) “7-Schedules”: (a) one for the estate charges and (b) six for the block charges (A1-A2; A3, B1, B2-3, B4-B5 and B6). Under this scheme, the three buildings which combine two blocks, are treated as a “Building”.

(iv) “8-Schedules”: (a) one for the estate charges and (b) seven for the block charges (A1, A2, A3, B1, B2-3, B4-5, and B6).

(v) “10-Schedules”: (a) one for the estate charges and (b) nine for the block charges (A1, A2, A3, B1, B2, B3, B4, B5, and B6).

7. Unfortunately, it is impossible to discern from the leases what structure has been adopted (see Section 5 below). The problems exist throughout the estate, albeit that the irrationality/inconsistencies become greater in the later stages of the development. These problems have been aggravated by the inclusion of the two commercial units on the ground floor of A1 and B5 and the porter’s lodge in A3.

8. Over the past twenty years, the Estate Company has collected the service charges under a number of the different schemes:

(i) 3-Schedules scheme between 2000-2003. This scheme was operated by Bellway Homes, the developer.

(ii) 8-Schedules scheme between 2003-2005.

(iii) 7-Schedules scheme between 2005-2007. Apparently, this was operated on the basis of (a) one for the estate charges and (b) six for the block charges (A1, A2, A3, B1, B2, B3-B6). It is difficult to see the rationale for this method.

(iv) 10-Schedules scheme between 1 April 2007 and 31 March 2012.

(v) 3-Schedules scheme since 1 April 2012.

Each of these schemes is consistent with some of the plans and/or some of the service charge percentage provisions in some of the leases; but none comply with all, or even a majority, of the leases. No one has suggested a scheme that could be operated without varying a significant number of the leases. It would be impossible to devise such a scheme given the manifest inconsistencies within the leases. The percentages are consistent with either a 3-Schedules or a 10-Schedules Scheme; the plans suggest a 3-Schedules, 7-Schedules, 8-Schedules or 10-Schedules scheme.

9. Inevitably, the percentages upon which the service charges have been demanded have been adjusted depending upon whether the individual lease points to a 10-Schedules or a 3-Schedules Scheme. The percentage is smaller if “the Building” is defined as being more than the individual block.
10. The vast majority of the tenants have been willing to pay their service charges despite the fact that the charges may not have been collected in accordance with the terms of their individual leases. However, two tenants brought proceedings before this tribunal arguing that their service charges were not payable.

(i) The first application (LON/00BG/LSC/2013/0612) was brought by Mr David Evans, the tenant of 112 Berglen Court (B1). The application was issued on 20 August 2013. Mr Evans complained that his service charge liability demanded in 2012/3 had increased by 10% because of the decision of the Estate Company, LWML (see [12] below) to operate the 3-Schedule, rather than the 10-Schedules scheme. The Tribunal (Judge Mohabir) determined the application on the papers (at p.689-698). In his decision, dated 20 January 2014, the Judge accepted that the service charges were not payable as the service charges had not been assessed in accordance with the terms of his lease which defined B1 as “the Building”. Since this ruling, Mr Evans has agreed to pay 100% of the estate charge, but only 85% of the building charge.

(ii) The second application (LON/00BG/LSC/2014/0575) was brought by Mr Tim Williamson, the tenant of 81 Medland Court (A3). The application related to the service charges payable for the service charge year 2012/3. The Estate Company did not defend this application. The Tribunal (Judge Percival and Mel Cairns MCIEH) in their decision, dated 20 January 2015 (at p.699-704), again confirmed that that the service charges were not payable as they had not been computed according to the percentage specified in his lease. Since this ruling, Mr Williamson has taken what he described as “a position of principle”. He has not paid any service charges. He is willing to pay his service charge as soon as a lawful demand is made, computed in accordance with the terms of his lease. The Estate Company

has not issued such a demand, contending that they are unable to apportion part of the Medland House building charges to his block (A3).

11. This Tribunal is now asked to sort out the “mess” that has arisen and approve a rational framework whereby the building service charge can be collected. As Counsel observed, “a special place in hell should be reserved for the person/s who signed off these leases”. Because of the delays that have occurred, it is no longer possible to hold the devil’s draftsmen to account for their gross negligence before our temporal courts.

## **2. The Application**

12. On 28 October 2020, this application was issued to vary the 262 residential leases at Medland House and Berglen Court, Branch Road, Limehouse, London E14 (“the estate”). The application is brought under section 37 of the Landlord and Tenant Act 1987 (“the Act”) on the ground that more than 75% of the affected parties consent and no more than 10% object to the proposed variations. In the alternative, the variation is sought under section 35(2)(e) on the grounds that the leases fail to make satisfactory provision for the recovery of the expenditure by the Estate Company for the benefit of the Tenants.

13. The proposed variations are specified in two schedules which are annexed to the application:

- (i) Schedule 5 includes the proposed plans to replace Plan 3 in respect of all the residential leases in respect of Medland House (at p.319) and Plan 3 in respect of all the residential leases in respect of Berglen Court (at p.320).

- (ii) Schedule 6 (at p.321-332) specifies the proposed “Relevant Percentage” to be substituted in each residential lease for the Part A building costs and the Part B estate costs, proportions which are specified in Appendix 3.

The Applicants ask the Tribunal to order that these variations should take effect from 1 April 2012.

14. The application is brought by the following:

- (i) Limehouse West Freehold Company Limited (“LWFC”), the freeholder and the “Landlord” under the leases. On 5 November 2019 (registered at HMLR on 3 February 2020), LWFC acquired the freehold of the estate for £900,000 pursuant to the provisions of section 5 of the Act (the Right of First Refusal). LWFC is owned by 151 of the lessees.

- (ii) Limehouse West Management Limited (“LWML”), the “Estate Company” under the lease. Each of the residential lessees hold one share in LWML.

- (iii) A total of 129 of the lessees (49% of the total). 126 lessees are listed in Schedule 1 (at p.17). Mr Walsh (6 Medland House) subsequently applied to be removed as an applicant. On 5 March 2021 (at p.937), the following lessees were removed as respondents and joined as applicants: Gerald

McEvilly (196 Berglen Court), Edward and Gillian Stonehill (105 Berglen Court); Alun Irvine (51 Medland House) and John and Susan Miller (91 Berglen Court).

15. The respondents to the application are listed in Schedule 2:

(i) The 11 lessees who voted against the proposed lease variations (at p.26). Two of these (Mr and Mrs Stonehill and Mr and Mrs Miller) now support the application.

(ii) The 43 lessees who did not respond to the proposal (at p.27-30). The majority of these lessees do not reside in their flats.

16. The application also includes the following schedules:

(i) Schedule 3 Part 1 provides a summary of the 262 leases (at p.31-53). All the leases are for terms of 200 years, less three days, from 24 June 1998. The first lease in respect of 1 Medland House was granted on 7 July 1999. The final lease, in respect of 262 Berglen Court, was granted on 31 January 2002. This indicates the timescale over which the development was completed. Part 2 (at p.55) is the lease for 90 Bergen Court. A standard template has been used for all the leases.

(ii) Schedule 4 (at p.96-317) includes all the consents/objections in the ballot which was sent out on 19 December 2019. 209 lessees (79%) consented to the proposed variations, whilst 11 objected (4%). Two of these objectors now support the application (at p.413-416).

(iii) Schedule 7 (at p.333-338) specifies the interested parties upon whom the application has been served.

17. The Tribunal has given Directions on 28 October 2020 (p.930), 15 January 2021 (p.935) and 22 March 2021 (at p.938). Any lessee who opposed the application was required to file a statement explaining why they opposed the proposed variation. The following have done so:

(i) Mr Tim Williamson, 81 Medland House (A3). His case is at p. 585-595.

(ii) Mr Christopher Webber and Mrs Nicola Webber, 28 Medland House (A2). Their case is at p.548-579.

(iii) Mr Pascal Walsh, 6 Medland House (A1). His case is at p.546.

(iv) Mr Simon Holmes, 25 Medland House (A1). His case is at p.547.

(v) Mr Philip Saunders, 29 Medland House (A2). His case is at p.580-1.

(vi) Ms Maria Grazia Marino, 33 Medland House (A2). Her case is at p.582.

(vii) Mr Stuart Divall, 44 Medland House (A2). His case is at p.583-4.

(viii) Mr Simon & Mrs Angeliki Simoudi, 99 Berglen Court (B1). Their case is at p. 543-5.

(ix) Mr David Evans, 112 Berglen Court (B1). His case is at p. 529-535.

(x) Mr Andrew Bell, 115 Berglen Court (B1). His case is at p. 596.

(xi) Dr Wenxia Shen, 116 Berglen Court (B1). Her case is at p. 524-8.

18. On 22 March 2021, the Tribunal gave the Respondents permission to adduce expert evidence in response to that adduced by the Applicants from their surveyor, Mr Heneker. The Respondents are not seeking to rely on any such evidence.

### **3. The Hearing**

19. The Tribunal conducted a hybrid hearing. Judge Latham and Miss Krisko were present in person; Mrs West joined by video. Each party was permitted to have three people present; others joined by video.

20. Ms Galina Ward (Counsel) appeared in person for the Applicants instructed by Greenwoods GRM LLP. She provided a Skeleton Argument. She was accompanied by Ms Chi Collins (in person) and Ms Amy Castleman (by video) from her instructing solicitors. She adduced evidence from Mr William Heneker who gave evidence in person and from Mr Stephen Townsend, Ms Dianne Craker, Mr Mark Broadmore and Ms Ann Stephen, all of whom gave evidence by video.

21. Mr Edward Blakeney (Counsel) appeared in person for Mr Tim Williamson instructed by HPLP Solicitors. He provided a Skeleton Argument. He was accompanied (in person) by Mr Mark Eaton from his instructing solicitor. He adduced evidence from Mr Williamson (by video), Mr Williamson had been quarantining, but attended the last day of the hearing.

22. The parties were instructed to notify the Tribunal in advance if they intended to give evidence. None of the other respondents indicated that they wanted to give evidence. However, we have had regard to their written statements which they filed in response to this application (see Section 8 below). The Tribunal heard closing submissions (by video) from Dr Shen, Mr Evans and Mr Bell. We also permitted them to put questions to the witnesses.

23. Ms Ward called the following witnesses:

(i) Mr William Heneker FRICS. He is a director of Lambert Chartered Surveyors (“Lamberts”). On 1 February 2009, Lamberts were appointed to manage the estate. Mr Heneker has headed the team who have managed the estate. On the third day of the hearing, Mr Williamson produced a draft report which Mr Heneker prepared in February 2013 when LWML were first contemplating an application to this tribunal. The report had been posted on the LWML portal. Mr Heneker has provided two reports dated 10



December 2019 (at p.757-781) and 5 March 2021 (at p.871-882). He has also provided an additional report, dated 17 May 2021 (at p.921-928) in which he responds to 15 questions posed by the Respondents. The Tribunal were impressed by his evidence. Whilst not strictly an independent expert, he was willing to consider all the possible options whereby the service charges might be apportioned. The question which he considered was “what would be the most appropriate variation?” His priority was to provide a scheme that was workable. Whilst a 10-Schedules scheme could be operated, he recognised the practical difficulties in implementing such a scheme. There were various “building costs” incurred in respect of Medland House or Berglen Court which could not be attributed to any specific block. Such costs would need to be apportioned to specific blocks. This was a recipe for dissent. In the past, the managing agent had opted for the soft option of charging such costs as estate costs. However, he was also willing to consider what scheme most clearly reflected the intention of the parties, having regard to the wording and lease plans of the individual leases. The problem, as discussed in Section 5 below, is that there is no consistency between the leases.

(ii) Mr Stephen Townsend, 261 Berglen Court (B6). His statement is at p.484. In 2006, Mr Townsend and his wife bought their lease. He has worked in the IT industry for 30 years and has extensive experience of computerised systems for accounting and job costing for the building industry. He was a director of LWML between 21 March 2006 and August 2013. He is a shareholder in LWFC. He first spotted the anomalies in the leases. It was suggested that Mr Townsend favoured a 3-Schedules scheme because this is the most favourable for those lessees with leases in B6. We reject this suggestion. We are satisfied that at all times, the directors of both LWML and LWFC have acted in the best interest of all lessees on the estate, in accordance with their fiduciary duties towards their shareholders.

(iii) Ms Dianne Craker, 84 Berglen Court (B1). Her statements are at p.346 and p.426. She is an economist, former civil servant, and retired management consultant. She was an impressive witness. On 1 May 2015, Ms Craker and her husband acquired their lease. In May 2017, she became a director of LWML. She described how the Board holds management meetings every quarter. These are open to all lessees. She was instrumental in the decision of lessees to acquire the freehold pursuant to section 5 of the Landlord and Tenant Act 1987 (the Right of First Refusal). This purchase was completed in November 2019. She is the only lessee who is a director of both LWFC and LWML. Each company has three directors. All the directors carry out their responsibilities on a voluntary basis and are unpaid. Ms Craker’s flat is in B1. Some of the respondents suggest that she would benefit were the service charges to be apportioned under a 10-Schedules, rather than a 3-Schedules, scheme. She does not see it in this way. As a director of both companies, her first priority is to resolve the “mess” relating to the leases. It is not sustainable for some lessees to withhold service charges because these have not been demanded in accordance with their leases. Currently, this is only a small minority. The estate needs to be properly managed, maintained and service charges paid without the risk of insolvency for LWML which would be detrimental to all lessees.

(iv) Mark Broadmore, 75 Medland House (A3). His statement is at p.479. He is a Software Engineer and Product Manager. He acquired his flat in 2011. He is a shareholder in both LWML and LWFC. He has not been a director of either company. He lives in the same block as Mr Williamson. He first became aware of the issue at the General Meeting (“GM”) held on 22 May 2012. His service charges had increased by 15% when LWML switched from a 10-Schedules to the 3-Schedules scheme in April 2012. He downloaded the spreadsheet for the 2012 expenditure and concluded that the increase for A3 was justified as it had previously been undercharged. On 2 May 2015, he sent an e-mail (at p.483) to Mr Williamson explaining why he had reached this conclusion.

(v) Ms Ann Stephen (39 Medland House) (A2). Her statement is at p.476. She is a retired anaesthetist. She acquired her flat in 1999. She has joined as an applicant to this application. She sees herself as one of the “silent majority” of leaseholders who support the stance that LWML have taken. She attended the GM on 22 May 2012. She felt that the presentation was clear. Having studied the consultation pack which she received in December 2019, she lent her support to the proposal. Mr Blakeney suggested that she had merely signed a statement which had been drafted on her behalf by LWML. The Tribunal is satisfied that the statement accurately reflects her approach towards this application. The majority of the tenants accept that a mechanism must be found whereby LWML can collect 100% of the service charge expenditure and see no better scheme than that proposed in this application. Her position is supported by Ms Sarah Shankland, the lessee of 93 Berglen Court (B1). Her statement is at p.473. She was not called to give evidence.

24. Mr Blakeney called Mr Williamson (81 Medland House – A3). His statement is at p.601. He described himself as a semi-retired Company Director. His lease is dated 24 August 1999 (at p.637) and unambiguously defines A3 as “the Building” for the purposes of his service charge liability. He was one of the first lessees on the estate. He sees himself as a man of principle. He is willing to pay his service charges provided that these are demanded in accordance with the terms of his lease. He also sees no reason why his lease should be varied. If problems have arisen subsequently to the grant of his lease, that is for the landlord to resolve. His principles permit no flexibility. He has paid no service charges since 2012 and now owes some £50,000. On the third day of the hearing, the Tribunal urged LWML and Mr Williamson to agree a sum that he would be willing to pay. He accepts that the estate charge is due, but has made no contribution towards this. No agreement was reached.

#### **4. The Leases**

25. The Tribunal has been provided with the lease for 90 Berglen Court (at p.55-93), a flat in Block B1. It is agreed that all the leases use the same template. This includes the leases for the two commercial premises, over which this Tribunal has no jurisdiction. The copy of this lease has been provided by the Land Registry.

26. There are five parties to the lease:

(i) British Waterways Board (“the Landlord”). Since 3 February 2020, this interest has been held by LWFC, a company in which 151 of the lessees are shareholders.

(ii) Bellway Homes Limited (“the Developer”) which no longer has any interest in the estate;

(iii) Limehouse Basin Management Limited (“the Basin Company”). A “Basin Service Charge” is payable by tenants who have access to the services in the Limehouse basin. This is not relevant to the current application.

(iv) Limehouse West Management Limited - “the Estate Company” (“LWML”). Each residential lessee owns one share in the Estate Company. The Estate Company covenants with the Landlord and the Tenant to perform the obligations set out in the Sixth Schedules (the building and the estate services) and the Eighth Schedules (insurance). The Tenant covenants to pay the Estate Service Charge.

(v) Alan Lau (“the Tenant”). This interest is now held by Mr Daniel Theron.

27. There are a number of definitions:

(i) “The Demised Premises” are defined as: “the flat on the first floor of the Building known as Flat 90 Berglen Court (“the Flat”) together with the parking space numbered 90 (“the Parking Space”) both described in the First Schedules hereto and shown edged red on Plans 1 and 2”. Plan 1 (at p.90) accurately describes the Flat in Block B1. Plan 2 defines the parking space which is below Block B2.

(ii) “The Building means the building shown for identification only edged green on Plan 3 containing residential flats of which the Demised Premises forms (sic) part.” Plan 3 (at p.92) shows Blocks A1 and A2 edged in blue. This is an obvious error which was overlooked by both the Landlord, who executed the lease, and the Tenant.

(iii) “The Estate” means “the development at Limehouse Basin as the same is described in Part II of the First Schedule”. The Estate is accurately edged brown on Plan 3.

(iv) “The Relevant Percentage”: “Part A Proportion of 2.2649% plus the Part B Proportion of 0.3136%”. The Part A Proportion relates to the “building costs; whilst Part B relates to the “estate costs”. The percentages of the Part A Proportions for Block B1 add up to 100% suggesting that B1 should be treated as the Building under the 10-Schedules scheme.

28. Schedule 6 sets out the Part A and Part B Services. The Part A (Building Costs) include the following (emphasis added):

“(a) The main structure of the Building including (but not by way of limitation) the foundations, roofs and exterior of the load bearing walls;

(b) The drains pipes conduits and all devices for conveying rainwater from the Building;

(c) The passages, staircases, landings, lifts, entrances and the other parts of the Building (including the ceilings) enjoyed and used by the Tenant in common with all or any of the other tenants and occupiers of the Building;

(d) The gas and water pipes conduits ducts sewers drains and electric wires and cables (including television and radio wiring and aerials) and all other installations in under or upon the Building EXCLUDING such installations as are the property of a public utility supply company or of a person or company supplying any television aerial, satellite dish, rediffusion service internal telephone system door porter/video entry system or similar facility;

(e) The entrances, paths, and forecourts forming part of the Building (including the boundary wall, gates and fences) of the Building;

(f) The Parking Area".

29. Ms Ward pointed out that Berglen Court has common foundations. The carpark is constructed beneath B2-B6 and there is vehicular access through B1 at ground level (see [3] above). The Parking Space for Flat 90 is on the upper level under Block B2. In order to enter the carpark, it is necessary to leave B1, cross a short paved way and enter B2 via a secure entrance. These factors suggest that the parties had intended that "the Building" should be the whole of Berglen Court.

30. Mr Blakeney referred the Tribunal to other parts of the lease in support of his contention that the parties did not contemplate Berglen Court to be treated as "the Building": (i) The definition of "the Demised Premises" refers to "the flat on the first floor of the Building". This was inconsistent with "the Building" being a series of blocks. (ii) Clause 4(2) refers to alterations "to any other part of the Building". (iii) Paragraph 3(d) of the Second Schedule refers to the right to use the common entrance way, entrance hall landings, passages and staircases and lifts "in the Building". The Tenant would only require access to the facilities in the block in which the flat was located. (iv) He made the same point referring to Paragraph 3(c) of Part A of the Sixth Schedule (see above).

## **5. The "Mess"**

31. Mr Heneker has set out the inconsistencies in the leases in a Schedule at p.883-892. The schedule has evolved over time with extra detail being added as it has become available. No one has questioned its accuracy.

32. Block A1, Medland House: The lease plans for Flats 1 to 7, define A1 and A2 as "the Building"; whilst those for Flats 8 to 25, define A1 as "the Building". The percentages specified in the leases suggest that A1 is to be treated as a separate building under a 10-Schedules scheme. There is an error in the "estate percentage" specified for Flat 12.

33. The Chandlery, namely the commercial premises on the ground floor of A1, contributes 5.3324% towards the A1, A2 and A3 “building” service charges, the percentage being computed on the basis of a 3-Schedules scheme. The Chandlery is also required to contribute 1.7282% towards the estate service charge. The contribution made by the residential lessees towards the building costs in A1, A2 and A3 all total 100%. Thus, the contribution made by the Chandlery results in surplus of 5.3324% for each block.
34. On 25 February 2016 (at p.951-969), DJ Parfitt construed the Chandlery lease in an action brought by LWML against the lessees for arrears of service charges for the years 2007/8 to 2012/3. He noted that the standard template for the residential leases had been used for this commercial lease. He upheld the claim brought by LWML. This Tribunal has no jurisdiction in respect of this commercial lease. The effect of this judgment is that the building service charge collected for A1, A2 and A3 will amount to 105.3324%, whilst the estate service charge paid by all the lessees in both Medland House and Berglen Court will amount to 101.7282%. The Applicants recognise that the percentages in all the leases need to be reduced to ensure that only 100% is collected. This is reflected in the proposed scheme.
35. Block A2, Medland House: The lease plans define A2 as “the Building”. However, there is no lease plan for Flat 33. Overall, both the lease plans and the percentages suggest a 10-Schedules scheme.
36. Block A3, Medland House: Both the lease plans and the percentages suggest that A3 is “the Building”. However, there is no lease plan for Flats 47, 48, 60, 61, 66, 38, 72, 73 78 and 82. There is an error in the “building percentage” specified for Flats 48, 63, 72, and 77. The lease which is filed at the Land Registry for Flat 59, does not correspond with the copy retained by the freeholder. Overall, the leases would suggest a 10-Schedules scheme.
37. The percentages for A3 only add up if Flat 46A (the porter’s lodge) contributes 1.5197%. There is no one to pay this. The proposed scheme makes a modest increase in the building service charge paid by A1, A2 and A3 to make up for this shortfall.
38. Block B1, Berglen Court: The lease plans define B1 as “the Building”. However, there is no lease plan for Flats 91, 103 and 114. Flat 114 has a lease plan which defines “the Building” as B2. There is an error in the “estate percentage” for Flat 88. Overall, both the leases and the percentages suggest a 10-Schedules scheme.
39. Block B2, Berglen Court: There is no consistency in the lease plans: (a) six leases define B2 as “the Building”; (b) twenty define B2 and B3 as “the Building”; (c) three define A1-3 and B2+B3 as “the Building”. There is no consistency in the percentages specified for the “building percentage”. There are errors in both percentages specified for Flat 139. However, the percentages would suggest either a 3-Schedules or a 10-Schedules scheme, depending upon the percentage specified in the particular lease.
40. Block B3, Berglen Court: There is no consistency in the lease plans: (a) thirty three leases define B2 and B3 as “the Building”; (b) three define A1-3 and

B2+B3 as “the Building”. There is no consistency in the percentages specified for the “building percentage”, albeit that different leases indicate either a 3-Schedules or a 10-Schedules scheme.

41. Block B4, Berglen Court: There is no consistency in the lease plans: (a) twenty six leases define B4 and B5 as “the Building”; (b) one defines B4, and (c) one defines A1-3 and B2+B3 as “the Building”. 27 leases suggest a 3-Schedules scheme; one suggests a 10-Schedules scheme.
42. Block B5, Berglen Court: There is no consistency in the lease plans: (a) twenty six leases define B4 and B5 as “the Building”; and (b) one defines “the Building” as A1-3 & B2+B3. Four leases have no lease plans. There is no consistency between the percentages and the lease plans. If one relied solely on the percentages, these would suggest either a 3-Schedules or a 10-Schedules scheme. There is an error in the estate percentage for Flat 236.
43. The Tai Chi commercial premises are on the ground floor of B5. This is also based on the template for the residential leases. The lease plan and the percentages are consistent with a 3-Schedules scheme. This has been agreed with the lessee. This Tribunal has no jurisdiction over this lease.
44. Block B6, Berglen Court: Only four of the twenty one leases include a lease plan. These define “Building” as B6. However, there is no consistency between the lease plans and the percentages. The four leases with plans which define B6 as “the Building”, have a percentage which suggests a 3-Schedules scheme. The other percentages are either consistent with a 3-Schedules (eleven leases) or a 10-Schedules (six leases) scheme, but are not consistent with each other.

## **6. The Law**

45. The Applicants primarily rely on section 37 of the Act which provides for the variation of leases supported by the requisite majority of the parties. Mr Blakeney concedes that the requisite thresholds have been met. Section 37 provides (emphasis added):

“(1) Subject to the following provisions of this section, an application may be made to the appropriate tribunal in respect of two or more leases for an order varying each of those leases in such manner as is specified in the application.

(2) Those leases must be long leases of flats under which the landlord is the same person, but they need not be leases of flats which are in the same building, nor leases which are drafted in identical terms.

(3) The grounds on which an application may be made under this section are that the object to be achieved by the variation cannot be satisfactorily achieved unless all the leases are varied to the same effect.

(4) An application under this section in respect of any leases may be made by the landlord or any of the tenants under the leases.

- (5) Any such application shall only be made if—
- (a) in a case where the application is in respect of less than nine leases, all, or all but one, of the parties concerned consent to it; or
  - (b) in a case where the application is in respect of more than eight leases, it is not opposed for any reason by more than 10 per cent of the total number of the parties concerned and at least 75 per cent. of that number consent to it.
- (6) For the purposes of subsection (5)—
- (a) in the case of each lease in respect of which the application is made, the tenant under the lease shall constitute one of the parties concerned (so that in determining the total number of the parties concerned a person who is the tenant under a number of such leases shall be regarded as constituting a corresponding number of the parties concerned); and
  - (b) the landlord shall also constitute one of the parties concerned.”

46. Section 38 provides (in so far as is relevant):

(3) If, on an application under section 37, the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application, the tribunal may (subject to subsections (6) and (7)) make an order varying each of those leases in such manner as is specified in the order.

...

(6) A tribunal shall not make an order under this section effecting any variation of a lease if it appears to the tribunal —

(a) that the variation would be likely substantially to prejudice—

(i) any respondent to the application, or

(ii) any person who is not a party to the application,

and that an award under subsection (10) would not afford him adequate compensation, or

(b) that for any other reason it would not be reasonable in the circumstances for the variation to be effected.

.....

(10) Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person,

compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.

47. Both Counsel agreed that the relevant principles to be applied are set out in the decision of the Upper Tribunal (“UT”) (HHJ Gerald and AJ Trott FRICS) in *Shellpoint Trustees Ltd v Barnett* (“*Shellpoint*”) [2012] UKUT; [2013] L&TR 21. Having satisfied ourselves that the requisite thresholds have been met, there are five questions which we should ask:

(i) What is or are the object or objects to be achieved by the proposed variations? As a matter of statutory construction, there may be single or multiple objects. It is for the applicants, not the tribunal, to identify the “object” or purpose which may be of infinite variety depending upon the facts and circumstances relating to the leases, buildings and flats in question. Identifying the objective is a question of evidence to be adduced by the applicants: what are they trying to achieve by the variations, and why? What problems or deficiencies are there or have there been in running the blocks and enforcing the leases? What is the purpose of the variations? Further, it is not for the tribunal to determine whether they approve of the object, but it is for the tribunal to make a finding, based upon the evidence, of what the object is (at [70]–[71]).

(ii) Can the ‘object’ be satisfactorily achieved by the proposed variations(s) without varying all the leases to the same effect? There are two questions: does the proposed variation achieve the object, and if so, do all of the leases need to be varied to satisfactorily achieve that object? These are questions of evidence to be adduced by the applicants: how do the proposed variations achieve that object or objects? Can that only be satisfactorily achieved if all the leases are varied to the same effect? Again, it is for the applicants, not the tribunal, to select the solution or variation from what will frequently be one of a number of different options. If the majority of tenants are supportive, then it is not for the tribunal to second guess them although, the tribunal is at liberty to make suggestions. The jurisdiction is relatively narrow, and is not intended to allow rewriting of leases merely because that is the will of the majority and in many cases may well seem sensible (at [72]–[74]). The contractual intent of the original parties should not be altered without good reason or sound evidence ([78]).

(iii) Would the proposed variations be likely substantially to prejudice the respondents to the applications such that they cannot be adequately compensated by an award under section 38(10)? This Tribunal is satisfied that compensation is not a realistic option in this case. Indeed, no party suggested that it was. We must therefore focus on the issue of prejudice.

(iv) Is there any other reason it would not be reasonable in the circumstances for the variations to be effected? Any flaw in the consultation process may be a relevant factor because this may cast doubt on the reliability of the ballot in December 2019 and precisely to what the majority had thought they were agreeing (at [113]).



(v) In all the circumstances, should the Tribunal exercise its discretion and make an order varying the leases?

48. On the issue of prejudice, Ms Ward referred the Tribunal to the UT decision of *Frank Parkinson v Keeney Construction Limited* [2015 UKUT 607 (7c)] and the following page in the judgment of HHJ Huskinson at [19]:

“There is an advantage not only to a lessor but also to lessees that the leases under which flats are held should be well drafted and should, in particular, make satisfactory provisions with respect to the payment of service charge. Where the existing leases of the flats in a building do not make satisfactory provisions in this regard, then an amendment to secure that satisfactory provisions are made (such that each lessee pays a fair share of the relevant expenditure) is not an amendment which necessarily brings loss or disadvantage to a lessee even though that lessee may be paying a higher percentage of the service costs than previously.”

49. In the alternative, the Applicants rely on section 35 which provides (in so far as is relevant):

(1) Any party to a long lease of a flat may make an application to the appropriate tribunal for an order varying the lease in such manner as is specified in the application.

(2) The grounds on which any such application may be made are that the lease fails to make satisfactory provision with respect to one or more of the following matters, namely—

.....

(f) the computation of a service charge payable under the lease.

.....

(4) For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if—

(a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and

(b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and

(c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure.

50. In relation to section 35, section 38 of the Act further provides:

(1) If, on an application under section 35, the grounds on which the application was made are established to the satisfaction of the tribunal, the tribunal may (subject to subsections (6) and (7)) make an order varying the lease specified in the application in such manner as is specified in the order.

...

(4) The variation specified in an order under subsection (1) or (2) may be either the variation specified in the relevant application under section 35 or 36 or such other variation as the tribunal thinks fit.

(5) If the grounds referred to in subsection (2) or (3) (as the case may be) are established to the satisfaction of the tribunal with respect to some but not all of the leases specified in the application, the power to make an order under that subsection shall extend to those leases only.

51. Sub-sections 38(6) and (10) as set out above also apply to applications under section 35 of the Act.

52. Mr Blakeney referred the Tribunal to the UT decisions in *Triplerose Ltd v Stride* [2019] UKUT 99 (LC); [2020] HLR 9 (at [19], [39] and [40] and [40] and *Morgan v Fletcher* [2009] UKUT 186 (LC). We accept his submission that the Tribunal only has jurisdiction under section 35 if satisfied that the statutory criteria are satisfied. A lease does not fail to make satisfactory provision simply because it could have been more explicitly drafted.

53. The Applicants ask the Tribunal to backdate any variation to 1 April 2012. Both parties accept that this Tribunal has jurisdiction to do so and have referred us to *Brickfield Properties Limited v Botten* [2013] UKUT 133 (LC). Counsel agree that this jurisdiction applies equally to variations under section 37 and 35. We have had regard to the guidance given by HHJ Huskinson at [26] – [34] and this passage at [26]:

“Certain of the variations contemplated under section 35(2) are variations which it would not be helpful or effective to back date – the purpose is to deal with the future, such as to make satisfactory provision regarding the repair or maintenance of certain property. However as regards paragraph (f) of section 35(2), if a landlord is entitled from a certain date to recover less than (or perhaps more than) 100% of the expenses of providing the services etc, then this inappropriate level of recovery is the defect. The purpose of the statute is to cure the defect. There is nothing in the statute to indicate an intention to leave the defect in place for an indeterminate period until the date of an application to the LVT or perhaps until the date of the decision of the LVT – i.e. there is nothing in the statute indicating an intention only to cure the defect prospectively from one of these later dates rather than to deal with the defect from the time that it arises.”

54. Both Counsel referred the Tribunal to the passage at [34] where the Judge indicates that backdating would be appropriate where lessees would “otherwise enjoy an unintended consequence.”
55. The Applicants have chosen the date of 1 April 2012, as this is the date from which LWML have been collecting service charges under the 3-Schedules scheme. Most lessees have been paying the services charges demanded, albeit that this may not correspond with the terms of their leases. The exception is Mr Williamson. He has not paid any service charges since 2012, and has the decision in LON/00BG/LSC/2013/06122 in his favour. Mr Blakeney has referred us to *Virgin Atlantic Airways Ltd v Zodiac Seats UK Ltd* [2013] UKSC 46; [2014] AC 160 and the principles of res judicata and issue estoppel. These principles have been established to support the good administration of justice in the interests of the public and the parties by preventing abusive and duplicative litigation. We consider the relevance of these principles to the current application hereafter.

## **7. The Background**

56. Medland House and Berglen Court were completed between 1999 and 2001. Bellway Homes Limited (“Bellway”), the developer, appointed Equity as managing agents. Three employees of Bellway served as directors of LWML. Bellway collected service charges under a 3-Schedules scheme. Bellway kept three schedules based on the square footage of each flat. No lessee objected to service charges being collected on this basis.
57. On 23 September 2003, three lessees were appointed as directors of LWML and took over responsibility from Bellway. Thereafter, the lessees were responsible for managing the estate. LWML decided to collect the service charges under an 8-Schedules Scheme. On 4 December 2003, LWML appointed Rendall & Rittner to manage the estate. In 2005, LWML decided to collect the service charges under a 7-Schedules scheme. In April 2007, LWML reverted to a 10-Schedule Scheme.
58. On 21 March 2006, Mr Townsend became a director of LWML. He is unable to comment on why LWML chose to adopt each of these configurations. In around mid-2008, he learnt from Rendall & Rittner that there were inconsistencies in the leases. He had initially understood that there were minor anomalies. However, the more research that he did, the greater the anomalies that became apparent. At this time, he had not grappled with how the scheme worked in practice and saw no reason to depart from the 10-Schedules scheme.
59. LWML’s immediate problem was that on 1 April 2007, Hurford Salvi Carr (“HSC”) the commercial tenants of the Chandlery, had stopped paying their service charges. The percentages in their lease reflected a 3-Schedule scheme. This informed Mr Townsend’s view that LWML should revert to a 3-Schedule Scheme. Mr Townsend had analysed the manner in which the 10-Schedule scheme had been operated and described how, when he had tested the figures, they “crumbled”. The HSC service charge dispute was not resolved until 25 February 2016, when DJ Parfitt vindicated the stance taken

by Mr Townsend. It should be noted that, given the extent of the “mess” which LWML had uncovered, the directors had been far from confident of success. They took the view that this litigation should be resolved, before the current application was made to this tribunal.

60. On 1 February 2009, LWML appointed Lamberts as managing agents in place of Rendall & Rittner. The LWML Board sought Mr Heneker’s advice on how they should proceed. His preliminary report, dated 18 December 2009 (amended on 12 March 2010) is at p.706-746. At Appendix 1 (p.717), there is a detailed analysis said to be based on an examination of 263 of 265 of the leases. Mr Heneker had particular regard to the lease plans and the percentages specified in the leases. He notes that the lease plans were probably prepared and coloured in by junior staff not familiar with the development and with no proper understanding of the consequences of the errors that have obviously crept in. He carefully considers the allocation between “building costs” and “estate costs” in Schedule 6 of the leases.

61. Mr Heneker concludes (at p.712):

“There are several different ways in which the Part A (Building) Costs have been apportioned in the leases, there clearly having been absolutely no consistency whatsoever in the original lease drafting process. Some leases state that the apportionment of Part A (Building) Costs should be on an individual block basis (e.g. Blocks A1, A2, A3 & B1), whilst others dictate (or more accurately imply) a combined block basis (e.g. Blocks B2, B3, B4, B5 & B6). Due to the variations without any pattern, there can be no definitive answer to the question of what was originally intended.”

The Tribunal endorses this assessment.

62. He notes however (at p.714):

“It would seem that there is a strong argument that the Part A (Building) costs incurred in running Medland House should be split on a “sub-block” basis, whereas for Berglen Court, it seems that the expenses ought to be split on a “global block” basis.

Again, this corresponds with the Tribunal’s assessment of the leases.

63. His advice (at p.713) is:

“If asked to advise on the apportionment of service charges from scratch (i.e. ignoring the existence of the existing leases), there would be no doubt to my advice; I would recommend three schedules – Estate, Medland House and Berglen Court, with each schedule adding up to 100%. If possible, this is the way I would recommend costs be allocated today, although it is accepted that legal advice would be required in order to substantiate such a change. When examining the percentages, there is a strong argument to suggest that this was in fact the intention for Berglen Court. The same clearly cannot be said for Medland House and this is where it really is six to one and half a dozen to the other. In reality,

only a judicial body can preside over the matter – in this case, the Leasehold Valuation Tribunal to whom an application could be made for clarification.

“The rationale for this “global block” method of apportionment is quite simple and straightforward: -

1. It reduces the scope for error in mistakenly allocating expenses to the wrong sub-block. Having to decide to which of the 10 current schedule or schedules a particular invoice should be charged is a complicated task and a recipe for potential errors – many of which may never get spotted.

2. It considerably reduces the complication in the current method of apportionment. For example, at the most recent AGM there was an argument over the way in which the window cleaning should be apportioned – some residents were quite adamant that the method should be that the number of windows in a block be divided by the total windows cleaned and split on a percentage basis. This is fine in theory, but very cumbersome and complicated to manage in reality. One only has to look at the huge exercise of reapportionment that was required for the 2008/9 service charge expenditure to see that a more simplistic method would be beneficial.

3. Expenses that are currently being charged to lessees as Part B (Estate) Costs, due to the fact that the apportionment is not really possible on a per block basis, could be more accurately allocated. For example, the cost of repairs to the lighting in one of the underground car parks currently has to form part of the Estate costs. On a Medland House/Berglen Court basis of apportionment, repairs to the Medland House car park would fall to the Medland House Part “A” (Block) Costs schedule and repairs to the Berglen Court car park would fall to the Berglen Court Part “A” (Block) Costs schedule.”

64. In a letter to Mr Glover (a LWML director), dated 12 February 2010 (again amended on 12 March 2010) (at p.731-46), Mr Heneker considers four options:

(i) 10-Schedules (described as the “block” method”).

(ii) 3- Schedules (described as the “building method”).

(iii) 1-Schedule whereby all building and estate costs would be allocated between the 262 flats in Medland House and Berglen Court on a square footage basis. This is clearly inconsistent with the terms of the leases which contemplate that there should be separate “building” and “estate” charges. No one has suggested such an apportionment.

(iv) Various “Proximity” methods refined to reflect the leases for the individual blocks. Various alternatives are considered. There are two methods for Medland House: (i) A1, A2 and A3; or (ii) A1/A2 and A3. One method is suggested for Berglen Court, namely B1, B2/B3, B4/B5 and B6.

65. Mr Heneker considers the financial impact of each option based on the 2009/10 budget. Mr Williamson relies on this to argue that he would pay 40% more under the 3-Schedules scheme (see p.751). He suggests that the Proximity scheme leads to being the fairer as there are less winners and losers.

66. Mr Heneker considers the pros and cons of each method. He favours the 3-Schedules method and identifies the following advantages:

“• It allows a sensible scale allocation of costs between buildings, without being overcomplicated.

• It potentially allows for the future enfranchisement of each standalone building under the Leasehold Reform, Housing & Urban Development Act 1993 (i.e. the purchase of the freehold of either or both of the buildings), without the need for further subdivision at a later date.

• There is little room for error in the apportionment of expenses. Such expenses are either “Medland House” or “Berglen Court” and it would be easy to treat each building as a separate entity for this purpose, given the more realistic scale and ease of management.

• There are small potential cost savings in management time and accountancy charges as a result of a more simplified service charge structure.

• In grouping blocks together, there is much less likely to be a cash flow problem on the expenditure side as costs are spread across a larger number of flats.

• In the same vein, on the income side, with several small blocks each having a small number of contributors, just one or two late payers can easily lead to significant cash flow problems. This does not arise to nearly the same degree where blocks are combined.”

67. Those who oppose this application argue for the “building costs” to be apportioned to their block, whether A1, A2, A3 or B1. This objective could be achieved either through the 10-Schedules method or some form of proximity scheme. Mr Heneker (at p.734) identifies the major advantage and disadvantages of such a model based on the individual block:

(i) The main advantage: “If expenses are correctly allocated, it gives the most accurate way of recharging costs to lessees as each repair or service can be allocated directly to the service receiver.”

(ii) The disadvantages: (i) “This is the most complicated method of apportionment, requiring careful allocation of the invoice to a specific schedule and cost centre. It requires additional administration by all parties – the porter, suppliers, auditors, etc. (ii) It makes the apportionment of some “Building” costs impossible to the degree required (e.g. car park cleaning – where the car parks span the entire building – or an electrician’s invoice covering the replacement of bulbs

in more than one block). Consequently, there would inevitably be an ever expanding Estate charge, arguably defeating the object. (iii) It introduces a far greater likelihood of errors in the apportionment of costs, with the property manager having nine different schedules to choose from (plus, of course, the tenth “Estate” schedule)”.

Mr Heneker notes that this does not address the problem of the shortfall from the porter’s lodge (Flat 46A) which should be recovered as an estate charge. The Tribunal further recognises the practical problems of implementing such a scheme which could lead to further applications by lessees to this tribunal complaining about the manner in which charges which have been allocated to their block.

68. In the light of these reports, Mr Townsend compiled a spreadsheet which identified the inconsistencies in the 262 leases. This has evolved into the Schedule which Mr Heneker has provided to the Tribunal (at p.883-892) which we summarise in Section 5 of our decision. On 29 September 2011, the LWML Board decided to reinstate the 3-Schedule scheme with effect from 1 April 2012. The Board further decided to defer any application to this tribunal until the Chandlery litigation had been resolved. Over the past nine years, the vast majority of the lessees have paid the service charges demanded in accordance with the 3-Schedule scheme.

69. On 22 May 2012, LWML convened a General Meeting to which all lessees were invited. Some 40 attended, which was the highest attendance that there had been for such a meeting. The meeting lasted for two hours. Mr Heneker was present to answer any questions. Mr Townsend made a PowerPoint presentation (at p.490-522). This was subsequently placed on the LWML website to which all lessees had access. In conclusion, Mr Townsend noted:

“At any time in the past, a leaseholder could have refused to pay because their demands were calculated using a percentage that differs from that in their lease. This risk has been present since day one of the company.”

70. Mr Williamson was unable to attend this meeting. Despite this, Mr Blakeney criticised Mr Townsend for making a misleading presentation which did not address the shortcomings of what was proposed. He criticised the Board for implementing the 3-Schedule scheme despite (i) this not being in accordance with Mr Williamson’s lease; (ii) the knowledge that tenants might not pay; and (iii) the need to seek a variation from this Tribunal.

71. This Tribunal rejects the criticisms of the conduct of this meeting. The spreadsheet of lease inconsistencies has evolved as further information has become available. The Tribunal is satisfied that Mr Heneker had considered all the options with an open mind. Mr Townsend’s presentation was comprehensive. Mr Williamson has been blind to the dilemma faced by LWML, namely that there is no scheme for the collection of service charges which would comply with the terms of all the leases. Even Mr Williamson’s lease resulted in there being a recovery of 105.3324% of the building service charge for his block.

72. There has been considerable delay in LWML issuing this application. During the hearing, Mr Williamson produced a draft report that Mr Heneker had prepared in August 2013, in anticipation of such an application. Mr Heneker advocates a 3-Schedule Scheme. Mr Blakeney relied on it in support of his suggestion that the 105.3324% recovery of building charges for Block A3 could be remedied by reducing the percentage paid by other lessees. This was a possibility. However, it did not resolve the problem that there is no consistency in the leases for the 262 residential flats. The leases do not provide a workable, coherent and reasonable system whereby LWML can recover 100% of its service charge expenditure.
73. There have been a number of explanations for the delays that have occurred. LWML is run by unpaid volunteers. Mr Townsend resigned from the Board in August 2013. In May 2017, Ms Craker was appointed to the Board and assumed responsibility for the current application. There has been a succession of litigation, Mr Evans' and Mr Williamson' applications to this tribunal being determined respectively on 20 January 2014 and 20 January 2015. On 25 February 2016, DJ Parfitt determined the Chandlery litigation. The Grenfell Fire Tragedy on 14 June 2017 raised pressing issues that LWML needed to address. There were further delays whilst 151 lessees acquired the freehold using LWFC as their nominee company. On 15 May 2019, they had served their Claim Notice to exercise their Right of First Refusal; on 3 February 2020, this acquisition was registered. Strictly, only the "landlord" can make an application under section 37.
74. Mr Blakeney criticised Ms Ward's reference to the LWML Board members being volunteers as being "emotive". We reject this criticism. We commend Mr Townsend and Ms Craker for the time that they have spent in seeking to ensure the effective management of the estate. We are satisfied that at all times, they have sought to act in the best interests of all the lessees.
75. On 19 December 2019, Mr Heneker, on behalf of LWML, served the consultation letter on the lessees which has led to this application. The letter is at p.851-6. This enclosed: (i) a Report from Mr Heneker (at 757-850); (ii) a Schedule of the Service Charge Percentages (at p.857-865); (iii) a Consent Form (at p.866); and (iv) a Question and Answer Sheet (at p.867-870). The letter canvassed two options, namely the 3-Schedules and the 10-Schedules. The 3-Schedule scheme was considered to be the better solution, but LWML were willing to consider any representations before reaching a final decision. The lessees were asked to consent to the variation specified in paragraph 19 of the letter which reflects the variation sought in this application. LWML stated that they would be seeking an order which takes effect from 1 April 2012. This would not affect those lessees who had paid their service charges. However, it would allow LWML to pursue those who had not paid and who owed £44,000. This related to just two lessees (see p.868), apparently Mr Williamson and Mr Evans.
76. At [4.12] of his report (at p.772), Mr Heneker discusses the inconsistencies in the leases:



“In 127 of the 179 leases at Berglen Court, the Part A percentage reflects the percentage floor area of the building as a whole. The remaining 52 leases in Berglen Court, and the 83 leases in Medland House, use Part A percentages that reflect the floor area of the block within which the flat is located. It is not therefore possible to say that the leases themselves point in one direction or the other, particularly given the completely inconsistent approach to defining the Building within the leases.”

77. At [4.16]–[4.26], Mr Heneker addresses the impact on individual lessees of the alternatives of a 10-Schedule and a 3-Schedule Scheme considering five different projects, namely (i) replacement of light fittings, (ii) refurbishment of lift; (iii) re-carpeting of the common parts, (iv) redecorating the common parts; and (v) replacement of the mailbox boxes for each flat located in the common parts. The results of this exercise are set out at Appendix 3 of his report (at p.810-843). This suggested “winners” and “losers” and that Block A3 would be £1,504 worse off under a 3-Schedule scheme, whilst Mr Williamson would be £,1,319.56 worse off (see p.846). Mr Heneker now prefers to refer to “swings and roundabouts”. The impact will depend upon the nature of the works being executed at any time.
78. The lessees were asked to respond to the consultation by 19 February 2020. On 15 January 2020 (at p.389), Lamberts chased up responses. 208 lessees (79%) have consented to the proposed variation. Their responses are at p.96-304. 11 lessees (4%) objected. Their objections are at p.305-316. 43 lessees did not respond.
79. The relevant date for determining whether the requisite thresholds have been met is the date of the application. Ms Craker states that the current tally is that 209 lessees (80%) support the application and 14 (5%) oppose it. The additional consent forms are at p.89-93.
80. On 28 October 2020, the Applicants issued their application to this tribunal. 12 lessees have filed statements responding to the application. These are considered at Section 8 below. On 5 March 2021, Mr Heneker filed a Supplementary Report (at p.871-915). He has provided his final iteration of the “Schedule of Leases and Inconsistencies” (at p.883-892) which are summarised in Section 5 above. He has also responded to the points raised by the lessees who oppose the application (at p.903-914). One criticism that has been raised is his failure to consider the “Proximity” options. He therefore provided a further copy of his 2009/10 Appraisal which had addressed this option.
81. On 22 March 2021, Judge Powell gave further Directions permitting the Respondents to put questions. Mr Williamson has posed 15 questions which Mr Heneker answers at p.921-928. The substance of the points raised are that the leases and percentages for Block A3 suggest that the block should be treated as “the Building”. The modest shortfall caused by Flat 46A (the porter’s flat) and the surplus caused by the contribution from the Chandlery (the commercial premises) could be remedied without varying his lease. Whilst this is possible, the object of this application is to implement a

coherent system across the estate. In order to achieve this, all the leases need to be varied to the same effect.

82. A further issue has arisen relating to the need for fire safety measures in the aftermath of the Grenfell fire tragedy. Mr Heneker addresses this in his Supplementary Report (at p.879). Prompt action was required as a number of lessees found themselves unable to sell or remortgage their flats. LWML initially obtained a report from Lawrence Webster Forrest. On 24 October 2019 (at p.418), Lamberts updated the tenants on the findings. LWML subsequently obtained a report from Vemco who recommended a reduced package of works. On 24 September 2020, Ms Craker organised a zoom meeting which was attended by some 100 lessees and lasted 3.5 hours. On 28 September 2020, Lamberts served a Stage 1 Notice of Intention. LWML subsequently obtained a report from Quality Fire Safety Management, who recommended a modified package of works. There was a saving of some £278k for Blocks A1, A2 and A3, but additional costs of £160k for Block A3. There is a saving of some £590k in respect of the works required to Berglen Court. On 22 October 2020, Lamberts served a supplementary Stage 1 Notice of Intention. LWML have made an application to the government's Building Safety Fund and are confident of a successful outcome. The Tribunal is satisfied that the cost of these works is not relevant to the application which we are required to determine.

## **8. Objections to the Proposed Scheme**

83. The Respondents have raised the following objections to the proposed scheme:

(i) Mr Williamson, 81 Medland House (A3). His case is at p. 585-595. His lease plan defines "the Building" as A3. His percentages are consistent with this. He argues that the proposed variations are not required to achieve the objective sought by the landlord. The consultation was neither fair nor balanced. No variation is required to his lease as 100% collection of the service charge is achieved through A3 being treated as "the Building" as defined in his lease. He suggests that his service charges will increase by some 40% under the proposed variation, the effect of which is to treat A1, A2 and A3 as "the Building". He would be prejudiced and could not be properly compensated. Whilst he recognises that the service charge contribution made by the Chandlery would result in more than 100% of the service charge expenses being recovered, he suggests that a pro rata reduction could be made to all the sums demanded, without any formal variation to the leases. He opposes any variation being backdated. This would be an abuse given the Tribunal decision in his favour. In his Skeleton Argument, Mr Blakeney concludes that the Tribunal should dismiss the application "at least in so far as Mr Williamson's lease is concerned". Alternatively, any variation should only take effect from the date of the Tribunal's decision. Mr Williamson offers no solution as to how LWML should address the "mess" that exists. In his closing submissions, Mr Blakeney suggested an 8-Schedules scheme, "the Buildings" being A1, A2, A3, B1, B2/B3, B4/5 and B6.

(ii) Mr and Mrs Webber, 28 Medland House (A2). Their case is at p.548-579. They do not currently reside at their flat. Their lease plan defines “the Building” as A2. Their percentages are consistent with this. They suggest that only minimal variations are required to the flats at Medland House. Neither the lease plans nor the percentages in any of the flats for A1, A2 and A3 suggest that Medland House should be treated as “the Building”. Where necessary, some lease plans need to be varied so that “the Building” is defined respectively as A1, A2 or A3. A modest adjustment will need to be made in respect of the service charge contribution made by the commercial premises and the porter’s lodge. They recognise that more significant changes may be required in respect of Berglen Court. However, this would not justify the changes proposed for Medland House. Concern is also raised about fire safety remedial works and the impact that this will have on different blocks. Ms Craker notes (at p.348) that Mr and Mrs Webber acquired their flat in 2016. They were notified of the three sets of proceedings relating to the service charge apportionment and that the service charges were being collected under a 3-Schedules scheme (see p.378-386). LWML was planning to make an application to the tribunal to resolve the issue.

(iii) Mr Walsh, 6 Medland House (A1). His case is at p.546. Mr Walsh had supported the application; he now opposes it. The lease plan defines the “Building” as A1 and A2. However, his percentage indicates that he should only contribute to the building costs in respect of A1. He now supports the position adopted by Mr and Mrs Webber (“the Webber formulation”).

(iv) Mr Holmes, 25 Medland House (A1). His case is at p.547. His lease plan defines “the Building” as A1. His percentages are consistent with this. He supports the Webber formulation.

(v) Mr Saunders, 29 Medland House (A2). His case is at p.580-1. His case is at p.547. His lease plan defines “the Building” as A1. His percentages are consistent with this. He supports the Webber formulation. He also raises procedural points about the relationship between LWFC and LWML and complains that shareholders were not consulted on whether LWML should be a party to this application.

(vi) Ms Marino, 33 Medland House (A2). Her case is at p.582. There is no lease plan annexed to her lease. Her percentage is consistent with A1 being “the Building”. She supports the Webber formulation.

(vii) Mr Divall, 44 Medland House (A2). His case is at p.583-4. His lease plan defines “the Building” as A1. His percentages are consistent with this. He supports the Webber formulation.

(viii) Mr and Mrs Simoudi, 99 Berglen Court (B1). Their case is at p. 543-5. Their lease plan defines “the Building” as B1. Their percentages are consistent with this. They argue for the 7-Schedules scheme which combines A2–A3, B2-B3 and B4-B5 which are the three buildings which include two blocks. B1 would continue to be treated as “the Building”.

(ix) Mr Evans, 112 Berglen Court (B1). His case is at p. 529-535. His lease plan defines “the Building” as B1. His percentages are consistent with this. He argues for the 8-Schedules scheme which has been described as the “proximity” method as this is the scheme that most closely reflects the original intention of the parties. He suggests that he would pay considerably more under the proposed 3-Schedules scheme. In 2011/12, his service charge was computed on both the 3-Schedules scheme (at p.534) and the 10-Schedules scheme (at p.535). The building service charge was 28.3% higher when computed under a 3-Schedules scheme. He also complains about the delays that have occurred. Since he brought his application before this tribunal, he has agreed to pay 100% of the estate charge and 85% of the building charge.

(x) Mr Bell, 115 Berglen Court (B1). His case is at p. 596. His lease plan defines “the Building” as B1. His percentages are consistent with this. He states that he had initially supported the proposed variation. However, he now feels that he was misled and opposes the application.

(xi) Dr Wenxia Shen, 116 Berglen Court (B1). Her case is at p. 524-8. Her lease plan defines “the Building” as B1. Her percentages are consistent with this. She complains that the proposed 3-Schedules scheme will unduly favour B6. She states that two directors of LWML live in this block. This is not correct. She argues that B1 should be treated as “the Building”. She disputes the result of the ballot. She states that it is unusual for the application to be made by Lamberts, the managing agent. She criticises the manner in which the consultation was conducted.

## **9. The Tribunal’s Determination**

### **Should the Tribunal vary the leases under Section 37?**

84. Both Counsel accepted the thresholds specified in section 37(5)(b) have been met. The application is not opposed for any reason by more than 10 per cent of the total number of the parties concerned and at least 75 per cent of that number consent to it. The relevant time is the date of the application. 209 lessees (79%) consented to the proposed variations, whilst 11 objected (4%). It is significant that 129 lessees (49%) have joined the application as Applicants.

85. Given that the thresholds are met, it is therefore necessary for the Tribunal to address the five questions posed in *Shellpoint*.

#### **(i) What is the object to be achieved by the proposed variation?**

86. In her Skeleton Argument, Ms Ward argued that the “the fundamental purpose of the application is to establish a workable, coherent and reasonable system whereby LWML is entitled to recover 100% of its expenditure on providing the services it is required to provide under Schedules 6 to the Leases.” In her closing submission, she highlighted the evidence of Ms Craker and the need to “sort out the mess”. She also adopted the formulation suggested by the tribunal, namely the need to devise a

rational framework whereby LWML can collect service charges from the lessees for the estate.

87. Mr Blakeney sought to argue for a more limited objective, namely “an enforceable scheme for 100% recovery of service charges”. His reason for doing so was to be able to contend that this objective could be achieved without varying Mr Williamson’s lease. Mr Blakeney took this formulation from the Applicants’ Position Statement, date 26 February 2021 (at p.342). However, he omitted the additional passage which added that this objective could not be achieved “unless all of the leases are varied to the same effect, i.e. to specify the “Building” on the lease plan, and specify an appropriate Part A percentage reflecting the relative floor area of the flat within the Building, so that the percentages for each Building add up to 100%.”
88. The Tribunal accepts Ms Ward’s argument that it is neither for the Respondents nor the Tribunal to determine or approve of the object. Our role is rather to make a finding, based on the evidence, as to what the objective is. We are satisfied that the evidence supports the formulation set out in Ms Ward’s Skeleton Argument. In her closing submissions, she merely sought to reformulate this in different ways. Any “workable, coherent and reasonable system” would be a rational one.

(ii) Can the ‘object’ be satisfactorily achieved by the proposed variations without varying all the leases to the same effect?

89. Section 37(3) does not require that all the residential leases need to be varied to achieve the desired object, but rather all the leases need to be varied to the same effect. In the event, the Applicants’ proposal requires all the leases to be varied to provide a workable, coherent and reasonable system for the collection of service charges:

(i) A new “Plan 3” is to be substituted in all leases. This will be a substantive change for all leases. In Clause 1 of the leases, “the Building” is defined as “the building shown for identification only edged green on Plan 3 containing residential flats of which the Demised Building forms part”. There are two proposed versions of Plan 3: (i) one for all the residential flats at Medland House (namely A1, - A3); and (ii) one for all the residential flats at Berglen Court (namely B1 – B6). The leases for 34 flats currently have no Plan 3 lease plan attached, so there is a complete lacuna. Even for the 129 flats, where the percentage is based on a “3-Schedule” scheme, the current Plan 3 lease plan does not reflect this.

(iii) In all leases, there will be a new percentage for “the Relevant Percentage” for both the “Part A Proportion” (the building charge) and the “Part B Proportion” (the estate charges). Both charges are apportioned according to the size of the flats. For the flats where charges are already apportioned under “3-Schedule” scheme, the changes are modest. For example, for 118 Berglen House the building charge will change from 0.3367% to 0.336740% (reflecting the greater precision of the calculation) and the estate charge from 0.2276% to 0.228115%, reflecting the adjustment in respect of the porter’s lodge. For other flats, for example Mr Williamson’s

flat at 81 Medland House, the changes are more significant. The building charge will change from 2.9223% to 1.42554% and the estate charge from 0.4586% to 0.459732%. His building charge had been computed under a “10-Schedule” scheme. Mr Williamson will pay a smaller percentage in respect of the costs of A1, A2 and A3, rather than a larger percentage in respect of the costs of A3.

90. The Applicants’ proposed scheme can only be achieved by varying the “Plan 3” lease plans and the “Relevant Percentages” in all the leases. A different scheme could be devised where it might not be necessary to vary all the leases. However, this Tribunal is primarily concerned with the 3-Schedules scheme proposed by LWFC and LWML and which has the support of a majority of the lessees.

91. Many of the Respondents have argued for a different scheme which would have required more modest variations to their leases. Under section 37, the Tribunal must focus on the variation proposed by the landlord. Their concerns are rather relevant to the issue of “substantial prejudice”.

(iii) Substantial Prejudice

92. The Tribunal recognises that this is the most significant issue that we are required to consider. Mr Williamson, Mr Evans and a number of the Respondents argue that they will be required to pay significantly more under the proposed scheme and that they will be significantly prejudiced. No party has suggested that compensation would be appropriate, were such prejudice to be established. Indeed, it is difficult to see how such compensation could be computed or who would bear the cost.

93. In approaching the issue of prejudice, three points should be emphasised:

(i) All the lessees have a common interest in there being a workable, coherent and reasonable system whereby LWML recovers 100% of its expenditure on providing the services that it is required to provide.

(ii) The current situation is not tenable. The majority of the lessees are paying their service charges despite the fact that these have not been computed in accordance with the terms of their leases. The estate would become unmanageable, were any more tenants to adopt the stance adopted by Mr Evans and Mr Williamson. It is perhaps surprising that more have not done so. Whilst LWML has agreed a compromise with Mr Evans, no such agreement has been reached with Mr Williamson. Even the compromise reached with Mr Evans is only a temporary expedient. All lessees must pay 100% of the service charges payable in respect of the flats which they occupy.

(iii) All the parties are agreed that both the building and the estate charges should be apportioned according to the size of the flats. This was the basis upon which the percentages in the leases were computed. This is replicated in the proposed scheme. An issue has been raised about Block B6, one which only affects the lessees of Berglen Court. The flats in B6 are larger and more valuable. The design is somewhat different, albeit that we agree that the cost of the cooling system is insignificant. The lessees of flats in B6 pay a larger

service charge reflecting the greater size of their flats. This is the method of apportionment which is reflected in all the leases.

94. No lessee has suggested that they would be substantially prejudiced by the proposed variation in respect of the **estate** charge. The changes are modest and largely reflect the impact of the porter's lodge. The argument rather relates to the manner in which the **building** charges will be apportioned. Mr Blakeney and some of the Respondents have referred to "winners and losers". They suggest that the proposed changes will have a consistent bias in favour of some lessees and against others. Ms Ward rather refers to "swings and roundabouts". In some years, some lessees will pay more (for example when the roof of a neighbouring block is replaced), but in other years, they will pay less (when the roof of their block is replaced).
95. For those living in Medland House, lessees will now pay a smaller proportion of the costs relating to A1, A2 and A3, rather than a larger proportion in respect of their individual blocks. The manner in which B6 is treated in the Berglen Court building charge will have no relevance to them.
96. All the leases use the same template and provide for service charges to be split between "estate" and "building" costs. The parties would have contemplated that there would be consistency throughout the estate. The two possible options are therefore the 10-Schedule or the 3-Schedule schemes.
97. Any hybrid scheme would add an unnecessary degree of complexity which would not have been contemplated by the parties. It would be illogical to treat A1 and A2 as separate Buildings for Medland House, whilst treating B2/B3 and B4/B5 as single Buildings for Berglen Court. LWML have considered the option of some hybrid scheme under the suggested principle of "proximity" and has rejected it.
98. The Tribunal is therefore satisfied that the question that we should ask is whether the Applicants' decision to opt for a 3 Schedule rather than a 10-Schedule scheme will cause "significant prejudice" to any lessees. As stated, the status quo is not sustainable. We are further satisfied that all leases must be varied to the same effect.
99. One of the difficulties of operating a 10-Schedule Scheme relates to the fact that much of the expenditure relates to Medland House or Berglen Court, given that these two distinct parts of the estate have separate foundations and carparks. Any expenditure relating to Medland House or Berglen Court must be split between the individual blocks, three in the case of Medland House and six for Berglen House. The Tribunal accepts that it is possible to make this apportionment, but this depends upon the judgment of the managing agent. Ms Craker has demonstrated that, in practice, the managing agents allocated such expenditure as an "estate charge" rather than a "building charge". Thus in 2011/2, 80% of the overall expenditure under the 10-Schedule Scheme inherited from Rendall and Rittner was allocated to the "estate" schedule. In 2012/3, under the 3-Schedule Scheme, this had reduced to 45% (see p.447-8). This better reflects how the leases

contemplate that service charge expenditure should be apportioned between the “building” and the “estate” schedules.

100. The Tribunal is satisfied that LWML are entitled to favour a scheme that is easier to operate. It is more transparent. It avoids the risk that lessees challenge the manner in which expenditure is allocated to individual blocks. It is in the interests of all lessees to avoid further litigation which is likely to be funded from the service charge account. To date, it has largely been lawyers who have benefited from this unsatisfactory set of leases.
101. Having heard all the evidence, the Tribunal accepts that the best description as to how either a 3-Schedules or a 10-Schedules scheme will impact upon the 10 blocks is “swings and roundabouts”, rather than “winners and losers”. The impact will depend upon the nature of the expenditure in any service charge year. The advantage of a 3-Schedule scheme is that any unexpected expenditure on any block will be spread more widely. Such risks are shared. There will also be a larger reserve fund to draw upon.
102. In considering the issue of prejudice, one factor is clear. The 3-Schedules scheme has been operated since 1 April 2012. The vast majority of tenants have been willing to pay their service charges, albeit that these may not have been computed strictly in accordance with their leases. Mr Williamson is the only lessee who has made no contribution. Thus, most lessees will see no change in the sums that they have been required to pay.
103. The Tribunal also notes that between 2000 and 2003, namely the period during which these leases were granted, Bellway Homes operated a 3-Schedules scheme. There is no evidence that any of the parties at this time objected to this means of apportionment on the basis that this did not reflect the common intention of the parties.
104. Having regard to all these factors, we are satisfied that the proposed variations will not be likely to substantially prejudice the respondents to the applications. The current situation is untenable. All lessees have a common interest in maintaining the workable, coherent and reasonable system which has been in operation since 1 April 2012.

(iv) Any other reason why it would not be reasonable to vary the leases?

105. Mr Blakeney argues that the consultation leading to the ballot was fatally flawed and that there is a real doubt as to whether the lessees understood the precise effect of the proposed scheme. He argues that the information provided was inadequate and misleading.
106. We reject this contention. We are satisfied that all those who have been responsible for formulating this proposal have acted in the best interests of the estate. All relevant information has been published on the portal. The approach adopted by LWML has been one of transparency. The meetings of the LWML management committee have been open to all lessees. Shortly after the current 3-Schedule Scheme was introduced in April 2012, Mr Townsend made a detailed presentation to lessees. Mr Heneker was present.



It ill-beholds Mr Williamson who was not present at the meeting to criticise how the meeting was conducted.

107. The Tribunal is satisfied that the result of the ballot which was conducted in December 2019 accurately reflects the views of the lessees. Two of the lessees who opposed the proposed variation now support it; one lessee has changed his mind and now opposes it. The lessees were provided with extensive information explaining the “mess” that LWFC and LWML needed to resolve and of their proposed solution. Lessees had been paying their service charges under a 3-Schedule scheme and were fully aware of the implications of such a scheme for them.

108. Mr Williamson complains that the Applicants have only put forward one scheme. LWML have considered a number of options. The Consultation document discussed the merits of the 3-Schedules and 10-Schedules schemes. The Tribunal is satisfied that the correct procedure has been for LWML to seek support for its preferred scheme.

#### (v) The Exercise of Discretion

109. We are satisfied that the current situation is untenable. Service charges are not currently being collected in accordance with the terms of the leases. We are satisfied that there is currently no way that LWML could collect service charges in accordance with the terms of the leases. A variation to the leases is urgently required. There has already been unacceptable delay. We have found that substantial prejudice will not be caused to any lessee. We are further satisfied that the procedures leading to the ballot were fair. Taking all relevant matters into account, we are satisfied that this is a clear case in which we should exercise our discretion in favour of the proposed variation.

#### Should the variation be backdated?

110. The Applicants are asking the Tribunal to backdate the variation to 1 April 2012. Normally, this Tribunal would be extremely reluctant to backdate a variation by nine years. However, this is an exceptional case. Since 1 April 2012, LWML have been collecting service charges under this “3-Schedule” scheme. The vast majority of lessees have been paying under this scheme. Were we not to backdate the variation, lessees might require LWML to recompute their service charges. For reasons already discussed, there is no rational way whereby LWML could do so. We are therefore satisfied that we should backdate the variation to 1 April 2012.

111. We must consider the arguments of res judicata and issue estoppel which have been raised by Mr Blakeney on behalf of Mr Williamson. We reject his argument that LWML should have sought a variation in response to his application in LON/00BG/LSC/2014/0575. First, LWML had not prepared the ground work for an application under section 37. Secondly, a variation under section 35 in respect of a single lease would not have provided the workable, coherent and reasonable system for the whole estate.

112. It does not reflect well on either LWML or Mr Williamson that no service charges have been paid for the past nine years. Despite the difficulties, LWML could have recalculated Mr Williamson's service charge based on A3 as "the Building". Equally, Mr Williamson should have paid the estate charge and made some offer to pay the building charge. A compromise, such as that agreed with Mr Evans, could have been reached.
113. The Tribunal must have regard to the fact that a tribunal has determined that the service charges for the year 2012/13 should be computed on the basis of A3 as "the Building". That decision has not been challenged on appeal. We have therefore concluded that in the case of Mr Williamson, we should backdate the variation to 1 April 2013. As a result of this decision, Mr Williamson will now become liable for the service charges which have been demanded since 1 April 2013. It would be manifestly unfair for Mr Williamson, who has paid no service charges for the past nine years, to have a windfall at the expense of the other lessees. In the absence of agreement, LWML will need to recompute the service charges payable prior to 1 April 2013.
114. We have also considered the situation in respect of Mr Evans. We are satisfied that he would not be prejudiced were the Tribunal to backdate the variation in respect of 112 Berglen Court to 1 April 2012. Ms Ward confirmed to the Tribunal that LWML would not seek to go behind the compromise that it has reached with him for the years in which he has received a 15% reduction in respect of his building charges.

### **Variation under Section 35**

115. Had the Tribunal rejected the application to vary under section 37, we would have permitted a variation under section 35. We have found that it is necessary to vary all the leases in order to ensure that 100% of the service charge expenditure is recoverable and that there is not a surplus because of the sums paid by the commercial units. The requirements of section 35(2)(f) are therefore met.

### **Conclusions**

116. This is an application under section 37 of the Act. This requires us to consider the variations proposed by the Applicants. These are supported by 79% of the lessees and are opposed by just 4%. We are satisfied that the Applicants have satisfied the statutory requirements for such a variation.
117. We have considered the objections raised by the 11 lessees who oppose this application. They argue that more modest variations would suffice. The substance of their complaint is that they will be prejudiced if the building charge for which they are liable extends to other blocks, whether in Medland House or Berglen House. They therefore argue for a 10-Schedules scheme or some hybrid scheme which secures the same outcome. We have discussed why we are satisfied that the Applicants are entitled to favour a 3-Schedules scheme to a 10-Schedules scheme or any variant to this.

118. Seven of the 11 Respondents come from Medland House. They will not be affected by any of the building service charges in respect of Berglen Court as these will be charged to the Berglen Court lessees whichever Schedule is adopted.
119. The remaining four Respondents come from Block B1 in Berglen House. These Respondents have parking spaces, none of which are under B1. Yet their leases provide that maintenance costs relating to the “Parking Area” are “Building Costs”.
120. No Respondent holds a lease in respect of Blocks B2 to B6. These are the blocks where there is the greatest inconsistency between the definition of “the Building” and the percentages specified in their leases.
121. Mr Blakeney argued that Mr Heneker has focused on a scheme that provides for the efficient management of the estate, rather than one that requires the least changes to any lease to secure 100% recovery of the service charge expenses. We are satisfied that a coherent system that ensures that the estate is efficiently managed is a legitimate objective.
122. The position adopted by Mr Williamson is untenable. The anomalies in the leases make it impossible for LWML to collect service charges as specified in the leases. Mr Williamson has refused to pay any service charges unless demanded strictly in accordance with the terms of his lease. He has paid no service charges for the past nine years. Were other lessees to have adopted his position, LWML would be insolvent. We are asked to legitimise the system under which LWML have collected services charges over the past nine years. We are satisfied that it is appropriate to do so.

**Judge Robert Latham**  
**6 July 2021**

### **Rights of appeal**

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such

reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking. If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL  
PROPERTY)

LON/00BG/LVT/2020/0006

IN THE MATTER OF PART IV, SECTION 37 OF THE LANDLORD AND  
TENANT ACT 1987

AND IN THE MATTER OF MEDLAND HOUSE AND BEGLEN COURT,  
BRANCH ROAD, LOMEHOUSE, LONDON E14

BETWEEN:

LIMEHOUSE WEST FREEHOLD COMPANY LIMITED  
LIMEHOUSE WEST MANAGEMENT LIMITED  
and  
VARIOUS LESSEES

**Applicants**

- and-

VARIOUS LESSEES

**Respondents**

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**ORDER**

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**UPON** considering the Applicants' application, dated 28 October 2020;

**IT IS ORDERED**, pursuant to section 37 of the Landlord and Tenant Act 1987,  
that all the residential leases in respect of Medland House and Berglen Court  
are amended as follows:

- (i) the Plan at **Appendix 1** is to replace Plan 3 in respect of all the residential leases in respect of Medland House.
- (ii) the Plan at **Appendix 2** is to replace Plan 3 in respect of all the residential leases in respect of Berglen Court.
- (iii) the "Relevant Percentage" in each residential lease is to be replaced by the Part A and Part B proportions which are specified in **Appendix 3**.

**IT IS FURTHER ORDERED** that the variations are to be backdated to 1 April 2012 for all residential leases, save for 81 Medland House. The variations are to be backdated to 1 April 2013 in respect of the lease for 81 Medland House.

The Tribunal **directs** the Applicants' solicitor no later than **30 July 2021** to:

(i) add **Appendix 4** which should specify the relevant reversionary title numbers to the residential flats and specify each leaseholder's name, flat number and title number.

(ii) file a copy of this Order together with a copy of the Tribunal's decision, at HM Land Registry.

(iii) confirm to the Tribunal that it has done so.

The Tribunal **directs** HM Land Registry to enter a note in the register of each of the leasehold titles of the residential leases within Medland House and Berglen Court (as set out in Appendix 4) and in the register of the relevant reversionary freehold title, confirming that the terms of the registered lease has been varied by this Order, dated 6 July 2021 and to file a copy of this Order under each affected title.

**Judge Robert Latham**  
**6 July 2021**