



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

Case reference : **LON/00AZ/LSC/2020/0277**

HMCTS code (paper, video, audio) : **Hybrid: In person & CVP REMOTE**

Property : **Various Properties on the Crossfields and Tanners Hill Estates, London SE8**

Applicant : **The London Borough of Lewisham**

Representative : **Mr Ranjit Bhose QC instructed by Anthony Collins Solicitors LLP**

Respondents : **The leaseholders listed in the Schedule to the Application**

Representatives : **The active leaseholders appeared in person and/or were represented by other lessees**

Type of application : **For the determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**

Tribunal members : **Judge N Hawkes**
Mrs H C Bowers MRICS
Mr O N Miller BSc

Venue : **10 Alfred Place, London WC1E 7LR**

Date of decision : **30 June 2022**

DECISION

Decisions of the Tribunal

- (1) The Tribunal makes the determinations as set out under the various headings in this Decision.
- (2) The Applicant is directed to, by **28 July 2022**, file and serve revised service charge calculations for each block, giving effect to the Tribunal's determinations and to the Applicant's concessions.
- (3) The Respondents may, if they take issue with the calculations, serve any proposed corrections on the Applicant (but not, at this stage, on the Tribunal) by **25 August 2022**.
- (4) If the revised service charge calculations cannot be agreed by **29 September 2022**, the Applicant may apply to the Tribunal for a determination, setting out the nature of the outstanding dispute.

The application

1. The Applicant is the freehold owner of the Crossfields Estate, London SE8 and of the Tanners Hill Estate, London SE8. The Respondents are the long lessees of various flats on these two estates.
2. The Respondents who gave oral evidence and/or who made oral representations to the Tribunal (whether or not the representations were made through a representative) will be referred to below as the active Respondents.
3. The Applicant seeks determinations under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") that the Respondents listed in the schedule to the application are liable to pay a service charge to the Applicant in respect of works of external repair and redecoration which were carried out to the blocks containing their flats (i) in the period July 2014 to December 2015 in respect of the Crossfields estate, and (ii) in the period January 2014 to April 2015 in respect of the Tanners Hill estate ("the Major Works").
4. Management of the Tanners Hill and Crossfields estates is undertaken, on the Applicant's behalf, by Lewisham Homes Limited ("Lewisham Homes"). Lewisham Homes is wholly owned by the Applicant and is an arm's length management organisation. The Major Works were undertaken by Mitie Property Services (UK) Limited ("Mitie") with Baily Garner LLP ("Baily Garner") instructed to act as the contract administrator.

5. Directions were first given by the Tribunal in this matter on 9 February 2021. Further Directions were given on 9 June 2021, which were amended on 24 June 2021. Additional Directions were given on 5 October 2021, listing the matter for a pre-hearing review on 9 November 2021. Further Directions were given at the pre-hearing review on 9 November 2021, leading up to the inspection and final hearing.
6. At the commencement of the final hearing, the Tribunal considered the nature and scope of hearing. These proceedings concern major work which has been undertaken to 20 different blocks of flats. Directions were issued and over 11 days of Tribunal time was allocated to this application on the basis that the Tribunal would determine the reasonableness and payability of the service charges which form the subject matter of the application alone. There was insufficient time available at the hearing to determine any other matters.
7. Further, no expert evidence concerning any alleged breach of covenant on the part of the Applicant and no valuation evidence concerning the notional rental value of any of the Respondents' flats had served by any party in these proceedings.
8. Accordingly, if and insofar as any of the Respondents may potentially have a claim against the Applicant for breach of covenant and/or duty, any such claim has not been determined in these proceedings. The Respondents may wish to take independent legal advice concerning any such potential claims.
9. At the commencement of the hearing, the Applicant stated that it will not seek to recover any legal costs incurred in connection with these proceedings from any of the Respondents, and it was agreed that this assurance would be recorded in the Tribunal's decision.

The hearing

10. A hybrid hearing took place both in person and by CVP video on 19, 20, 21, 22, 25, 27, 28 and 29 April 2022. All participants were given the option of attending the hearing in person at 10 Alfred Place, London WC1E 7LR. The Tribunal was allocated a reading day on 13 December 2021 and carried out inspections on 14 and 15 December 2021, and also on 26 April 2022. The inspections will be described in greater detail below.
11. The Applicant was represented by Mr Ranjit Bhose QC of Counsel, instructed by Anthony Collins LLP, at the hearing. The active Respondents represented themselves and, where recorded below, some of the active Respondents also represented other leaseholders pursuant to rule 14 of the Tribunal Procedure (First-tier Tribunal) (Property

Chamber) Rules 2013 (“the 2013 Rules”). The Tribunal is grateful to Mr Bhose QC and to the active Respondents for their assistance.

12. Some of the participants and observers were only able to be present for part of the eight day hearing and those present were permitted to drop in and out of the online video platform in order to accommodate their other commitments. In order to ensure that there is a clear record of attendance on the Tribunal file, all attendees were asked to confirm in writing to the Tribunal Case Officer the dates and the times at which they were present.
13. Mr Bhose QC, Mr Dawes, and the members of the Tribunal attended the hearing in person throughout and Ms Walsh and Ms Lewis were able to attend most of the hearing in person.
14. The following witnesses gave oral evidence of fact on behalf of the Applicant:
 - (i) Mr Colin Dawes, a Building Surveyor employed by Lewisham Homes.
 - (ii) Mr Joseph Jackson, an Associate Partner at Baily Garner.
 - (iii) Mr Gerard Egan, a Clerk of Works employed by Lewisham Homes on the Tanners Hill Estate.
 - (iv) Ms Annelie Sernevall, a freelance consultant who was appointed designated Programme Manager from 23 October 2014 until 20 December 2015, overseeing all aspects of the Major Works on Crossfield estate. The works to the Tanners Hill estate had already completed (subject to snagging) when she was instructed, and she was also responsible for ensuring that the outstanding defects on the Tanners Hill estate were remedied.
 - (v) Mr Hayden Schuitemaker who was Leasehold Consultation Manager at Lewisham Homes for a period prior to March 2014 when he moved to the Asset Management Team. He became a Final Account Project Manager in August 2015. In 2017, he started working as a freelance Final Account Project Manager. Initially, this was exclusively for Lewisham Homes but he now works for Lewisham Homes approximately one day a month on a consultancy basis.

- (vi) Ms Emma Mills who has been the Head of Home Ownership and Independent Living at Lewisham Homes since 2012. Ms Mills oversaw the statutory consultation in respect of the Major Works.

15. The following Respondents gave oral evidence of fact:

- (i) Ms Gillian Lewis who is the lessee of flat 9 Deloraine House and who represents flats 1, 11, 12, 30, 52, 59 and 60 Deloraine House.
- (ii) Ms Nuala Walsh who is the lessee of flat 77 Heston House and who represents flats 79, 65, 23, and 25 at Heston House.
- (iii) Ms Ogden Hodge who is the lessee of flat 46 Tanners Hill block.
- (iv) Mr Francis Suckling who is the lessee of flat 48 Tanners Hill block.
- (v) Ms Vickie Yeardley who is the lessee of flat 52 at 42-60 Florence Terrace.
- (vi) Mr Tom Allum who is the lessee of flat 8 at Browne House.
- (vii) Mr Hugh Miller who is the lessee of flat 13 Farrar House.
- (viii) Ms Sue Lawes who is the lessee of flat 40 at Holden House.

The background and procedural matters

- 16. The Tanners Hill Estate comprises eleven diverse residential blocks of flats which include inter war blocks and a 1960s tower block and various low-rise buildings dating from the 1970s/1980s. The Crossfields Estate comprises nine residential blocks of flats which were built in about 1935, with tiled pitched roofs and concrete access balconies with concrete staircases.
- 17. The Tanners Hill estate and the Crossfields estate contain both flats which are held on long leases and flats which are let to local authority tenants on periodic tenancies. All of the long lessees on the two estates are Respondents to this application and, prior to the hearing, leaseholders at five blocks on the Tanners Hill estate and at six blocks

on the Crossfields estate sought to challenge the service charge costs which form the subject matter of these proceedings.

18. The Tribunal was provided with a specimen lease (“the Lease”) and was informed that, insofar as is material, all of the Respondents’ leases are in identical form.
19. The Tribunal was informed that the works to each block were to be undertaken by Mitie in the period from approximately July 2014 to December 2015 on the Crossfields estate and from January 2014 to April 2015 on the Tanners Hill estate. However, Lewisham Homes subsequently extended the original contractual term for 6 months until 30 September 2015.
20. On 20 October 2015, Mitie and Lewisham Homes agreed to amend the final account process under the contract so that it would be triggered by completion of all outstanding works rather than by the end of the contractual term, as extended.
21. A dispute then arose between Lewisham Homes and Mitie under the contract. This dispute was resolved by a settlement agreement dated 1 February 2019. The Applicant states that the settlement agreement contains provisions which mean that it is confidential to the parties but that Mitie has given permission for Lewisham Homes to confirm that:
 - (i) The agreed settlement figure between Lewisham Homes and Mitie is more than the amount that the Applicant has now demanded of the Respondents; and
 - (ii) the information which supports the sums demanded of the Respondents is the final account figures prepared by Baily Garner, and not the Settlement Agreement.
22. During the course of the hearing, Mr Allum questioned how the Tribunal could be satisfied that that the sums demanded of the Respondents are not more than the settlement figure unless the confidential Settlement Agreement is disclosed in these proceedings.
23. In all the circumstances of this case, the Tribunal accepts that the settlement figure is more than the amount which is being demanded of the Respondents. The Applicant is legally represented, its lawyers are entitled to see the Settlement Agreement, and they are under a duty to not to put forward such an assertion unless it is factually correct.
24. The Tribunal inspected the eleven blocks of flats in respect of which challenges to the service charge costs had been made on 14 and 15

December 2021. During this inspection, representatives of the parties were invited to point out matters which they wished the Tribunal to observe but, as is usual practice, they were informed that they were not permitted to make oral submissions until the hearing itself.

25. In reaching its determinations, the Tribunal has taken into account the oral evidence that it heard, the submissions which were made at the hearing, any matters canvassed by the Tribunal, and the documents to which the Tribunal was referred during the course of the hearing. The Tribunal has also taken into account the parties' Statements of Case and the Tribunal's findings on carrying out its inspections.
26. The hearing bundles are extensive and, in reaching its determinations, the Tribunal has not considered any documents which were not referred to or any matters which were not raised at the hearing. This is because it would be procedurally unfair to do so when the parties would not have the opportunity to make submissions concerning their relevance. At the hearing, the Tribunal explained the importance of every party being aware of the matters which remain in dispute and the evidence relied upon on support.
27. At the commencement of the hearing, Mr Bhose QC was instructed to inform the Tribunal that, following the Tribunal's December 2021 inspections, remedial work had been carried out to the widopan (a liquid waterproofing system used on the Tanners Hill estate on communal floor areas as part of the Major Works). He stated that, the remedial work having been completed, the Applicant would contend that all of the work which forms the subject matter of this application has been carried out to a reasonable standard.
28. When the Tribunal indicated that it was minded to reinspect the widopan, the Tribunal was informed that an inspection might not be necessary because the Applicant could provide photographs and a video showing the completed remedial work. The Tribunal determined that a further inspection would nonetheless be of assistance because the parties were not in agreement that, following the remedial work, the widopan was in a reasonable condition.
29. On the afternoon of 26 April 2022, which was not listed to be a hearing day, the Tribunal reinspected the widopan at Deloraine House, Heston House, 38-84 Tanners Hill block, and at 2-20, 22-40 and 42-60 Florence Terrace. The parties were informed in advance that it would not be possible to communicate with the Tribunal during this inspection. Mr Dawes observed the inspection. He did not seek to communicate with the Tribunal but he was able to explain to residents who saw the members of the Tribunal at their blocks that a Tribunal inspection was being carried out. No one else attended the inspection on 26 April 2022.

30. When the hearing resumed 27 April 2022, the Tribunal informed the parties that its observations were as follows.
31. At Deloraine House, the Tribunal noted that, although this was more marked on some floors than on others, there was significant cracking across the width of the widopan at all levels. The Tribunal also observed holes in the widopan. Some of the holes were approximately the size of a 1 pence coin and some were approximately the size of a 2 pence coin. In addition, the Tribunal saw that areas of widopan were missing or had come away. However, widopan which had been partially obstructing drainage areas had been removed since the Tribunal's first inspection.
32. At Heston House, the Tribunal observed some cracks and holes in the widopan. Although these defects were not as pronounced as at Deloraine House, there were clearly outstanding deficiencies. On inspecting the Florence Terrace blocks the Tribunal noted defects, in particular on the stairs, as well as patch repairs. At Tanners Hill block, the Tribunal noted patch repairs on the stairs and the balcony walkway was in very poor condition with large and multiple holes and cracks.
33. The Tribunal observed areas of rucked asphalt but, other than at Deloraine House, the widopan followed the contours of underlying asphalt. At Deloraine House, the extent of the holes in the widopan demonstrated that the substate had not been properly prepared and was neither smooth nor secure enough for the application of widopan.
34. Whilst some blocks were worse than others, the general application of widopan was poor throughout all of the blocks. Footprints could be seen on the surface of the widopan in places and these are likely to have been present since the time of its application. The overall application of the widopan was too thin and there were some areas where it had clearly been reapplied.
35. At the conclusion of the hearing and after the Tribunal had summarised its findings on reinspecting the widopan, the Applicant made the following concessions and clarified certain aspects of its case:

“A accepts that some of the elements of the works have not been carried out to a reasonable standard and submits that the following reductions are the appropriate and fair ones to reflect this:

(1) Browne House: a reduction of 15m² in respect of the failing paintwork to the top floor of the stairwell (Nos.12 & 27 on the Final Account ('FA'));

(2) Castell House: a 20% reduction on the cost of the decoration to the internal painted surfaces (Nos 6 & 7 on the FA);

(3) *Tanners Hill Block:*

i. *The removal of the widopan walkway charge (No.53) and a 10% reduction from the widopan stairs charges (Nos 51 & 52);*

ii. *A reduction of (say) 3m² to reflect the small area of unfinished pointing shown in the photo on [TaH/E148] (No.26). A does not take a point that this is de minimis because – in this isolated instance – this would appear to be unfinished work.*

(4) *Deloraine House: a 40% reduction in the charges for widopan (Nos 46-49);*

(5) *Heston House: a 20% reduction in the charges for widopan (Nos 44-47);*

(6) *The Florence Terrace blocks: a 10% reduction to the widopan stairs charge (although it is noted that none of the 3 lessees in 2-20 Florence Terrace have filed any Initial or Detailed Responses about any of the works to their block). The FA references are: 2-20FT – Nos 46 & 47 (not 48); 22-40 FT – 45 & 46 (not 47); 42-60 FT - 45 & 46 (not 47).*

Other Concessions

A accepts the following further reductions from the demanded sums:

(1) *The CE blocks: the cost of using anti-graffiti paint. A is content to charge for fire retardant paint at £5.00 per m² rather than £7.64 per m² for the anti-graffiti paint that was used (see, for example HoH/A19 FA No.18). Mr Dawes could not recall having seen the note of the meeting of 11.09.14 [HoH/E42] which refers to him ‘to instruct BG to omit anti-graffiti paint and use standard class O above tiling’, and no instruction was ever given by him to BG. Although anti-graffiti paint was a suitable paint to use, A is nevertheless prepared to limit the charges accordingly. [Note – no such charge was anyway applied on Cremer House]*

(2) *Deloraine House: omit FA No.26 [DeH/A45] – 3 No. ‘Replace door to caretakers store with FD30’.*

(3) *Browne House: in the light of Mr Jackson’s oral evidence in relation to the numbers of scaffold alarms, the number of these should be 8, not 16 (FA No.64).*

Finally, to confirm clarification provided at the hearing:

(1) Farrer House and Finch House: the management fee for all CE blocks was 10%, up to a £200 maximum. These two blocks exceeded the maximum. Although the full amount was included in the 08.19 demands (eg FaH/A22) a later letter informed of the reduction (see 04.09.19 for Farrar House, appended to Mr Miller's WS). The revised figures have been applied to the lessees' accounts.

(2) Deloraine House: The FA should be based on £255,970.56 [DeH/A47]. This reflects:

i. A 30% reduction for the jet cleaning (FA No.30), being a sum of £2,549.07, to 'reflect the staining that remains on the rear of the building'. Lessees were informed of a reduction on 04.03.16 [DeH/A21], the 30% figure being notified on 05.08.19 [DeH/A26];

ii. A 30% reduction for all the brickwork repairs (helibar, refacing and repointing) (FA Nos 31, 33, 35, 37), in the sum of £12,784.35. Again, lessees were notified A would not charge the full amount of these works on 04.03.16 [DeH/A21]"

36. By a letter which was received by the Tribunal after close of business on 21 April 2022, Ms Yeardley of 52 Florence Terrace applied for an extension of time to rely upon late evidence. By Paragraph 5 the Tribunal's Further Directions dated 9 November 2021, any participating leaseholder had had until 23 November 2021 to serve on the Applicant any additional documents upon which they wished to rely which were not already contained in the Applicant's draft hearing bundles.
37. In her application, Ms Yeardley explained that she had intended to serve the additional evidence immediately after the Tribunal's December inspection. She stated that it was not until the inspection that she had realised that the Tribunal would not be able to enter her flat unless she had granted written permission in advance. Ms Yeardley thought she had served the proposed additional evidence in December 2021 and acknowledged her error. She explained that, as a front-line NHS clinician, she had been very pre-occupied with rising covid case numbers in December and, also, that it was very difficult to go back over the Major Works which had been a "nightmare" to deal with alongside a contemporaneous personal challenge.
38. Ms Yeardley first sought to send the late evidence to the Tribunal on the evening of 18 April 2022, which was Easter Monday. The Tribunal Case Officer responded on 20 April 2022 explaining that the correspondence had to be copied to the Applicant before could be sent to the Tribunal. The proposed late evidence was sent to the Applicant by Ms Yeardley on 20 April 2022. The Applicant's solicitor responded on 21 April 2020 in the following terms:

“The Applicant objects to the admission of this late evidence. If you wish to rely upon this evidence, please make an application in accordance with paragraph 13 of the Further Directions of the Tribunal dated 9th November 2021 which for ease of reference stated:

‘It is not anticipated that any application will be made to rely upon late evidence which has not been served in accordance with these Directions. However, if a party considers that their circumstances justify making an application for an extension of time in order to enable them to rely upon late evidence, the application should be made as soon as possible in writing and on notice to the other active parties. Any such applicant must explain why they were unable to comply with the Directions and must enclose any evidence relied upon in support of their application for an extension of time.’”

39. On 21 April 2022, Ms Yeardley made an application to the Tribunal in accordance with the Tribunal’s Further Directions dated 9 November 2021.
40. Paragraph 5 of the Further Directions dated 9 November 2021 provided as follows:

“5. Any participating leaseholder who wishes to rely at the final hearing upon relevant documents which are not contained in the Applicant’s draft hearing bundles must serve the Applicant (but not the Tribunal) with copies of their document(s) by 23 November 2021.”
41. Having considered the overriding objective contained in the 2013 Rules, the Tribunal determined that it would not exercise its discretion to extend time under Paragraph 5 the Tribunal’s Further Directions dated 9 November 2021 so as to admit the proposed late evidence.
42. The Tribunal’s Further Directions had expressly set out the procedure to be followed by a party seeking to rely upon late evidence and had stated that any application should be made as soon as possible. However, no application for an extension of time was made until almost 5 months after time had expired.
43. The Tribunal accepted that the matters put forward by Ms Yeardley would account for some delay but was not satisfied on the balance of probabilities that they satisfactorily accounted for delay of the length which had in fact occurred.
44. The Tribunal had the evidence of other lessees and the findings from its own inspections on the issue of the standard of the Major Works and the admission of new evidence part-way through the hearing would potentially have resulted in delay whilst the evidence was considered by the Applicant. The Tribunal determined that, in all the circumstances,

it would not be fair and just to extend time so as to admit the late evidence.

45. Ms Walsh of flat 77 Heston House made an application on 17 December 2021 for an extension of time to rely upon late evidence in the form of photographs taken on 10 December 2021. This application does not appear to have been determined prior to the hearing. In support of the application, Ms Walsh stated:

“...on the inspection of the 14th, having spent 2 hours on Deloraine House it became obvious that we would have to limit the time on Heston in order to fit in all the blocks. I was happy to focus on the areas of my own previous inspections and spend less time on Heston House because I thought I had included photographic evidence of everything I was pointing out to the tribunal.

It was only at the end of the inspection that I realised I had actually only submitted half the photos in evidence, the ones from my own first inspection. As I said above I had done 2 recent inspections and unfortunately due to work and being ill, I had run out of time to include the photos from my 2nd and last inspection in my submission to the applicants.”

46. Ms Walsh’s application and photographs were copied to the Applicant on 17 December 2021. In all the circumstances, the Tribunal found that it was fair and just to extend time for the service of Ms Walsh’s additional photographs to 17 December 2021 in order that they could be admitted as evidence at the hearing. The application was made promptly, the Tribunal accepted Ms Walsh’s reasons for serving the photographs out of time, the Applicant had had since 17 December 2021 to consider the photographs, and Ms Walsh’s application was unopposed.
47. Documents which were served by Mr Miller of flat 13 Farrer House on the Applicant within the timetable set out in the Tribunal’s Further Directions were inadvertently omitted by the Applicant from the hearing bundle. Accordingly, copies of Mr Miller’s documents were sent to the Tribunal and they formed part of the evidence in this case.
48. By email dated 25 April 2022, Ms Rosie Shaw of 12 Florence Terrace wrote to the Tribunal in the following terms:

“I am a leaseholder at 12 Florence Terrace, London SE14 6TU on the Tanners Hill Estate.

My very sincere apologies for the late message, but I’ve just been informed by a neighbour that there is a request in the evidence from Lewisham Homes (point 16.1 - Sept 17th 2021), that as no response

was received from several of the blocks (including mine), that the Tribunal is being asked to make a determination in its favour. I OBJECT to this request on the following basis;

- if the Tribunal finds that there are issues affecting the other blocks (of a similar type), that those issues also affect the blocks where a response was not received and that should be taken into account in those final bills.

- that those blocks where a response was not received were not informed that a lack of response would mean that those blocks would be singled out for a different determination. I was of the understanding that the Tribunal would review and make a determination fairly across all blocks.

- that a lack of response does not necessarily reflect a lack of problem - certainly in my case I was not able to respond as a single parent with a full time job, with additional pressure as a result of the pandemic. I do not feel that it would be right to penalise me or any other leaseholders who have been affected by the problems with the major works, but who have not been in a position to respond.”

49. The Applicant submitted that, because no initial response had been filed by Ms Shaw, the content of this email should not be considered by the Tribunal. The Tribunal determined that it would be fair and just to take account of this correspondence insofar as it contained submissions on the issue of the approach to be taken to blocks in respect of which initial responses had not been served.
50. This point had already been canvassed at the hearing and the Applicant would have the opportunity to make further submissions on this issue in closing. Insofar as the correspondence contained evidence, no application to rely upon late evidence had been made in accordance with the Tribunal's Further Directions and the Tribunal accepted the Applicant's case that it should not be admitted.
51. No party sought to call expert evidence in these proceedings. At the commencement of the hearing, the Applicant raised an issue concerning whether the evidence of witnesses of fact on both sides who had relevant professional qualifications should carry greater weight than the evidence of those who did not. It was ultimately agreed that the evidence of witnesses of fact would not carry greater weight in these proceedings by virtue of any professional qualifications which they might have.
52. The Tribunal asked the parties to challenge each other's witnesses on all points of significant disagreement whilst accepting that, in the 8 days available for the final hearing, it would not be proportionate or

possible for every point in issue between the parties to be explored, however minor. The Tribunal is satisfied that it heard sufficient evidence and argument determine whether the service charges which form the subject matter of these proceedings are reasonable and payable.

The Specimen Lease

53. The covenants relied upon by the Applicant are as follows.
54. By clause 6 of the Lease, the Applicant covenants with the lessee to perform and observe and carry out or cause to be carried out the covenants and obligations set out in the Ninth Schedule. These include the following:

“1. To maintain in good and substantial repair and condition (and whenever reasonably necessary rebuild reinstate renew and replace all worn or damaged parts) the following:-

(1) THE main structure of the Building and the Demised Premises including ... all exterior and all party walls and structures ... staircases landings steps and passages to the Building and the walls bounding the same and window frames ... and all doors therein save such doors as give access to individual Flats/Maisonettes and including all roofs and chimneys and every part of the Building above the level of the top floors ceilings

(2) ALL fixtures and fittings cisterns tanks sewers drains gutters soil waste and other pipes wires cables ducts shafts and conduits and any other things installed in the Building or on the Estate for the purpose of supplying water gas electricity and other usual services ...

(3) Any wireless and television masts and aerials cables and wires erected on the Building or in or over the roof or roofs of the Building and available for use by the Flats/Maisonettes

(4) ALL such parts of the Reserved Property not hereinbefore mentioned and all fixtures and fittings therein and additions thereto”

...

3. To use its best endeavours ... to carry out such cleansing of the common halls staircases landings steps passage door and windows of the Building as often as the Lessor shall deem necessary PROVIDED THAT this Clause shall only apply to Estates where a caretaking facility is provided

4. *UPON the Lessor's usual repainting cycle for the Building to paint and decorate in a good and proper and professional manner the exterior of the Building and all such parts of the said common halls staircases landings steps passages doors and windows of the Building as are usually so treated*"

55. By clause 5 of the Lease, the lessee covenants with the Applicant (expressly subject to sections 18 to 30 of the 1985 Act):

"... to pay to the Lessor such sum or sums in respect of the matters described in parts I and II of the Tenth Schedule hereto and assessed in accordance with the terms thereof together with any Value Added Tax or other tax or duty properly payable or assessed thereon as maybe demanded in writing from time to time by the Lessor within 21 days of the service of such demand on the Lessee"

56. Part I to the Tenth Schedule of the Lessee defines "the charges" (called in that schedule "the Lessee's contribution") as:

"... such proportion of the charges costs or payments made expended or incurred or to be made expended or incurred by the Lessor ... in observing performing or complying with the covenants on the part of the Lessor herein contained as properly may be attributable to the Lessee in accordance with this part of this Schedule"

57. Paragraph 5 to Part I to the Tenth Schedule then further defines "the Lessee's contribution" as being the summation of seventeen named and numbered elements of works or services then divided by a "contribution formula". These elements include "(iii) Communal Television Aerials", "(xi) Repairs and Maintenance", "(xv) Painting" and "(xvi) Management Costs".

58. Part II to the Tenth Schedule concerns:

"The charges (in this part of the Schedule called the 'improvement contribution' as defined by section 187 of the Housing Act 1985) ... shall be such proportion of the charges costs or payments made expended or incurred or to be made expended or incurred by the Lessor (hereinafter called the 'improvement expenditure') in respect of any works of improvement as properly may be attributable to the Lessee in accordance with this part of this Schedule"

59. This provision refers to section 187 Housing Act 1985. This section:

(1) defines "improvement contribution" as:

“an amount payable by a tenant of a flat in respect of improvements to the flat, the building in which it is situated or any other building or land, other than works carried out in discharge of any such obligations as are referred to in paragraph 16A(1) of Schedule 6 (obligations to repair, reinstate, etc.)”

(2) defines “improvement” as follows:

“improvement” means, in relation to a dwelling-house, any alteration in, or addition to, the dwelling-house and includes—

(a) any addition to, or alteration in, landlord's fixtures and fittings and any addition or alteration connected with the provision of services to the dwelling-house,

(b) the erection of a wireless or television aerial, and

(c) the carrying out of external decoration;

and shall be similarly construed in relation to any other building or land;”

60. In respect of brick cleaning which has been carried out to Deloraine House and Heston House, the Applicant submits that there was a contractual obligation / entitlement to undertake this work either (a) in pursuance of the obligation to “maintain in good and substantial ... condition” and/or (b) as “works of improvement”.

The Tribunal’s determinations

General matters

61. The Tribunal has taken into account all of the matters which have been identified above. However, the evidence in this case was extensive and the Tribunal has only summarised the evidence insofar as it is necessary to do so in order to understand the Tribunal’s reasoning.
62. The Respondents’ challenges focus on the standard of the work which was carried out and on whether certain elements of the Major Works were reasonably required. No alternative quotations are relied upon and there is no evidence that the cost of any individual items fall outside the reasonable range of charges for work of the type which was undertaken.
63. One of the principal issues in these proceedings is whether the works in question were of a “reasonable standard” within the meaning of section 19(1) of the 1985 Act.

64. Mr Bhose QC notes the absence of expert evidence and states that this question is one for the Tribunal to determine, based upon all of the evidence before it, its own inspections, and its knowledge and experience as an expert tribunal. It is a matter for the Tribunal what weight it gives to the various pieces of evidence, including witness testimony. The Tribunal agrees with this analysis.
65. Mr Bhose QC also states that there is no presumption for or against the reasonableness of the standard and nor does any party bear an evidential burden on this question: it is an assessment to be made on the totality of the evidence.
66. The Tribunal notes the observations of HHJ Rich QC in *Schilling v Canary Riverside* 2005 LRX/26/2005 concerning the evidential burden citing *Yorkbrook Investments Ltd v. Batten*[1985] 2EGLR 100 at p.102k: “*The test, therefore, as to the burden of proof or onus of proof, whichever term is used, is simply this: to ask oneself which party will be successful if no evidence is given, or if no more evidence is given than has been given at a particular point in the case*”. However, in the present case, the Tribunal is able to make its determinations by evaluating the totality of the evidence and it is not necessary to consider whether it is possible to resort to the burden of proof in order to decide whether an argument has been made out.
67. The Applicant submits that, in determining whether the works were undertaken to a reasonable standard:
- (i) The Tribunal should focus on each estate individually, and each block within that estate. It would be inappropriate to draw inferences (positive or negative) between the two estates, and the course, or standard, of the works undertaken to each of them. The Tribunal accepts that there are significant differences between the two estates and in the manner in which the Major Works project was conducted on each estate. For example, polyurea was used in place of widopan on the Crossfields estate and significantly more snagging was carried out on the Tanners Hill estate. The Tribunal accepts, on the facts of this case, that it is not possible to draw inferences on the balance of probabilities between the two estates.
 - (ii) The Tribunal should be very cautious in seeking to draw adverse inferences about the standard of work on one element in one block, to another block on the same estate. Where the Tribunal has inspected those elements in both blocks, the Applicant takes no issue. Otherwise, the Applicant submits that this

would be inappropriate. The Applicant states that this is particularly so where the lessees of a block have chosen to take no part in these proceedings. For example, no lessees in Heard Street, Mahoney House, or 1-35 Omega Street have chosen to take part, and the Tribunal has not inspected these blocks. The Applicant has assumed that none of these lessees take any issue with their service charges. The Applicant submits that there would be no proper basis for deducting anything from these charges because, for example, of concerns with the condition of the widowpan on other blocks, which have been inspected. The Tribunal accepts that it should be very cautious in seeking to draw any such inferences. However, the Tribunal put the Applicant on notice that it considered that there was potentially sufficient evidence to justify drawing such an inference in respect of the widowpan, which will be considered below.

- (iii) The Tribunal should make every proper allowance for the fact that “handover” of the individual Tanners Hill estate blocks took place in March to April 2015 (7 years ago), and between September 2015 and June 2016 on the Crossfields estate. This is particularly the case in relation to complaints about, for example, redecoration. Some considerable deterioration might be expected by now, although the Applicant submits that is not in fact the case. The Tribunal accepts that such allowances should be made and has taken the passage of time into account in making its findings below.
- (iv) The Tribunal should be cautious before accepting arguments that examples of “bad workmanship” or current disrepair to or deterioration in any block, visible upon an inspection in December 2021 or now, are necessarily to be laid at Mitie’s door. The Applicant states that these buildings are decades old and will have been repaired and decorated a number of times over their lives, including repairs since the Major Works. The fact that there may be some paint splats, or untidy pointing or brickwork repairs etc. does not mean these were caused during the works. Nor does it follow that because, say, some coping stones of Welsh arches at (for example) Deloraine House could now benefit from remedial works, that the standard of Mitie’s works was not reasonable. Not every brick or every coping stone was repaired during the works; professional judgments were

made as to what was, at that time, considered necessary. The Tribunal accepts that it must be satisfied on the balance of probabilities that any evidence of poor workmanship and/or current disrepair or deterioration can be attributed to the Major Works and has only made reductions where it is so satisfied.

- (v) In assessing the standard of Mitie's works, the Tribunal should pay particular attention to the Applicants' photographs, taken in the autumn of 2015. In weighing up the evidence and reaching its determinations, the Tribunal has taken into account these photographs as well as the active Respondents' photographs, the date on which each of the photographs referred to was taken (where known), and all of the other relevant evidence in these proceedings.
- (vi) The Tribunal should give particular weight to the evidence of the Applicant's witnesses, as to the processes followed to see that only necessary works were undertaken by Mitie and to see that they were undertaken to the standards required by the contract. The Applicant states that it was in the Applicant's interest to ensure that all works were undertaken to a reasonable standard, and it engaged its own professionals to see that this was delivered. The Tribunal has objectively and impartially weighed the evidence of fact which it heard in the context of all of the other relevant evidence which was adduced in this case.
- (vii) In considering whether works have reached the required standard, the Tribunal should not take into account the fact (if it be warranted on the evidence) that it has taken longer than may be thought to have been reasonably necessary for the works to have been completed or that a reasonable standard was reached only after more extensive snagging and/or defects rectification than may have been expected. It might be possible for a lessee to bring a claim against their reversioner in private nuisance and/or breach of covenant in such a scenario, but such considerations are not relevant under section 19 of the 1985 Act. The Tribunal accepts this submission concerning the individual items of work but, for the avoidance of doubt, is of the view that it can take into account the manner in which the Major Works

project was managed when considering the reasonableness of the professional fees.

- (viii) The applicable standard is one of reasonableness not one of perfection. It is also a standard which has to be applied to the particular block in question, the particular building element concerned, and taking into account any particular difficulties arising in respect of that element of work. The Tribunal accepts this submission.
- (ix) In any case where the Tribunal is not satisfied that a particular element to a particular block was undertaken to a reasonable standard (which itself is, and can only be, an informed but broad-brush assessment in respect of that element of work), the Applicant accepts that a reduction would be appropriate. The Applicant submits that, in a contract such as this, with measured quantities, one would look at the quantity charged for, assess what part of that quantity did not meet the requisite standard, and reduce accordingly. The Tribunal accepts this submission. Any work which has not been carried out to a satisfactory standard must be considered in the context of the work which has been carried out to a satisfactory standard. The Tribunal understands that, where errors have been made at or in the locality of an individual lessee's property, these errors will be of particular concern to the lessee in question. However, in these proceedings (which do not include the determination of any damages claims brought by individual lessees against the Applicant), any errors in the carrying out of work or in the management of the Major Works project must be considered in the context of all relevant work which has been carried out.

68. The Applicant submits that, in determining whether the service charge costs were reasonably incurred:

- (i) There is no evidence that the costs for the individual elements of works are anything other than reasonable. As stated above, no alternative quotations are relied upon by the Respondents.
- (ii) The Tribunal can have confidence in the robustness of the process followed by the Applicant and in the accuracy of the end product (and the resulting

charges to the Respondents). As stated above, the Tribunal has objectively and impartially weighed the evidence of fact which it heard in the context of all of the other relevant evidence which was adduced in this case.

69. The Tribunal's determinations in respect of the individual blocks are set out below.

THE TANNERS HILL ESTATE

Deloraine House

70. The lessees of flats 9, 11, 12, 30, 52, 59 and 60 Deloraine House served an initial response to this application. The Applicant notes that that is 7 of 33 lessees in a block which contains 68 flats.
71. The Tribunal heard oral evidence from Ms Gillian Lewis. Ms Lewis is the lessee of flat 9 Deloraine House and she represents flats 1, 11, 12, 30, 52, 59 and 60 Deloraine House.
72. Ms Lewis has lived at Deloraine House for 38 years and she had lived at Deloraine House for over 30 years when the Major Works began. She believes that the last time that major work was carried out to Deloraine House was in the 1990s, and she accepts that brick refacing may not have been carried out at that time.

The time taken to carry out the work to Deloraine House

73. In her oral submissions to the Tribunal, Ms Lewis stated that the Major Works were a "major nightmare" which had to be lived through and endured for longer than envisaged. She was one of a number of Respondents who raised issues concerning the amount of snagging which was required and the length of time it took to complete the Major Works.
74. Ms Sernevall accepted that the snagging on the Tanners Hill estate was more extensive than she would normally have expected. Mr Dawes gave evidence that there were meetings with lessees concerning snagging and he accepted that snagging items remained after the work had been signed off. However, in his view, the work had nonetheless reached the requisite standard at the material time. The Tribunal requested sight of the snagging list, which was produced and is lengthy. Ms Lewis and other lessees are concerned that work was signed off prematurely, depriving them of the defect liability period.
75. We accept Ms Lewis's account that she and other lessees played an active and time-consuming role in identifying items of snagging and

bringing them to the attention of the Applicant. Having considered all of the evidence, we are satisfied that the work to the Tanners Hill estate took longer than was reasonably necessary and we could see the toll which this took on Ms Lewis and others.

76. Whilst the Respondents who have been affected may have other potential remedies, we accept Mr Bhowe QC's submission that section 19 of the 1985 Act gives the Tribunal jurisdiction to consider whether the "works are of a reasonable standard" but does not give the Tribunal jurisdiction, when considering individual items of work, to take into account how long it took to reach the standard which was ultimately achieved. Further, the Tribunal has no jurisdiction to potentially award damages. However, we do find that we can take into account the manner in which the project was managed, including the extent of the snagging and delays, in assessing the reasonableness of the professional fees.

Statutory Consultation

77. The Tribunal has no jurisdiction to require a landlord to carry out a consultation which is more extensive than the statutory consultation requirements set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the 2003 Regulations"). For the reasons set out below, we are satisfied that the requisite statutory consultation took place.

78. The Applicant's case concerning the statutory consultation is as follows.

- (i) On 7 December 2009, Lewisham Homes gave notice to the Respondents of its intention, acting on behalf of the Applicant, to enter into a long-term contract for the undertaking of cyclical repairs and redecoration work, improvements and planned component renewals to their blocks and estate.
- (ii) The notice was given under schedule 2 to the 2003 Regulations, being the applicable schedule where a landlord proposes to enter into a "qualifying long term agreement" for which "public notice" is required.
- (iii) Lewisham Homes then considered all statutory observations made and undertook the procurement of the proposed contract in accordance with European Union requirements. The basis for the pricing under the proposed contract was a series of schedules of rates.

- (iv) Having completed the procurement process, Lewisham Homes proposed to award the contract to Kier Support Services Limited and gave a statutory notice of the proposal to each Respondent by a letter dated 8 October 2010. However, Kier Support Services Limited then withdrew from the process, requiring the Applicant to select an alternative contractor from the procurement.
- (v) Accordingly, on 7 April 2011, Lewisham Homes gave notice to the Respondents of its proposal to enter into a long-term agreement with Mitie. This notice was also given under schedule 2 to the 2003 Regulations. Then, having considered all statutory observations, Lewisham Homes entered into a contract with Mitie on 24 August 2011 for an initial term of 4 years (“the Contract”). The Contract with Mitie was in the form of TPC 2005 term partnering contract and covered approximately the northern half of the Applicant’s area.
- (vi) The function of Client Representative under the Contract was initially performed, on Lewisham Homes’ behalf, by Pelling LLP. From 1 April 2013 this function was performed by Baily Garner as a replacement for Pelling LLP.
- (vii) Lewisham Homes then gave a further notice to each Respondent, this time under Schedule 3 of the 2003 Regulations. These notices were specific to each block, summarised the proposed works to the block and the reasons why it was considered necessary to carry them out, along with the estimated costs of the works and the individual Respondent’s estimated contribution towards them. Lewisham Homes, on behalf of the Applicant, then had regard to any observations made in relation to the proposed works.
- (viii) The Schedule 3 notice in respect of Deloraine House was given on 18 December 2003, providing a 5 page priced and itemised list of proposed work and a date for observations of 21 January 2014. The only observation received within this period was an email dated 21 January 2014 from Ms Lewis in which she principally requested clarification.
- (ix) Lewisham Homes then sent all lessees notice of a drop-in session which took place on 6 February

2014. There was also a meeting a meeting with Mitie on 12 February 2014, which was attended by a number of lessees from Deloraine House and Heston House.

79. Ms Lewis was concerned that work appeared to have started before the period for observations had closed, raising the inference that the Applicant did not have regard to the lessees' observations. However, during the course of giving oral evidence, she very fairly accepted that the scaffold may not have been erected until 18 February 2014 and that any work carried out in advance of the scaffold being erected appeared to comprise inspections and a site office being brought in.
80. We accept the Applicant's case that, given the nature of the project, scaffold and a site office would have been needed irrespective of the precise scope of the Major Works. We note that the Applicant was under no obligation pursuant to the 2003 Regulations to arrange the drop-in session or the meeting with Mitie. Ms Lewis has not referred the Tribunal to any specific requirement in the 2003 Regulations which is said to have been broken. In all the circumstances, we are not satisfied on the balance of probabilities that it can be inferred from the matters observed by Ms Lewis that the Applicant did not have regard to observations made by 21 January 2014.
81. Another matter raised by Ms Lewis in the context of the consultation is that the estimated cost of the brick refacing was £289.43 (2 m²) but the actual cost was £25,929.33. The Applicant accepts that this increase occurred but submits that it was not necessary to undertake a further statutory consultation. Mr Bhose QC referred the Tribunal to *Reedbase v Fattal* [2018] EWCA 840, in particular, to [36] where Arden LJ stated:

"It is sometimes necessary for a landlord to repeat stage 2 of the process required by the Consultation Regulations but neither the Landlord and Tenant Act 1985 nor the Consultation Regulations give guidance as to when this should be done. In my judgment, the relevant test, in the absence of any explicit statutory guidance, as to when a fresh set of estimates must be obtained, must be whether, in all the circumstances, the [tenants] have been given sufficient information by the first set of estimates. That involves ... comparing the information provided about the old and the new proposals (and that comparison should be made on an objective basis).

In my judgment ... it must also be considered whether, in all the circumstances, and taking account of the position of the other tenants who did not object to the changes, the protection to be accorded to the tenants by the consultation process was likely to be materially assisted by obtaining the fresh estimates."

82. The Applicant submits that there was no obligation to enter into a fresh consultation for the following reasons:
- (i) The lessees had been informed that re-facing of bricks was to be undertaken.
 - (ii) This was one element out of very many elements with an estimated cost of £744K odd.
 - (iii) The Schedule 3 notice included a 12% contingency in the sum of £84,319.13.
 - (iv) Brickwork repairs are the kind of repair where the actual scope of repair needed will depend on detailed inspection once the scaffold has been erected. The Applicant does not accept that such an assessment could have been made without a scaffold and drew the attention of the Tribunal to the extensive rear elevations and the fronts to the walkways.
 - (v) There was no suggestion that these works would exceed the contingency (in fact they were less than one third of the contingency).
 - (vi) It would be wholly impractical to construe the 2003 Regulations as requiring consultation for increased costs for this type of repair (discovery of the need for a new roof would be far more likely to require it – indeed the Applicant did consult on a new canopy to Farrer House, and on new roofs to the Florence Terrace blocks).
83. Ms Lewis submits that 30-40% of Deloraine House is accessible from either the balconies or at ground level and that it would have been possible to assess the bricks more accurately applying a hammer test before the scaffold was erected.
84. We accept Ms Lewis' submission, which is consistent with the Tribunal's observations on inspecting the block, that it would have been possible to inspect a significant proportion of the brickwork without scaffolding. In our view, the need for scaffolding to carry out a full inspection does not satisfactorily explain why the estimated cost of the brick refacing was only 1% of the actual cost of the brick refacing.
85. We nonetheless find it was not necessary on the facts of this case to reconsult. The protection to be accorded to the tenants by the consultation process was unlikely to have been materially assisted by

obtaining the fresh estimates on account of the fact that the area of bricks the Applicant proposed to reface had increased when this is the kind of repair where the actual scope of repair is likely to vary from the estimate, the final figure was less than a third of the contingency, and this was one element out of many within an estimated total expenditure of in the region of £744,000. In our view, the tenants had sufficient information on the facts of this case.

86. However, we consider that the absence of any satisfactory explanation as to why the estimated cost of the brick refacing was only 1% of the actual cost of the brick refacing is evidence that the project was not well managed and we have taken this into account, along with other factors, in reducing the professional fees.

Jet washing

87. We are not satisfied that any of the charges in respect of the jet washing to Deloraine House are reasonable and payable.
88. The Applicant's submissions are as follows:

- (i) Deloraine House was approximately 80 years old when the Major Works were undertaken. It was built of a distinctive yellow brick (as opposed to a dark red London stock brick, which the Applicant submits would be more "forgiving" to dirt and pollution).
- (ii) There was neither evidence nor suggestion that the brickwork had ever been cleaned before the Major Works.
- (iii) It is highly unlikely that, over its 80 year life, the brickwork had not discoloured from its original colour and condition, being subjected to traffic and fumes.
- (iv) A conscious process was undertaken by Baily Garner as to whether the block needed to be jet washed, in the light of lessees' objections to this course (the Tribunal was referred to relevant documents).
- (v) A detailed rationale was set out in the email from Mitie to Ms Lewis dated 2 May 2014, at the start of the cleaning to the rear elevation. This email states:

"The jet washing has been carried out to the walkway, coping stones & the external of your

property. Where there are more engrained/stubborn areas these will have a different system to keep the brickwork to the same standard.

In regards to the full reasoning for these works I have been given further information from our Consultant following Lewisham Homes' site visit and confirmation for these works to proceed, I have also attached a couple of extracts from Surveying/Building Journals which will clarify these works:

'Back of Deloraine was to proceed as it is heavily stained and would not be economical or aesthetically plausible to carry out individual areas.'

There is also the fact that it is likely not to be scaffolding up for another 10/15+ years and therefore the brickwork will be heavily stained by then. It is also about protecting the brickwork and the fact that the rear is visible to the public highway..."

89. The Tribunal is surprised that the Applicant has not provided any photographs taken by its employees and/or contractors showing the condition of the block before the jet washing took place, particularly in light of the fact that the need for the jet washing was contemporaneously strongly disputed. Instead, Mr Jackson produced Google Street View photographs to demonstrate the condition of the block before and after the jet washing. In giving oral evidence, Mr Jackson stated: *"I thought the estate quite transformed by jet washing. There were some areas of minor stain."* He considered that the jet washing gave the block a lift.
90. Mr Bhowe QC accepted, as we consider that he was bound to do, that the Google Street View photographs produced by Mr Jackson do not evidence any material difference to the part of the front elevation shown in those photographs before and after the jet washing. Mr Jackson did not himself concede this point on being questioned concerning the photographs and Mr Dawes was of the view that the bricks were darker before the jet washing.
91. Ms Lewis strongly disagrees and she was adamant that, whereas there is currently staining to the brickwork to the rear of Deloraine House, there was no staining to the brickwork prior to the jet washing. Ms Lewis gave evidence that it was accepted on a walk around which she attended that jet washing had caused the staining and that the

reduction granted by the Applicant in respect of the cost of the jet washing was on account of this.

92. When it was put to Ms Lewis that the staining could not have been caused by the jet washing because chemicals were not used, Ms Lewis said that she is not qualified to state how staining was caused during the process of jet washing. However, she stressed that the staining to the brickwork was not there before the jet washing and she said that, apart from the possibility that there was a chemical in the water, she could not think of any other explanation.
93. On being referred to the Applicant's email of 2 May 2014, Ms Lewis reiterated that *"There absolutely was not pre-existing heavy staining. There really wasn't ... I have never understood it."* Further, she stated that people had in fact commented on how wonderfully the yellow of the bricks at Deloraine House had lasted for years. She gave evidence that she is the Secretary of the Tenants' Association, she takes the minutes, and she would remember if anyone had moaned or complained or if any issue had ever been raised concerning the condition of the yellow bricks prior to the jet washing.
94. Ms Lewis gave clear evidence that the jet washing did not improve the condition or appearance of Deloraine House and she was concerned that it may have damaged the bricks. Ms Lewis has maintained throughout that there was no need for the jet washing. In an email dated 14 April 2014 to which the Tribunal was referred, she stated:

"The back of both Heston and Deloraine Houses are clean – we viewed Heston today as we were pruning the last tree that needed to be cut to accommodate scaffolding"
95. Ms Lewis proposed spot cleaning, where needed, instead of jet washing. She gave evidence that she first noticed the staining when the scaffolding came down which she estimated was probably towards the end of 2015. She stated that it is a great irony that none of the lessees could understand the need for jet washing and now there is staining to the brickwork when there was none before.
96. In our view, Ms Lewis was an impressive witness. She readily made concessions where appropriate. For example, she accepted that certain areas of paintwork may have been damaged by water ingress instead of by poor preparation in 2014. She was clear and thoughtful in giving her evidence and she took care to be as accurate as possible.
97. As stated above, Ms Lewis had resided at Deloraine House for 38 years and she is secretary of the Tenants' Association. She has taken a very keen interest in matters concerning Deloraine House before, during

and after the Major Works and that she has allocated a considerable amount of her personal time to matters relating to the Major Works.

98. The focus of Ms Lewis' time and attention has been Deloraine House and, unlike the Applicant's witnesses, she has at all material times resided there. Ms Lewis' evidence concerning the jet washing is supported by that of Ms Walsh, who we also consider to be a credible witness. The only photographs which the Applicant has been able to produce show no relevant difference to the areas shown in the photographs before and after the jet washing. Where the evidence of Ms Lewis and Ms Walsh differs from that of the Applicant's witnesses on the issue of the jet washing, we prefer the evidence of Ms Lewis and Ms Walsh.
99. In support of its case that the costs of the jet washing are payable, the Applicant relies upon its obligation pursuant to paragraph 1 to the Ninth Schedule to the Lease to "*keep in good and substantial ... condition ... all exterior ... walls*". In the alternative, the Applicant relies upon the entitlement to improve in the Tenth Schedule to the Lease.
100. On the basis of the evidence of Ms Lewis and Ms Walsh and having considered the photographs, we find as a fact on the balance of probabilities that that the brickwork at Deloraine House was in good and substantial condition such that it did not require jet washing at time of the Major Works. We are not satisfied on the evidence before us that it is likely that there was any deterioration in the brickwork, by way of staining and/or dirt, such that it was not in good and substantial condition. Further, we find as a fact on the balance of probabilities that no improvement to the condition of the brickwork resulted from the jet washing.
101. In all the circumstances, we find that the charges in respect of the jet washing are not reasonable and are not payable.

Brick Refacing

102. In our view, a reasonable charge for the brick refacing should not exceed the estimate of £289.43.
103. Both Mr Jackson and Mr Egan gave evidence concerning the process by which brick refacing and repointing was agreed to be undertaken on the Tanners Hill estate. Mr Egan's evidence was that the brick repairs were done because they needed to be done; it was not part of his evidence that repairs were undertaken for cosmetic reasons. The Applicant submits that the Tribunal can have confidence in Mr Egan's evidence because he was a conscientious and exacting Clerk of Works.

104. The Applicant states that there is no evidenced challenge to its case that brick refacing in the sum of £26,000 was undertaken and that the Tribunal will have seen evidence of this from its inspection. The Tribunal has been invited to note resurfaced bricks at high level and on the external faces and front elevation balcony walls to Deloraine House, areas which it would not have been possible to inspect without a scaffold.
105. Ms Lewis invites the Tribunal to find that the brick refacing was unnecessary because there were only tiny blemishes on the bricks and she states that the refaced bricks stand out. Applying our knowledge and experience as an expert Tribunal, we accept Mr Bhowe QC's submission that whether or not bricks are blemished is not determinative of the issue of whether they need to be refaced, the issue is the integrity of the brick. We also accept that it does not follow from the fact that some of the refaced bricks stand out that the work was not carried out to a reasonable standard for a project of this type and price. It is likely to be significantly more expensive to ensure that the refaced bricks cannot be identified.
106. Ms Lewis understood that any bricks which needed to be refaced were to be identified by chalk marks. None of the bricks at the front of Deloraine House were marked but, despite this, she saw an operative refacing bricks to the front of the block. Accordingly, she asked the operative to stop whilst she telephoned a Mr Phillips, who was acting on behalf of the Applicant, to report the matter. After Ms Lewis had spoken to Mr Phillips, the operative left and never returned. Ms Lewis' end of the block has a great many refaced bricks but there are none at all on the other side of the block. In light of this, Ms Lewis questions the need for the brick refacing.
107. The Applicant contends that it is speculative to question why the work stopped and why no further works were carried out to that walkway. The Applicant submits that, if Ms Lewis is correct, it does not follow that any of the works already undertaken did not need to be undertaken. Further, the Applicant has responded to Ms Lewis' concerns by reducing the cost of all brickwork repairs by 30% and submits that no additional reduction is warranted.
108. For the reasons set out above, we consider Ms Lewis to be a very credible witness and we accept the evidence of Ms Lewis on this point. In our view, the fact that no further brick refacing work was carried out after Ms Lewis questioned what the operative was doing is strong evidence from which it can be inferred on the balance of probabilities that a significant amount of work was being carried out which was not needed. We consider it likely that some brick refacing was needed and, on the limited evidence available, we find as a fact that the estimated charge for brick refacing represents the cost of the work which was reasonably required.

Roof Works

109. Now that clarification has been provided by the Applicant concerning the roof works, this item no longer appears to be challenged. Further, the Tribunal accepts the evidence of Mr Dawes concerning the work which was undertaken to the roof and is satisfied on the balance of probabilities that the relevant costs are reasonable and payable.

Brick repointing

110. Ms Lewis stated at paragraph 6.4 her written objections to the Applicant's Statement of Case "Brickwork repointing – was done to a poor standard and often patchy". When Mr Bhoose QC referred her to photographs of brickwork, Ms Lewis stated that the photographs were more of an example of how gutters had not necessarily been adequately connected to lead flashing leading to water gushing down walls. She conceded that the discoloration to the wall may be as a consequence to water cascading down the wall. The Tribunal understands that the defect to the gutters has since been remedied.
111. As stated above, we accept Mr Bhoose QC's submission that the applicable standard is one of reasonableness and not one of perfection. Ms Lewis is correct to say that the repointing is patchy, and we accept that the finish is not perfect. However, the mortar is performing its function of keeping the bricks apart and, in our view, the finish at this block is reasonable.
112. In all the circumstances, we find as a fact on the balance of probabilities that the standard of the repointing to Deloraine House was reasonable having regard to the nature of the block and the project and, in particular, the rate charged for the work which was carried out.

Decoration works

113. We accept that proper allowance must be made for the passage of time, that the relevant standard is not one of perfection and that we must be satisfied on the balance of probabilities that any defects relate to the Major Works. We have taken into account all of the matters which we have identified as relevant at paragraph 67 above. However, on inspecting the block, we saw many instances of defects which are likely to have arisen during the Major Works due to poor preparation. There were areas which had not been rubbed down before being repainted, backs of stack pipes were rusty where they had not been decorated, and we observed a general lack of care and attention to detail.
114. Further, we accept Ms Lewis's direct evidence that she saw black gloss paint applied to dirt, moss, rust, dust and generally unprepared

surfaces, which is consistent with the observations of the Tribunal on inspecting the block. We note that Ms Lewis very fairly highlighted the fact that she is not objecting to the charges for painting the stairwells, because the poor workmanship to these areas has been rectified.

115. In all the circumstances, we find that the charges for the decoration works to Deloraine House fall to be reduced by 20%.

Side Door Replacement

116. The Applicant has confirmed that it is content to omit this charge.

Wash down of windows

117. Ms Lewis stated, in giving oral evidence, that people were unhappy with the wash down of the windows at Deloraine House. We accept her evidence on this issue which, if not set out in the documents which she filed and served, the Applicant had the opportunity to address at the hearing.

118. In all the circumstances, we find as a fact on the balance of probabilities that, if a wash down occurred before the scaffold was struck, it did not make any discernible difference to the condition of the windows. Accordingly, we find that any service charge costs relating to a wash down are not payable.

Widopan

119. The Applicant has conceded that there should be a 40% reduction in the charges in respect of the widopan. Having taken into account the submissions and evidence which we have heard and, in particular, our findings on inspecting the block (which are summarised above), we determine that a 60% reduction is appropriate to reflect our finding that this work was not carried out to a reasonable standard.

Professional Fees

120. Having reviewed all of our findings, we are satisfied on the balance of probabilities that the major work on the Tanners Hill estate was not well managed.

121. By way of example, we accept the evidence of Ms Lewis that certain lessees on the Tanners Hill estate spent a considerable amount of their own personal time raising relevant issues concerning the Major Works and pointing out defects which needed to be rectified which had not been identified by the Applicant.

122. The snagging list for the Tanners Hill estate is extensive and there is no satisfactory explanation for the length of time which it took to complete the work or for the amount of snagging which was required. Ms Sernevall very fairly acknowledged, as she was bound to do, that the snagging was a very challenging exercise for the lessees who spent a great deal of time and effort supervising, overseeing and contributing. She stated that it was complex and difficult to try to put right the works.
123. The Tribunal heard that because of the difficulties and the fact communication with residents on the Tanners Hill estate was not satisfactory, Ms Severvall was appointed to oversee the work to the Crossfields estate.
124. There is also no satisfactory explanation for the fact that the estimated cost of the brick refacing to Deloraine House was only 1% of the actual cost of the brick refacing. It appears that the contractor who carried out the brick refacing was not adequately supervised and the standard of any wash down was not properly monitored. Examples of similar difficulties have been identified on other blocks.
125. The Applicant accepts that there were project management deficiencies on the Tanners Hill estate as a whole and the issue for the Tribunal is the extent to which the professional fees fall to be reduced. The Applicant proposes that the professional fees be reduced to 0.67% from 1.34%.
126. Having regard to all relevant findings in this decision and to all of the circumstances of this case, we determine that the professional fees fall to be reduced to 0.25% in respect of the Deloraine House and all other blocks Tanners Hill estate.

Heston House

127. The lessees of flats 3, 23, 25, 36, 60, 65, 77 and 79 Heston House served an initial response to this application. The Applicant notes that this is 8 out of 32 lessees in a block which contains 80 flats.
128. The Tribunal heard oral evidence from Ms Nuala Walsh. Ms Walsh is the lessee of flat 77 and she represents flats 79, 65, 23, and 25 Heston House.
129. Ms Walsh has lived at Heston House for over 23 years and she had lived on the Tanners Hill Estate for over 30 years. She very fairly gave evidence that she was unable to remember when external works had last been carried out to Heston House.

Statutory Consultation

130. The Applicant's case concerning the statutory consultation is as follows.
131. The Schedule 3 notice for Heston House was dated 18 December 2013 and provided a 6 page priced and an itemised list of proposed works. The date for observations was 21 January 2014.
132. It was put to Ms Walsh that, whilst the cost of the proposed work was of great concern, the only elements in respect of which she challenged the need to undertake the work concerned the IRS system. Ms Walsh explained that this was due to her limited understanding at the time but she did not disagree with this assertion.
133. Ms Walsh made initial observations on or before 23 December 2013. These observations were actioned on 23 December 2013, copying Ms Walsh into the correspondence. Ms Walsh responded on 23 December 2013, clarifying and correcting some of the points she was making. Ms Walsh made further observations on 10 January 2014 and stated that she was still waiting for a response to her initial email.
134. Mr Schuitemaker spoke to Ms Walsh concerning the Major Works on 22 January 2014 and he provided her with specific written responses and the answers to some "frequently asked questions" the same day. Ms Walsh gave oral evidence that the conversation occurred because she had phoned Mr Schuitemaker on receipt of a notice from Mitie. Ms Walsh stated that Mr Schuitemaker did his best but then more issues came along.
135. A drop-in meeting for lessees at Heston House took place on 6 February 2014 and a number of lessees had a meeting with Mitie on 12 February 2014. Observations were received in response to the Notice of Estimates from seven leaseholders on various dates in 2014. Lewisham Homes responded to those observations.
136. The first record concerning Heston House in the Clerk of Works' reports is dated 7 February 2014 and scaffold erection was first noted on 7 April 2014. Ms Walsh gave evidence that she did not know when the scaffolding was put up. This is entirely understandable given the passage of time and the fact she had a full-time job.
137. Ms Walsh explained that she was concerned by the fact that the Schedule 3 notices were served shortly before Christmas, when people were likely to have completed their Christmas shopping and to have no money left. She stated that the office of Lewisham Homes then closed. In her email of 10 January 2014, Ms Walsh recorded that the estimated cost to her was £15,792. During cross-examination, she agreed that the timing of the notice may not have been intentional but she was of the

view that, as a public authority, the Applicant should have been preparing lessees in advance for the Major Works.

138. As stated above, the Tribunal has no jurisdiction to require a landlord to carry out a consultation which is more extensive than the statutory consultation requirements set out in the 2003 Regulations. Ms Walsh has not referred the Tribunal to any specific requirement in the 2003 Regulations which is said to have been broken. Whilst we understand Ms Walsh's concerns regarding the cost of the work and the timing of the service of Schedule 3 notice, we are satisfied on the balance of probabilities that the statutory consultation requirements have been complied with.

The notice under section 20B of the 1985 Act

139. The validity of a section 20B notice dated 9 September 2015 was challenged on the grounds that the notice (a) does not state when the costs were incurred and (b) does not list the costs only relevant to lessees.
140. Ms Walsh has not pointed to any legal authority for the proposition that this information must be contained in a section 20B notice and we accept Mr Bhowe QC's submission that there is no requirement for a section 20B notice to include these matters. Having considered the express wording of the section 20B notice, we are satisfied that it is valid.

Jet washing

141. The Applicant's submissions in respect of the jet washing are similar to those made in respect of Deloraine House.
142. Ms Walsh gave evidence that she complained about the jet washing from the outset and made a stage 1 complaint to Lewisham Homes. She did not agree that the jet washing brightened up the block and she drew support from Google Street View photographs relied upon by Mr Jackson stating one cannot tell the difference between the two photographs.
143. When it was put to Ms Walsh that Baily Garner had inspected Heston House and had concluded that some areas did not need to be jet washed, she said "*Yes, but in the same breath they did the whole of Deloraine House and none of it needed doing*". She was clear and consistent in her evidence that the "*after aesthetics*" were no better than the position before the jet washing and she strongly disagreed when it was put to her that the jet washing gave the block a lift.

144. We found Ms Walsh to be a careful and credible witness and her evidence is consistent with the only photographic evidence the Applicant has produced concerning the jet washing of Heston House. Like Ms Lewis, Ms Walsh has taken a keen interest in matters concerning her block before, during and after the Major Works and that she has allocated a considerable amount of her personal time to matters relating to the Major Works. The focus of her attention has been Heston House and, unlike the Applicant's witnesses, she has at all material times resided there. The evidence of Ms Walsh is supported by that of Ms Lewis. Where the evidence of Ms Walsh and Ms Lewis differs from that of the Applicant's witnesses on the issue of the jet washing, we prefer the evidence of Ms Walsh and Ms Lewis.

145. On the basis of the evidence of Ms Walsh and Ms Lewis and having considered the Google Street View photographs, we find as a fact on the balance of probabilities that that the brickwork at Heston House was in good and substantial condition such that it did not require jet washing at time of the Major Works. We are not satisfied on the evidence before us that it is likely that there was any deterioration in the brickwork, by way of staining and/or dirt, such that it was not in good and substantial condition. Further, we find as a fact on the balance of probabilities that no improvement to the condition of the brickwork resulted from the jet washing.

146. In all the circumstances, we find that the charges in respect of the jet washing are not reasonable and are not payable.

Decoration works

147. We accept that proper allowance must be made for the passage of time, that the relevant standard is not one of perfection and that we must be satisfied on the balance of probabilities that any defects relate to the Major Works. We have taken into account all of the matters which we have identified as relevant at paragraph 67 above.

148. However, on inspecting the block, we saw some instances of defects which are likely to have arisen due to poor preparation. We saw examples of paint on the brickwork that has not been cleaned up which, in our view, is likely on the balance of probabilities to have been applied at the time of the Major Works. The paint on the bricks appeared contemporaneous to the paint applied to the surfaces during the course of the Major Works. In the stairwells, we observed that paint was coming away and there were areas of bare concrete. The deterioration was greater than we consider reasonable, notwithstanding the significant period of time which has elapsed since the Major Works were carried out.

149. In all the circumstances, we find that the charges under this heading fall to be reduced by 15%.

Masonry and render repairs

150. The Applicant submits that these works were carried out to a reasonable standard. As regards the coping stones, the Applicant notes that these are original and have been in place for decades in exposed positions, open to the elements. The Applicant states there are probably thousands of coping stones on the three different “front” elevations to this block at four levels.
151. The Applicant relies upon photographs which show the ongoing work and the completed work and states that it is inevitable that some of the stones will have degraded in the seven years since the works were completed.
152. The Applicant notes that the Welsh arches were repaired, not rebuilt. The Applicant submits that, if any of these now require works, this is due to structural movement. It is not because the repairs by Mitie have failed or, even if they have, it does not follow that they were not to a reasonable standard.
153. The Tribunal is satisfied that work was required to the coping stones and accepts that, over time, there will be cracks and flaws. The Tribunal finds that there are a few areas where the deterioration is greater than that is likely to be caused by the passage of time or by the other factors identified by the Applicant, although the work was generally carried out to a reasonable standard. In all the circumstances, the Tribunal finds that the cost of the remedial work to the coping stones falls to be reduced by 10%.
154. The repointing to the Welsh arches has failed. Having inspected the Welsh arches and applying our knowledge and experience as an expert Tribunal, the Tribunal finds that the Welsh arches should have been rebuilt rather than repaired. The Tribunal is not satisfied that the cost of any of the work to the Welsh arches was reasonably incurred.

Drainage

155. The Applicant has clarified that the drainage works consisted of lining the drains to effectively form a new drain within the existing one. This was in order to close off any breakages within the pipework, cracks and debris. The pipes were first jet washed clean. The liner was fed into the pipe and then expanded to form a solid plastic pipe inside the old drainage pipework.
156. These remedial works were undertaken by APC Building Services and the Tribunal was referred to a Drainage Completion Certificate dated 20 March 2014 which states:

“A post repair follow up CCTV camera inspection was also carried out to verify the works and flow tests undertaken to confirm that the pipework is watertight, clear and free flowing”.

157. Ms Walsh submitted that this work has had no effect because stack pipes are still regularly blocked. Mr Jackson stated that, at Heston House and Deloraine House, the stack pipes were built to cope with pre-war living and it would be very costly to replace them. He said that the stack pipes are being cleared regularly and that the ongoing problem is a “capacity issue”. We agree with Mr Jackson on this issue and find that the current blockages are unlikely to be the result of a failure of the work which was undertaken as part of the Major Works project.

158. In all the circumstance, we find the charges under this heading are reasonable and payable.

Wash down of windows

159. Mr Egan confirmed that the windows were washed down. When this was put to Ms Walsh she stated *“If it did happen, it was a horrendous job.”* Ms Walsh gave evidence that she came home on the day the scaffold was struck to find the windows at Heston House which should have been washed in the condition shown in a photograph which she has provided. She stated that the photograph was taken either on the same day or the day immediately after the windows were said to have been cleaned. Ms Walsh’s photograph shows a window still covered in dust and dirt. We accept Ms Walsh’s evidence.

160. In all the circumstances, we find as a fact on the balance of probabilities that any wash down which occurred before the scaffold was struck did not make a discernible difference to the condition of the windows. Accordingly, the relevant service charge costs were not reasonably incurred and we find that they are not payable.

Widopan

161. The Applicant has conceded that there should be a 20% reduction to the charges in respect of the widopan at Heston House. Having taken into account the submissions and evidence which we have heard and, in particular, our findings on inspecting the block (which are summarised above), we determine that a 60% reduction is appropriate to reflect our finding that this work was not carried out to a reasonable standard.

Fees

162. For the reasons set out above, we find that the professional fees for all blocks on the Tanners Hill estate fall to be reduced to 0.25%.

163. We accept the evidence of Ms Mills that the management fee simply covers the costs of the Home Ownership Team. There are no charges to the lessees for any other Lewisham Homes' staffing costs relating to any other departments (including the Major Works department). We have found that the statutory consultation requirements were complied with and the management fee has already been reduced by just over 4% by the Applicant. We are not satisfied on the balance of probabilities that any further reduction to the management fee is warranted.

Tanners Hill Block

164. The lessees of flats 36, 44, 46 and 48 Tanners Hill Block served an initial response to this application. The Applicant notes that this is 4 out of 15 lessees in a block which contains 25 flats.
165. The Tribunal heard oral evidence from Ms Ogden Hodge and Mr Francis Suckling concerning the Tanners Hill Block.
166. Ms Hodge is the lessee of flat 46 Tanners Hill Block and Mr Suckling is the lessee of flat 48. Ms Hodge has resided at the block for 22-23 years and she was present during the Major Works. Mr Suckling is a non-resident leaseholder but he visited the block several times during the Major Works. He is a surveyor by profession but he gave evidence of fact at the hearing.
167. Ms Naomi Groves of flat 36 Tanners Hill Block did not give oral evidence but she participated in the hearing and the Tribunal is grateful for her contribution. The Tribunal is also grateful to Ms Hodge for legal research which she carried out, which it has not been necessary to refer to because the point to which the research relates was ultimately resolved by agreement.
168. Some of the complaints raised in respect of the Tanners Hill Block concern work which Respondents consider should have been undertaken by the Applicant but which was not carried out. The Tribunal does not have jurisdiction to order the Applicant to undertake work and cannot make any reduction to charges for the items of work which were carried out on account of work which did not take place. However, as stated above, the Respondents concerned may wish to take independent legal advice concerning whether they may have other remedies.
169. Complaint was also made about internal damp said to have arisen as a result of the Major Works. As stated above, the Tribunal has not in these proceedings determined claims, if any, which the Respondents may have against the Applicant, whether for damages for breach of repairing covenant or otherwise. Again, the Respondents concerned may wish to take independent legal advice concerning these matters.

Statutory Consultation

170. Ms Hodge raised the fact that there was a change in the scope of the brick repointing from 30m² in the Schedule 3 notice to 500m² in the final account, without consultation.
171. The Applicant's submissions on this issue are similar to those made in respect of the brick refacing at Deloraine House. The Schedule 3 notice in respect of Tanners Hill Block was dated 19 December 2013 and a 5 page schedule of works was provided. Item 8.19.0 concerns repointing and states "General allowance for noted poor areas", £20.90 for 25m². There was also a 10% contingency of £37,596.64.
172. After the scaffolding had been erected and an inspection carried out, the lessees were informed, by letter dated 30 September 2014, of the proposed increased quantity of "brick repairs and repointing". They were provided with a revised schedule of works and were invited to contact the Leasehold Consultation Officer if they required any further information. In the final account, the cost of the repointing was £10,498, that is approximately 28% of the contingency sum.
173. The estimated cost of the brick refacing is a very small fraction of the actual cost and the extent of the increase has not been satisfactorily explained. We nonetheless find it was not necessary on the facts of this case to reconsult.
174. In our view, the protection to be accorded to the tenants by the consultation process was unlikely to have been materially assisted by obtaining the fresh estimates on account of the fact that the area to be repointed had increased when this is the kind of repair where the actual scope of repair is likely to vary from the estimate, the final figure was less than a third of the contingency, and this was one element out of many within an estimated total expenditure of in the region of over £375,000. In our view, the tenants had sufficient information.
175. However, we consider that the absence of any satisfactory explanation as to why the actual cost of the brick repointing was so much greater than was estimated is evidence that the project was not well managed and we have taken this into account, along with other factors, in reducing the professional fees.

Scaffolding Alarms

176. Complaint is made that the scaffolding alarm was not connected to a central alarm centre. The Applicant agrees but confirms that there was no charge for a call centre facility.

177. Mr Suckling stated that the scaffold alarms were often missing, not switched on or not working. However, as he was not resident, this is based on information provided by his tenant. Mr Suckling explained that the tenant reported seeing children and adolescents on the scaffolding at night but they never heard an alarm go off.
178. For reasons set out in greater detail below, people are likely to have been able to access parts of the scaffold without setting off any alarm (alarms were not located on every section of the scaffold). Due to the regularity with which people were seen on the scaffold, we consider there are likely to have been instances of the alarms not being switched on outside working hours (a management issue).
179. However, in all the circumstances we are not satisfied on the balance of probabilities that the alarms themselves were defective and we make no deduction under this heading.

Decoration works

180. Ms Groves challenged the charge for Integra paint/masonry paint “one quantity being only in stairwells”. The Tribunal understands that Ms Groves was concerned that there may have been double counting but accepts Mr Jackson’s explanation.
181. The rate for Integra Paint/Anti-graffiti paint is £12.33 for 551.94m² and the rate for masonry paint to external rendered surfaces of walls is £7.95 for 551.9m², giving a combined rate of £20.28 for the painted surfaces. Integra paint was used because of its superior qualities to a standard masonry paint (and was not used because of its anti-graffiti properties). Accordingly, two coats of paint were applied, first masonry paint and then a top coat of Integra Paint.
182. The Tribunal accepts that this was reasonable and finds that the cost of the decoration works to Tanners Hill Block is reasonable and payable.

The standard of repointing

183. Mr Suckling described an area of repointing to part of the flank wall as of poor quality and not flush. He stated that the work was carried out in a piecemeal manner using different gangs of bricklayers. Mr Suckling noted that Mr Egan, whose reports were detailed and whose role it was to be the “eyes and ears of the client”, had numerous blocks to contend with. Mr Suckling submitted that Mr Egan would have been greatly challenged in carrying out this role.
184. Mr Egan gave evidence that he would be happy with a 25mm grind into the pointing and Mr Suckling submitted that this was not in

accordance with the specification or with the task orders which required a 50 mm grind.

185. Mr Suckling was a careful and thorough witness of fact and he was understandably cautious when it came to putting a figure on the proportion of the repointing which he observed to be defective. He estimated the relevant area to be 10% but stated that it could possibly be greater. Ms Hodge made similar complaints concerning the standard of the repointing. She submitted that the cost of the repointing should be reduced by 50% to 75% but an area which she referred to as unfinished had not in fact been repointed.
186. Mr Bhose QC pointed out that Mr Dawes was not asked whether the 50mm reference included the pre-existing recessed depth and noted that a 50mm grind into the pointing itself, where the pointing is already recessed, would take one more than halfway into the brick.
187. The Applicant's case is that, in any event, the pointing to this block was to a reasonable standard, save for the very small area of unfinished pointing, of area of less than 3m². Mr Bhose QC submits that there is no cogent evidence that any of the pointing has failed in the last 7 years and that it is entirely speculative on Mr Suckling's part as to whether some parts of it may not have been ground out to an adequate depth.
188. The Tribunal accepts Mr Suckling and Ms Hodge's case that the pointing varies in its style and quality and falls below a reasonable standard in places. We also accept that, whilst in places the finish is not of an acceptable standard, there is no cogent evidence before the Tribunal of mortar falling out. Having carefully considered and weighed up all these factors, we find that the charges under this heading fall to be reduced by 10%.

Brick refacing

189. Ms Hodge submitted that the brick refacing work was a cosmetic improvement which cannot be justified. Mr Dawes stated in cross-examination that the brick refacing was carried out because, once the brick face deteriorates, there is the potential for water penetration through the brickwork. He also stated that he thought "the cosmetic issue is a further factor" but that it was not the only reason for the brick refacing work.
190. Mr Dawes is a witness of fact and he therefore cannot give expert opinion evidence in these proceedings. However, his statement that the brick refacing work is not simply cosmetic accords with the Tribunal's knowledge and experience as an expert Tribunal and we find that the cost of the brick refacing is reasonable and payable.

Widopan

191. As stated at Paragraph 35 above, the Applicant makes the following concession concerning the widopan at this block: “The removal of the widopan walkway charge (No.53) and a 10% reduction from the widopan stairs charges (Nos 51 & 52)”. The Tribunal is not satisfied on the evidence that any further reduction falls to be made.

Fees

192. For the reasons set out above, we find that the professional fees for all blocks on the Tanners Hill estate fall to be reduced to 0.25% but that the management fee sought by the Applicant should not be reduced.
193. In this context, we note that Ms Groves states in her written evidence that there was a high turnover of staff, who did not have working knowledge of the works. Mr Suckling’s oral evidence, which we accept, that a mortar spillage occurred which was not dealt with for 10 months is consistent with Ms Groves’ statement.
194. Mr Suckling referred the Tribunal to evidence given by Mr Jackson that the contract with Mitie was a partnership contract which relied upon trust. He submitted that only a brave person would enter into such a contract in the building industry. He stated that there was poor management and scoping and submitted that the arbitration subsequently entered into with Mitie demonstrates the disintegration of trust. Mr Suckling also submitted that an absence of proper control resulted in poor workmanship and a lack of respect for tenants.
195. Ms Hodge questioned why no reserve fund had been set up in advance of the Major Works and she also gave evidence, which we accept, that there was poor management and poor communication with lessees. The Applicant accepts that communication could have been better on the Tanners Hill estate.
196. The Tribunal has taken the evidence given by lessees at Tanners Hill block into account in finding that there have been deficiencies in monitoring and management to the extent that the professional fees fall to be reduced to 0.25%.

22-40 Florence Terrace

197. The lessee of flat 28 at 22-40 Florence Terrace served an initial response to this application. The Applicant notes that this is 1 out of 3 lessees in a block which contains 10 flats. The lessee of flat 28 did not attend the hearing to give oral evidence.

Scaffold Alarms

198. It is claimed that the scaffolding alarms were not connected to a call centre. This is agreed by the Applicant and there have been no charges in connection with any call centre. There is no complaint that the alarms at 22-40 Florence Terrace did not work. The Tribunal finds that the costs of the alarms are reasonable and payable.

Widopan

199. The Applicant accepts a 10% reduction in relation to the Widopan on the stairs. Having taken into account the submissions and evidence which we have heard and, in particular, our findings on inspecting the block (which are summarised above), we determine that a 15% reduction is appropriate to reflect our finding that this work was not carried out to a reasonable standard.

Wash down of windows

200. It is claimed that this did not happen, the Applicant disputes this. Where oral evidence has been given, there has been complete consistency between the blocks concerning the standard of the wash down, if any, provided by Mitie's contractors. Whilst the Tribunal must exercise caution in drawing inferences between blocks, in our view, this supports the assertion that the wash down to 22-40 Florence Terrace was not effective. No photographic evidence has been provided that any wash down was to a reasonable standard and Ms Walsh has provided a photograph showing that the wash down, if any, to her flat was poor.
201. In all the circumstances, the Tribunal finds it likely that this complaint is well founded and that any wash down to this block did not make a discernible difference to the condition of the windows. Accordingly, the relevant service charge costs were not reasonably incurred and we find that they are not payable.

Masonry Works

202. It is claimed that there was "no proper prep" prior to the masonry work being undertaken, so that the repairs failed within months. No further detail is given. This claim is not accepted by the Applicant. On the basis of our inspection, the Tribunal finds that the standard of the masonry work to this block was reasonable, and reiterates that the

relevant standard is not one of perfection. Accordingly, the service charge costs relating to the masonry works are payable.

Professional fees

203. For the reasons set out above, the Tribunal finds that the professional fees in respect of the blocks on the Tanners Hill estate fall to be reduced to 0.25%.

42-60 Florence Terrace

204. The lessees of flat 46 and 52 at 42-60 Florence Terrace served an initial response to this application. The Applicant notes that this is two of four lessees in a block which contains 10 flats. Ms Vickie Yeardley of flat 52 attended the hearing and gave oral evidence.

Scaffold Alarms

205. It is claimed that the scaffolding alarms were not connected to a call centre. This is agreed by the Applicant and the Applicant has confirmed there have been no charges in connection with any call centre (a possibility which was of concern to Ms Yeardley). The Tribunal finds that the costs of the alarms are reasonable and payable.

Decorations

206. We accept that proper allowance must be made for the passage of time, that the relevant standard is not one of perfection and that we must be satisfied on the balance of probabilities that any defects relate to the Major Works. We have taken into account all of the matters which we have identified as relevant at paragraph 67 above. However, on inspecting the block, we did observe instances of poor preparation and a general lack of care and attention to detail in relation to the Major Works. We find that the charges under this heading fall to be reduced by 10%.

Wash Down of Windows

207. The Tribunal accepts the evidence of Ms Yeardley on this issue and finds as a fact on the balance of probabilities that the wash down, if any, which occurred before the scaffold was struck did not make a discernible difference to the condition of the windows. Accordingly, the relevant service charge costs were not reasonably incurred and we find that they are not payable.

Widopan

208. Ms Yeardley stated that, in her block, 15 patch repairs have been carried out to 38 stairs and that there are now two new holes in the stairwell and two on the landing area. She stated that failings occurred within a month of the work being carried out. As stated above, we accept the submission of Mr Bhose QC that we must consider the standard achieved following repairs. However, we have taken the history into account in assessing the professional fees for the management of the Major Works project.
209. The Applicant accepts a 10% reduction in relation to the widopan on the stairs. Having taken into account the submissions and evidence which we have heard and, in particular, our findings on inspecting the block (which are summarised above), we determine that a 15% reduction is appropriate to reflect our finding that this work was not carried out to a reasonable standard.

Professional fees

210. For the reasons set out, the Tribunal finds that the professional fees in respect of the blocks on the Tanners Hill Estate fall to be reduced to 0.25%.
211. Ms Yeardley drew the Tribunal's attention to the fact that it was unclear which long poles on the walkways had been decorated and to errors on the part of the Applicant's employees and/or contractors in counting and other inaccuracies. She acknowledged that the sums in question were small but stated that, as result of these inaccuracies in simply counting, she "had no confidence in the rest of the surveying".
212. Ms Yeardley submitted that closer monitoring was needed in respect of the preparatory work. She was also concerned that work appeared to have been signed off on the basis of a video submitted by Mitie and that further defects may arise in the future due to the manner in which the work was carried out. She stated that she had felt undermined when simply asking questions and had had to bring in Councillors because she was unable to obtain a straight answer.
213. The Tribunal accepts that there have been some errors, inaccuracies, management failings and communication failings on the part of those acting on behalf of the Applicant. These matters have been taken into account in reducing the professional fees.

The Tanners Hill Estate blocks with no active Respondents

214. The relevant blocks are: 2-20 Florence Terrace; Heald Street; Mahoney House; 1-35 Omega Street; 2-18 Omega Street; and Pitman House.

215. In respect of 2-20 Florence Terrace, the Applicant states because the Tribunal has inspected the widopan in this block and has informed the parties of the result of its inspection, the Applicant accepts it has had a fair chance to meet this information. The Applicant considers that a 10% reduction in relation to the stairs reflects the degree to which the works are not to a reasonable standard.
216. During its inspection of 2-20 Florence Terrace, the Tribunal observed footprints in the widopan, holes on stairs and that the widopan had generally been applied thinly and poorly. Based on our observations during the inspection, the Tribunal determines that a 15% reduction in the cost of the widopan is appropriate.
217. The Tribunal did not inspect Heald Street; Mahoney House; 1-35 Omega Street; 2-18 Omega Street; or Pitman House. The Tribunal accepts that it must be cautious in seeking to draw adverse inferences about the standard of work on one element in one block, to another block on the same estate. However, the Tribunal does not have to suspend judgment or belief and simply accept the Applicant's case.
218. Whilst some blocks were worse than others, the general application of widopan was poor at all of the blocks inspected by the Tribunal. Mitie was responsible for the work to every block and, in all of the blocks we inspected, the nature and character of the substandard application was the same. Applying our expert knowledge and experience and having considered the nature and consistency of the deficiencies, in our view it is likely on the balance of probabilities that the application of widopan at floor level fell below a reasonable standard throughout the Tanners Hill estate.
219. In all the circumstances, we find that a reduction of 10% falls to be made in respect of the blocks in respect of which no specific complaints have raised by leaseholders. We note that it is likely that any severe deficiencies would have been drawn to the Tribunal's attention and, as stated above, we consider that a cautious approach must be adopted when drawing inferences between blocks. For the avoidance of doubt, we make no reduction in respect of the widopan work to the canopy roof at Pitman House.
220. As set out above, the Tribunal finds that the professional fees fall to be reduced to 0.25% across the Tanners Hill estate.
221. The Tribunal otherwise finds that the service charges which form the subject matter of this application and which are sought from lessees of these blocks are reasonable and payable.

THE CROSSFIELDS ESTATE

Browne House

222. The lessees of flats 8, 9, 11, 13 & 14 Browne House served an initial response to this application. The Applicant notes that this is 5 out of 9 lessees in a block which contains 15 flats. Mr Tom Allum of flat 8 attended the hearing and gave oral evidence.
223. During the Major Works, Mr Allum resided at Browne House but he was generally at work during the working week. Mr Allum does not currently reside at Browne House but he visits the block from time to time.

Scaffold Alarms

224. Mr Allum states that he never heard the alarms sound although he saw people on the scaffold on a regular basis, both during the day and at night. During the day, Mr Allum saw youths on the scaffold and, at night, it was understandably difficult for him to see the people concerned in any detail. Mr Allum gave evidence that he generally saw youths on the scaffold during the day at weekends because on weekdays he was usually at work. He described being shocked, having thought that access to the scaffold would be restricted.
225. Mr Allum gave evidence that he saw ladders left out on a few occasions and, at least once, over the weekend at this block. He stated that this did not occur all the time and that ladders were not left out across the whole of the estate. Mr Allum told the Tribunal that one of his neighbours had been burgled. He said that potential burglars would be able to see into the flats from the scaffolding in order to ascertain whether or not the occupants were at home and the nature of the goods inside.
226. The Applicant submits that its evidence establishes that:
- (i) Alarms were fitted to all blocks, being placed on the bottom and top lifts in every corner to a maximum linear distance of 50 meters (the sensors creating a laser perimeter along the length of the run).
 - (ii) They were turned on at the end of each working day and turned off at the start of the next working day.
 - (iii) Mitie was called upon to respond to any faults.
 - (iv) Lessees were charged a rate for the fitting of alarms - the specification and rate did not include a price for

the alarms to be fitted to a central call centre (and no charge was made for this).

227. The Applicant submits that the fact that Mr Allum did not hear an alarm sound does not mean that the alarms were not working. Nor does the fact that, regrettably, persons unknown may have been able to access parts of the scaffold without the alarm sounding. This is a walk-up block where it may have been possible for determined people to access the scaffold from the open walkways on the front elevations. As the intermediate lifts were not alarmed (such as the lift alongside Mr Allum's second floor flat) if persons unknown were on those lifts there would be no prospect of an alarm sounding.
228. The Applicant submits that an important part of the point of including scaffold alarms is their deterrence effect; it is to seek to dissuade persons unknown. The Applicant states that had it not provided any alarms, it would have been criticised by its residents but, had it specified alarms to all lifts it would likely have been criticised for over-specification. Had it arranged for the alarms to be connected to a central call centre, it would probably face complaints that these were wholly unnecessary costs to have incurred. On this basis, the Applicant invites the Tribunal to find that what it provided was reasonable.
229. The Applicant also submits that it is not credible to think that there were widespread ongoing alarm failures which were not attended to by Mitie for the following reasons. Given that there was specific discussion about alleged burglaries at a leaseholder meeting on 31 March 2015, it is not credible to think that Ms Sernevall would have allowed such a situation to continue. The minutes record Ms Sernevall as being told of eight burglaries on the Crossfields estate only one of which involved entry/exit via the scaffolding and that the burglary in question was committed during the day when the alarm system was off. The notes go on to record that it was not appropriate to incur costs for additional sensors when the burglaries had not been carried out via the scaffolding.
230. The Tribunal accepts Mr Allum's evidence that he regularly saw people on the scaffold and that, on occasion, ladders were left out outside the contractors' working hours. We also accept the Applicant's evidence that it was possible to access the scaffold without setting off an alarm. Given the regularity with which Mr Allum saw people on the scaffold, we find that it is likely that there were instances of the alarms not being turned on. This is, however, a management issue which is relevant to the level of the professional fees as we are not satisfied on the evidence before us on the balance of probabilities that any of the alarms themselves were defective.
231. A more comprehensive alarm system connected to a call centre could have been provided at considerably greater expense to lessees.

However, in our view, the more limited system provided by the Applicant at a lower cost was within the range of reasonable options open to the landlord. We understand that any necessary adjustments have been made by the Applicant to ensure that lessees are only charged for the number of alarms provided. In all the circumstances, we find that the costs which fall under this heading are payable.

Polyurea

232. On the Crossfields Estate, polyurea rather than widopan has been applied to communal areas. Mr Allum takes issue with the quality of this aspect of the Major Works. Matters raised include difficulties in cleaning the polyurea and gaps between the polyurea coated surface and the walls.
233. The Applicant submits that the application of the polyurea to the walkways of the block was to a reasonable standard. The Applicant accepts that the surface requires a brush to clean it but submits that this does not make it an unreasonable product to have chosen. The polyurea had to be re-applied at this block, but the Applicant notes that it was the first block at which polyurea was used.
234. The Applicant submits that polyurea was a suitable coating for existing surfaces, provided that it is installed in accordance with the manufacturer's instructions. The Applicant invites the Tribunal to infer that this was the case from the current condition of the polyurea.
235. The Applicant contends that claims that the application of polyurea resulted in ponding are unfounded because the polyurea coating is only 3mm thick and so would not have affected pre-existing levels.
236. The Applicant states, replying upon photographic evidence, that there were no gaps between the polyurea covered asphalt and the upstands when the works were completed. Mr Allum gave evidence that he did not recall seeing any gaps at that time.
237. The Applicant accepts that there are some locations where there are now gaps. The Applicant states that this is likely to have been caused by differential movement, which one is bound to have in a block of this age which does not include any movement joints. However, the Applicant submits that this does not mean that the installation works were not carried out to a reasonable standard.
238. On this block, mortar fillets were incorporated in some locations and the Applicant submits that this was a reasonable way to proceed as one may infer from the presence of these fillets that there may otherwise have been some form of gap. The Applicant states that it is speculative whether, had some form of mastic sealant been used

instead, any cracking would have been any different and that the choice of one form of filler over the other (if either were needed at all at a particular location) was a choice that a reasonable landlord would make.

239. The Applicant accepts that water may enter into gaps but states it is important to bear in mind that here one is talking of sheltered locations. The risk of water ingress through any gaps that have now opened up having any consequential, adverse, effect on the structure of the block is, the Applicant submits, very slight.

240. The Tribunal accepts that the polyurea is a thin coating designed to seal cracks and crazing, giving longevity to the original surfaces, and that it simply follows the contours of the underlying asphalt. However, applying our expert knowledge and experience, the Tribunal determines that there should have been better detailing in order to ensure that the area would remain waterproof following differential movement, which the Applicant accepts was bound to occur in a block of this age.

241. We note that, in some places, adequate detailing was carried out. In our view, this should have occurred throughout. We are not satisfied that the difficulties in cleaning the polyurea are such as to render it an unsuitable material. If the Applicant fails to clean the areas which are its responsibility in accordance with its covenants, the lessees may have remedies which are beyond the scope of this determination. In all the circumstances, we find that a reduction of 10% falls to be made from the cost of the polyurea on account of the deficiencies in detailing observed during the Tribunal's inspection.

242. Mr Dawes gave evidence that Lewisham Homes does not conduct annual inspections and concerning the potentially detrimental effect of this on the manufacturer's guarantee. The Applicant submits that this evidence does not, and cannot go to the question of whether the installation costs of the polyurea were reasonably incurred.

243. Mr Bhoose QC submits that, quite apart from Ms Lawes' reliance on Krypton Chemicals UK Limited having since been dissolved, this might only become relevant in the future should repairs be required to the polyurea itself. If the Applicant was then to seek to recover costs from the Respondents towards any such repairs, it might be open to the Respondents to question why the guarantee was not being relied upon. The Tribunal accepts this submission.

Decoration Works

244. On the basis of our inspection, the Tribunal determines that the decoration work, whilst not perfect, has stood up reasonably well given

the passage of time and is of a reasonable standard. In all the circumstances, we find that the costs which fall under this heading are payable (save for the agreed reduction in respect of the paintwork to the upper communal stairwell).

Wash Down of Windows

245. Mr Allum gave oral evidence concerning the day on which he returned home and saw that the scaffolding had been struck. He recalled that this was quite a momentous occasion because the scaffolding had been in place for a long time. He then saw that the windows to his block had not been cleaned and either the same day, or shortly afterwards, he tried to rig up a system to clean them from inside. He said that he might have spoken to his next door neighbour about this but that there was no need for the residents to have general discussions because everyone could see that the windows had not been done.
246. The Tribunal accepts the evidence of Mr Allum on this issue and finds as a fact on the balance of probabilities that the wash down, if any, which occurred before the scaffold was struck did not make a discernible difference to the condition of the windows. Accordingly, the relevant service charge costs were not reasonably incurred and we find that they are not payable.

Bin Chute Doors

247. The Tribunal is satisfied that it was reasonable to paint the bin chute doors. On the basis of the inspection, the Tribunal determines that this work, whilst not perfect, has stood up reasonably well given the passage of time and is of a reasonable standard.
248. In all the circumstances, we find that the costs which fall under this heading are payable.

Masonry Work

249. Mr Allum took issue with the quality of this work. We are not satisfied on the evidence before us that brickwork to this block was unnecessarily repointed or refaced.
250. On the basis of the inspection, the Tribunal determines that this work, whilst not perfect, is of a reasonable standard. To achieve colour matching would have been a more complex and expensive task. In all the circumstances, we find that the costs which fall under this heading are payable.

Integrated Reception System

251. The Applicant's position is that the integrated reception system ("IRS") is for Sky viewing. It provides broadcast signals from multiple sources (typically terrestrial television, FM radio, DAB digital radio and satellite TV) to multiple outlets, via a single aerial cluster and signal booster-distributor. The benefit is for one aerial to replace the various Sky dishes.
252. The IRS system was set-up so that all residents had the option to be connected. The Applicant states that, if any residents wish to connect in future, they will be able to do so.
253. The Tribunal accepts the Applicant's evidence that there is an IRS system to Browne House and that the work in connection with this IRS system was carried out to a reasonable standard.
254. Mr Allum made the point that, if a lessee refused to answer the door to facilitate an installation to their flat, the block was not charged for the connection of the relevant flat to the IRS system. By contrast, when lessees who did not wish to be connected to the IRS system nonetheless allowed work to take place within their flat, the block was charged (with the cost divided between all of leaseholders). He considered that this was unfair.
255. We note Mr Allum's concern but we are not satisfied on the evidence that any of the work which was in fact carried out was not to a reasonable standard. In all the circumstances, we find that the costs which fall under this heading are payable.

Fees

256. On the basis of Mr Allum's evidence we are satisfied that, on occasion, alarms were not switched on and ladders were left out outside contractors' working hours.
257. Mr Allum referred the Tribunal to the limited nature of the records kept by the Clerk of Works for the Crossfieds estate who, unlike Mr Egan on the Tanners Hill estate, did not give oral evidence. He noted that, whilst Ms Sernevall stated that comprehensive logs were kept and were available to Bailey Garner, no such logs have been disclosed in these proceedings. Mr Allum stated, and we accept, that there were deficiencies in terms of communication with lessees in this block.

258. In all the circumstances we find that the professional fees fall to be reduced to 1%.

Castell House

259. The lessee of flat 22 Castell House served an initial response to this application. The Applicant notes that this is 1 out of 16 lessees in a block which contains 45 flats. The lessee of flat 22 Castell House did not attend the hearing to give evidence.

Scaffold Alarms

260. For the reasons set out above in relation to Browne House, the Tribunal finds that the costs which fall under this heading are payable.

Polyurea

261. The work at Castell House was similar to that carried out at Browne House and the Tribunal finds that a reduction of 10% falls to be made from the cost of the polyurea on account of deficiencies in detailing observed during the Tribunal's inspection.

Decoration Works

262. The Applicant has clarified that there is no charge for the painting of rainwater downpipes and soil pipes.
263. As regards the painting of communal stairwells, the Applicant accepts that there should be a reduction. On inspecting the block, the Tribunal observed that the paintwork in the stairwells is flaking and there are areas of damp. There is significant bulging to the underside of the balcony at third floor level and the paintwork has lost its bond.
264. Having taken into account the passage of time and the matters identified at paragraph 67 above, the Tribunal finds that the 20% reduction offered by the Applicant is appropriate.

Wash Down to Windows

265. Where oral evidence has been given, there has been complete consistency concerning the standard of the wash down, if any, provided by Mitie's contractors on this estate. Whilst the Tribunal must exercise caution in drawing inferences between blocks, in our view, this supports the assertion that the wash down to Castell House was not effective. No photographic evidence has been provided that any wash down was to a reasonable standard.

266. In all the circumstances, the Tribunal finds it likely that this complaint is well founded and that any wash down to this block did not make a discernible difference to the condition of the windows. Accordingly, the relevant service charge costs were not reasonably incurred and we find that they are not payable.

Masonry Work

267. Having inspected the block and having taken into account the passage of time, we find that the standard of this work, whilst not perfect, is reasonable.

Window Sealant

268. Having inspected the block and having taken into account the passage of time, we find that the standard of this work, whilst not perfect, is reasonable.

Professional/Management fees

269. Having carefully considered all the circumstances, we find that the professional fees fall to be reduced to 1% but that there are no grounds for reducing the management fee sought by the Applicant.

Cremer House

270. The lessees of flats 11 and 13 Cremer House served an initial response to this application. The Applicant notes that this is 2 out of 7 lessees in a block which contains 15 flats. The lessees of flats 11 and 13 Cremer House did not attend the hearing to give evidence.

Decorating Works

271. Complaint is made by the Respondents about the standard of this work, including that there was inadequate preparation. On inspecting the block, the Tribunal found that the paintwork to the fascia of the porch and paintwork to the ceiling areas in the stairwell was badly peeled.

272. Having taken into account the passage of time and the matters identified at paragraph 67 above, the Tribunal finds that the decorating was not to a reasonable standard and that a 15% reduction falls to be made.

Polyurea

273. On inspecting this block, the Tribunal found the polyurea to be in reasonable, although not perfect, condition. Accordingly, the Tribunal makes no reduction under this heading.

274. Any potential damages or other claims against the Applicant concerning internal water ingress are outside the scope of these proceedings and any issues concerning the guarantee will fall to be considered if the Applicant seeks to charge the Respondents for remedial work to the polyurea.

Wash Down to Windows

275. Where oral evidence has been given, there has been complete consistency concerning the standard of the wash down, if any, provided by Mitie's contractors. Whilst the Tribunal must exercise caution in drawing inferences between blocks, in our view, this supports the assertion that the wash down to Cremer House was not effective. No photographic evidence has been provided that any wash down was to a reasonable standard.

276. In all the circumstances, the Tribunal finds it likely that the complaint under this heading is well founded and that any wash down to this block did not make a discernible difference to the condition of the windows. Accordingly, the relevant service charge costs were not reasonably incurred and we find that they are not payable.

Roof Guttering

277. Complaint is made that an area of roof guttering has been blocked or broken since the Major Works were undertaken. The Applicant has confirmed that no charges were made for any works to guttering save for the painting of rainwater gutters. Further, the guttering was cleaned, as a precaution, following an inspection which took place on 18 November 2021.

278. In all the circumstances, the Tribunal is not satisfied on the balance of probabilities that any deduction falls to be made under this heading.

Farrar House

279. The lessees of flats 9, 13, 24, 33 Farrar House served an initial response to this application. The Applicant notes that this is 4 out of 21 lessees in a block which contains 40 flats.

280. The Tribunal heard evidence from Mr Hugh Miller who is the lessee of flat 13 Holden House. Mr Miller is an architect but, as with all of the

other witnesses, he gave evidence of fact. Mr Miller has resided at Farrar House throughout.

Replacement of the Canopy

281. Mr Miller sought to advance a historic neglect claim. He did not produce any expert evidence concerning (a) when the Applicant was first in breach of its covenant to repair the covering to the canopy or (b) when the canopy would anyway have required replacement because of the degradation of the timbers. He accepted in evidence, albeit not as an expert witness, that it would likely have been a number of years before the works were carried out. Photographs of the rotten joints support this proposition.

282. The Applicant states that this claim is bound to fail. Mr Miller became the assignee of flat 13 Farrar House on 26 August 2011, registration being completed on 13 October 2011. The Applicant states that, as a matter of law, he cannot maintain an action for damages for breach of covenant before that date: *Daejan Properties Ltd v Griffin* [2014] UKUT 0206 (LC) at [87].

283. The Tribunal is mindful that, at the outset of the hearing, all of the lessees (a number of whom raised what appeared to be potential breach of covenant claims) were informed that breach of covenant claims, whether by way of set off or otherwise, would not be determined by this Tribunal. Accordingly, the Tribunal makes no determination on this issue. However, the Applicant's position, which is clear, is as set out above.

Polyurea

284. Mr Miller gave evidence that cracks have opened up in the last 6-7 years and submitted that this will undermine the lifespan of the polyurea. He did not agree that the risk of water penetrating through the cracks was remote and said that any water would run down the bricks onto the surface below. Mr Miller submitted that mastic should have been used to finish the upstand in place of mortar because mastic is more flexible. He said that mortar is cheaper than mastic but that he would always use a mastic fillet in his professional capacity. He stated that he could not see cracks in the polyurea when the Major Works were completed but that fine cracks would be hard to see.

285. On inspecting this block, the Tribunal observed significant damage to the underside of the ceiling at the second-floor level with staining and bulging. Above this area, at the third-floor level, was a large repair to the polyurea floor covering. At the third-floor level, there was evidence of mould and damp penetration to the area below the canopy/box guttering. The Tribunal observed through an open window

into the kitchen of one of the flats what appeared to be significant damp to the internal plaster. There was also evidence of salt residues and moss growth on the brickwork in a number of locations. One area of staining and salt to the brickwork was on the second floor below the evidence of damp from the third floor. There was some damage to the edge of the canopy.

286. In our view, the use of a concrete fillet is reflected in the pricing. However, the Tribunal saw a lack of attention to detailing including areas of the polyurea covering that had been applied over the edges of the drainage grills, reducing the drainage soak away area. The Tribunal determines that the costs under this heading fall to be reduced by 10% on account of the defects observed.

Decoration Works

287. Mr Miller stated that materials appeared to have been chosen on the basis of being the cheapest rather than the most robust. He noted that some concrete repair work was a different colour from the concrete used for repairs to the stairs and said that the common parts now look worse than they did before because the eye is drawn to different patches of discoloured concrete. Mr Miller accepted that colour matching would probably cost more and very fairly said that he did not know how much more it would cost.
288. Mr Miller stated that, walking around the site, he can quite easily see that the mortar repairs are not the same. He very fairly accepted that, being 90 years old, there would have been earlier repairs in different colours and that the repairs carried out during the Major Works may soften with time. However, he stated that he would not be happy with the standard of work. When it was put to Mr Miller that the freeholder has as much interest as the lessees in using suitable materials, he said yes in terms of robustness but that aesthetic appearance is likely to be less of a concern to the freeholder.
289. In his closing submissions, Mr Miller stated that the quality of the work was such that he would not be happy with it in his own home. He said that 6-7 years later it seems to be failing in areas. He submitted that paint is coming off the gutters in a way which would not be expected if the paint had been correctly chosen and primed. He stated that he could not be certain if this was because the cheapest paint had been used, but that he considered this to likely. He said that paint was also peeling off soffits of balcony canopies.
290. We entirely accept Mr Miller's evidence that the work was not to the standard which he personally would carry out. In our view, the failure to fully colour match was reasonable for a project of this nature and price. However, the Tribunal noted that some of the re-pointing was poorly detailed, particularly poorly matched, and uneven. We also

accept, taking into account the passage of time and the other matters identified at paragraph 67 above that there are areas where the preparation during the Major Works is likely to have been to be poor. In all the circumstances, we find that the costs under this heading fall to be reduced by 10%.

Holden House

291. The lessees of flats 12, 17, 21 and 40 Holden House served an initial response to this application. The Applicant notes that this is 4 out of 32 lessees in a block which contains 60 flats. The Tribunal heard evidence from Ms Sue Lawes who is the lessee of flat 40 Holden House.

292. Ms Lawes has been a lessee for 19 years and she was the Secretary of the Tenants' and Residents' Association for a period. For the last three years, Ms Lawes has not been a resident lessee.

Scaffolding and Scaffolding Alarms

293. Ms Lawes states that it was agreed at a meeting that the scaffolding costs would be capped at £17,000. She was not certain of the date of the meeting and no minutes of the meeting were produced in evidence. There is insufficient evidence before the Tribunal to establish that any legally binding agreement was reached. The Tribunal notes that the actual charge for the scaffolding costs is £17,808.

294. There is a dispute between the parties concerning the number of burglaries which took place via the scaffolding. We note that the alarm system used by the Applicant (if operated properly) made it more difficult, but not impossible, for burglaries to take place via the scaffolding. Ms Lawes gave evidence that the alarm system was not properly managed, which accords with the evidence of Mr Allum. We have taken this into account in reducing the professional fees. However, we are not satisfied on the balance of probabilities that the scaffolding and alarm system itself was defective and we therefore find that no deduction falls to be made under this heading.

Polyurea

295. During our inspection, the Tribunal observed several gaps between the polyurea covering and the balcony walls and as well as some patch repairs. There was also lifting of the polyurea upstands in places. Whilst we accept Ms Lawes' assertion that the polyurea has not improved the contours of the original surface, the purpose of the application of polyurea was simply to seal the original surface.

296. We are not satisfied that the difficulties in cleaning the polyurea are such as to render it an unsuitable material. If the Applicant fails to clean the areas which are its responsibility in accordance with its covenants, the lessees may have remedies which are beyond the scope of this determination. Ms Lawes was concerned that the guarantee for the application of polyurea may be invalid. This issue has been considered above.
297. The Tribunal finds that a reduction of 10% falls to be made from the cost of the polyurea on account of deficiencies which were observed during the Tribunal's inspection.

Decoration Works, Metalwork and Masonry Works

298. Ms Lawes states that the brick refacing and repointing work is "appalling and arbitrary", that some of it is "lumpy and clumsy". She also raised the issue that the work has not been colour matched. Ms Lawes added that the choice of bricks was arbitrary with some good bricks dug out and bricks which needed attention left as they were. She explained that she considered bricks to be defective when they had holes in them the size of a 5 pence coin and she did not agree that bricks which appeared to be in good condition might fail a hammer test.
299. Ms Lawes very fairly accepted that some of the bricks had been repaired prior to the Major Works, for example, when boiler flues were fitted. She also accepted that the bricks which had been repaired during the Major Works had not failed but stated that they "look awful". She complained of a red textured substance having been painted over some of the bricks.
300. Ms Lawes gave evidence that the Conservation Officer had asked for some of the Welsh Arches to be rebuilt rather than repaired. She was of the view that the Conservation Officer did not see the finished work. Ms Lawes explained that she had had dealings with the Conservation Officer as a member of the Deptford Society and that she has not found any documents on the Applicant's website or reports from the Conservation Officer to confirm that the Conservation Officer is content with the Applicant's work.
301. Ms Lawes stated that, when the specification for the Major Works was drawn up, neither Lewisham Homes nor Baily Garner was aware that the block was in a Conservation Zone and that she and other lessees had had to tell them to bring the Conservation Officer in.
302. Ms Lawes accepted that the preparation of the stairwell railings was good in parts. Where chipping has occurred, she agreed that this could in part be due to impact damage but she maintained that this was also, in part, due to poor preparation.

303. Ms Lawes complained of inconsistent charging between blocks. It was put to her that, if Mitie could not demonstrate to Baily Garner's satisfaction that work had been carried out to a block, there would be no charge to the lessees of that block for the work in question but that this did not mean that the cost of the work which lessees at other blocks have been charged for is unreasonable. Ms Lawes' response was that work which has not ultimately been charged for should not have originally been signed off.
304. The Tribunal accepts the evidence of Ms Lawes that she and other lessees asked for the Conservation Officer to be brought in. The Applicant has not yet provided evidence that the Conservation Officer was content with the finished work to Holden House and the Tribunal hopes that it will do so. However, in our view, this goes to the manner in which the project was managed rather than to whether the work which falls under this heading was carried out to a reasonable standard within the meaning of section 19 of the 1985 Act. The signing off of work which was not ultimately charged for also goes to the issue of management.
305. Applying our expert knowledge and experience, we are of the view that bricks which appear to be in good condition can fail a hammer test and that bricks which appear to have a damaged/"holed surface" may still be sound. Visual appearance is not determinative of the condition of the bricks. We accept that some bricks have been painted over but we only observed this where the original brickwork had also been painted. We agree that colour matching did not occur but consider that the degree of mismatch which occurred was reasonable for a project of this nature and price.
306. On inspecting the block, the Tribunal noted instances where the detailing on the repointing was poor with mortar smeared on the surrounding brickwork and thick mortar joints not consistent with the original pointing. There were also some areas where the repointing had been missed which, in our view, is another management issue. We observed that, to one Welsh arch, the surface of one brick had blown and that, around another Welsh arch, the repointing was clumsy. There were other areas of damaged brickwork.
307. In all the circumstances, and having taken into account the passage of time and the other matters identified above, the Tribunal finds that the cost of the brick refacing and repointing falls to be reduced by 20% and that all of the other costs under this heading fall to be reduced by 10%.

Wash down of Windows

308. Ms Lawes gave evidence that she did not believe this was done because no one saw it being done and because the windows at the block remained dirty after the wash down was said to have occurred.

309. We accept this evidence and find as a fact on the balance of probabilities that any wash down which occurred before the scaffold was struck did not make a discernible difference to the condition of the windows. Accordingly, the relevant service charge costs were not reasonably incurred and we find that they are not payable.

Window Sealant

310. Ms Lawes produced one photograph showing a gap where the old sealant had been removed but not refilled and other photographs showing old sealant in place. She relied upon 12 photographs. When it was put to her that this is in the context of work to 440 windows and doors and that the cost of the sealant was £3,800, Ms Lawes explained that her toilet window was not done so this meant something to her. She also submitted that it was “an indication of how the works were not checked”.

311. The Tribunal observed, on inspecting the block, that there were areas where no new sealant was applied. As explained above, any claims against the Applicant for failing to carry out work in breach of its repairing covenants and/or other duties are not before this Tribunal. However, there does not appear to be any logical explanation for the areas that were missed and the Tribunal accepts Ms Lawes’ submission that this is evidence that the appropriate degree of supervision was lacking. The Tribunal has taken this matter into account in reducing the professional fees.

312. As regards the quality of the application of new window sealant, the Tribunal finds that the work which was carried out, although not perfect, was to a reasonable standard. Accordingly, the Tribunal makes no deduction under this heading.

IRS System

313. The cost of the system is a communal cost which is split between all flats, whether or not the occupants use the system. The Tribunal accepts oral evidence given by Ms Lawes that she did not receive any cards from Mitie or a letter concerning the proposed IRS installation. However, this goes to the management of the project not to the quality of the IRS system which was installed. We also note that 60 flats at Holden House were connected to the IRS system.

314. We are not satisfied that any reduction falls to be made under this heading and we note that the Applicant has confirmed that Ms Lawes' flat can be connected to the IRS system.

Professional fees

315. Ms Lawes initially said that any management fee "*for this omnishambles should be forfeited*". She recognised, after the position had been explained by Ms Mills at the hearing, that the management fee is for the Home Ownership Team's costs. We are not satisfied that the management fee sought by the Applicant falls to be reduced.
316. However, we determine that the professional fees should be reduced to 1% on account of the errors in managing the work to Holden House identified above and the limited evidence of record keeping.

Wilshaw House

317. The lessees of flats 10, 11, 25, 37 and 42 Wilshaw House served an initial response to this application. The Applicant notes that this is 5 out of 34 lessees in a block which contains 68 flats. The lessees who served initial responses did not attend the hearing to give evidence.

Scaffolding and Scaffold Alarms

318. Issues concerning the alarms have been explored above and the Tribunal is satisfied on the balance of probabilities that the costs which fall under this heading are reasonable and payable.

Polyurea

319. On inspecting the block, the Tribunal observed that polyurea covering has been applied to the floors and there are instances of this lifting at the edges in some places. The coating has been applied to abut the wall but without any application to upstands. The Tribunal finds that a reduction of 10% falls to be made from the cost of the polyurea on account of deficiencies observed during the Tribunal's inspection.

Decoration works

320. On inspecting this block, the Tribunal observed instances of staining to the paintwork on the underside of the balconies with bubbling in places. Some of the soil pipes were showing signs of chipping and rust and there were places where the preparation for the paintwork was poor.

321. The Tribunal finds that a reduction of 15% falls to be made under this heading on account of deficiencies observed during the Tribunal's inspection.

Wash Down of Windows

322. Where oral evidence has been given, there has been complete consistency concerning the standard of the wash down, if any, provided by Mitie's contractors. Whilst the Tribunal must exercise caution in drawing inferences between blocks, in our view, this supports the assertion that the wash down to Wilshaw House was not effective. No photographic evidence has been provided that any wash down was to a reasonable standard.

323. In all the circumstances, the Tribunal finds it likely that the complaint under this heading is well founded and that any wash down to this block did not make a discernible difference to the condition of the windows. Accordingly, the relevant service charge costs were not reasonably incurred and we find that they are not payable.

Masonry Works

324. On inspecting this block, the Tribunal observed that, in some areas, the brick repair work has been poorly detailed with clumsy workmanship. The Tribunal saw some loose and chipped bricks as well as cracking to the brickwork, gaps in the pointing and pointing that had been smeared onto surrounding bricks and used to infill in place of a brick repair. In all the circumstances, the Tribunal determines that a reduction of 15% falls to be made under this heading.

Window Sealant

325. Whilst the application of window sealant may not be perfect, the Tribunal finds that it was of a reasonable standard. Accordingly, no deduction falls to be made under this heading.

Aerial Sockets

326. The Tribunal is satisfied on the balance of probabilities on the evidence available that it is likely that this work was carried out to a reasonable standard.

The Crossfields Estate blocks with no active Respondents

327. The relevant blocks are Congers House, Finch House and Frankham House. The Tribunal is not satisfied on the evidence put before it that inferences can be drawn between the different blocks on the Crossfields estate.

328. The Tribunal finds that the service charges which form the subject matter of this application which are sought from the lessees of these blocks are reasonable and payable. The Tribunal notes that it would have been open to the lessees of these blocks to bring any matters of concern to the Tribunal's attention by participating in these proceedings.

Name: Judge N Hawkes

Date: 30 June 2022

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).