Y TRIBIWNLYS EIDDO PRESWYL

RESIDENTIAL PROPERTY TRIBUNAL

LEASEHOLD VALUATION TRIBUNAL

Reference: LVT/0010/04/13

In the Matter of 6 & 7 Ocean House, Clarence Road, Cardiff CF10 5FR

In the matter of an Application under Section 27A of the Landlord and Tenant Act 1985
And in the matter of an Application under Section 20C of the Landlord and Tenant Act 1985

TRIBUNAL	David Evans LLB LLM Roger Baynham FRICS
APPLICANTS	Mr Ben Smith and Mr Jamie Robinson
RESPONDENT	Ocean House Management Limited

DECISION

INTRODUCTION

1 Ocean House (the Building) is a four storey former commercial building located at the junction of Clarence Road and Harrowby Street in the Cardiff Bay area of Cardiff. In 2000/2001, the upper floors were converted into 8 residential apartments by Ocean Developments Ltd (the Developer) whilst the ground floor was retained for commercial use. There are four commercial units currently occupied by a café and a Solicitors' practice. There is in addition a basement car park with 12 car parking spaces. The apartments are accessed from Clarence Road. There is a small hallway with a lift and stairs leading to the residential units on the upper floors. On the first floor there is a small landing and four apartments (1 to 4). Apartments 1 and 2 each have a small balcony which overlooks an open area used for car parking at the back of the building. On the second floor, there is again a small landing and the other four apartments (5 to 8). These are larger than the apartments on the first floor as they have additional accommodation on a mezzanine level and a roof garden with decking. Apartments 5 and 6 each have a balcony and their roof gardens or terraces extend above the balconies forming in effect a second balcony for each of these apartments.

2 On the 12th June 2002, the Developer granted leases of both apartments to Robbik Property Ltd (Robbik). The terms of the leases were for 125 years less 3 days from the 25th March 2001 at an initial ground rent of £50 pa, increasing every 25 years to £150 pa in 2101. Each lease contains the usual provisions found in leases such as this with the lessor being responsible for the external, structural and common parts maintenance and repair subject to the obligations imposed on each lessee to contribute a defined proportion of the service costs through the Service Charge. According to the Applicants' leases, the accounting year for the Service Charge is from the 1st January to the 31st December in each year. The lessor is entitled to demand an interim payment on account of a year's Service Charge in June and December. The Service Charge accounts are then prepared as soon as possible after the end of the financial year and the lessees are provided with a certificate from the Accountant (as defined) setting out what has been actually spent and calculating the balance due from the lessee or the amount to be credited against future

service costs. In practice, however, the service charge accounts have been prepared on the basis that the financial year runs from the 25th December in one year to the 24th December the next. The lessor's agent has prepared a budget prior to the 25th December and the interim charge has been demanded on the 25th December and 24th June. Whilst the company's unaudited accounts have been prepared by its accountants, they do not appear to have carried out this task in respect of the Service Charge.

3 Mr Smith is the leasehold owner of apartment number 6 and Mr Robinson is the owner of apartment number 7. Mr Robinson bought his apartment in 2005. The terms of the leases of the Applicants' apartments are slightly different:

	Apartment 6 (Mr Smith)	Apartment 7 (Mr Robinson)
Premium	£200,000	£175,000
Service costs proportions:		
Building	13.6%	13.5%
Common Parts	17.4%	17.3%
Basement car park	8.3%	8.3%
Administrative costs	8.3%	8.3%
Insurance	13.6%	13.5%

4 The Respondent is the current owner of the reversion. It is a limited company with 12 shareholders - one for each unit - although there is only one director, Mr Mark Andrews, who is also a director of Robbik and was a director of the Developer. During the proceedings it was assumed that the reversion was freehold despite the terms of the leases being 125 years less 3 days.

5 The management of the Building has been entrusted to managing agents. Originally the agent was Cooke and Arkright, or so it was understood to be. At some stage, Seels took over responsibility for management. In 2011, Seels produced a budget for the year ending 25th December 2012 (Year 12). That total amount of that budget was £27,961.10. The amount payable by the Applicants was approximately £4,000 each. On the 4th January 2013, Seels notified the Applicants that the actual expenditure for Year 12 was £42,828.27 and that they were required to pay an additional £2,085.28 in the case of Mr Smith and £2,072.16 in the case of Mr Robinson. By that time, the Applicants had received from Absolute Property Management Services (Absolute) who had replaced Seels as managing agents from December 2012, the budget for the year ending 24th December 2013 (Year 13) totalling £29,724.05. They became concerned about certain items of expenditure and not having received, in their view, any satisfactory explanation, they decided to refer the matter to this Tribunal by making an application under section 27A of the Landlord and Tenant Act 1985 (the Act). They decided to concentrate upon a small number of specific invoices and these are listed in the application.

HEARING

6 The application was heard at the Tribunal Offices in Cardiff on the 24th and 25th September 2013. Prior to the hearing, we inspected the Building externally. We were accompanied by a representative from Absolute and by Mr and Mrs Robinson. We were able to inspect the basement car park, the internal common parts and Apartment 7 including the roof garden. We were also able to see the roof garden of apartment number 8 which adjoins Mr Robinson's apartment. The proprietors of the café on the ground floor allowed us access both to the café itself and the car parking area at the rear from which we were able to see the undersides of

the balconies for Apartments 1 and 2 as well as the undersides of the balconies and extended roof terraces for Apartments 5 and 6.

7 Mr and Mrs Robinson attended the hearing on behalf of the Applicants. Mr Robinson informed us that Mr Smith was not able to attend. We were concerned, as it transpired that Mr Robinson did not have all the documents which the Respondent had submitted. We were satisfied that Mr Smith had been notified of the hearing and as he had spoken to Mr Robinson about it he was clearly aware of it. We therefore gave Mr Robinson some time to enable him to look through the documents, many of which he would have seen beforehand, although he might not necessarily have familiarised himself with those documents in readiness for the hearing. After doing so, he expressed himself ready to proceed.

8 The Respondent was represented by Mrs Elizabeth Marshall (Counsel) assisted by Ms Laura Alliss (from DJM, Solicitors, Swansea) and Mr John Poppleton from Absolute. Its case was summarised in two letters written to the Tribunal dated 28th May 2013 and 11th July 2013. The Respondent had also forwarded to us the documents referred to in the previous paragraph. Groups of documents had been given reference numbers and in this decision we shall identify a document by that number.

THE ISSUES

9 The Applicants had helpfully identified specific invoices about which they raised queries. During the course of the hearing, Mr Robinson raised an issue in respect of an additional invoice not mentioned in the application. Mrs Marshall did not object to this. Mr Robinson explained that in some cases he and Mr Smith had merely wanted an explanation as to the reason for the expense and the amount. He had not expected a "court case". The specific invoices were as follows:

Year 12

(i) MC & D Chisnall - electrical contractors (Chisnell)
- Invoice dated 10/2/12 - £94.50 - emergency lighting inspection (Ch1)
- Invoice dated 19/3/12 - £567.00 - fitting lamps and 4 fluorescent downlights (Ch2)
- Invoice dated 27/6/12 - £3,717.00 - rewiring in communal areas (Ch3)

(ii) Clarke Matthews - consulting engineers
- Invoice dated 31/8/12 - £3,000.00 - investigation into water ingress (CM1)
- Invoice dated 31/10/12 - £2,400.00 - tender document for fire protection (CM2)
- Invoice dated 30/11/12 - £3,480.00 - further investigation into water ingress
  design remedial works to balconies
  tenders for fire protection (CM3)

(iii) Robbik Property Ltd/Mountain Ash Plasterers Ltd - building work
- Invoice dated 19/7/12 - £1,920 - remove chimney and roof repair (Rob1)

(iv) RMT Builders - general builders (RMT)
- Invoice dated 22/2/12 - £114.00 - investigation into water ingress (RMT1)
- Invoice dated 30/4/12 - £840.00 - scaffold hire (the additional invoice) (RMT2)
- Invoice dated 28/11/12 - £576.00 - assisting Mr Matthews in investigation (RMT3)

Year 13

(i) Insurance - £6,775
(ii) Cleaning - £4,056
(iii) Roller Shutters - £500
(iv) Lift Costs - £2,580

We shall deal with these issues in turn.

Emergency lighting inspection- Ch1 - £94.50

10 On about the 12th December 2011, Chisnell attended the Building and carried out an annual inspection of the emergency lighting system. The inspection noted certain deficiencies which are listed in the Certificate (document 4f(v)). On page 3 of the Certificate there is written the comment: "very limited installation of existing emergency lighting" and on the first page under the heading "details of deviations from the current standards" it states "no emergency lighting outside lifts, non correct application and siting of emergency lighting (inadequate lighting to car parking and exit routes, plant room and exterior of main door". Mr Robinson was concerned about the cost and that this was the start of a process for major electrical works over which there was no consultation.

11 Mr Poppleton explained that the emergency lighting system is tested every year. It is a 3 hour test. Since 2006, as a result of the Regulatory Reform (Fire Safety) Order 2005, things have changed. There is a lot more legislation and Building Regulations have also changed. On a lot of sites there has been a great deal of expense. There were more regulatory changes in 2010/2011. Mr Poppleton had used Chisnell when he had worked at Seels. He did not regard £78.75 plus VAT to be an unusual amount for this job.

DETERMINATION

12 Mrs Marshall submitted that this invoice was in respect of an annual inspection. It was a precursor to and not a part of the electrical works at the Building. We agree. The inspection was an annual event required under the legislation and as such would have had to have been incurred even if there had been no works required as a result. The Certificate was notifying the Respondent that works were required to be done and was not in preparation for the works themselves. Under Part Four of the Sixth Schedule to the Applicants' leases (Administrative Costs), the Respondent may "employ all such…tradesmen…as may be necessary or desirable for the proper maintenance safety and administration of the Building…" In our view the obtaining of the annual inspection certificate for the emergency lighting is such a cost. The Applicants did not provide any evidence to challenge Mr Poppleton's statement regarding the cost and from our own knowledge and experience we adjudge it to be within the bounds of reasonableness. In the circumstances, WE DETERMINE that the cost of £94.50 was reasonably incurred. The Respondent should however note that this is an administrative cost and that the proportion payable by each Applicant is 8.3%, ie £7.84 each. In the Service Charge Statements (4c(i) and 4c(ii)), all the Chisnell costs have been added together and charged out at 17.4% or 17.3%, as the case may be. This is not correct and the figures will therefore need to be adjusted. The Applicants are therefore entitled to a credit in respect of the difference.

Fitting lamps and 4 fluorescent downlights -Ch2 - £567.00
Rewiring to additional emergency lighting in communal areas - Ch3 - £3,717.00

13 It is convenient to consider these two items together as they are the works required to put right the deficiencies noted by Chisnell at the time of the inspection and included in its Certificate. The Applicants argued that there had been no consultation and that the cost was too high. They had not, however, provided us with any comparable prices. Mr Robinson accepted that the work needed to be done and he did not dispute that the amounts charged were proper prices for that work on the principle that all the work had been done. He had not noticed any dramatic change in the lighting and he had not been provided with the schedule referred to in the invoice. The common areas are not substantial. However, he conceded that he had not been living at the apartment at the time and he may not have noticed any difference. There had been no consultation. If he had been notified that the work was going to be done, he would have made a couple of phone calls, spoken to

Mr Smith and if the price was within the right ball park, he would have agreed for Chisnell to go ahead.

14 Mr Poppleton told us that he could not comment on the cost as he had no knowledge of the quantity or location of the work in invoice CH2. However, he would imagine it to be a reasonable figure. As far as invoice CH3 is concerned, he did not know how the figure was broken down or the extent of the work. There had been work in the stairwells as there were new conduits. Also there were certain elements of a new system. The invoice refers to a schedule, but no schedule was included.

15 Mrs Marshall conceded that the works in these two invoices constituted one set of works for the purposes of section 20 of the Act and that there had been no statutory consultation. Although the Tribunal had drawn the attention of the Respondent to the question of an application under section 20ZA of the Act, no application had been made. After considering the issue with Mr Poppleton, she confirmed that her client did not wish to make such an application and accepted that the inevitable consequence was that the proportion of each Applicant's contribution would be limited to £250.

DETERMINATION

16 We are satisfied that, following receipt of the inspection certificate, the managing agents had no choice but to carry out the work necessary to bring the Building up to the required standard. This is after all a safety issue and there can be no compromises when dealing with such matters. We accept that regulations change and that upgrading of the electrics is a necessary cost from time to time. We are also satisfied that some work was carried out. However, the failure to provide the schedule attached to invoice Ch3 and the lack of oral evidence makes it difficult for us to determine what work was carried out and whether it was of a reasonable standard. We accept Mr Poppleton's evidence that there were new conduits in the common parts, so some work was obviously carried out. There was no up to date inspection certificate which would have confirmed that the Building now complied with current regulations. Whilst Mr Poppleton has experience of Chisnell's work in the past, we cannot rely upon his speculation as he fairly commented that he had no knowledge as to the quantity or location of the work carried out.

17 We can well understand that Mr Robinson would not have noticed what work had been done. We also accept that if he had been consulted he would have discussed the work and the cost with Mr Smith and they would have made enquiries about the cost and provided that the proposed cost was in the right "ball park", he would have accepted it. However, we consider it unlikely that Seels would have authorised payment for work which had not been carried out or if the work had been unsatisfactory. We cannot, however, be sure that a total cost of £4284 is reasonable.

18 The Respondent's concession limiting the Applicants' contribution to £250 each represents in effect a reduction of the overall cost of the electrical work to between £1,400 and £3,000 inclusive of VAT, depending on the extent of the works on the basement - the Applicants have to pay only 8.3% of the costs here. The probability is that the work in the common parts would have represented a larger proportion of the invoices, but even a 50:50 split of, say £2,000 would result in a contribution of just over £250. We have insufficient evidence to enable us to determine or even make an educated guess as to the element of the invoices attributable to the common parts and the basement. It is however, not necessary to do so. We are satisfied that the aggregate of these costs reasonably occurred, would, whatever proportions attributable to each area, be such that each lessees' proportion would have exceeded £250 and so WE DETERMINE the contribution of each of the Applicants is to be limited to £250.

Investigation into water ingress - CM1 - £3,000.00

19 At some point prior to January 2012, an issue arose concerning the ingress of water into Apartment 1. Apartment 1 is located on the first floor immediately below Apartment 5 which is on the second and third floors. Both these properties have balconies overlooking the car park whilst Apartment 5 has a terrace in addition on the third floor.

20 Seels initially instructed RMT Builders Ltd (RMT) who attended the property on the 13th January 2013 (see invoice 0475). It carried out some investigation works in February 2012 (invoice 0479) and in March 2012 it carried out some investigative work into water ingress relating to the balcony of Apartment 5 (invoice 0482). It provided scaffolding in April 2012 (see invoice 0495 at 1d(ii)). In May 2012, RMT attempted to prevent further water ingress into Apartment 1 (invoice 0512) but it would appear from the invoice trail that it was about this time that Seels considered it appropriate to obtain specialist advice to ascertain what the problem was and how to remedy it. Consequently Clarke Matthews was instructed. In August 2012, Mr John Matthews attended the Building on a number of occasions and carried out his investigations. These revealed that the water ingress in Apartment 1 was localised around the integral brickwork pier. The joists to the floor above Apartment 1 had advanced rot infestation and other timbers were rotten or otherwise showed signs of rot. There was a similar issue with Apartment 5. However, in addition, water had penetrated the roof terrace and balcony of Apartment 5 causing further rot and rendering part of it unsafe.

21 Mr Robinson explained that it was apparent that there were major issues with the balconies. Work had been done on them by RMT. There were a lot of invoices but nothing had yet been resolved. There were still large costs to come. No attempt had been made to utilise Buildings Insurance or the Building Guarantee Scheme. He queried the cost of the report. He queried whether it was normal to have a report. He did not question the report itself. He had thought at first that the cost had been for the work to be done and been surprised in the summer of 2013 to learn that the costs were only for the investigation. He had not at first realised the extent of the damage or that it had not been remedied. He did not seek advice or obtain his own report.

22 Mr John Matthews, a qualified civil engineer with 22 years' experience, told us that he had been called in by Seels in about June 2012 to investigate water ingress in Apartments 1 and 5. Builders had been looking at the problem but were unable to resolve it. As a result of his investigation, he concluded, by eliminating other possible explanations, that the cause of water ingress in Apartment 1 was water entering the cavity between the Building and the adjacent property, travelling along a steel beam which penetrated the cavity and extended through Apartment 1. The brick pier then acted as a vertical conduit. The problems on the lower floor in Apartment 5 were caused by the problems on the terrace. His subsequent investigations had confirmed this. The water proof membrane had been penetrated by nails holding in place the timber battens that support the decking. Also the perimeter drainage channel was completely blocked and the outlet grill loose. In his estimate, the water ingress had been occurring for somewhere between 1 and 5 years, say 3 years. Some emergency work had been carried out by RMT and Amrob the total cost of which was about £900. He had invited tenders for remedial work, but had only received one reply tendering £36,000. He was currently awaiting further tenders. He normally charges an hourly rate of £125, but as he does a lot of work for Seels he generally charges £105 per hour for their work. He will usually round that down to the nearest £100. This is exclusive of VAT.

23 Mr Poppleton explained that he had not been the managing agent when these issues had arisen. When he had prepared the budget for Year 13, he had assumed there were no outstanding issues and that there was money in the reserve fund. He had based his figures on those for previous years. It was slightly more than for Year 12, but it is better to over-estimate costs than have to ask lessees to pay an additional sum. He understood that a claim had been made to the insurers for the cost of the work. He thought the policy would include the "trace and access" costs, but he

understood that the insurers were raising queries concerning the water ingress works. They will not pay for the cost of repairing the cause, only the damage. However, whilst it was possible that that the damage to Apartment 1 might be paid, there was an issue with the damage emanating from the terrace in Apartment 5 and that might well not be paid. He could not be sure that this would be the outcome, however. The 10 year guarantee had expired in 2011. Mr Poppleton knew Mr Matthews from his days as Seels.

DETERMINATION

24 We are satisfied that a reasonable managing agent when faced with a complex issue such as this would react as Seels did. It would at first send a builder to look at the problem, try, if it could, to sort it out and, if not, to report back. Having established the complexity, it would take professional advice from a building surveyor. In this case, Seels instructed a civil engineer. Mr Matthews was well known to Seels and was clearly experienced in this kind of work. It is not unusual for managing agents to rely upon professionals with whom it has developed a relationship over the years provided the lessees are not asked to pay a premium for employing his/her services. In our view, the hourly rate of £105 plus VAT is not beyond the bounds of reasonableness. Mr Matthews clearly made four site visits in the company of an employee of RMT (15th, 20th, 21st and 29th August, 2012) as can be seen from the RMT invoice 0547. The RMT invoice states that the employee was on site on the 20th August for a whole day. Whilst we do not consider it likely that Mr Matthews would have been on site for all that time, the times are indicative of the extent of the work involved. We are therefore satisfied that Mr Matthews will have spent in total approximately 24 hours @ £105 per hour, rounding the figure down to £2,500 plus VAT. Given the complexity of the problem, WE DETERMINE that these costs were reasonably incurred. Dealing with the insurance points, we accept that a claim has been made under the buildings insurance. We are also satisfied on the evidence that there are no grounds for claiming under the 10 year guarantee as that period has passed. It should be noted that these costs were incurred under paragraph 2 of Part Four of the Sixth Schedule - Administrative costs - and the proportion payable by each of the Applicants is 8.3%. The proportion attributed in the Service Charge Statement dated the 4th January 2013 is 13.654%. The Applicants are therefore entitled to a credit for the difference. We note that the statement uses slightly enhanced proportions rather than those in the lease. Mr Poppleton may wish to take the opportunity to consider and if appropriate correct this and other entries at the same time - eg an audit fee had been included when there appears not to have been an audit of the service charge, the managing agent's fees are Administrative Costs (8.3%) and some entries which involve the basement car park may need to be apportioned. These points are not part of our determination.

Tender document for fire protection- CM2 - £2,400.00

25 Whilst investigating the cause of the water ingress, Mr Matthews went into the basement car park. He noted that there were serious issues relating to the fire safety requirements. At the conclusion of his report of August 2012, Mr Matthews noted "the structural steel columns and some of the steel beams are not protected with fire resistant encasement or intumescent coating". He recommended that protection be installed as soon as possible "so that in the event of fire the structural capacity of the steel sections will not be compromised". He told us that some of the beams had been protected which suggested to him that someone knew what had to be done but had not completed the work. He had prepared the specification, drawings and tender document and the cost of the work would be £4,600 inclusive of VAT. He stated that there were two types of fire protection: firstly, the beam could be painted with special paint which when exposed to a fire forms a foam; secondly the beams can be lined with plasterboard. He considered that Seels would not know what to do. The fire officer does not make a recommendation and the local authority's building control would not be involved. In response to questions by Mr Robinson, he suggested that

if Seels had gone to three builders for quotations, he would have had three different options and Seels was not qualified to decide which was appropriate.

26 Mr Robinson was unhappy with the invoice. He was not questioning that the work had to be done but about the amount and the necessity for appointing Clarke Matthews to prepare a tender document. The lessees had not been made aware that there was an issue. It was not transparent. The Clarke Matthews tender was sent out on the 31st October 2012, but he was not informed of the problem until he received a letter dated 3rd January 2013 from Seels. He did not have any alternative estimates.

27 Mr Poppleton explained that some steel work did not need encapsulating. An inspection would have raised a question mark as to whether the basement complied with the regulations. Most of the steelwork is encapsulated. It was not necessary to use the services of Mr Matthews. He could have gone direct to a company such as Advance Fire Technologies and asked for a specification. If he had gone to a contractor, it would have provided an estimate free. If he had asked for a specification, it would have charged. With regard to intumescent paint, he could have gone directly to the manufacturer and it would have provided a specification free of charge as he would be using their paint and a recommended contractor. If Clark Matthews were instructed, Mr Matthews would have the calculations behind the specification and would oversee the job. He would guarantee those calculations and would give a certificate when the work was completed.

DETERMINATION

28 We are satisfied on the basis of Mr Poppleton's evidence that the issue of the fire safety in the basement should have been picked up sooner. A reasonable inspection should, as he said, have raised a question. If it had, it may have been possible to pass the responsibility on to the Developer or claimed under the Zurich Insurance Building Guarantee. That is not an issue in these proceedings. However, having been informed that there was a problem, it was not, in our view, necessary to instruct an engineer to prepare a specification and tender. As Mr Poppleton explained, there were alternatives. We have no evidence as to why Seels employed Clarke Matthews, whether it considered the alternatives, whether it obtained any estimates from any other surveyors, engineers or experts to provide a solution to the problem. There may not have been any necessity on the part of the Respondent to consult the lessees, but there was an obligation to ensure that overall the lessees are not required "(i) to pay for unnecessary services…[nor] (ii) to pay more than they should for services which are necessary and are provided to an acceptable standard" (per Lord Neuberger in Daejan Investments Ltd -v- Benson and others [2013] UKSC 14 paragraph 42). We are not satisfied on the evidence that either Seels or the Respondent fulfilled its obligations to the lessees by exploring cheaper options or that it was reasonably necessary to instruct Clarke Matthews to prepare the specification, drawings and tender documents. WE DETERMINE that this cost was not reasonably incurred and the Applicants are each entitled to the appropriate credit.

Further investigation into water ingress, design remedial works to balconies, tenders for fire protection - CM3 - £3,480.00

29 After his initial report, Mr Matthews continued his investigations. We can see from the RMT invoices 0557 and 0580 that Mr Matthews attended the site for "investigation works" on the 5th and 6th September and the 6th, 13th and 15th November 2012. RMT has billed 4 hours for each of the September visits and 8 hours for each of the November visits. Whilst we doubt very much that Mr Matthews was on site for all that time - his charge at £105 per hour would have far exceeded the £2,900 charged - we accept this as an indication of the length of time spent on site and in his preparation, design and associated work connected with this. However, Mr Matthews told us that the person assigned to help him, principally Mr John Stroud, who was a general builder and not a specialist tradesman, was hanging around for him at times. Even though the tender for the fire

protection had been completed and sent to contractors by 31st October 2012 and billed on that day, there may have been a small amount of work associated with that aspect included in CM3.

30 Mr Robinson's issues with this invoice were in effect the same as those relating to the previous invoices.

DETERMINATION

31 Having heard Mr Matthews give evidence, we do not consider that he would spend longer than was reasonable in dealing with a job or that he would exaggerate his time spent on this project. Mr Robinson did not suggest that he had done so. The complexity of the building and the nature of the problem meant that the areas affected needed to be thoroughly examined as ultimately, the managing agents would be relying upon Mr Matthews to justify the substantial expenditure which was inevitable following the discovery of the water ingress and the rot. Seels and Mr Matthews had to be as certain as possible as to what was the cause, the extent of the damage, the remedial work required and to ensure that any work carried out would not affect the integrity of the Building or the condition and amenity of the other apartments. We consider that it was reasonable for Seels to ask or allow Mr Matthews to continue his investigation.

32 We drew Mrs Marshall's attention to the terms of Lease dealing with the definition of the "Demised Premises" which at paragraph (d) of the First Schedule includes "any balcony terrace mezzanine roof garden or patio attached to and exclusively serving the demised Premises and all parts thereof including (but without prejudice to the generality of the foregoing) the brickwork stonework stucco tiles surface coverings and railings together with any supporting structural parts brackets bolts and other fixings (if any)". Mrs Marshall considered that structural work to the balcony and terrace was the Respondent's responsibility chargeable to the lessees through the service charge. The issue was not extensively argued. We have no need to make any finding for the purposes of this decision, but in view of the reluctance of the insurers to pay for the repairs, Mr Poppleton is going to have to be very careful as to how he approaches the remedial works.

33 There are three sections to this invoice. We have dealt with the investigation work above. On the basis of Mr Matthews' evidence we consider the element of fire safety work to be insignificant in the context of the overall cost included in that invoice. The third element is the design of the remedial works to the balconies. On balance we consider that to have been reasonably incurred as a managing agent is going to want to know what needs to be done, even if the responsibility for carrying out the work may rest with an individual lessee. The remedial work could well impact upon the structure of the building as well as affect other apartments. Whether this element of the costs is recoverable from the lessee(s) under the terms of the individual leases is not a matter for us. We accept that Mr Matthews' rates of charge are within the bounds of reasonableness, as considered above, WE DETERMINE that these costs were reasonably incurred.

Remove chimney and roof repair - Rob1 - £1,920

34 The Applicants complained about the cost of work done to Apartment 8 which was owned by Robbik. Mr Andrews was a director of Robbik and also a director of the Developer and the sole director of the Respondent. Mr Andrews had in effect done work affecting his own apartment on his own initiative and it was being recovered through the service charge. Mr Robinson understood that he had had to do this. Again the Applicants complained that there has been no attempt to utilise buildings insurance or the building guarantee. There had been no consultation.

35 The Respondent accepted that there had been no consultation. There was no direct evidence from Seels or Robbik, but the Respondent produced at 1c(ii) a letter from Seels dated 5th June 2013 and an e-mail from Mr Andrews dated 26th June 2103. From this it appears that the there was a problem with water ingress into Apartment 8 which was owned by Robbik. RMT had twice been to sort out the problem, but they had failed to do so. Robbik had a buyer for the

apartment who would not complete until the problem had been solved. Robbik had instructed Mountain Ash Plasterers (Mountain Ash) - which carried out general building work as well as plastering. The chimney stack had been in a poor state of repair and a section of roof felt was missing. Mountain Ash had billed Robbik in the sum of £1,920 inclusive of VAT (1c(i)) and Robbik had in turn billed the Respondent (Rob1).

36 Mr Poppleton was not directly involved at this time, but he had been managing a nearby property and he could confirm that the work had involved the removal of a chimney stack. He could not confirm the state of the chimney, but he was able to tell us that he had seen five lifts of scaffolding up to that level. The stack had been taken down and the roof re-slated. He would have taken the same decision. The chimney served no useful purpose and it would no longer need to be maintained. The cost of the scaffolding alone would, in his experience, have been £1,000 to £1,200.

37 Mrs Marshall conceded that there had been no consultation. Any contribution to the costs by each Applicant would be limited to £250. She was aware of the High Court decision in Phillips and Goddard -v- Francis and Francis [2013] EWHC 3650 (Ch) (Phillips). She invited us to distinguish this case from Phillips because the Chisnell work was electrical and the Robbik work was repair. It was therefore in a different category and should not be added together in assessing the "qualifying works". Would it were that simple. In view of the wide ranging nature of the former Chancellor's ruling in Phillips it will be necessary to consider it some detail.

Phillips and Goddard -v- Francis and Francis

38 It is incumbent upon a Tribunal at this level in the judicial hierarchy to adopt the legal reasoning and follow the guidance and pronouncements of higher tribunals and Courts. Unless we are able to distinguish that decision on its facts or consider that the judge's remarks were not necessary for the purposes of the decision (obiter dicta), we are only able to depart from this principle of binding precedent in limited circumstances: firstly, where there are conflicting decisions of courts of equal standing; secondly, where there is a subsequent decision of a higher Court which casts doubt on the correctness of the earlier decision; thirdly, where the decision is considered to be, to use the legal euphemism, per incuriam, ie wrong through want of care eg because it overlooked some other binding authority or statutory provision. It would be exceptional indeed for this Tribunal to suggest that a decision of the High Court was plainly wrong.

39 Phillips concerned a comprehensive set of improvements to a chalet park in St Merryn, Cornwall. The total service charge for the period ending 31st December 2008 was £269,933.49 and for the year to 31st December 2009 it was £583,542.87. The cost of the "qualifying works", ie works on a building or other premises (s20ZA of the Act) constituted a substantial proportion of the costs incurred. Under section 20 of the Act, the contribution towards the cost of those qualifying works is limited to an amount prescribed by regulations unless the lessor has followed the consultation process prescribed by those regulations or obtained a dispensation under section 20ZA of the Act. Section 20(5) of the Act authorises the Secretary of State (in Wales, the Welsh Government) to prescribe an amount either by reference to the cost of the works and/or an amount calculated by reference to the contribution of any one or more tenants.

40 In Wales the procedure is laid down in the Service Charges (Consultation Requirements) (Wales) Regulations / Rheoliadau Taliadau Gwasanaeth (Gofynion Ymgynghori) (Cymru) 2004 (SI 2004/684 (W.72)) as amended by the Service Charges (Consultation Requirements)(Amendment) (Wales)(Regulations) / Rheoliadau Taliadau Gwasanaeth (Gofynion Ymgynghori) (Diwygio) (Cymru) 2005 (SI 2005/1357 (W.105))(Regulations). The Regulations are in both Welsh and English. The English version mirrors the Service Charges (Consultation Requirements)(England) Regulations 2003 (SI 2003/1987). The prescribed amount in respect of any qualifying works as set by regulation 6 is "an amount which results in the relevant contribution of any tenant being more than £250". In other words, if the cost of the works exceeds the prescribed limit of £250, the landlord must carry out the

consultation process set out in the regulations or risk being able to recover only the sum of £250 from each tenant.

41 In Phillips, the argument in the County Court was one which this Tribunal, in common with many other Leasehold Valuation Tribunals (in England, now, First Tier Tribunals), has heard frequently in service charge cases: the lessees claiming that the total scheme constituted one set of qualifying works for the purposes of the Act; the lessors arguing that each individual job was a separate set of qualifying works, each set having its own threshold of £250. The County Court found for the lessors. On appeal, in the High Court, the former Chancellor, Sir Andrew Morritt, distinguished Phillips from the Court of Appeal decision in Martin and Seale -v- Maryland Estates Ltd [1999] EWCA Civ 3049 (Maryland), where the Court of Appeal had held that "the definition of "Qualifying works" indicates what their quality is but not how one batch is to be divided from another". It seemed to the Court of Appeal that "as Parliament has not attempted to spell out any precise test, a common sense approach is necessary. The legislative purpose of the limit is to provide a triviality threshold…" (per Robert Walker LJ). However, in Phillips, the former Chancellor considered that Maryland had been decided on the basis of an earlier version of section 20 prior to its substitution by the Commonhold and Leasehold Reform Act 2002. He concluded that the new wording changed the emphasis of the consultation:

- the limit was now by reference to the amount of the contribution and not to the cost of the works;
- the contributions are payable on an annual basis so the limit applies to the proportion of the qualifying works carried out in that year;
- there is no triviality threshold;
- there is a need for some limitation on contributions towards sporadic works as much as to the cost of a redevelopment plan.

42 We are not sure how easily that decision sits with the speech of Lord Neuberger in Daejan Investments Ltd -v- Benson and others [2013] UKSC 14 who at paragraph 71 states that "if a landlord fails to comply with the [consultation] Requirements in connection with qualifying works, then it must get a dispensation under section 20(1)(b) if it is to recover service charges in respect those works in a sum greater than the statutory minimum". The statutory minimum related to the "works". There is no suggestion that it relates to works within a particular time frame. Nonetheless, the effect of Phillips is to require an aggregation of the cost of qualifying works throughout a financial year, so that once the prescribed threshold has been reached, it will be necessary for a lessor or managing agent to undertake the consultation process, apply for dispensation or forgo the cost if it intends to carry out further works, however trivial. That decision is currently the subject of an appeal to the Court of Appeal. In the meantime, lessors and managing agents are issuing protective section 20ZA applications and in some cases requesting that service charge cases are deferred until the hearing of that appeal.

43 Mrs Marshall invited us to distinguish Phillips on the ground that the work was of a different category and should not therefore be aggregated. However, when distinguishing one case from another in order to overcome an inconvenient decision, we must ensure that we are not creating a distinction without a difference although, as Lord Reid commented in Jones -v- Secretary of State for Social Services [1972] AC 944, "it is notorious that where an existing decision is disapproved but cannot be overruled, courts tend to distinguish it on inadequate grounds. I do not think that they act wrongly, they are adopting the less bad of the only alternatives open to them".

44 What is clear is that in Phillips, the scale and nature of the works were substantial extending over two financial years. The former Chancellor states (at paragraph 36): "I see nothing in the present legislation which requires the identification of one or more sets of qualifying works. If the works are qualifying works it will be for the landlord to assess whether they will be of such a scale as to necessitate complying with the consultation requirements…" His finding that the threshold of £250 is an annual one "conforms more closely to the on-going works of repair and maintenance likely to be necessary on an estate in multiple occupation" even though they "are unlikely to be identified as parts of a complete set of works which can be costed at the outset. In the normal way

they will be carried out as and when required." The former Chancellor sees the new section 20 and the regulations as providing additional protection to lessees where there may be a series of works over a 12 month period where the total cost exceeds for one or more lessees the sum of £250. However, he goes on to suggest that this principle is not intended to be universally applicable. Whilst recording the need for "some limitation on an obligation to contribute" to "sporadic works of that nature as with a redevelopment plan conceived and carried out as a whole", his use of the expression of "sporadic works of that nature" (our underlining) would suggest that there must be some thread of continuity in the type of works being undertaken. The former Chancellor had no need to introduce the words "of that nature". Their inclusion must have been for a purpose, namely to indicate that works of different natures are not to be aggregated together. The lights and the wiring, although two contracts, are conceded by Mrs Marshall as being works of the same nature. However, the electrical works and the removal of a chimney stack cannot be regarded as works of the same nature. Each will therefore have its own threshold of £250.

45 We are therefore persuaded by Mrs Marshall that it is open to us to conclude that Phillips does not extend to this kind of case where the works are of a completely different nature.

DETERMINATION

46 On the basis of Mr Poppleton's evidence the letter from Seels and the e-mail from Mr Andrews, we are satisfied that work was required to eliminate the water ingress problem, that it was reasonable in all the circumstances to remove the redundant chimney stack and recover the roof. We also accept Mr Poppleton's evidence as to the cost. The amount charged by Mountain Ash is within the bounds of reasonableness for the work described. Consequently WE DETERMINE that the cost was reasonably incurred. However, it was conceded that there was no consultation and as the cost exceeds the prescribed limit, the contribution of each Applicant is limited to £250. The Applicants are entitled to a small credit as a result.

Investigation into water ingress - RMT1 - £114.00

47 On the 16th February 2012 Seels asked RMT to attend the Building and investigate the ingress of water into Apartment 1. RMT had previously attended the same apartment for the same reason on about the 13th January 2012. Mr Robinson said that RMT had attended the Building dealing with problems in Apartments 1 and 5 in 2012, but it had not solved anything. It had carried out work then and subsequently was being paid for assisting Mr Matthews. Mr Robinson said that his objection was really to the number of RMT invoices throughout the year. Mr Poppleton explained that whilst he was not managing the Building at that point, he could confirm that RMT was a general builder used by Seels. He had used them himself. When Seels received a complaint about water ingress, it would send a builder to look at the problem, try to fix it and report back. Depending on the degree of complaint, he would send a builder or go himself, if it were serious. He had been to look at issues at the Building since taking over the management. If a contractor is asked to do a job, it may not invoice for investigating the problem first.

DETERMINATION

48 We can understand why Mr Robinson considers that there was a lot of RMT invoices with little tangible to show for them. However, each of the invoices which we were requested to consider deals with a different aspect of the overall problem. In this case, RMT went to investigate the water ingress in Apartment 1. It had previously been in January 2012 (see invoices at 4a(iv)). It had then charged £40 plus VAT for attending the Building to investigate the cause of the water ingress and reporting back. On the 16th February 2012, it had removed part of the plaster board ceiling in Apartment 1 and also had gone into Apartment 5. We have no information as to how long

this investigation took, but we can well understand that a builder would charge for this work. The price of £95 plus VAT does not seem excessive and so WE DETERMINE that this cost was reasonably incurred. As this work was investigative rather than construction work, we conclude that it comes under "Administrative Costs" rather than "The Building" and so the appropriate proportion is 8.3%.

Scaffold hire (the additional invoice) RMT2 - £840.00

49 This RMT invoice number 0495 was raised by Mr Robinson during the course of the hearing. Mrs Marshall did not object and so we gave permission for it to be included as part of the application. The invoice is dated the 30th April 2012 and relates to the erection of scaffolding in the car park in such a position as to gain access to the balconies of Apartments 1 and 5. The scaffolding was still there at the time of the inspection in September 2013. Mr Robinson was concerned at the amount of the costs incurred before any work had been done.

50 Mr Poppleton explained that since the scaffolding had been there for over a year, it had been used both during the investigation and for other work. RMT had hoped to have the contract for the repair work. It had not charged for it - until another contractor had used it.

DETERMINATION

51 We accept Mr Poppleton's explanation. The scaffolding has been in situ for over a year in the hope, if not expectation, that RMT would receive the contract for any remedial work. It was used by RMT and by Mr Matthews and, it appears now, another contractor. Having access to the roof during this period has been necessary and the provision of the scaffold at an initial cost of £700 plus VAT has certainly helped. Whatever RMT's motivation, it cannot be said that the cost is unreasonable and so WE DETERMINE that the cost was reasonably incurred. The Applicants are entitled to a small credit as the proportions used in the calculations are marginally higher than those used in the Applicants' leases.

Assisting Mr Matthews in investigation - RMT3 - £576.00

52 RMT's invoice 0580 for £480.00 plus VAT (£576.00) is stated as being for assisting Mr Matthews with the investigation works. It claims attendance at the Building for 3 full days of 8 hours each, namely 24 hours at £20 per hour. We know from Mr Matthews that he was assisted generally by Mr John Stroud, a general builder not a skilled craftsman. Mr Matthews had said in reply to Mr Robinson that he (Mr Matthews) had not been on site for 52 hours although the builder had been kept hanging around at times. Mr Robinson had added the total hours claimed by RMT for assisting Mr Matthews as shown in three invoices 0547, 0557 and 0580. Mr Matthews could not comment on the total hours claimed by RMT. Mrs Marshall rightly pointed out that Mr Robinson's stated objection was in respect of invoice 0580 only.

DETERMINATION

53 We are only concerned with the one invoice, number 0580. It is for 3 days' attendance at 8 hours per day, namely 24 hours. Mr Matthews' bill for the whole of this part of the investigation work was £2,900 plus VAT. Applying Mr Matthews' concessionary rate of £105 per hour this represents approximately 28 hours' work. Even discounting an insignificant amount of time relating to the fire issue, if Mr Matthews had been on site for 24 hours, it only leaves 4 hours for him to deal with the design and all the administration, telephone calls and correspondence. Mr Robinson is in our view right to raise concerns about the hours claimed by RMT and the total cost of this invoice. Even allowing for an element of travel, it seems to us that the hours claimed do not adequately fit in with Mr Matthews' evidence of his charging rates and the amount of his invoice CM3.

The Respondent brought no evidence to support this invoice. It was one of those raised by the Applicants in the application. We are not satisfied that a charge of £480 plus VAT is reasonable. Without evidence from RMT as to the actual hours spent and the reasonableness of the charge it is difficult to place a figure on the value of the assistance afforded to Mr Matthews. We do not consider it would be fair simply to reject the invoice on the basis that the costs were not reasonably incurred. The Respondent is entitle to pass on a reasonable cost which, using our knowledge and experience, we put at £240.00 plus VAT (£288.00). WE DETERMINE that the costs of £576.00 were not reasonably incurred, but that costs of £288.00 were reasonably incurred. The Applicants are therefore each entitled to a credit for their proportion of the balance. The Respondent should note that the credit will need to be in the proportions charged and the debit at 8.3% as this investigative work.

Insurance - £6,775

54 The premium for the Buildings Insurance for the period 5th January 2012 to 4th January 2013 was £6,445.12 including IPT. The insurance for the following year was £6,775.86 including IPT (see 1b(iii). The application states "building to be insured via broker and at a high value". Mr Robinson told us that Mr Smith had considered that the insurance cost was too high and had always been high. He wished to know whether the managing agents were obtaining quotations from different insurers.

55 Mr Poppleton explained Seels' practice was to use three brokers and obtain quotations from each. Originally, Seels had used Thomas Carroll but changed to BM Insurance Services two years ago. They would revalue the Building every three years. He did not have the last valuation. There had been a poor claims history. The claim for water ingress had been notified to NIG, the insurers, and that meant it would be difficult to place the insurance elsewhere.

DETERMINATION

56 Mr Robinson's share of the insurance premium for Year 12 was £925.72. This is slightly higher than it should be, as the proportion shown is 13.554% and not 13.5% as in his lease - £922.03 and not £925.72. This is a very high cost and one which we can well understand Mr Robinson would wish to query. However, we accept Mr Poppleton's explanation. The Respondent uses a broker. The Building is valued every three years. It is a mixed use building with commercial properties on the ground floor. There is a poor claims record with two large outstanding potential claims. The Building is not a risk which a new insurer would happily accept. Generally a poor claims record means a high premium. We have been given no alternative quotations. The Applicants have not suggested any alternative approach. WE DETERMINE that the amount included in the Year 13 budget - which is based on the actual premium - is reasonable.

Cleaning - £4056

57 Since the budget has been prepared, Mr Poppleton has reorganised the cleaning and has accepted a new contract with Bumbles Cleaning Services. The parties agreed that the budget figure could be reduced to about £2,000. As the new contract was not effective from the beginning of the year, WE DETERMINE that a reasonable amount to be included in the Year 13 budget is £2,100. The Applicants are entitled to the appropriate credit.

Roller Shutters - £500

58 Mr Robinson pointed out that replacement parts had been fitted in 2012 and the Respondent conceded that it would not be reasonable to include costs for the repair of the shutter door. The parties agreed that it was still reasonable to seek annual maintenance costs of £200 to £300 for Year 13. We agree and therefore WE DETERMINE that a reasonable amount to be included in the Year 13 budget is £300. The Applicants are accordingly entitled to the appropriate credit.

Lift Costs - £2,580

59 Upon hearing the Respondent's explanation, Mr Robinson, on behalf of the Applicants, agreed that this cost was reasonable. WE DETERMINE accordingly.

SUMMARY

60 We have made the following determinations:

Ch1 - £94.50 - reasonably incurred, but appropriate proportion only 8.3%.
Ch2 and Ch3 - £4,284 - Applicants' proportions limited to £250 each.
CM1 - £3,000 - reasonably incurred, but appropriate proportion only 8.3%.
CM2 - £2,400 - not reasonably incurred.
CM3 - £3,480 - reasonably incurred, but appropriate proportion only 8.3%.
Rob1 - £1920 - costs reasonably incurred, but Applicants' proportions limited to £250 each.
RMT1 - £114 - costs reasonably incurred, but appropriate proportion only 8.3%.
RMT2 - £840 - costs reasonably incurred, but proportion must be applied as per lease.
RMT3 - £576 - not reasonably incurred; £288 reasonably incurred but appropriate proportion only 8.3%.
Insurance -£6775 - reasonable
Cleaning - £4056 - not reasonable; £2,100 reasonable
Roller shutter - £500 - not reasonable; £300 reasonable
Lift costs - £2,580 - reasonable.

DIRECTIONS

61 We direct that:

(a) the Respondent shall within 21 days prepare and serve on each of the Applicants amended accounts for Year 12 and an amended budget for Year 13 incorporating the determinations made in this decision and making appropriate adjustments to the proportions charged to each Applicant where appropriate.

(b) the Applicants shall each within 14 days of receipt of the amended accounts endeavour to agree the amounts involved.

(c) in the event of there being any matter not agreed at the end of that period of 14 days, any party shall have liberty to restore this application for final determination.

COSTS

62 The Applicants had made an application under section 20C of the Act for an order that all or any of the Respondent's costs incurred in these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of their service charges. The application was not extended to any other lessee although this does not preclude any such lessee from making an application on his/her own account.

63 Mr Robinson submitted that Mr Smith had started these proceedings because he had been unable to obtain answers. There had been a lack of consultation in respect of major costs. Work needs to be done in future. It is evident from Mr Matthews that there are faults with the building which should have been dealt with. This has been going on for a substantial amount of time. They had issued proceedings in order to get answers. He referred us to the issues which had been discussed.

64 Mrs Marshall considered that the issue had been one of transparency. Mr Poppleton had been making efforts since becoming managing agent. He had tried to deal with the problems before the Applicants had issued the proceedings. He prefers to co-operate rather than fight. Before the proceedings were issued, he had tried to engage with lessees about the budgets. The Respondent was in some difficulty as there was a paucity of evidence. It has acted appropriately and made proper concessions. A number of issues were resolved when oral evidence was given.

65 Mr Robinson replied that Mr Poppleton had not been able to give information as to what was going on in 2012.

DETERMINATION

66 Section 20C(3) gives us power to "make such order on the application as [we] consider just and equitable in the circumstances". This is a wide discretion, but in exercising that discretion, we must "have regard to what is just and equitable in all the circumstances" which includes "the conduct and circumstances of all the parties" (per HH Judge Rich QC in The Tenants of Langford Court (Sherbani) –v- Doren (LRX/37/2000)). Judge Rich continues that we should keep in mind "that the power to make an order under section 20C should only be used in order to ensure that the right to claim costs as part of the service charge is not to be used in circumstances that make its use unjust". The entitlement to costs is after all "a property right". We should not lightly deprive the Respondent of such a right (see also HH Judge Mole in Plantation Wharf Management Co Ltd –v- Jackson and Irving [2011] UKUT 288 (LC)).

67 In The Church Commissioners –v- Derdabi [2010] UKUT 380 (LC), HH Judge Gerald provides useful guidelines as to the exercise of our discretion. He suggests that we consider the degree of success enjoyed by (in this case) the Applicants, proportionality, the conduct of the parties and other "circumstances" such as the property being part of a resident-managed development. In St John's Wood Leases Ltd –v- O'Neil [2012] UKUT 374, the Upper Tribunal reinforced the principle that "whether the order should be made depends upon the facts and circumstances of the case and what is just and equitable in those circumstances" and that "the reasons why and amounts by which any service charge expenditure have been disallowed will always be important".

68 On the one hand we must balance the Respondent's contractual property right to have its costs paid with, as we find, Seels' failure to provide information and that in approximately 12 out of 14 issues raised, the Applicant has succeeded in obtaining some reduction. In respect of the insurance and the lift costs no reductions were made. However, if the explanations had been given earlier - eg the claims record and the valuations in respect of the insurance and the necessity for a maintenance contract - it might not have been necessary to raise them. The time involved was not extensive relative to the amounts involved. In some cases, the overall costs were considered to be reasonably incurred, but the Respondent had charged the Applicants the wrong proportions. In two cases, the managing agents had failed to consult and in one of those cases, they had failed to organise the necessary repair work resulting in the lessee organising it and submitting its own invoice. This was bound to raise a service charge payer's suspicions that something was amiss. The Applicants' contributions to the Clarke Matthews accounts have been reduced from over £1,200 each to £537.84 each. We appreciate that Mr Poppleton has been making efforts to mend bridges and he is to be commended for doing so, but the fact remains that management has been wanting by failing to respond to issues when raised, failing to consult when legally bound to do so, failing to respond to lessees concerns, employing an expensive consultant when cheaper options were

available, applying the wrong percentages and failing to provide Mr Poppleton with the documentary evidence which would have helped him deal with some of the issues directly with the Applicants and in this Tribunal.

69 We have concluded that the application under section 20C must be granted. The question is on the facts of this case how to balance the issues which we have outlined. Frequently lessees apply a scattergun approach when challenging service costs, one which puts an unreasonable burden upon managing agents who are forced to spend inordinate amounts of management and clerical time researching and putting together evidence and bundles for the Tribunal relating to accounts spread over several years. The Applicants have not done this. They have deliberately been selective and we should recognise this.

70 Mrs Marshall correctly points out that certain matters were conceded at the hearing. That certainly saved some time. However, it was only at the hearing that the concessions were made. The Respondent had been made aware of the consultation issue earlier in the proceedings but neither conceded the point nor made an application to dispense. Further, although Mr Poppleton referred, in his letter of the 28th May 2013 to the Tribunal, to the change of cleaners and the frequency of cleaning in "an attempt to reduce costs" no concession was made at that stage. It is also correct that the Respondent did not initiate these proceedings and the Respondent is entitled to defend them. However, if this application had not been issued, it was only a matter of time before the Respondent would have needed to start some legal process to determine the service charges and the Respondent, and not the Applicants, would have had to pay the Tribunal fees with no guarantee of recovery.

71 Taking into account all these factors – the lessor's right for the costs to be paid by the lessees, the number and value of the issues where the Applicants have been successful relative to the number and value of those upon which they sought a determination, the nature of the issues and the reasons for our determinations as well as the conduct of the parties - we have concluded that the Respondent's right to recover the costs of this application through the service charge should not be exercised against the Applicants. WE DETERMINE that the Respondent's costs are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicant.

DATED this 28th day of November 2013

CHAIRMAN