FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AW/LBC/2019/0068, 69, 70, 71, 74**
Property	**:**	**Flats 3, 4, 5, 6 & 7, 6 Embankment Gardens, London SW3 4LJ**
Applicant	**:**	**Ms Irene Ferme (1) & Mr Borut Samastur (2)**
Representative	**:**	**The First Applicant in person**
Respondent	**:**	**Dr Massimo Ammaniti (1)** **Ms E. Vladimirskaya & Ms Elizaveta Buslik (2)** **Ms Suzana Mignon (3)** **Mrs Edwina Elizabeth Bell (4)** **Ms Sara Del Monte (5)**
Representative	**:**	**Mr Dray of Counsel**
Type of application	**:**	**Determination of alleged breaches of covenant**
Tribunal members	**:**	**Judge W Hansen (chairman)** **Kevin Ridgeway MRICS**
Date and venue of paper determination	**:**	**16 January 2020 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**22 January 2020**

DECISION

Determination

(1) The First Respondent has not breached the covenant contained in (i) paragraph 8 of Schedule 5 or (ii) paragraph 20 of Schedule 5 to the lease dated 12 February 2016.

(2) The Second Respondent has not breached the covenant contained in (i) paragraph 6 of Schedule 5 or (ii) paragraph 19 of Schedule 5 or (iii) paragraph 19 of Schedule 5 to the lease dated 3 July 2013.

(3) The Third Respondent has not breached the covenant contained in (i) paragraph (7) of Schedule 5, Part 1 or (ii) paragraph 12 of Schedule 9 to the lease dated 19 September 2005. The Third Respondent has breached (i) the covenant contained at paragraph (18)(a) of Schedule 5, Part 1 to the said lease by sub-letting Flat 5 on one occasion to a Heather Harris between 11 November 2018 and 11 February 2019 and (ii) the covenant contained at paragraph (20) of Schedule 5, Part 1 to the said lease by failing to provide the Applicants or their predecessors in title with particulars of the underletting or a copy of the underlease.

(4) The Fourth Respondent has not breached the covenant contained in (i) paragraph (7) of Schedule 5, Part 1 or (ii) paragraph (19) of Schedule 5, Part 1 or (iii) paragraph (20) of Schedule 5, Part 1 to the lease 18 October 1976.

(5) The Fifth Respondent has not breached the covenant contained in (i) paragraph 6 of Schedule 5 or (ii) paragraph 19(a) or (b) of Schedule 5 or (iii) paragraph 8 of Schedule 7 to the lease dated 26 October 2007. The Fifth Respondent has breached the covenant contained at paragraph 20 of Schedule 5 to the said lease by failing to provide the Applicants or their predecessors in title with particulars of any of the underlettings which she admitted or copies of the underleases in respect of each admitted underletting.

Decision

1. By order of Judge Powell dated 8 October 2019, these five applications were joined and have been heard together because they raise similar allegations of breach of covenant by the underlessees of Flats 3, 4, 5, 6 and 7, 6 Embankment Gardens, London SW3 ("the Property").

2. The Property comprises 7 flats, all held on long underleases. The Applicants are the headlessees of the Property, having been registered as proprietors on 12 February 2019.

3. These applications were brought on or about 16 August 2019 under s.168(4) of the Commonhold and Leasehold Reform Act 2002 seeking orders that breaches of covenant have been committed by the Respondents. The applications are in similar but not identical terms. Likewise, the underleases are similar but not identical. Thus whilst there is much in common between the applications, each application needs to be considered on its own merits, having regard to the terms of the relevant underlease and the particular allegations of breach that are made.

Background

4. Flat 3. The First Respondent, Dr Ammaniti, is the underlessee of Flat 3. He holds under a lease dated 12 February 2016 ("Flat 3 Lease") granted under s.56 of the Leasehold Reform Housing and Urban Development Act 1993 ("the 1993 Act"). He is alleged to have breached the Flat 3 Lease by failing to provide access to the Applicants, the allegation being that a proper request on reasonable notice had been made for such access to be provided to the Applicants on 16 March 2019, which was not complied with (Flat 3, Breach 1).

5. The leasehold covenant in question is contained in para 8, Sch 5 which provides:

> *To permit the Lessor at all reasonable times and upon reasonable notice being given to the Lessee beforehand to enter into and upon the Flat to view the state and condition thereof and for all other reasonable purposes.*

6. The First Respondent is also alleged to have breached the covenants at para 20, Sch 5 by sharing possession of Flat 3 with the Honourable Philip Astor and/or underletting Flat 3 to Mr Astor (Flat 3, Breach 2).

7. Para 20, Sch 5 provides as follows:

   (a) Not to assign or underlet share or part with possession of part only of the Flat.

(b) Not to assign underlet or part with or share possession of the whole of the Flat without the consents of Lessor and Headlessee in writing such consents not to be unreasonably withheld.

8. Flat 4. The Second Respondents, Elena Vladimirskaya and Elizaveta Buslik, are the underlessees of Flat 4. They hold under a lease dated 3 July 2013 ("Flat 4 Lease") granted under s.56 of the 1993 Act. They are alleged to have breached the Flat 4 Lease by failing to provide access to the Applicants, the allegation being that a proper request on reasonable notice had been made for such access to be provided to the Applicants on 16 March 2019, which was not complied with (Flat 4, Breach 1).

9. The leasehold covenant in question is contained in para 6, Sch 5 but is otherwise in the same terms as the covenant set out in paragraph 5 above.

10. The Second Respondents are also alleged to have breached the covenants at para 19, Sch 5 by underletting and/or sharing possession of Flat 4 with Mr Alkhrrubi and/or Mrs Koldas.

11. The leasehold covenant in question is in similar terms to the covenant set out in paragraph 7 above, save that there is no prohibition on underletting or parting with or sharing possession of the whole save during the last 7 years of the term (Flat 4, Breach 2).

12. Flat 5. The Third Respondent, Ms Mignon, is the underlessee of Flat 5. She holds under a lease dated 19 September 2005 ("Flat 5 Lease") granted under s.56 of the 1993 Act. She is alleged to have breached the Flat 5 Lease by failing to provide access to the Applicants, the allegation being that a proper request on reasonable notice had been made for such access to be provided to the Applicants on 16 March 2019, which was not complied with (Flat 5, Breach 1).

13. The leasehold covenant in question is narrower for Flats 5 and 6 than it is for the other flats. For Flat 5, it is contained in para (7), Sch 5 of Flat 5 Lease and provides as follows:

> *To permit the Lessor … at all reasonable times by appointment … to enter into and upon the Demised Premises or any part thereof for the purposes of viewing and examining the state of repair*

14. The Third Respondent is also alleged to have breached the covenants at para 18, Sch 5 by underletting Flat 5 (Flat 5, Breach 2). These are in substantially the same terms as set out at paragraph 7 above.

15. Finally, the Third Respondent is alleged to be in breach of the covenant contained in para 12 of Sch 9 because the floors are not covered with wall to wall fitted carpet (Flat 5, Breach 3).

16. Flat 6. The Fourth Respondent, Mrs Bell, is the underlessee of Flat 6. She holds under a lease dated 18 October 1976 ("Flat 6 Lease"). She is alleged to have breached the Flat 6 Lease by failing to provide access to the Applicants, the allegation being that a proper request on reasonable notice had been made for such access to be provided to the Applicants on 16 March 2019, which was not complied with (Flat 6, Breach 1).

17. The leasehold covenant in question is contained in para (7), Sch 5 of the Flat 6 Lease and is in the same terms as set out in paragraph 13 above.

18. The Fourth Respondent is also alleged to have breached the covenant at para (19), Sch 5 (which is in substantially the same terms as set out at paragraph 7 above) by underletting Flat 6 to Ms Del Monte, who is actually the tenant of Flat 7, or sharing possession of Flat 6 with Ms Del Monte, and failing to give notice thereof in breach of the covenant at para 18, Sch 5 (Flat 6, Breach 2).

19. Flat 7. The Fifth Respondent, Ms Del Monte, is the underlessee of Flat 7. She holds under a lease dated 26 October 2007 ("Flat 7 Lease") granted under s.56 of the 1993 Act. She is alleged to have breached the Flat 7 Lease by failing to provide access to the Applicants, the allegation being that a proper request on reasonable notice had been made for such access to be provided to the Applicants on 16 March 2019, which was not complied with (Flat 7, Breach 1).

20. The leasehold covenant in question is contained in para 6, Sch 5 of the Flat 7 Lease and is in the same terms as the covenant set out in paragraph 5 above.

21. The Fifth Respondent is also alleged to have breached the covenants at para 19 (a), Sch 5 by underletting Flat 7 and para 20 by failing to give notice thereof. The covenant against underletting is the same terms to that set out in paragraph 11 above, i.e. underletting of part is prohibited (para 19(a)) but there is no prohibition on underletting the whole save in the last 7 years of the term (para 19(b)). Although the application only alleges a breach of para 19 (a), we are prepared to treat this allegation as encompassing sub-paragraphs (a) and (b) of para 19 but not sub-paragraph (c) (Flat 7, Breach 2).

22. Finally, the Fifth Respondent is alleged to be in breach of the covenant contained in para 8 of Sch 7 because the floors are not covered with wall to wall fitted carpet (Flat 7, Breach 3).

Evidence

23. The First Applicant, Ms Ferme, and her daughter, Ms Kostrevc, gave evidence on behalf of the Applicants. Neither had previously made a witness statement. Ms Ferme relied on the applications and the applications were, in each case, signed with a statement of truth. However, her oral evidence went considerably beyond what was said in the applications, particularly in relation to events on 6 and 16 March 2019, and in the course of giving evidence she sought to produce further (previously undisclosed) documentation to support her case. The position in relation to Ms Kostrevc was even less satisfactory, there being no suggestion prior to the hearing that she was to be called. We nonetheless allowed her to give evidence on the basis that her evidence was limited to events or alleged events on 6 and 16 March 2019 and having taken the view that it could be dealt with by Mr Dray without the need for an adjournment or further inquiry, given the limited scope of the evidence. Neither witness was a remotely satisfactory or credible witness. We shall deal with their evidence in more detail below.

24. For the Respondents, we heard live evidence from the First Respondent, the Fourth Respondent, the Fifth Respondent, her husband, Mr Amodio, and Mr Astor. In addition, we considered the evidence of Ms Mignon, the tenant of Flat 5, and Ms Lydia Vladimirskaya, the daughter of one of the joint tenants of Flat 4, both of whose statements were served with a hearsay notice because the deponent was, in each case, out of the country.

Findings

25. Flat 3, Breach 1. The Applicants sent substantially the same letter dated 24 February 2019 to each of the underlessees requesting access. The material part of the letter read as follows:

> *As the new intermediate landlords … we are exercising our right set up in the lease contract to allow us to inspect your flat on Saturday 16 March 2019 from 3pm to 4pm. If the noted time is not suitable for you, please contact Irena Ferme via email address provided above to reschedule the appointment (which cannot be later than 31 March 2019).*

26. In Dr Ammaniti's case, the letter was sent to him in Rome where, to the knowledge of the Applicants, he was living. The letter arrived on 11 March 2019, 4 clear days before 16 March 2019.

27. There is no suggestion that there was any urgency or pressing need to inspect the flat and the letter did not specify the purpose of the intended visit. The letter did not request access. It notified the recipient that the Applicants would be "*exercising our right set up in the lease contract to allow us to inspect your flat on Saturday 16 March 2019*". Dr Ammaniti did not reply. Nor did any of the other underlessees. They were not bound to do so: see e.g. *New Crane Wharf Freehold Ltd v. Dovener* [2019] UKUT 98 (LC) at [23].

28. In the absence of any reply, the critical question is whether the Applicants in fact sought to exercise their right to inspect on 16 March 2019. The First Applicant in her oral evidence to the Tribunal suggested that she did attend at the Property on 16 March 2019 and call at Flat 3 in an attempt to obtain access.

She said "*I attended a bit before 4pm and no opened the door*". She gave the same evidence in relation to each of flats 3, 4, 5, 6 and 7. This was a reference to the flat door not the communal entrance as the Applicants have a key to the communal entrance. Her daughter gave evidence supporting this account, although she said she waited outside the Property so, even on her own evidence, could not have witnessed what went on inside the Property. However, she said her mother told her that none of the underlessees had attended the appointment. Ms Kostrevc said she had come to the Property by tube from Wembley separately from her mother who came by bus. Both witnesses said that on the day in question, it was the last thing they wanted to be doing because the First Applicant's mother was ill in hospital but suggested that attending at the Property was more important than visiting their mother/grandmother in hospital. Their accounts were fairly but firmly challenged in cross examination by Mr Dray who questioned, in particular, why this evidence had not been raised before now.

29. The Tribunal did not find either witness's evidence credible on the issue of the 16 March 2019 visit. It beggars belief that this important evidence was not contained in the application, the Reply dated 29 November 2019 or anywhere in the bundle. We consider the omission telling. In any event, the account given by each witness was not remotely persuasive. If this meeting was sufficiently important to warrant a special trip from Wembley on a Saturday afternoon, it makes no sense that Ms Kostrevc would have waited outside the Property. We think it far more likely, given the lack of reply from any of the underlessees, that the First Applicant and her daughter would not have bothered to attend the Property on 16 March 2019, particularly given the fact that their mother/grandmother was ill in hospital. Accordingly, we find as a fact that neither the First Applicant nor Ms Kostrevc attended the Property on 16 March 2019 but even if either of them did so, we do not accept that the First Applicant (or her daughter) knocked/rang the bell on any of Flats 3, 4, 5, 6 or 7 in an attempt to gain access. The First Applicant's evidence about this aspect, in particular, was hopelessly vague and singularly unconvincing.

30. Our conclusion on this issue is therefore that, in the absence of any actual attempt to gain access to Flat 3 (or any of the other flats) on 16 March 2019, there was no breach of covenant. The failure to respond to the letter was not a breach of covenant. We note, incidentally, that access has since been offered (on reasonable notice etc) by all the underlessees by letter dated 27 September 2019 to which there has been no response from the Applicants.

31. In any event, we would have rejected this claim against Dr Ammaniti on the basis that 4 clear days' notice was not reasonable notice on the facts of this case, in particular having regard to the facts that this was a routine, non-urgent appointment and Dr Ammaniti was (to the knowledge of the Applicants) living in Rome at the time. In those circumstances this was not reasonable notice.

32. Flat 3, Breach 2. This is an entirely baseless allegation. Mr Astor was the previous lessee of Flat 3. He sold Flat 3 in or about 2010 to Dr Ammaniti and has had no further dealings with the Flat. However, whilst he was living there, he was a trustee and director of the Game and Wildlife Conservation Trust and gave the Flat address as his address for correspondence. He resigned as a director on 30 August 2018. The Applicants instructed a business that calls itself "Expedite Detective Agency" ("Expedite") which produced a report dated 4 May 2019 apparently suggesting that Mr Astor was still living at Flat 3, despite the leasehold proprietor being Dr Ammaniti. Although Dr Ammaniti's "*residency score*" was described as "*very high*", the Report appeared to suggest that Mr Astor was "*the unknown resident*" and had been living at Flat 3 as recently as 30 August 2018. The source of all this unreliable evidence from Expedite was said to be "*Wisdom*". We heard evidence from Mr Astor and Dr Ammaniti both of whom made it abundantly clear that the Applicants had got it completely wrong. Mr Astor has never shared possession of Flat 3 with Dr Ammaniti. As he explained, Mr Astor now lives in Highgate and has done since 2013. He sold Flat 3 to Dr Ammaniti in 2010 and has not lived there since. He inadvertently omitted to tell Companies House of his change of address and Flat 3 remained registered as his address for correspondence. This was a mistake. Dr Ammaniti confirmed that he has never shared possession of Flat 3 with Mr Astor. Both were utterly straightforward and honest witnesses whose evidence

we accept. The suggestion that Mr Astor has been sharing possession of Flat with Dr Ammaniti is, frankly, ludicrous. Why Ms Ferme has persisted in this totally unreasonable allegation is beyond us. We reject it.

33. Flat 4, Breach 1. We repeat, mutatis mutandis, paragraphs 25 and 27-30 above and reject this allegation of breach of covenant against the Second Respondents.

34. For completeness, there is one additional element in relation to Flat 4 that we must deal with. It is common ground that the Feb 24 letter sent to the Second Respondents was returned through the post undelivered. If this were all there was, there would no breach in any event because of the lack of notice. However, the First Applicant in evidence maintained that she had in fact put a duplicate of the letter in the wooden pigeonhole for Flat 4 on 6 March 2019. Again, this evidence was not foreshadowed in the application. However, in this instance, the First Applicant was able to refer to a photograph, which appears to be timed (19:51) and dated (6 March) and appears to show a letter addressed to Flat 4 in the pigeonhole. In addition, we allowed the First Applicant to introduce further documentation which showed that she had arranged to meet the tenant of Flat 2, Mr Povey, at the Property on 6 March at 8pm. On this basis we are prepared to accept that the Applicants did give notice to the Second Respondents on or about 6 March 2019 of their request to inspect Flat 4 on 16 March 2019.

35. Flat 4, Breach 2. As previously noted, the Second Respondents are also alleged to have breached the covenants at para 20, Sch 5 by underletting and/or sharing possession of Flat 4 with Mr Alkhrrubi and/or Mrs Koldas.

36. No one appears to know who Mr Alkhrrubi is. We suspect that he is a previous underlessee of Flat 4. The basis for this allegation is, once again, the evidence contained in a report by Expedite dated 3 May 2019. Mr Alkhrrubi is there mentioned as "the occupant registered to this address" with a "residency score" of "medium". Ms Lydia Vladimirskaya, who made a witness statement on behalf of her mother, Elena, one of the joint tenants, made it clear that Mr Alkhrrubi is unknown to the Second Respondents and that Flat 4 has not been underlet to

him or anyone else. Whilst this evidence was admitted by way of a hearsay notice because the witness was away from the country on a trip which was booked before this hearing date was fixed, the Tribunal accepts this evidence. There is, in substance, no evidence to contradict it. The evidence of Expedite is, in our judgment, totally unreliable. There has been no breach covenant by underletting to or sharing possession of the whole or part of the flat with Mr Alkhrrubi. We would also make the point that the prohibition on underletting etc of the whole only bites in the last 7 years of the term and the term runs until 2136.

37. However, It is admitted, indeed volunteered, that a Mrs Koldas has been staying at the flat for a few months on an informal and non-exclusive basis and this has been seized on by the Applicant as another breach. However, there is, we find, no subletting and no parting with possession. At most, there has been a sharing of occupation which is, importantly, different (see e.g. *Ansa Logistics Ltd v Ford Motor Company Ltd* [2012] EWHC 3651 (Ch) at [39]-[41]) and not prohibited by the Flat 4 lease.

38. We reject this allegation of breach.

39. Flat 5, Breach 1. We repeat, mutatis mutandis, paragraphs 25 and 27-30 above and reject this allegation of breach of covenant against the Third Respondent.

40. Flat 5, Breach 2. Ms Mignon admits that she sub-let Flat 5 on one occasion to a Heather Harris between 11 November 2018 and 11 February 2019. The relevant leasehold covenant (para 18 (b), Sch 5) prohibits underletting of the whole without the previous consent in writing of the Lessor not to be unreasonably withheld. There is no suggestion that consent was obtained and it is admitted that this underletting was a breach of covenant. It was also a breach of the covenant contained in para 20 by failing to give particulars of the underletting to the Lessor. Ms Mignon gave evidence via a hearsay statement because she is resident in Mexico and there is medical evidence dated 17 December 2019 advising her not to leave Mexico for at least 3 months. We accept this as a good reason for not attending and accept her evidence. We are satisfied that this was

a one-off historical breach, that occurred before the Applicants were registered as proprietors, and that there has been no other breach. The flat was advertised on a website (HomeAway USA) but this advertising has now ceased.

41. Flat 5, Breach 3. It is common ground that there is laminate flooring, not wall to wall carpets, throughout Flat 5. However, we have been shown a license dated 19 November 2010 whereby the Applicants' predecessor in title granted retrospective consent to the installation of laminate flooring. The present allegation of breach is inconsistent with the license and inequitable; any obligation to keep the floors covered with carpet has been waived: see e.g. *Faidi v. Elliot Corporation* [2012] HLR 27. In those circumstances, the Applicants' allegation of breach of covenant is unsustainable (and unmeritorious, there being no complaints of noise disturbance as a result of the flooring).

42. Flat 6, Breach 1. We repeat, mutatis mutandis, paragraphs 25 and 27-30 above and reject this allegation of breach of covenant against the Fourth Respondent.

43. Flat 6, Breach 2. This is, again, an entirely baseless allegation, based on the unreliable evidence of Expedite. Mrs Bell is the underlessee of Flat 6. Ms De Monte is the underlessee of Flat 7. We heard evidence from both Mrs Bell and Ms Del Monte. Both firmly denied any suggestion that Mrs Bell has underlet or shared possession of her flat with Ms Del Monte. We accept their evidence. As Mrs Bell explained, and we accept, she had never even met Ms Del Monte until 20 September 2019, after these proceedings were started. Mr Dray described it as a "*case of crossed wires*". That is being charitable to the First Applicant. It was a wholly unreasonable allegation to pursue, based on no evidence of any worth. We reject any suggestion of a breach by Mrs Bell of the covenant against underletting or sharing possession.

44. Flat 7, Breach 1. We repeat, mutatis mutandis, paragraphs 25 and 27-30 above and reject this allegation of breach of covenant against the Fifth Respondent.

45. In any event, we would have rejected this claim against Ms Del Monte on the basis that she was not given reasonable notice of the proposed appointment. Ms

Del Monte told us and we accept that she only received the letter dated 24 February 2019 on 13 March 2019. She lives in Naples with her husband and the letter was sent to her in Naples. She was thus only given 2 clear days' notice of the proposed appointment. This was not reasonable notice on the facts of this case, having regard in particular to the facts that this was a routine, non-urgent appointment and Ms Del Monte was (to the knowledge of the Applicants) living in Naples at the time.

46. Flat 7, Breach 2. Ms Del Monte admitted that she had sub-let (the whole of) Flat 7 on approximately 10 occasions over the last 5-6 years ending in September 2019. There is no prohibition on her doing so until the last 7 years of the term. The term expires on 28 September 2136. So this is not a breach of para 19 (b). That is the extent of her admission and there is no evidence to establish a breach of para 19 (a). However, she is in breach of the covenant at para 20, Sch 5 by failing to give particulars of any of the (sub) underlettings and failing to produce copies of the (sub-)underleases.

47. Flat 7, Breach 3. Ms Del Monte bought Flat 7 on 7 October 2011. The flat was marketed for sale as a "*well-proportioned studio flat … which has been attractively refurbished in a clean, contemporary style with bamboo wood flooring*". Ms Del Monte purchased the flat with the wood flooring in situ. It is clear from a letter dated 9 September 2011 that the vendor of Flat 7 sought retrospective consent to various alterations he had made to the flat in preparation for the sale to Ms Del Monte and that such consent was given, expressed to be "*binding on you as the Lessee of the flat and upon your successors in title*". Whilst the letter does not specifically refer to the wood flooring, it is clear to us and we infer from the letter and the surrounding circumstances that the intention was to ensure a clean sale to Ms Del Monte, with no possibility of a later complaint that there were any outstanding breaches of covenant. On that basis we conclude that it is not open to the Applicants to allege that Ms Del Monte is in breach of the covenant that requires wall to wall carpeting. There have been no noise complaints and the covenant must be treated as waived in the circumstances (see paragraph 40 above.

48. Conclusion. Save in the limited respects outlined in paragraphs 40 and 46 above, we reject each application in respect of each Respondent.

49. What happens hereafter is a matter for the Applicants and potentially the County Court. However, we are not going to leave this case without expressing the hope that recourse to the County Court is not necessary and that the parties are able to resolve their differences without further litigation. The breaches we have found proved are one-off and historical in the case of Ms Mignon and Flat 5 and entirely technical in relation to Ms Del Monte and Flat 7. We therefore earnestly hope that the parties can resolve this matter without the need for court proceedings.

50. Any applications for costs or otherwise shall be in writing and shall be filed and served within 28 days of receipt of this Decision. Any replies to any application made by the other party shall be filed and served within 14 days after receipt of such application. The Tribunal will then deal with any outstanding applications in writing.

51. Post-script: On 21 February 2020 at 16.25, just as the Tribunal were about to send its Decision out to the parties, the Applicants attempted to adduce yet further evidence bearing on the disputed events of 6 and 16 March 2019.

52. We refuse to admit any post-hearing evidence. We allowed the Applicants to call evidence (Ms Kostrevc) that was not foreshadowed in the papers and to produce previously undisclosed documentation in the course of their closing submissions. However, there must come an end. Finality is an important principle in litigation. This evidence could have easily have been obtained for use at the trial. To admit it now would be unfair to the Respondents and contrary to the overriding objective contained in paragraph 3 of the 2013 Tribunal Procedure Rules (SI 2013 No. 1169).

Name: Judge W Hansen **Date:** 22 January 2020