FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	**:**	**LON/00AC/LSC/2018/0338, LON/00AC/LVL/2018/0011, LON/00AW/LVL/2019/0006 and LON/00AW/LDC/2019/0164**
Property	**:**	**31-80 Parade Mansions, Watford Way, London NW4 3AU**
Leaseholders	**:**	**The persons listed in Appendix 1**
Representative	**:**	**Mr John Graham (a lay representative) until lunch on second day and then acting in person**
Landlord	**:**	**Mirette Investments Ltd**
Representative	**:**	**Ms M Bleasdale of Counsel**
Type of Application	**:**	**For the determination of the liability to pay service charges and for the variation of leases**
Tribunal Members	**:**	**Judge P Korn** **Mr C Gowman MCIEH MCMI BSc** **Mr O N Miller BSc**
Date and venue of Hearing	**:**	**18th to 20th November 2019 at 10 Alfred Place, London WC1E 7LR**
Date of Decision	**:**	**27th January 2020**

DECISION

Decisions of the Tribunal

(1) The charges for the estimated cost of the major works which are the subject of these proceedings are payable in full.

(2) The tribunal dispenses with the section 20 consultation requirements in respect of the major works which are the subject of these proceedings to the extent that they have not been complied with. This element of the tribunal's decision affects all leaseholders and not just those listed in Appendix 1.

(3) In relation to the drainage charges for 2018, the Leaseholders' respective contributions towards the cost of all of items 16 to 41 of the Scott Schedule for 2018 are reduced by 60%. In monetary terms, the disallowed element of the aggregate of items 16 to 41 is £4,446.00, and therefore the Leaseholders' share of this sum is not payable.

(4) In relation to the management charges, the Leaseholders' respective contributions are reduced by 10% for the years 2012 to 2017 and by 40% for 2018.

(5) All other disputed service charge items are payable in full.

(6) Although this is not part of the decision, the tribunal notes that the Landlord has agreed that a limited number of invoices identified in the Scott Schedule have been incorrectly added to the service charge and that the Leaseholders either have been or will be re-credited in respect of the relevant sums.

(7) In relation to the applications for the variation of the Leaseholders' respective leases, pursuant to sub-section 38(1) of the Landlord and Tenant Act 1987 the following variations are ordered in respect of each type of lease:-

Lease Type A

Paragraph 1(2) of the Third Schedule to the lease to be deleted and replaced with the words: *""the Service Charge" means 1/52nd of the Total Expenditure"*.

Lease Type B

The first two lines of clause 2(2)(a) of the lease to be amended to read: *"To pay and contribute to the Lessor a service charge equal to 1/52nd of the expenses of:-"*.

Lease Type B+

The first two lines of clause 2(2)(a) of the lease to be amended to read: *"To pay and contribute to the Lessor by way of further rent a service charge equal to 1/52nd of the expenses of:-"*.

Eaglesham Lease

The first two lines of clause 2(2)(a) of the lease to be amended to read: *"To pay and contribute to the Lessor by way of further rent a service charge equal to 1/52nd of the expenses of:-"*.

(8) Pursuant to sub-section 38(2) of the Landlord and Tenant Act 1987, the tribunal also makes an order varying the other leases of residential flats within the Property in the same manner as is set out in (7) above. For the avoidance of doubt, this means that the 'Lease Type A' variation will apply to any other leases which are 'Lease Type A', that the 'Lease Type B' variation will apply to any other leases which are 'Lease Type B', that the 'Lease Type B+' variation will apply to any other leases which are 'Lease Type B+' and that the 'Eaglesham Lease' variation will apply to any other leases which are 'Eaglesham Leases'.

(9) The tribunal directs that HM Land Registry takes due note of the lease variations hereby ordered and requests that the registers of the respective freehold and leasehold titles be amended accordingly.

Introduction

1. The Leaseholders seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the payability of certain service charges.

2. The Leaseholders' service charge challenge falls into two categories. One category comprises certain major works, namely (i) replacement of two rear metal staircases, (ii) decoration of the front access stairs, (iii) emergency maintenance works to gutters, pipework, render and brickwork, (iv) replacement of twelve rear metal staircases and (v) treatment of front walkways and terraced areas.

3. The other category comprises various individual service charge items for the service charge years 2012 to 2018. At the hearing it was agreed that the key issues here (after the Leaseholders accepted that they were not being charged for rubbish clearance) were (i) a faulty intercom, (ii) the cost allocation for pest control as between commercial and residential, (iii) management fees, (iv) cleaning, (v) the cost allocation for certain individual maintenance items and (vi) historic neglect. The issue of drainage was later added.

4. In relation to the major works, no final accounts have yet been issued, and so necessarily the challenge is just to the estimated cost of these works. This leaves open the possibility that there could be a further challenge to the actual cost once this is known and invoiced.

5. In response to the Leaseholders' service charge application the Landlord seeks dispensation under section 20ZA of the 1985 Act from compliance with the statutory consultation requirements in respect of certain external repair works to the extent (if at all) that those requirements have not been complied with.

6. The Leaseholders have also made an application under section 35 of the Landlord and Tenant Act 1987 ("**the 1987 Act**") to vary the service charge provisions in their respective leases, and in response the Landlord has made its own application for the leases to be varied in a different manner and has also made an application under section 36 of the 1987 Act.

7. The relevant statutory provisions are set out in Appendix 2 to this decision.

Inspection

8. Prior to the commencement of the hearing the tribunal inspected the Property in the presence of both parties, and the Leaseholders were given an opportunity to point out items of concern, in particular areas of disrepair and work which they contended had been carried out in a sub-standard manner.

The Leaseholders' representative

9. The Leaseholders were initially represented at the hearing by Mr John Graham, a lay representative with no legal qualifications and no other relevant qualifications known to the tribunal. During the lunch break on the second day of the hearing the Leaseholders decided to sack Mr Graham as their representative and thereafter to present their case themselves.

The disputed major works charges and other service charge items

Mr John Soulsby's expert reports and cross-examination thereon

10. Mr Soulsby was instructed by (as he puts it) Mr Sulman Rahman on behalf of the Residents' Association for Parade Mansions. Mr Soulsby is an experienced sole practitioner who is a Fellow of the Royal Institution of Chartered Surveyors and has been involved during his professional career in structural surveys, specifying and supervising

various building projects and dealing with other issues such as dilapidations and party wall matters. He has been appointed as an expert witness in a number of cases.

11. The hearing bundle includes a joint experts' schedule of agreed facts and outstanding issues relating to the Property and dated September 2006 but not signed, the joint experts being Mr Soulsby and a Mr Patrick Reddin. There is also a signed report from Mr Soulsby dated 16th June 2015 in respect of works then being carried out to the exterior of the Property, and there is a signed witness statement dated 10th May 2019.

12. The conclusions in his written witness evidence are that there were numerous defects to the roofs which should have been addressed, that the cast-iron and steel staircases and landings were in extremely poor condition, that renewal (as distinct from proper maintenance) was unnecessary in most areas of the work, that lack of maintenance over many years had caused some elements of the building to deteriorate significantly, that the renewal of some of the guttering and rear staircases had not been carried out well and that there were many snagging items still to be addressed and for which he suspected leaseholders would be charged extra. He also categorised certain works as improvements and said that it should be checked whether improvements were permitted under the leases (i.e. whether the cost of carrying them out was recoverable).

13. At the hearing Mr Soulsby said that he had not done a condition survey of the Property but had recommended that one be done. His reports include an examination of some of the works carried out.

14. Regarding paragraph 2:01 of the joint experts' report dated September 2006, Mr Soulsby said that different parts of the building had not been individually assessed and that much of the work which had been specified was unnecessary and possibly had not been carried out. For example, very few tiles actually needed replacing. Currently there were numerous roof tiles missing and there were problems such as unsafe staircases and guardrails and defective pipework.

15. As regards the recent work done by the contractor Barry Dodd, there had in his view been some problems with the standard of his work, but Mr Soulsby accepted that these were in the nature of snagging items. Mr Soulsby did not know what works had actually been paid for.

16. Specifically in relation to the works to the external staircases, Mr Soulby's view was that the holes were not large enough on each tread to enable the surface water to drain away properly. As regards the wooden windows, Mr Soulsby said that they had not been redecorated for many years and that they had rotted as a result.

17. In cross-examination it was put to him that a replacement which constitutes a modern form of repair is now regarded by case law as being a repair. He accepted that this could be the case if the improvement in question made economic sense. Regarding the schedule of works commented on by him (together with Mr Reddin) in September 2006, he accepted that these were merely anticipated works. It was also put to him that his views as to how to repair the staircases were inconsistent but he did not accept this.

18. Regarding Mr Soulsby's 2015 report in which he had stated that simple decoration of the guttering, wastepipes etc would have been sufficient, he accepted that the report did not contain any analysis of the ongoing maintenance costs but added that it had not been part of his role to provide any cost analysis. It was put to him that replacement with plastic would create future savings, but his view was that plastic was not as effective as cast iron and he did not accept that there had been any significant problems with the cast iron.

19. As regards Mr Soulsby's concern that leaseholders would be charged extra for addressing snagging items, Ms Bleasdale told the tribunal that the Landlord would not be charging Leaseholders extra for dealing with snagging items. Ms Bleasdale also put it to Mr Soulby that the repair of staircases that he was advocating in his written reports would actually be more expensive (according to her instructions) than replacement, but Mr Soulsby said that this depended on the specification.

Mr Hillel Broder's evidence

20. Mr Broder of OCK Chartered Surveyors is the Landlord's expert witness and has given a witness statement. He is an experienced chartered building surveyor and a Member of the Royal Institution of Chartered Surveyors. He has been involved in the management of major works to the Property as contract administrator.

21. In his witness statement he states that the Landlord went through the statutory consultation process in relation to the major works but that there was no active feedback from leaseholders. The gutter works were put out to tender and Barry Dodd Maintenance came back with the lowest quote and was awarded the contract. The next phase of works was the replacement of the staircases; the lowest quote for these works was from Indigo Contractors, who were awarded the contract but then failed to undertake the works. Barry Dodd Maintenance was the next lowest quote for the staircase replacement works and they were accordingly instructed to proceed.

22. The final phase of the works related to the treatment of the rear terraces and front walkways. The lowest quote for these works was from Thameside Roofing, who was awarded the contract, but this contractor also failed to undertake the relevant works, stating that it

could not in fact carry out the works as per its tender. Mr Broder had specified the 'Langley' system of treatment, but he then approached Barry Dodd Maintenance to request a quote using the 'Kemper' system, which in fact was a system with which he was happier than the 'Langley' system. He had only specified 'Langley' in the first place because Langley had carried out a seminar in his office. Barry Dodd Maintenance came up with a quote which was lower than the next lowest quote (from Allard Construction) obtained using the Langley system and Mr Broder decided to go with Barry Dodd Maintenance. He accepts that his approach was unconventional, but he maintains that it was done to ensure the smooth running of the works and he felt at the time that it would result in a better finish.

23. The full specification has always been available to the leaseholders for inspection, and Mr Broder's office is a short distance from the Property, but no leaseholder has taken up the opportunity to inspect. There have been no complaints about the standard of works other than some correspondence from Mr Danny McIntyre. Snagging works to staircases have been completed and works completed to a good standard, and leaseholders have not provided any feedback despite this having been requested.

24. At the hearing, in relation to a specific concern raised by the Leaseholders, Mr Broder said that the railings were higher than previously as a result of new regulations. To the extent that this had caused a problem with the opening of windows, Barry Dodd Maintenance had agreed to cut out sections of the railings at no extra cost to leaseholders to allow the relevant windows to be opened. They would also 'touch up' the railings and reposition some treads or drill extra holes in them to help with drainage of surface water. The Landlord had kept a retention for the purpose of ensuring that the job was completed to a satisfactory standard. In relation to any damage that there has been to the windows, Barry Dodd Maintenance would replace the windows at no extra cost.

25. Regarding a specific concern about water splashing into Flat 75, the contractor had attended and found a gap which has now been sealed.

26. In answer to a question from the tribunal as to why Mr Broder had selected Barry Dodd Maintenance in relation to the treatment of the rear terraces and front walkways when Mr Dodd had not initially quoted for these works, Mr Broder said that this was because by that stage the work had become more urgent.

27. In answer to another question from the tribunal, Mr Broder pointed to the evidence within the hearing bundle supporting his contention that replacing the metal escape staircases would be cheaper than repairing them, namely the alternative quotes from M.F. Design.

28. Regarding the final account for the maintenance works and the sum of £24,798 for additional scaffolding, Mr Broder said that this related to the replacement of gutters and soilpipes. It was agreed on site that some extra pipework needed to be replaced, and the size of the job grew as the works proceeded, because it led to a re-assessment as to what was required. Having put up more scaffolding they identified other items of work such as broken tiles and defective rendering, and it was felt to be more logical and cheaper to deal with it as one comprehensive job rather than re-consulting and putting up fresh scaffolding later.

29. In relation to Mr Doherty's concerns about asbestos (see later), Mr Broder said that there were two concrete landings and there was asbestos in the shutters hidden under the concrete. It was made safe by a specialist company and then later removed, again by a specialist.

Mr Danny McIntyre's evidence

30. Mr McIntyre is the leaseholder of Flat 73 and has given a witness statement. He has lived in Flat 73 since 1971 and states that he has found the management of the Property by the Landlord's managing agents, Ord Carmell and Kritzler, to be very poor.

31. In his witness statement he lists various concerns, including charges for unused scaffolding, unnecessary charges relating to health and safety, sub-standard painting of front entrance hall walls, fascias and soffits unpainted and in poor condition, blocked and leaking gutters, pipes which were leaking and badly fitted, badly renewed floor surfaces, poor condition of bin enclosure attracting rats, sharp edges on underside of handrails, dangerous manhole cover, brick pier and lintels in poor condition, electric cable lying in dangerous condition, expensive ongoing contract for drainage cover and miscellaneous other issues. He also refers to a large number of unanswered letters.

32. At the hearing Mr McIntyre summarised some of the points contained in his witness statement. In cross-examination he was asked by Ms Bleasdale in the context of the complaints about the bin enclosure whether he was prepared to contribute towards the cost of the pest control that he was seeking, but he replied that he was not prepared to do so as the problem was caused by the rubbish generated by the supermarket. Ms Bleasdale also noted that there was a concern about items being dumped outside the back of the building, but again Mr McIntyre said that leaseholders should not have to contribute towards the cost of their removal – in this case it was because all sorts of other people dumped items.

33. As regards the problems with blocked gutters, Mr McIntyre accepted reluctantly that it was possible that residential occupiers might occasionally flush down the toilet nappies and other items which should

not be placed in toilets, but he felt that blockages had not been dealt with in a cost-efficient way.

Mr Gerard Doherty's evidence

34. Mr Doherty is the leaseholder of Flat 76 and he too has given a witness statement. He purchased his flat in 1999 and states that he has also found the management of the Property to be very poor.

35. He states that the service charges are excessive and unreasonable and have been based on sub-standard or unnecessary works. He lists various concerns, including in relation to the entry-phone system, a leaking front bay window roof, guttering, a fascia board and unnecessary scaffolding, generally sub-standard work, safety hazards, unnecessary replacement of original metal staircases and asbestos issues.

36. At the hearing Mr Doherty said that nothing had been done to repair a particular leak between 2009 (when it was first reported) and 2016. When it was finally dealt with in 2017 it transpired that it was a very simple repair. On the question of unnecessary scaffolding, he had complained about this by email on 4th April 2019 but had simply been told to raise the point with the Landlord's solicitor.

37. In relation to asbestos, Mr Doherty pointed to copy photographs in the hearing bundle as evidence that the Landlord had flouted the relevant rules relating to the disposal of asbestos.

38. In cross-examination, Ms Bleasdale referred Mr Doherty to a letter dated 2nd December 2009 which was a response to his email complaining about the leak. In relation to the original consultation about the major works, Mr Doherty conceded that he did not know the details as he was in Columbia at the time and was not properly involved in discussions about the Property until about 5 years ago. He agreed that there had been discussions about the Landlord making a financial contribution to reflect previous poor maintenance and he accepted that if the Landlord were to offer a reasonable resolution of the staircase issue then he would be happy.

Mr Sulman Rahman's evidence

39. Mr Rahman is the leaseholder of Flats 42, 50, 61 and 62. His main evidence relates to the lease variation issue (as to which see later), but his witness statement also contains comments about the Landlord having allowed the Property to deteriorate and about the possible consequences of long-term neglect.

Mr Immanual Gabay's evidence

40. Mr Gabay, like Mr Broder, works for OCK Chartered Surveyors. He is also an experienced chartered surveyor and has also given a witness statement. In his witness statement he states that the Landlord's answers in the Scott Schedule to the various complaints made by the Leaseholders were prepared by him. He also states that the Landlord has agreed that a limited number of invoices identified in the Scott Schedule are not payable by the Leaseholders.

41. On the issue of historic disrepair, he states that the Landlord had wanted to proceed with the necessary repairs and that it was the leaseholders who had over a period of time been reluctant to contribute towards the cost. Without funding it is not possible to carry out a works programme, and the Leaseholders have a history of being in arrears with service charge payments.

42. At the hearing Mr Gabay said that the Landlord had already re-credited certain items and confirmed that it would re-credit those other items where it agreed with the Leaseholders' challenge.

43. In cross-examination Mr Doherty put it to Mr Gabay that he had never seen a cleaner at the Property and that the standard of cleaning was poor. In response Mr Gabay said that there had been no complaints until recently and then when recently there had been complaints the Landlord had responded. Mr Doherty accepted in response that the standard of cleaning had now improved. Mr Gabay added that the cleaning contract was tendered periodically.

44. Mr Doherty also put it to Mr Gabay that the intercom had not worked until about a year ago and that up until the time when it was finally mended he had complained repeatedly about it. After further discussion it transpired that Mr Doherty was just referring to his own intercom (there being three in total). Mr Gabay said that the Landlord had responded to the concerns raised but he was unable to point to any specific responses in the hearing bundle.

45. In relation to pest control, Mr Doherty put it to Mr Gabay that it was unfair for leaseholders to have to pay a significant proportion of the cost as the problem was mainly caused by waste from the food shops. In response Mr Gabay said that there were now no food shops below Mr Doherty's section of the Property and that it was perfectly possible that the main problem was being caused by residential occupiers.

46. In relation to the management fees, Mr Doherty put it to Mr Gabay that there had been a poor management response to the Leaseholders' various concerns. In answer to the question as to what the managing agents do in return for being paid £235 + VAT per flat per year, Mr

Gabay said that they prepare service charge demands, collect the service charges, prepare accounts and deal with maintenance, cleaning, drainage, intercom and regular inspections.

47. As to why the Landlord uses Barry Dodd Maintenance so often, Mr Gabay said that the Landlord did not use them to the exclusion of all other contractors but that it had found them to be good at what they do and to charge a competitive price. There followed a general discussion between Mr Doherty and Mr Gabay regarding water leaks and regarding a range of invoices, with Mr Gabay explaining the Landlord's position.

Mr Julian Lewin's evidence

48. Mr Lewin works in OCK Chartered Surveyors' accounting department and states in his witness statement simply that he has seen the Scott Schedule and is prepared to be cross-examined on any matters arising out of the accounts. In the event he was not cross-examined on any of these matters but he was asked a question about the service charge percentages (as to which see later).

Landlord's further comments on service charge issues

49. Ms Bleasdale made the point that the Landlord had agreed to the tribunal's direction that there be a joint expert in relation to the major works but the Leaseholders had not agreed to this. She added that the tribunal had also urged the Leaseholders not to use Mr Graham as their representative but that they had ignored this advice, only then to sack him halfway through the hearing.

50. On the issue of historic neglect, it was clear from the Upper Tribunal decision in *Daejan Properties Ltd v Griffin and another (2014) UKUT 206 (LC)* that in determining whether the cost of the work done was recoverable in full the issue was whether the work had been carried out in the correct manner. There might be a separate set-off argument, but the Leaseholders needed evidence to support any such argument. In fact, it was agreed back in 2010 that leaseholders would come back to the Landlord with costings on the set-off point but they had still not done so.

51. Regarding the question of whether the Landlord should have carried out all works that needed addressing in one go, the decision of the Upper Tribunal in *Garside v RFYC Ltd (2011) UKUT 367 (LC)* is authority for the proposition that it is not always appropriate to do so. In the present case the Landlord had been phasing the works to meet the concerns of leaseholders. It accepted that there were other works that needed doing but felt that it was not prudent to burden

leaseholders with a very large service charge bill by carrying out all of the works at the same time.

52. Regarding Mr Gabay's evidence, the Leaseholders had challenged a very large number of detailed issues and in Ms Bleasdale's submission it was not reasonable to expect Mr Gabay to have all of the detailed information at his fingertips. Problems do arise periodically, but that is inevitable for this type of block above a parade of shops.

Leaseholders' further comments on service charge issues

53. In relation to historic neglect, the Leaseholders felt that Mr Broder has not provided any evidence to support his analysis of the maintenance costs and that he had not properly factored in the consequences of historic neglect.

54. The Leaseholders disagreed that the tribunal had urged them not to use Mr Graham and felt that the issue of the joint expert had been more complicated than Ms Bleasdale was suggesting.

The application for dispensation

55. Both parties made written submissions on this issue, and at the hearing Ms Bleasdale made some initial oral submissions on behalf of the Landlord.

56. In response, Mr Rahman on behalf of the Leaseholders conceded that the Leaseholders would be unable to show that they had suffered prejudice as a result of any failure on the part of the Landlord fully to comply with the consultation requirements in relation to the works. After assuring the tribunal that he and the other Leaseholders understood the implications, Mr Rahman confirmed on behalf of the Leaseholders that they did not wish to contest this dispensation application and were no longer looking to argue that the service charges should be limited by virtue of any failure to comply with the consultation requirements.

The applications for variations of the leases

Mr Rahman's evidence continued

57. The main part of Mr Rahman's witness statement focuses on the service charge percentages set out in the leases.

58. He argues that under the leases the leaseholders are obliged in aggregate to pay 156% of the service charge whilst the Landlord – who owns 15 flats within the Property – is not obliged to contribute anything

towards the service charge. The Landlord does in fact make a contribution, but what has happened is that the Landlord has informally and arbitrarily varied the percentages, without obtaining the leaseholders' consent, so that it now pays 1.56% for each of its flats and the leaseholders pay between 2% and 2.72% for each of theirs. Even that arbitrary concession, given its informality, could disappear if the Landlord transferred its interest in the Property to a third party.

Cross-examination of Mr Lewin

59. In response to a question from Mr Rahman, Mr Lewin explained what percentage of the service charge the Landlord charges to each flat.

Leaseholders' position

60. The Leaseholders argue, as per Mr Rahman's witness statement, that the service charge provisions are currently inequitable and should be varied. In their original application dated 20th November 2018 they state that the service charge percentage should be varied so that it is divided equally among the existing 52 flats. They also want the variation to include a provision that if more dwellings are created the service charge will be apportioned equally among the expanded number of flats.

61. In a later email dated 5th August 2019 they then contend that the commercial premises should pay 40% of the service charge and the residential leaseholders between them should bear the remaining 60%.

Landlord's position

62. The Landlord does not accept that there is any reasonable basis for the commercial premises having to contribute towards all service charge costs.

63. As regards the principle of varying the residential lease service charge percentages, the Landlord seems to accept, or at least not to object to, this principle. However, it argues that since two flats (61A and 61B) which are controlled by the Landlord are smaller than the others those flats should only pay 75% of the amount paid by the other flats.

64. The Landlord also, by way of counter-proposal, requests a wider variation of the service charge provisions as set out in detail over several pages within the hearing bundles. The Landlord notes that there are four different styles of service charge provision in the various leases and argues that there should be a uniform service charge clause applying to all residential flats. It also submits that the service charge clause should be clearly understandable and provide for 100% recovery

of the costs of providing services and should allow the landlord's surveyor to determine how to allocate costs to allow for flexibility.

Tribunal's analysis and determination

Service charge issues

Dispensation

65. The Landlord has applied for dispensation from compliance with the section 20 consultation requirements in respect of the major works which are the subject of these proceedings, to the extent that they have not been complied with.

66. Mr Rahman on behalf of the Leaseholders has expressly stated that the Leaseholders do not wish to contest this application and are no longer seeking to argue that the service charges should be limited by virtue of any failure to comply with the consultation requirements. None of the other leaseholders of flats within the Property has contested the application for dispensation.

67. Arguably the Landlord's case has not been fully tested on this issue, but as the Leaseholders are expressly conceding that they cannot show actual prejudice and as none of the leaseholders is challenging the Landlord's position, we consider it reasonable to dispense with the consultation requirements to the extent that they have not been complied with. For the avoidance of doubt, this determination on dispensation affects all of the leaseholders and not just those (defined in this decision as Leaseholders with a capital "L") who are party to the application for a determination as to the payability of service charges.

Reasonableness of major works charges

68. Separate from the issue of consultation is the issue of whether the major works charges are themselves reasonable. First of all, as noted earlier, the charges are estimated charges as no final accounts have yet been issued. Under section 19(2) of the 1985 Act, *"where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable"*. The issue, in the case of estimated charges, is simply whether the estimate is a reasonable estimate; the questions of whether the charges have been reasonably incurred and whether the works are of a reasonable standard are not questions that arise at this stage.

69. The Landlord has provided a substantial amount of information regarding the need for the work, the process undertaken and the costings, and the Leaseholders have not offered any proper rebuttal of the Landlord's evidence. They instructed a surveyor, Mr Soulsby, to

assist them but neither Mr Graham nor the Leaseholders themselves seem to have thought through what Mr Soulsby's role should be. The hearing bundle includes a joint report from 2006, which is too old to shed any useful light on these issues. As for Mr Soulsby's more recent reports, these do not deal with costings in any meaningful way and nor do they contain any other information which would constitute a meaningful challenge to the reasonableness of the estimated charges. This is not to criticise Mr Soulsby's professionalism; the issue is the inadequacy of his instructions.

70. Therefore, the estimated charges for the major works are reasonable and payable. In principle there could still be a separate challenge to the actual cost once this is known and has been invoiced, although we would just comment that the Leaseholders' evidence would in our view need to be a lot sharper on these issues for them to have a realistic chance of mounting a credible challenge to the actual costs once known.

Other service charge issues

Dealing with these in turn:-

Intercom

71. It became apparent during the hearing that only one intercom was being complained about. It is clear from written submissions that there is a maintenance contract in place. Also, there is some evidence as to the reasons for the particular problems and the Landlord does seem to have responded to the complaint.

72. To the extent that the Landlord's response was delayed and/or was inadequate this is a management issue and could potentially be reflected by a reduction in the management fee, but there is insufficient evidence from the Leaseholders that work has been done by way of installing or repairing the intercom system itself which was sub-standard or carried out at an unreasonable cost. Therefore, the intercom charges are payable in full.

Pest control

73. The issue on which the Leaseholders have focused is the proportion of the total cost of pest control which should be allocated to residential leaseholders. Currently one-third of the cost is payable by residential leaseholders, with the balance being borne by the commercial premises, and the suggestion is that the residential leaseholders should pay less than one-third.

74. In our view the Leaseholders have failed to make a cogent case to support their contention. Whilst it is perfectly possible that food waste

from commercial premises has been causing problems, it is simply a matter of conjecture on the part of the Leaseholders that this is the chief problem as they have no actual evidence to support their claim. In any event, the commercial premises do bear twice as much of the cost as residential leaseholders. Therefore, in our view there is no good reason to change the proportion on the basis of the available evidence.

75. If and to the extent that the Leaseholders' concerns are partly also about the quality of the service, again there is insufficient evidence to support their position. The tribunal saw evidence of bait boxes being in place, and the fact that there have been problems with pest control does not by itself show that the Landlord has failed to deal with the problem, as pest control can be an ongoing battle and can be exacerbated by the antisocial actions of people unconnected to the management.

Cleaning

76. The Leaseholders seem to accept that the cleaning charges would be reasonable if the standard of cleaning were acceptable but they do not accept that the cleaning has been of a good standard. However, their evidence of this is just not strong enough. We do not consider it plausible to suggest or imply that the Property has never been cleaned and it is not consistent with what we saw on our inspection. In a block of this nature there will inevitably be issues from time to time, but the Leaseholders have not provided – and we have not seen – evidence of a systematic failure to clean the Property. We also consider the charges themselves to be reasonable.

77. Therefore, the cleaning charges are payable in full.

Drainage

78. Regarding the problem with blocked drains, the Landlord does have a maintenance contract in place, but the evidence – including the number and frequency of invoices – indicates that at times there were repeated call-outs at regular intervals. Having considered the copy invoices and seen and heard the parties' submissions on this issue, we do not accept that it is a plausible explanation that drains were becoming newly blocked with (for example) baby wipes with quite such frequency. Far more likely is that the relevant contractor was not clearing the drains properly, thereby either not resolving the problem at all or allowing it to recur much too easily.

79. The main problems seem to have occurred in the 2018 year. There were repeated problems and there is no evidence of any coherent strategy to deal with them. Inevitably in this type of situation the tribunal has to take a fairly broad-brush approach, and having considered the evidence we consider it appropriate to disallow the

Leaseholders' share of 60% of the cost of all of items 16 to 41 of the Scott Schedule for 2018. In monetary terms this involves disallowing the Leaseholders' share of £4,446.00 in aggregate.

Management fee

80. The Leaseholders seem to accept that the amount of the management fee would be reasonable if the managing agents were providing a good service. Their contention is that the service itself has been sub-standard.

81. A distinction needs to be drawn here between the management of the major works and the management of the Property generally. As noted above, there is no final actual charge as yet in relation to the major works, and the quality of the management of those works will only become an issue if and when there is a challenge to the actual final cost of those works. Any challenge to management fees at this stage, therefore, has to be limited to management of day to day services and management of the Property generally.

82. The Leaseholders have made complaints about general neglect in relation to cleaning of the internal common parts, but as noted above we do not accept that they have made their case. However, what was apparent from our inspection was evidence of general neglect of parts of the outside of the block. There is a significant amount of moss and mould and much evidence of leaking, and we accept that this is evidence of neglect over many years. In addition, we consider that the problem with the blocked drains was a management failing in addition to it causing more to be spent on unblocking drains than should have been spent.

83. To reflect the above findings, we consider that the management fee should be reduced by 10% for all of the years 2012 to 2017 and (because of the drainage issue) by 40% in 2018.

Other issues

84. The Leaseholders have raised concerns about unused scaffolding but have failed to bring evidence to show that they were charged for scaffolding which was not needed. As regards the use of scaffolding for extra matters which had not originally being envisaged as necessary, we accept the Landlord's submissions, on the basis of the available evidence, that this was a reasonable approach to take and they were entitled to take it.

85. As regards the general issue of long-term neglect, in principle the Leaseholders are correct that this can lead to more needing to be spent on the maintenance of a building than would otherwise be the case.

However, as the Landlord points out, first of all the proper challenge in such a case is not to the reasonableness of the cost of works that have been carried out as these need to be judged on their own merit; instead the correct approach, following the Upper Tribunal decision in *Daejan Properties Ltd v Griffin*, is to make a claim for a set-off. Secondly, there need to be some proper costings and other evidence to demonstrate that there is a valid monetary claim, not merely an assumption that some compensation must be due to leaseholders.

86. The Leaseholders have also raised various other points but have not done so in a way which persuades us that the service charges should be reduced accordingly. Some of the concerns relate to the major works, and as noted above it is premature to challenge the quality of those works as the only charges levied so far are estimated charges. Some concerns relate to specific invoices or charges other than the ones already referred to above, but save as mentioned in the paragraph below none of these challenges is clear enough or sufficiently evidence-based to justify the challenge. Other concerns seem to relate to things that have not been done, and unless the Leaseholders can show that they have actually been charged for works not done then there is no basis for reducing the service charges to reflect the alleged failure other than by reducing the management fees (as to which see above).

Further points

87. The Landlord has accepted that a limited number of invoices identified in the Scott Schedule are not payable by the Leaseholders and either have been or will be re-credited to their service charge accounts.

88. In the absence of a stronger basis for the Leaseholders' challenge, all other disputed service charges not specifically mentioned above are payable in full.

Lease variations

89. The Leaseholders' application for the variation of their respective leases has been made under section 35 of the 1987 Act. This is an application for the variation of individual leases, not an application under section 37 of the 1987 Act by a majority of the parties to the relevant leases for a variation of all of the leases at the Property (or any lesser number of leases specified in any such section 37 application).

90. The Landlord has made a counter-application under section 35 for an alternative set of variations to the Leaseholders' leases. In addition, it has made an application under section 36 of the 1987 Act. Under sub-section 36(1), *"Where an application ("the original application") is made under section 35 by any party to a lease, any other party to the lease may make an application to the tribunal asking it, in the event of*

its deciding to make an order effecting any variation of the lease in pursuance of the original application, to make an order which effects a corresponding variation of each of such one or more other leases as are specified in the application". The Landlord has specified that it wishes the service charge provisions in all of the long leases at the Property to be amended.

91. Sub-section 35(2) of the 1987 Act sets out the possible bases for a successful application for the variation of a lease. The provision which seems most relevant to the Leaseholders' case is that in sub-section 35(2)(f), namely that in respect of each flat *"the lease fails to make satisfactory provision with respect to … the computation of a service charge payable under the lease".*

92. First of all, as regards the Leaseholders' relatively late proposal that the commercial premises should bear 40% of all service charges, it is clear that many of the services relate solely to the residential premises and so their specific proposal is not realistic or fair. Whilst it is conceivable that there are reasonable grounds for concern as to whether the residential leaseholders are between them bearing too high a percentage of one or more aspects of the service charge and whether the commercial premises should bear a higher percentage, the Leaseholders have not argued their case in nearly enough detail on this point for us to be able to determine that there should be a variation along these lines.

93. Secondly, we come to the Leaseholders' main submission, namely that all residential units should pay the same service charge percentage. There are four different types of lease and the service charge percentages in each type of lease were discussed at the hearing. The lease types are referred to in the hearing bundle as Type A, Type B, Type B+ and 'Eaglesham'.

94. There was some discussion at the hearing as to how clear and fair the existing service charge percentages are. Under the lease of Flat 73, which is a Type A lease, the tenant pays 4.9% of Total Expenditure and 1/19th of the cost to the landlord of complying with the covenants in the (then) superior lease. Under the lease of Flat 71, which is a Type B lease, the tenant pays a service charge equal to 3.5% of the expenses listed. Under the lease of Flat 76, which is a Type B+ lease, the tenant pays a service charge equal to 3.83% of the expenses listed. Under the lease of Flat 77, which is an 'Eagelsham' lease, the tenant pays by way of service charge a fair and reasonable proportion (as calculated by the landlord's chartered surveyor) of the expenses listed.

95. Whilst we accept, having discussed the differences at the hearing, that the different types of service charge calculation are not quite as inconsistent as they first appear to be, they are still in our view unsatisfactory. There are differences between leases which have not

been properly justified, and the way in which the Type A service charge provisions work is quite opaque, albeit for historical reasons. In addition, and importantly, even under the Landlord's informal re-adjustment of the service charge percentages the existing leaseholders bear a higher a burden of the service charge then the currently unlet flats, and the Landlord has been unable to justify this.

96. Under sub-section 35(4) of the 1987 Act, *"For the purposes of subsection (2)(f) a lease fails to make satisfactory provision with respect to the computation of a service charge payable under it if— (a) it provides for any such charge to be a proportion of expenditure incurred, or to be incurred, by or on behalf of the landlord or a superior landlord; and (b) other tenants of the landlord are also liable under their leases to pay by way of service charges proportions of any such expenditure; and (c) the aggregate of the amounts that would, in any particular case, be payable by reference to the proportions referred to in paragraphs (a) and (b) would either exceed or be less than the whole of any such expenditure".*

97. In this case the evidence indicates that the situation envisaged by sub-section 35(4) might not apply as the total service charge percentages currently add up to 100%. However, they only add up to 100% due to the Landlord's informal and unilateral variation of the service charge percentages, and this is not a satisfactory solution. In any event, the informal variation is unfair as under the informal variation the total only adds up to 100% because a lower percentage is payable by the Landlord in respect of the unlet flats. This place an unfair burden on the owners of the let flats, and no adequate justification has been given for this.

98. As to how the percentages should be varied, the Leaseholders argue that each of the 52 flats should bear the same percentage but that the variation should also include a provision that if more dwellings are created the service charge will be apportioned equally among the expanded number of flats. The Landlord argues that two of the flats (61A and 61B) are smaller than the others and therefore should only pay 75% of the amount paid by the other flats.

99. We do not accept that Flats 61A and 61B should pay less as no evidence has been provided to indicate that these flats benefit any less from the residential services than the other 50 flats, and therefore in our view the most equitable approach on the facts of this case would be to split the service charge equally between the 52 flats. In order to accommodate the Leaseholders' concerns about further flats being constructed in the future one option might be to vary each lease so that the relevant leaseholder is required to pay a fair and reasonable proportion of the service charge. However, that would still beg the question as to what would be fair and reasonable, and we consider that as there is no compelling evidence that any one flat should pay a higher

percentage than any other flat it would be best – in the interests of certainty and fairness – for each flat to bear 1/52nd of the whole. If further flats are built in the future then at that point the parties can agree a further variation in the knowledge that to fail to do so would in principle entitle leaseholders to make a further application for a variation to the tribunal on the simple ground that the service charge percentages in aggregate would then exceed 100%.

100. Thirdly we come to the Landlord's own proposals for more extensive variations to the service charge provisions. The application is stated to be made so that all costs incurred in respect of the repair, maintenance, insurance, the provision of services and the recovery of money spent can be recovered and to enable all leases to be in identical form (in relation to service charges and the provision of services). Whilst there is certainly a logic to all leases containing identical provisions, it does not follow that it is part of the purpose of section 35 of the 1987 Act to achieve this. Section 35 enables the tribunal to vary the leases which are the subject of the application if they fail to make satisfactory provision with respect to one or more of the matters specified in that section, and in our view the Landlord has failed to make the case that any of these extensive further amendments are necessary in order for satisfactory provision to be made in respect of any of the matters listed in section 35. The argument seems to be that it would make the service charge recovery provisions satisfactory, but in our view the purpose of section 35 does not include making the detailed service charge provisions in each lease identical, particularly as it is very common for there to be some differences between leases on a development, and we consider the concept of 'satisfactory provision' to be much narrower than the Landlord is suggesting. These wider proposed variations are therefore not agreed.

101. As regards the Landlord's section 36 application, this is an application asking the tribunal, in the event of its deciding to make an order effecting any variation of one or more leases pursuant to a section 35 application, also to make an order which effects a corresponding variation of each of such one or more other leases as are specified in the application. The Landlord seeks a corresponding variation in relation to all of the other leases within the Property and it has not sought to limit its section 36 application so as not to apply to a scenario in which only limited variations are ordered. The section 36 application has not been opposed and we are satisfied that it makes sense for the variation to apply to all leases.

102. It has not been argued that we should refuse to vary the leases by virtue of the provisions of sub-section 38(6) of the 1987 Act and we are satisfied that sub-section 38(6) does not apply in this case. It has also not been argued that the tribunal should order compensation under sub-section 38(10), and we see no reason to order any compensation.

103. According, we consider that the only amendment that should be made is to vary the service charge percentage in every lease of a flat within the Property so that it is 1/52nd of the whole. In practical terms this means varying each type of lease as follows:-

Lease Type A

Paragraph 1(2) of the Third Schedule to the lease to be deleted and replaced with the words: *""the Service Charge" means 1/52nd of the Total Expenditure"*.

Lease Type B

The first two lines of clause 2(2)(a) of the lease to be amended to read: *"To pay and contribute to the Lessor a service charge equal to 1/52nd of the expenses of:-"*.

Lease Type B+

The first two lines of clause 2(2)(a) of the lease to be amended to read: *"To pay and contribute to the Lessor by way of further rent a service charge equal to 1/52nd of the expenses of:-"*.

Eaglesham Lease

The first two lines of clause 2(2)(a) of the lease to be amended to read: *"To pay and contribute to the Lessor by way of further rent a service charge equal to 1/52nd of the expenses of:-"*.

Observation regarding the Leaseholders' representative

104. In our view, the Leaseholders were badly served by Mr Graham. Whilst he may have given them the impression that he would be able to present their case in a compelling manner, the reality was very different. His grasp of the facts, of the legal principles, of how to present a case and of how to cross-examine witnesses seemed to us to be poor. Whilst we are not in a position to state how much of a difference it would have made to the outcome, in our view it would have been prudent for the Leaseholders to have instructed a competent, legally qualified person to represent them. However, as they are not themselves experts on what needs to be done when assembling a case of this nature, we make absolutely no criticism of them personally on this point.

Cost Applications

105. Any cost applications must be submitted to the Tribunal within **14 days** after the date of this decision and any response that a party wishes to make to any cost application made by the other party must be submitted to the Tribunal within **28 days** after the date of this decision.

Name: Judge P Korn **Date:** 27th January 2020

RIGHTS OF APPEAL

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

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

C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.

D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 1

List of Leaseholders applying for a service charge determination and for a variation of their leases

LG Property Investments Limited (Flat 33)
Natalie Sawdaye (Flat 37)
Sulman Rahman (Flats 42, 50 and 61)
Ibrahim Panjwani (Flat 45)
Jayne Andreas (Flat 46)
Tabibi Properties Ltd (Flat 49)
Kabeer Ali Rashid (Flat 52)
Barbra Klinger (Flat 53)
Maura McCaffery (Flat 54)
Cityquick Estates Ltd (Flat 57)
Adeela Shiroz and Sulman Rahman (Flat 62)
Flexi Holdings Ltd (Flat 65)
Deirdre Cantillon (Flat 70)
Danny McIntyre (Flat 73)
Kobi Haik (Flat 74)
Shehlla Alam (Flat 75)
Gerry Doherty (Flat 76)

APPENDIX 2

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
   (a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
   (b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose -
   (a) "costs" includes overheads, and
   (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
   (a) only to the extent that they are reasonably incurred, and
   (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

   and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited ... unless the consultation requirements have been either – (a) complied with in relation to the works or agreement, or (b) dispensed with in

relation to the works or agreement by (or on appeal from) the appropriate tribunal.

Section 20ZA

(1) where an application is made to the appropriate tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.

Section 27A

(1) An application may be made to the appropriate tribunal for a determination whether a service charge is payable and, if it is, as to -
   (a) the person by whom it is payable,
   (b) the person to whom it is payable,
   (c) the amount which is payable,
   (d) the date at or by which it is payable, and
   (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
   (a) the person by whom it would be payable,
   (b) the person to whom it would be payable,
   (c) the amount which would be payable,
   (d) the date at or by which it would be payable, and
   (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
   (a) has been agreed or admitted by the tenant,
   (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
   (c) has been the subject of determination by a court, or
   (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Landlord and Tenant Act 1987

Section 35

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

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

(a) the repair or maintenance of—

(i) the flat in question, or

(ii) the building containing the flat, or

(iii) any land or building which is let to the tenant under the lease or in respect of which rights are conferred on him under it;

(b) the insurance of the building containing the flat or of any such land or building as is mentioned in paragraph (a)(iii);

(c) the repair or maintenance of any installations (whether they are in the same building as the flat or not) which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation;

(d) the provision or maintenance of any services which are reasonably necessary to ensure that occupiers of the flat enjoy a reasonable standard of accommodation (whether they are services connected with any such installations or not, and whether they are services provided for the benefit of those occupiers or services provided for the benefit of the occupiers of a number of flats including that flat);

(e) the recovery by one party to the lease from another party to it of expenditure incurred or to be incurred by him, or on his behalf, for the benefit of that other party or of a number of persons who include that other party;

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

(g) such other matters as may be prescribed by regulations made by the Secretary of State.

(3) For the purposes of subsection (2)(c) and (d) the factors for determining, in relation to the occupiers of a flat, what is a reasonable standard of accommodation may include—

(a) factors relating to the safety and security of the flat and its occupiers and of any common parts of the building containing the flat; and

(b) other factors relating to the condition of any such common parts.

(3A) For the purposes of subsection (2)(e) the factors for determining, in relation to a service charge payable under a lease, whether the lease makes satisfactory provision include whether it makes provision for an amount to be payable (by way of interest or otherwise) in respect of a failure to pay the service charge by the due date.

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

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

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

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

(5) Procedure regulations under Schedule 12 to the Commonhold and Leasehold Reform Act 2002 and Tribunal Procedure Rules shall make provision—

(a) for requiring notice of any application under this Part to be served by the person making the application, and by any respondent to the application, on any person who the applicant, or (as the case may be) the respondent, knows or has reason to believe is likely to be affected by any variation specified in the application, and

(b) for enabling persons served with any such notice to be joined as parties to the proceedings.

(6) For the purposes of this Part a long lease shall not be regarded as a long lease of a flat if—

(a) the demised premises consist of or include three or more flats contained in the same building; or

(b) the lease constitutes a tenancy to which Part II of the Landlord and Tenant Act 1954 applies.

(8) In this section *"service charge"* has the meaning given by section 18(1) of the 1985 Act.

(9) For the purposes of this section and sections 36 to 39, *"appropriate tribunal"* means—

(a) if one or more of the long leases concerned relates to property in England, the First-tier Tribunal or, where determined by or under Tribunal Procedure Rules, the Upper Tribunal; and

(b) if one or more of the long leases concerned relates to property in Wales, a leasehold valuation tribunal.

Section 36

(1) Where an application ("the original application") is made under section 35 by any party to a lease, any other party to the lease may make an application to the tribunal asking it, in the event of its deciding to make an order effecting any variation of the lease in pursuance of the original application, to make an order which effects a corresponding variation of each of such one or more other leases as are specified in the application.

(2) Any lease so specified—

(a) must be a long lease of a flat under which the landlord is the same person as the landlord under the lease specified in the original application; but

(b) need not be a lease of a flat which is in the same building as the flat let under that lease, nor a lease drafted in terms identical to those of that lease.

(3) The grounds on which an application may be made under this section are—

(a) that each of the leases specified in the application fails to make satisfactory provision with respect to the matter or matters specified in the original application; and

(b) that, if any variation is effected in pursuance of the original application, it would be in the interests of the person making the application under this section, or in the interests of the other persons who are parties to the leases specified in that application, to have all of the leases in question (that is to say, the ones specified in that application together with the one specified in the original application) varied to the same effect.

Section 38

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

(2) If—

(a) an application under section 36 was made in connection with that application, and

(b) the grounds set out in subsection (3) of that section are established to the satisfaction of the tribunal with respect to the leases specified in the application under section 36,

the tribunal may (subject to subsections (6) and (7)) also make an order varying each of those leases in such manner as is specified in the order.

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

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

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

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

(a) that the variation would be likely substantially to prejudice—
(i) any respondent to the application, or

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

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

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

(7) A tribunal shall not, on an application relating to the provision to be made by a lease with respect to insurance, make an order under this section effecting any variation of the lease—

(a) which terminates any existing right of the landlord under its terms to nominate an insurer for insurance purposes; or

(b) which requires the landlord to nominate a number of insurers from which the tenant would be entitled to select an insurer for those purposes; or

(c) which, in a case where the lease requires the tenant to effect insurance with a specified insurer, requires the tenant to effect insurance otherwise than with another specified insurer.

(8) A tribunal may, instead of making an order varying a lease in such manner as is specified in the order, make an order directing the parties to the lease to vary it in such manner as is so specified; and accordingly any reference in this Part (however expressed) to an order which effects any variation of a lease or to any variation effected by an order shall include a reference to an order which directs the parties to a lease to effect a variation of it or (as the case may be) a reference to any variation effected in pursuance of such an order.

(9) A tribunal may by order direct that a memorandum of any variation of a lease effected by an order under this section shall be endorsed on such documents as are specified in the order.

(10) Where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any other party to the lease or to any other person, compensation in respect of any loss or disadvantage that the tribunal considers he is likely to suffer as a result of the variation.