FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY) &

IN THE COUNTY COURT at THANET
sitting at Havant Justice Centre

Tribunal references	**:**	CHI/29UN/LSC/2023/0005 CHI/29UN/LDC/2022/0099
Court claim number	**:**	318MC065
Property	**:**	Flat 2, 13 Paragon, Ramsgate, Kent, CT11 9JX
Applicants/Claimant	**:**	Michael White
Representative	**:**	Sean Farrance- White
Respondent/Defendant	**:**	Marc Turnier
Representative	**:**	Richard Miller of Counsel
Tribunal members	**:**	Judge J Dobson Ms. C Barton MRICS Mr. L Packer
County Court Judge	**:**	Judge J Dobson
Date of hearing	**:**	20th March 2023
Date of decision	**:**	10th May 2023

DECISION

Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be the date this decision is sent to you.

Summary of the decision made by the Tribunal

1. **The service charges claimed are not payable by the Respondent.**
2. **The Applicant is granted consultation from dispensation requirement, subject to a limit on only the Respondent's individual contribution to the sum of £250.**

Summary of the decision made by the Court

3. **The Respondent is not liable to the Applicant for any sum claimed. The claim is dismissed.**

4. **No order as to costs.**

Background

5. The Applicant is the registered freehold proprietor of 13 Paragon, Ramsgate, CT11 9JX ("the Building"), which is divided into 6 flats, and also registered as the lessee of Flat 4. The Respondent is the lessee of Flat 2 in the Building ("the Property") pursuant to a lease dated 15th May 1990 ("the Lease").

6. On 9th August 2022, the Applicant issued a money claim [A4- 8] in the County Court for the unpaid balance of service charges and ground rent for the service charge years 2018/19 to 2021/22 inclusive plus costs. The Respondent served a Defence on 12 September 2022 denying that any effective demand had been served, challenging a lack of consultation, and referring to an asserted agreement [not in any bundle].

7. The proceedings were transferred to the Tribunal by District Judge Batey by order dated on 11 October 2022 and providing that the Tribunal Judge would decide all issues outside of the jurisdiction of the Tribunal sitting as a Judge of the County Court.

8. Subsequently, on 15 November 2022, the Applicant applied to the FTT for dispensation of the consultation requirements. That application is made against all of the lessees. However, the Directions given in respect of that application provided that "Those parties not returning the attached form and those agreeing to the application will be removed as Respondents to the application and the Tribunal will not send you a copy of their determination." No party other than the Respondent did reply. The other original respondents having been removed pursuant to the Directions, their details do not appear above.

9. Other Directions were given by various Judges in respect of one or other of the two elements of the case for steps to prepare the original claim and the subsequent application for final hearing. By Order dated 31st January 2023, Judge Tildesley OBE listed both for final hearing together. The final hearing was listed on Monday 20th March 2023 starting at 10am with a time estimate of half a day.

10. What was understood to be the main hearing bundle (referred to below as "the hearing bundle") in respect of both the claim and the dispensation application was

provided for the hearing on behalf of the Applicant, comprising 480 pages of documents. There had been a smaller bundle from the Applicant comprising 123 pages in respect of the claim and a separate bundle provided by the Respondent comprising 323 pages. The hearing bundle omitted the Claim Form, the Defence and the Order transferring the case to the Tribunal, by way of examples. The Court and Tribunal therefore found it useful to also rely on the smaller bundle from the Applicant (referred to below as "the Applicant's bundle", accepting that to be an imperfect title).

11. Whilst the Court and Tribunal make it clear that they have read the bundles fully, the Court and Tribunal do not refer to various of the documents in detail in this Decision, it being unnecessary to do so. Where the Court and/ or Tribunal does not refer to pages or documents in this Decision, it should not be mistakenly assumed that they have been ignored or left out of account. Insofar as reference is made to specific pages from the hearing bundle, as termed above, that is done by numbers in square brackets, [ ], as occurs in the preceding paragraphs where appropriate, and with reference to PDF bundle page- numbering. Insofar as reference is made to specific pages from the other Applicant's bundle that is done by numbers in square brackets preceded by an "A" [A].

12. This Decision seeks to focus on the key issues and does not cover every last factual detail. The absence of a reference to or a finding about every statement or document mentioned is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not every matter requires any finding to be made for the purpose of deciding the relevant issues in the case. Findings have not been made about any matters irrelevant to any of the determinations required. Findings of fact are made on the balance of probabilities.

13. There was no inspection, but the Applicant's bundle included several photographs [104 onwards] of the Property and/ or the Building from different angles and the Court and Tribunal were content that they possessed sufficient information in respect of the Property to reach the required determinations in this case.

14. Some documents in the bundle made reference to Paragon Maintenance but that was not identified as a limited company and had the same email stated as the Applicant, such that the Tribunal understands that Paragon Maintenance is simply a name adopted by the Applicant in respect of matters relating to the Building.

The Lease and construction of leases

15. The Lease of the Property [18- 28] is provided in the hearing bundle, although not complete. It is apparent that two or more of the later pages are omitted but they were not considered relevant to the particular determinations required. A term of 125 years is granted plus associated rights. The parties in this case are not the original contracting parties to the Lease. The Property is described in the Lease not as Flat B but as "Ground Floor Flat", but no issue was identified as arising from that.

16. It is not necessary to copy the specific wording of clauses of the Lease in full. A summary will suffice in respect of most aspects.

17. Pursuant to clause 3, the Respondent must pay the (ground) rent identified in clause 1 as £20 per year, not to make any structural alterations or additions and to do or

not do the usual sorts of things found in a lease of this nature.

18. The Respondent covenanted pursuant to clause 4 to pay in respect of each year ending on 29 September the "Maintenance Charge" of (a) the greater of £200 or (b) the following:

> "A sum equivalent to one sixth of the actual cost (as certified by the Landlord's accountant) of performing the Landlord's Maintenance Covenants and all costs and expenses whatsoever including interest paid on money borrowed by the landlord to defray and [any?] expenses incurred by him in connection with the management of the Property in the year in question after deduction from such cost of all balances of the Maintenance Fund in hand at the beginning of that year as certified by the landlords accountant who shall be a member of the Institute of Chartered Accountants".

19. That is required to be paid as follows:

> "to be paid without any deduction as to £200 by equal half yearly instalments in advance on 29th September and 25th March in each year the first instalment (apportioned if necessary) to be paid forthwith and as to the balance (if any) on the rent day next following the issue by the landlord's account[ant?] of such certificate as aforesaid"

20. The landlord is required to deal with the funds in this manner:

> **"**shall be paid by the landlord into a separate fund (hereinafter called "the Maintenance Fund") and applied in the performance of or accumulated for future application in the performance of the covenant (hereinafter called the Landlord's Maintenance Covenants contained in paragraphs (3) (4) (5) (6) (7) and (8) of clause 5 hereof"

21. Pursuant to clause 5, the Applicant must establish the Maintenance Fund (2) and attend to insurance (7). There is entitlement to create a reserve fund (6).

22. Clause 5 additionally requires that the Applicant must fulfill the obligations (3) in respect of repair and maintenance of what is essentially the structure and exterior of the Building (a), the internal and external communal areas ((b) to (d) inclusive). There are requirements to decorate (4) external parts and to keep clean and lit internal communal areas and windows (5).

23. There is a Deed of Covenant dated 17th January 2019 within the hearing bundle [20] pursuant to which the Respondent covenanted to pay all rent due and service charges and other sums payable.

24. Leases are to be construed applying the basic principles of construction of such leases, and where the construction of a lease is no different from the construction of another contractual document, as set out by the Supreme Court in *Arnold v Britton* [2015] UKSC 36 in the judgment of Lord Neuberger (paragraph 15):

> "When interpreting a written contract, the court is concerned to identify the intention of the parties by reference to "what a reasonable person having all the background knowledge which would have been available to the parties would have understood them to be using the language in the contract to mean", to quote Lord Hoffmann in Chartbrook Ltd v Persimmon Homes Ltd [2009] UKHL 38, [2009] 1 AC 1101, para 14. And it does so by focussing on the meaning of the relevant words, in this case clause 3(2) of each of the 25 leases, in their documentary, factual and commercial context. That meaning has to be assessed

> in the light of (i) the natural and ordinary meaning of the clause, (ii) any other relevant provisions of the lease, (iii) the overall purpose of the clause and the lease, (iv) the facts and circumstances known or assumed by the parties at the time that the document was executed, and (v) commercial common sense, but (vi) disregarding subjective evidence of any party's intentions."

25. Context is therefore very important, although it is not everything. Lord Neuberger went on to emphasise (paragraph 17):

> "the reliance placed in some cases on commercial common sense and surrounding circumstances (e.g. in Chartbrook [2009] AC 1101, paras 16-26) should not be invoked to undervalue the importance of the language of the provision which is to be construed. The exercise of interpreting a provision involves identifying what the parties meant through the eyes of a reasonable reader, and, save perhaps in a very unusual case, that meaning is most likely to be gleaned from the language of the provision. Unlike commercial common sense and the surrounding circumstances, the parties have control over the language that they use in a contract. And again save perhaps in a very unusual case, the parties must have been specifically focusing on the issue covered by the provision when agreeing the wording of that provision."

The Hearing

26. The Applicant was represented by his son, Sean Farrance- White. The Respondent was represented by Richard Miller of Counsel. The hearing took place as a hybrid hearing with most participants in person but with Mr. Packer accessing the hearing remotely.

27. Both parties were also in attendance. The Applicant had provided a written statement dated 14th February 2023 [72-77]. The Respondent also provided a witness statement [78-86].

28. Mr. Miller also provided a Skeleton Argument on behalf of the Respondent comprising 9 pages.

29. It was identified in the hearing (and indeed in the Skeleton Argument) that the position in terms of bundles was confusing, with what were apparently draft bundles and the hearing bundle but without that being complete. The single complete bundle of relevant documents which ought to have existed did not. In the event, the overwhelming majority of the case turned upon a couple of specific points, which were addressed in documents and the outcome of which rendered other matters related to at least most of the claim largely or entirely irrelevant.

30. The principal lines of argument pursued on behalf of the Respondent were, firstly, that much of the claim had been settled by way of a compromise agreement and, secondly, both that service charges had not been demanded in accordance with the terms of the Lease and also that the Applicant had failed to comply with the requirements of section 21B of the Landlord and Tenant Act 1985 in issuing service charge demands, specifically that demands were not accompanied by a summary of the rights and obligations of tenants of dwellings.

31. The Applicant's case on the first matter was explained to be that one portion of the service charges had been offered to be reduced but no more than that. Mr. Farrance

White also explained his father had sought to deal with matters cheaply and efficiently and that they were not lawyers. The Court and Tribunal accepted that, although it did not alter the application of the relevant law.

The Tribunal Matters

The Tribunal's jurisdiction

32. The Tribunal has power to decide about all aspects of liability to pay service and administration charges in relation to residential properties and can interpret the lease where necessary to resolve disputes or uncertainties. For the avoidance of doubt, the Tribunal has no jurisdiction in respect of solely commercial premises.

33. Service charge is in section 18 of the Landlord and Tenant Act 1985 defined as an amount:

> "(1) (a) which is payable, directly or indirectly, for services, repairs, maintenance[, improvements] or insurance or the landlord's costs of management and
> (2) the whole or part of which varies or may vary according to the relevant costs."

34. Section 27A provides that the Tribunal can decide by whom, to whom, how much, when and how a service charge is payable. Section 19 provides that a service charge is only payable insofar as it is reasonably incurred and the services or works to which it relates are of a reasonable standard. The Tribunal therefore also determines the reasonableness of the charges. The amount payable is limited to the sum reasonable.

35. By section 19 of the Act a service charge is only payable to the extent that it has been reasonably incurred and if the services or works for which the service charge is claimed are of a reasonable standard. When service charges are payable in advance, no more than a reasonable amount is payable.

36. The Tribunal may take into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: "Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account."

37. In respect of consultation requirements and dispensation from those requirements, Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.

38. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation "if satisfied that it is reasonable to dispense with the requirements".

39. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.

40. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were "a means to an end, not an end in themselves".

41. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

42. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

> "I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with."

43. The "main, indeed normally, the sole question", as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

44. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.

45. If dispensation is granted by the Tribunal, that may be on terms and the Tribunal may determine the appropriate terms.

46. The decision in *Daejan* has been applied not only by this Tribunal but also by the Upper Tribunal and the higher courts, including *Aster Communities v Chapman* [2021] 4 W.L.R. 74 to which reference was made by Mr. Miller.

Are the Service Charges payable and reasonable?

47. The first question is whether the service charges were payable at all. The question of the reasonableness of the sums demanded necessarily requires there to be service charges payable such that the reasonableness of the amount is relevant.

48. It merits recording for the avoidance of doubt that, as noted further below, the Respondent had made payment of most of the service charges that the Applicant had listed in the Claim Form as being sums demanded and relevant to the balance claimed and had done so prior to the proceedings. That was accepted by the

Applicant and the claim issued was necessarily for the sums not paid.

49. If the Tribunal had been considering the payability and reasonableness of service charges more widely and a portion of them had been paid by a party, the Tribunal would have been likely to determine such charges to have been admitted or accepted by the payment. To that extent, defects in the demands identified below would not have been relevant because the admission or acceptance of the sums would result in no determination being required by the Tribunal. Indeed, the Tribunal would have no jurisdiction to decide about service charges admitted or accepted.

50. The determinations made below as to payability of service charges demanded are limited to such service charges as remained unpaid and in dispute in these proceedings.

51. The Tribunal finds on the evidence provided that the service charge demands made by the Applicant were not accompanied by the required summary of tenant's rights and obligations. Accordingly, any service charges demanded by such demands are not payable and will not be payable at least unless and until demands are made accompanied by such summaries. As to whether any other arguments may be relevant at that time is beyond the scope of these proceedings.

52. The Tribunal also finds that the Respondent is correct that the service charges were not demanded in accordance with the requirements of the Lease. There is no evidence of a certificate of expenditure from an accountant on behalf of the Applicant and so as any service charge greater than £200 is due on the next rent day following that, there can be no service charge due over and above £200 for any given year ending on 29th September unless and until such a certificate is produced. Therefore, if the summaries of tenant's rights and obligations had been provided with the service charge demands, the Applicant would have been entitled to demand that £200 for each such year but no more.

53. Both points were accordingly correctly raised on behalf of the Respondent.

54. Those matters, the Tribunal determines, in themselves disposed of any and all service charges demanded and falling within the sums claimed in the County Court proceedings and hence any and all service charges in respect of which the Tribunal is required to make a determination.

55. However, there was also another argument raised on behalf of the Respondent with regard to the major works element of the service charges which had been sought to be demanded

56. The Applicant's case was that an element of the service charges, the decorating, had been agreed to be reduced to an extent. The Respondent's case was that a sum had been agreed in respect of outstanding charges more generally, that sum being a total of £250, which the Respondent had then paid, the payment being said to be of various sums, including "Agreed Section 20 Works Liable Amount - £250.00" [230].

57. The Judge queried whether that argument in the paper case had been advanced but in the event the Tribunal was persuaded that the matter had been sufficiently raised that the Respondent was entitled to rely on it.

58. The Applicant said that he had agreed to accept a £560 discount in respect of the decorator to £250, because he had only been able to obtain one quote for that due to lack of availability of other contractors, not in respect of the major works generally. He maintained that the balance sum which he required to be paid remained owed.

59. The Respondent's position was that if the cost of the major works had only been reduced by £560, the amount actually owing by the Respondent at that time would have been quite different to the sum said to be outstanding at that time.

60. The matter turned on the correct construction of correspondence between the parties, in particular a letter from the Applicant to the Respondent dated 30th November 2021 [156-157] which lists sums said to be owed by the Respondent, including stating the following:

> "Share of cost £1767 you did not wish to pay as only could get one decent estimate due to factors mainly Pandemic .For the record I do not have to use the cheapest Quote as passed experience proved cheap not cheap, we have certainly had some chancers in the past so would have used A|K Decorators anyway however I will be reducing your contribution to £250
> Will pay the balance myself."

61. It merits observing that in the hearing the parties referred in the hearing to the figure as being £1763 rather than £1767 but the letter nevertheless reads as above.

62. On the following page, the letters states:

> "Total outstanding £1795"

63. Mr. Miller argued that the communication said that the sum owed would be reduced "to" £250.00 and not that it would be reduced "by" that figure, by £560 or any other figure. He also said that if the £1767.00 were reduced to £250.00, that £250.00 and the other sums listed gave the total of £1795.00. In contrast if the reduction was not to £250.00 but was any other sum, the total could not be £1795.00. Mr. Miller also noted that the £810 figure which was the share of decoration in the absence of any reduction (hence a reduction to £250 would be a reduction of £560) is not mentioned at all- the only figure for major works is the £1767.00.

64. Consequently, Mr Miller said that the reasonable person would read the letter as agreeing a reduction in the contribution to the major works as a whole to that £250.00.

65. It was said by the Applicant that his intention was to refer to a reduction in respect of the decorator only to £250.00. Hence, the Respondent should have paid the balance sum of £1203.00 (£1763 less £560).

66. He contended that he had not intended the letter to say what it did in respect of the total outstanding. Rather, a mistake had been made in the calculation. Mr Farrance White argued that the letter should be seen in the context of the sums owed and which the Respondent knew to be owed.

67. Mr Miller reminded the Tribunal that the letter had to be looked at objectively and as a reasonable person would read it, not what the Applicant may state that he

intended. He suggested that no reasonable person reading the letter could conclude that the stated total outstanding of £1795.00 in consequence of the £250.00 referred to was actually £2752.00, which he appeared to regard as the relevant sum if the balance the Applicant asserted remained due was added (although the Tribunal cannot identify how that particular figure was reached).

68. The Tribunal carefully considered the arguments from both parties. It concluded that the analysis by Mr Miller is compelling; that the document cannot reasonably be interpreted as argued by the Applicant, whatever he had intended; and therefore that the correct construction of the letter is that the total outstanding was the figure explicitly stated, namely £1795.00.

69. The wording in respect of the decorator and or major work more generally was less clear. It was perfectly clear that a sum was reduced to £250.00.

70. The longer paragraph starts by referring to £1767 (perhaps correctly £1763) and ends by referring to £250. The intervening words lack much in the way of punctuation and include words starting with capital letters apparently mid a sentence. There is both reference to a decorator and apparently to the major works more generally.

71. The Tribunal could identify the potential to read the longer paragraph as indicating a reduction in solely the contribution to the decorator's costs as £250. However, there is no explanation of what figure the Respondent would then owe in respect of the major works. Such an attempted reading struggles to an extent with the paragraph including both the decorator costs and the wider one and would require reading in a clear break between the two elements, which cannot be identified.

72. The paragraph is more obviously readable, given that it refers to the total contribution for major works and then mentions both, as meaning that both are reduced to a contribution of £250 (although if the letter ended at that point the construction of the paragraph either way would have been arguable).

73. The short paragraph says that the Applicant will pay the balance and that statement must relate to the preceding paragraph. There is no gap between the paragraphs to suggest the shorter one relates to anything else and indeed there is nothing else in the letter to which it could identifiably relate.

74. The only cost identified in the longer paragraph which there could be a balance of over and above £250 is the £1767. There is no identification that on a contribution to decorating alone being reduced to £250 there is any other balance which must also be paid by the Respondent in respect of major works. As Mr. Miller argued, there is no reference to figures in respect of decorating.

75. The calculation of the figures stated with the particular figure for major works being £250.00 gave the total stated of £1795. Reading the longer and shorter paragraphs discussed above in light of the remainder of the letter, only the construction of the paragraphs as reducing the Respondent's contribution to major works to £250 overall makes sense.

76. The amounts expended by the Applicant and the Respondent's knowledge highlighted by Mr Farrance White form part of the background, identified in *Arnold*

above as relevant to the understanding of the words by a reasonable person. However, given the various matters set out above, the Tribunal did not consider that background was such that it rendered the reasonable person more likely to understand the words in the manner contended for by the Applicant. The other issues identified in the letter in respect of estimates and quotes arose against that background.

77. The Tribunal accordingly construes the letter as there being a reduction in the Respondent's contribution to the major works as a whole to £250. The £1203 contended for by the Applicant was not then outstanding, even if it had been properly demanded.

78. It was not argued that any mistake in respect of the total outstanding and the terms of the offer as construed by the Tribunal to reduce the contribution to £250, which offer the Respondent had accepted hence an agreement, meant that the agreement could not be relied on by the Respondent. The Tribunal did not therefore venture into that potential issue.

79. The Tribunal is far from being without sympathy for the Applicant who had plainly sought to deal with matters himself and minimize costs for all concerned.

80. However, the wording actually used by the Applicant had the above effect and more generally, the Applicant was plainly unaware of the requirement imposed on those seeking to levy service charges. That the Applicant was able to seek any necessary advice and that the requirements imposed on him are no different to those imposed on others in his position goes without saying and the law applies to the Applicant just as it does to others. The Respondent was not obliged to pay where requirements had not been met and was entitled to adopt the approach to the letter that he did.

81. Given the various reasons why none of the service charges demanded were payable at all, the Tribunal did not in this instance consider the reasonableness of the charges and so the sum which would have been payable in the event that anything had been. The Tribunal is mindful that very commonly the reasonableness of service charges is considered and a decision made even where the Tribunal finds no service charges to be payable.

82. However, in this instance, the Tribunal considered it unnecessary and disproportionate to address the reasonableness of the charges to any extent. The Tribunal simply indicates that from the information available, it is not immediately apparent that service charges over and above the major works the subject of the compromise found to have been reached were obviously unreasonable and indeed were relatively modest. It is hoped that is sufficient to enable the avoidance of any further dispute about such charges should there otherwise be any reason for any.

83. The solicitor's costs claimed were not suggested to have been previously demanded from the Respondent as service charges or administration charges. The Tribunal has not determined the payability and reasonableness of any such costs as service charges or administration charges where no sums were identified as being such. The Respondent had made no application that costs in the Tribunal proceedings (and the same applies to the Court proceedings) should not be recoverable as service charges or administration charges and so no determination is required about that.

84. Hence the costs simply fall to be considered as costs of and incidental to the claim made. As such they are addressed under the relevant County Court heading below.

Should the Applicant be granted dispensation from consultation?

85. The Applicant explained that the major works include three contracts, for scaffolding, roofing and decorating.

86. The Applicant's application for dispensation and the amount potentially claimable by the Applicant if dispensation were granted was the background to the question of whether a concluded compromise agreement had been entered into by the parties.

87. Given the conclusion reached in respect of that, dispensation is arguably rendered rather less relevant against the Respondent than it might have been. However, the compromise of the Applicant's claim for sums from the Respondent towards major works was that the Respondent contribute £250, the sum payable in the absence of consultation requirements being complied with, not the dismissal of that claim in terms.

88. The Tribunal considered it questionable that any matter fell within its jurisdiction. Where agreement has been reached, it follows that the matters agreed are no longer in dispute.

89. However, the Tribunal determines that the compromise was strictly of the money claim and was not about entitlement to dispensation, or lack of it, in itself. Therefore, the Tribunal has determined on balance that it is able to consider the application for dispensation.

90. It was not in question that the Applicant had failed to meet consultation requirements in Schedule 4, Part 2 of Service Charges (Consultation Requirements) (England) Regulations 2003. He did not obtain two estimates for each item in the set of qualifying works. The Respondent also asserted, the Tribunal found correctly that the Applicant did not allow him to see a breakdown of the estimates, and did not, at least identifiably, have regard to his observations.

91. The breaches of consultation requirements by the Applicant were considered by the Tribunal to be substantial. However, following *Daejan*, that has no relevance to the question of whether dispensation ought to be granted.

92. It was argued by Mr Miller that, had the Applicant complied with his consultation requirements to have regard to observations, the Respondent would have sought a second estimate and queried various estimates. However, the Respondent had ample opportunity to do that following the Applicant's claim and indeed since the Applicant's specific application. The Respondent did not identifiably do so.

93. There was a suggestion in the bundle that the Applicant refused to accept alternative quotes from the Respondent, but it is unclear whether those are quotes the Respondent had obtained or proposed to obtain. In any event, the Tribunal proceeds on the evidence presented to it and there were no alternative quotes in the bundles.

94. Consequently, the Respondent failed to show that he was prejudiced and that the cost would have been lower, even ignoring the question of what the Applicant might

have done in the event of other estimates.

95. Therefore, whilst the practical impact and benefit for the Applicant is uncertain at best, on balance the Tribunal determined it to be appropriate to grant dispensation but to grant it subject to capping the contribution of the Respondent to the £250 which the parties had agreed by way of compromise.

96. In his Skeleton Argument, Mr Miller also submitted that dispensation should be on terms that the Applicant pay the Respondent's costs. However, no specific costs were identified and the argument was not pursued further in the hearing.

97. The Tribunal did not determine it appropriate to impose any further condition in respect of dispensation as regards the Respondent.

98. Mr Miller asserted that dispensation ought to be granted limiting the contribution of each lessee to £250. Mr Farrance White stated that was not agreed. The Tribunal gave the point careful consideration and was mindful that capping the amount recoverable against one lessee alone is not the usual course.

99. Plainly, the granting of condition in respect of the Respondent and not in respect of the other lessees would create a distinction between them. Mr Miller referred in his Skeleton Argument to *Aster*. That case involved, as one issue, the question of prejudice to all lessees and the application of the evidence adduced by one lessee as to prejudice to that lessee to all lessees. That was not, however, the particular point Mr Miller relied on. Nevertheless, the Tribunal needed to consider whether an effect was that the same condition ought to be imposed in respect of each lessee.

100. However, the Tribunal often encounters situations in which some lessees have paid service charges without challenge and others challenge them. The Tribunal only deals with the applications made and may find service charges not to be payable or reasonable in relation to the lessees whose service charges are in dispute. There may well be a distinction produced between one set of lessees and another.

101. Having considered matters carefully, the Tribunal has concluded that the condition should on this occasion only be imposed in respect of the Respondent for the following particular reasons.

102. The Tribunal noted that the bundle [67-70] contains the response of the other lessees to the Applicant's application for dispensation. They all agree with the application and none of them seek that any conditions be imposed.

103. Most specifically, it is not just the case that only the Respondent challenged the service charges for major works and opposed the application for dispensation but more particularly, and unusually (perhaps uniquely), there was the specific compromise agreement which the Tribunal found to have been reached between the Applicant and the Respondent in relation to the major works. That factor takes matters some way from the general situation.

The County Court matters

104. The County Court issues have been considered by Judge Dobson alone, having

regard to the findings and determinations of the Tribunal in respect of the Residential Lease service charges.

105. The claim as issued identified £1940.83 of what were described as "service charge, maintenance (ie cleaning), ground rent and insurance" (which will be referred to as "general charges") and £2107.00 of major works, a total of £4047.83 but also payments of £2039.00 (leaving a total of £2008.83). The claim made reference to the £560 discount said to have been offered (see above), potentially producing a balance of £1448.83 in respect of general charges and major works.

106. £450 was claimed in respect of solicitor's costs. A claim was also made for court fees. The £450 added to the £1448.83 produced the £1898.93 total of the claim made. That much was apparent. The method of listing all of the service charges demanded and separately deducting the amount of the payments made and also separately the £560 reduction produced a lot of different figures and was perhaps less helpful than the Applicant no doubt intended.

107. The determination in respect of the service charges payable includes a determination that the Applicant agreed to reduce the service charges potentially payable at the particular point in time to £250. It was common ground that the £250 had been paid by way of the Respondent's listed payments

108. The answer in respect of this aspect of the claim is that the £250 agreed sum having been paid by the Respondent and there in any event having been found to be no valid demands, no service charge sum, whether for major works or otherwise remained unpaid and due. By service charges, the Court includes all of the general charges as termed above other than ground rent.

109. Insofar as the Applicant sought to assert that he could resile from the £560 reduction because the Respondent had not paid all other sums, that did not form part of his case as issued. In any event, firstly, the Court would have rejected his ability to do so and, secondly, in light of the determinations above that no service charge sum- whether elements of general charges or in respect of major works- were owing and due, the sum would not have been payable in any event.

110. The payments made by the Respondent included the £250 compromise sum and exceeded by just under £200 the regular sums demanded for general charges. The Respondent had, it will be identified, by paying £2039.00 (including £250 for major works) paid far more than the £200s which would have been payable absent an accountant's certificate and of course more than the £nil which would have been due in the absence of valid demands more generally, so there could not discernibly be any service charges owed. However, the making of those payments and thereby accepting or admitting those sums did not prevent any potential small balance claimed being owed for other sums payable.

111. One possibility is that there was unpaid ground rent. Certainly, ground rent is listed as one element of the general charges. Any claim for ground rent falls to be determined by the Court, falling outside of the jurisdiction of the Tribunal. However, the Applicant could not identify any sum for ground rent due and unpaid. The Court therefore does not allow any claim for ground rent.

112. The Court also observes that, as Mr. Miller submitted, there is no evidence that any demand for ground rent was made in the prescribed form and so was valid. Hence, any claim for ground rent would necessarily have failed for that reason.

113. The Applicant was asked to identify if there were any sums which fell outside of the above two elements or otherwise to identify what any balance claimed related to,. The Applicant could not identify any other element or sum.

114. The Applicant having not demonstrated any sum to be due from the Respondent, the claim necessarily fails. The Court dismisses the claim.

115. Interest does not arise to be considered.

Costs and fees

116. The Applicant sought the recovery of the court fee paid on issue of the claim, in the sum of £115.00 and the legal costs mentioned above. However, the Applicant was wholly unsuccessful, no other factors had been advanced which made any other approach which could be taken by the Court to the fee appropriate and so the Court determined that the Applicant must bear the fee and should not recover any costs. Any other matters which may have been relevant to recovery or the amount of that, for example the lack of any invoice from solicitors indicating legal costs to have been paid or be payable do not arise.

117. For completeness, the Applicant was asked whether he relied on any contractual basis for a claim for costs. He could not identify any and neither could the Court. Hence to any extent that any contractual entitlement may have been a relevant factor, in the event it was not.

118. The Respondent made no claim for recovery of legal costs and so no determination was required in respect of such.

Court Order

119. The relevant Court Order in consequence of the above determinations provides for dates of payment of the sums payable for the claim and the court costs.

Concluding Note

120. The victory may be a somewhat pyric one for the Respondent and indeed one also likely to impact on the other lessees of flats in the Building.

121. The Applicant indicated that he will seek professional help in managing the Building. That may or may not enable him to address any required matters in respect of service charges which were included in this claim.

122. However, more generally if the Applicant is entitled to instruct managing agents and recover the cost of employing them, about which the Tribunal expresses no view (not least having had no need to consider the point), the likelihood is that the level of service charges claimed in the future will increase to at least that extent, and presumably the extent of the fees of the accountant providing the relevant

certification.

ANNEX - RIGHTS OF APPEAL

Appealing against the tribunal's decisions

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.

2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.

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

4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

5. Any application to stay the effect of the decision must be made at the same time as the application for permission to appeal.

Appealing against a reserved judgment made by the Judge in his/her capacity as a Judge of the County Court

1. A written application for permission must be made to the court at the Regional Tribunal office which has been dealing with the case.

2. The date that the judgment is sent to the parties is the hand-down date.

3. From the date when the judgment is sent to the parties (the hand-down date), the consideration of any application for permission to appeal is hereby adjourned for 28 days.

4. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties;

5. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking. All applications for permission to appeal will be considered on the papers

6. If an application is made for permission to appeal and that application is refused, and a party wants to pursue an appeal, then the time to do so will be extended and that party must file an Appellant's Notice at the xx office within 21 days after the date the refusal of permission decision is sent to the parties.

7. Any application to stay the effect of the order must be made at the same time as the application for permission to appeal.

Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court

8. In this case, both the above routes should be followed.