FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case references	:	**LON/00BG/LSC/2022/0396** **LON/00BG/LDC/2023/0104** **LON/00BG/LDC/2023/0199**
Property	:	Naxos Building, 4 Hutchings Street, London, E14 8JR Seacon Tower, 5 Hutchings Street, London, E14 8JX
Case reference	:	**LON/00BG/LSC/2022/0396**
Type of application	:	**Determination of the liability to pay service charges under section 27A of the Landlord and Tenant Act 1985**
Applicants	:	Andrei Kharlamov (32 Naxos Building) Iffet Collatine (60 Naxos Building) Darren Williams (39 Seacon Tower)
Representative	:	Andrei Kharlamov – in person Iffet Collatine – represented by Andrii Kharlamov Darren Williams – in person
Respondent	:	Seacon Residents Company Limited
Representative	:	Paul Letman (Counsel) instructed by Fairweather Law
Case reference	:	**LON/00BG/LDC/2023/0104**
Type of application	:	**Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985**
Applicant	:	Seacon Residents Company Limited
Representative	:	As above

Respondents	**:**	103 leaseholders at Naxos Buildings
Active Respondents	**:**	Andrei Kharlamov (32 Naxos Building) Iffet Collatine (60 Naxos Building)
Representative	**:**	As above
Case reference	**:**	**LON/00BG/LDC/2023/0199**
Type of application	**:**	**Dispensation with Consultation Requirements under section 20ZA Landlord and Tenant Act 1985**
Applicant	**:**	Seacon Residents Company Limited
Representative	**:**	As above
Respondents	**:**	103 leaseholders at Naxos Buildings 99 leaseholders at Seacon Tower
Active Respondents	**:**	Andrei Kharlamov (32 Naxos Building) Iffet Collatine (60 Naxos Building) Darren Williams (39 Seacon Tower)
Representative	**:**	As above
Tribunal members	**:**	**Judge Robert Latham** **John Naylor FRICS FIRPM**
Date and Venue of Hearing	**:**	**23, 24 and 25 January 2024 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**12 March 2024**

DECISION

Summary of the Decisions of the Tribunal

LON/00BG/LSC/2023/0104- Payability of Service Charges

(1) The Service Charge Percentages payable by Mr Kharlamov are: (a) Estate Service Charge: 0.563224%; (b) Block Costs: 1.096026%; (c) Multi-storey Car Park: 1.449275%.

(2) Reserve Fund Contributions: The sums demanded for the service charge years 2016 to 2022 are payable pursuant to the terms of the leases and are reasonable.

The Millenium Harbour

(3) Estate Charges: The Tribunal is satisfied that the sums demanded for the service charge years 2016 to 2022 are payable pursuant to the terms of the leases and are reasonable.

(4) Legal and Professional Charges: The sums demanded for the service charge years 2016 to 2022 are payable pursuant to the terms of the leases and are reasonable.

(5) Multi-storey Car Park: The sums demanded for the service charge years 2016 to 2022 are payable pursuant to the terms of the leases and are reasonable.

Qualifying Long Term Agreements ("QLTAs")

(6) Water Supply Charges: This is not a QLTA.

(7) Lift Maintenance: The three relevant maintenance contracts are QLTAs. However, none of the Applicants are required to pay more than the statutory threshold of £100 pa.

(8) Window Cleaning: These are not QLTAs.

(9) Management Fees: These are not QLTAs

Service Charges

(10) Surplus Service Charges: The sums demanded for the service charge years 2016 to 2022 are payable pursuant to the terms of the leases and are reasonable.

(11) Wages: The sums demanded for the service charge years 2016 to 2022 are payable pursuant to the terms of the leases and are reasonable.

(12) Legal, Professional and Company Secretarial Fees: The sums demanded for the service charge years 2016 to 2022 are payable pursuant to the terms of the leases and are reasonable.

(13) Directors' Insurance: The sums demanded for the service charge years 2016 to 2022 are payable pursuant to the terms of the leases and are reasonable.

Miscellaneous Item's raised in Mr Kharlamov's Reply

(14) Gardening: The sums demanded for the service charge years 2016 to 2022 are payable pursuant to the terms of the leases and are reasonable.

(15) Costs relating to the Clifton Restaurant Dispute: The sums demanded for the service charge years 2016 to 2022 are payable pursuant to the terms of the leases and are reasonable.

(16) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985 or for a refund of the tribunal fees paid by the applicant tenants.

LON/00BG/LDC/2023/0104- Repair of the Lift

(17) The Tribunal grants retrospective dispensation from the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 without condition in respect of the lift repairs which were executed to the Naxos Core B lift in 2022.

(18) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

(19) Seacon Residents Company Limited is entitled to pass the tribunal fees that it has incurred through the service charge.

LON/00BG/LDC/2023/0199 – the Supply of Electricity

(20) The Tribunal grants retrospective dispensation from the statutory consultation requirements in respect of the consultation requirements imposed by section 20 of the Landlord and Tenant Act 1985 in respect of the supply of electricity with (i) Engie Power Ltd, dated 12 March 2018 and (ii) British Gas Trading Limited, dated 1 August 2021.

(21) Dispensation is granted on condition that SRCL should not recover any of its costs relating to this application incurred up to 9 October 2023 through the service charge.

(22) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

Documents before the Tribunal

The Tribunal was provided with some 7,500 pages of documents. The Tribunal refers to the following Bundles in our decision:

1. The Respondent has provided a Hearing Bundle which is broken down into five sections:

(i) The Main Bundle (1,157 pages) which is divided into 17 tabs. However, it is numbered sequentially, and references will be "p.__";

(ii) Invoices (4,798 pages), references to which will be "Inv.__";

(iii) Contracts (253 pages), references to which will be "Con.__";

(iv) Procedural Applications (102 pages), references to which will be "Proc.__"; and

(v) Appendices (286 pages), references to which will be "App.__". The documents relating to LON/00BG/2023/0104 are at App.1-163, whilst those for LON/00BG/2023/0199 are at App.164-286.

2. The Applicants have produced two Supplementary Bundles (600 pages), references to which will be "T.__". These are numbered sequentially from T.1-449 (First Bundle) and T.451-601 (Second Bundle). The Directions made no provision for these Bundles.

3. During the hearing, the Respondent adduced a number of additional documents relating to (i) the apportionment of service charges; (ii) the reserve fund summary for the years 2016-2022; (iii) the papers considered by the SRCL Board before the reserve was set for the year 2023; and (iv) three lift maintenance contracts. The Applicants did not object to the late introduction of these documents.

Introduction

1. The Tribunal is required to determine three applications:

(i) LON/00BG/LSC/2022/0396: On 5 December 2022, Mr Andrei Kharlamov (tenant of 32 Naxos Building), Ms Iffet Collatine (60 Naxos Building) and Mr Darren Williams (39 Seacon Tower) ("the Applicants") issued this application seeking a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("Act") as to the amount of service charges payable by them in respect of the service charge years 2016 to

2022. The Respondent is Seacon Residents Company Limited ("SRCL") who are the Management Company for Seacon Wharf. a development in the Isle of Dogs.

(ii) LON/00BG/LDC/2023/0104: On 17 April 2023, SRCL issued this application seeking dispensation pursuant to section 20ZA of the Act in respect of works to bring the Naxos Core B lift back into service. This is one of three lifts in Naxos Building. The works involved the installation of a new lift motor and associated works. The lift became non-operational in June 2022 and was brought back into service in October 2022. SRCL did not follow the statutory consultation procedures because the works were urgent. The total cost of the works was £59,226. The respondents to this application are the 103 tenants at Naxos Building. All the tenants have been notified of this application. The only tenants to oppose it are Mr Kharlamov and Ms Collantine.

(iii) LON/00BG/LDC/2023/0199: On 17 April 2023, SRCL issued this application seeking dispensation pursuant to section 20ZA of the Act in respect of two contracts for the supply of electricity from (a) 12 August 2018 to 31 July 2020 with Engie Power Ltd and (b) 1 August 2021 to 31 July 2023 British Gas Trading Ltd. SRCL had overlooked the fact that these were Qualifying Long Term Agreements ("QLTAs") to which the statutory consultation requirements applied. The respondents to this application are the 103 tenants at Naxos Building and the 99 tenants at Seacon Tower. All the tenants have been notified of this application. The only tenants to oppose it are Mr Kharlamov, Ms Collantine and Mr Williams.

2. The estate at Seacon Wharf consists of Naxos Building which has 103 flats on 11 floors, and Seacon Tower with 99 flats on 15 floors. It is a gated development with secure parking and a 24-hour concierge/security. It is adjacent to the Thames and is a short walk from Canary Wharf. It was constructed in about 2002.

3. The tenants occupy their flats pursuant to tripartite leases with the freeholder/lessor (originally St James Group Limited, now Millennium Seacon Properties Limited ("MSPL")) and SRCL (the "Manager"). All the tenants are shareholders in SLCL. Since 2004, SRCL have appointed Hallmark Property Management Ltd ("Hallmark") to manage the Estate.

4. Mr Kharlamov who is a Vice President of J P Morgan, is the tenant of 32 Naxos Building, pursuant to a lease dated 4 September 2003. This has the benefit of Parking Bay 47 in the multi-storey carpark. This is a two bedroom flat on Level 8 which he occupies with his wife and child. He acquired the leasehold interest in March 2016.

5. Ms Collantine who is a banker, is the tenant of 60 Naxos Building, pursuant to a lease dated 6 September 2004. This has the benefit of Parking Bay 8 in the multi-storey carpark. This is a two bedroom flat on

Level 6 which she occupies on her own. She acquired the leasehold interest in 2012.

6. Mr Williams who is Global Head of Commercial Property at Impress, is the tenant of 39 Seacon Tower, pursuant to a lease dated 15 October 2004. This has the benefit of Parking Bay 32 in the multi-storey carpark. This is a two bedroom flat on Level 7. He acquired the leasehold interest in December 2015. He does not currently occupy the flat.

7. The substantive application which the Tribunal has been required to determine is LON/00BG/LSC/2022/0396. The two dispensation applications would have been determined on the papers, but for its link to the service charge dispute. Indeed, it was the service charge application which alerted SRCL to the need to apply for dispensation in respect of the QLTAs for electricity. In the absence of dispensation, SRCL would be limited to passing on no more than £250 per tenant in respect of the lift works and £100 per tenant per year in respect of the QLTAs.

8. Mr Kharlamov, Ms Collatine and Mr Williams have all acted in person. They have been assisted by Mr Kharlamov's father, Andrii Kharlamov ("Mr Kharlamov Senior") who is a retired judge from Ukraine. This Tribunal is used to dealing with litigants in person. It gives Directions to enable the parties to identify the issues that the Tribunal will be asked to determine and the evidence (including documents) on which each party will rely in support of their respective cases. The purpose of these directions is to ensure that the tribunal will be able to deal with an application fairly, in a proportionate manner, and avoid unnecessary costs to the parties, in accordance with the Overring Objective in rule 2 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the Tribunal Rules").

9. The starting point is the service charge accounts for the years in question. A Scott Schedule is intended to identify the service charge items in dispute and provide the opportunity for an applicant to identify why it is contended that service charges are not payable pursuant to the terms of their lease and/or why it is contended that the service charges are unreasonably high or that the services have not been provided to a reasonable standard. The Applicant tenants have rather sought to embark upon an audit of the service charge account for seven years, seeking disclosure of all the invoices for the years in question. This is not the role of this Tribunal.

The Procedural Background to LON/00BG/LSC/2022/0396

10. On 5 December 2022, the Applicants issued their application challenging the service charges payable for the years 2016 to 2022 (at p.1-35). The total sum of the dispute was stated to be £54,903.07. They challenged a number of individual service charge items including repair costs,

management fees and reserve fund contributions. They also questioned whether SRCL had complied with its statutory duties to consult.

11. On 14 February 2023, the Tribunal gave Directions, which were amended on 4 April 2023, 28 August 2023 and 4 October 2023 (at p.51-59). On 14 March 2023, the Respondent disclosed 870 pages of documents. This included the service charge accounts for the years 2016 to 2022 (at p.301-409).

12. Pursuant to these Directions, the parties have prepared a Scott Schedule (at p.61-227). They all raise a number of similar issues arising from seven years of service charge accounts. The Scott Schedule is broken down as follows:

Flat 32 Naxos Building: (i) 2016 at p.61-71; (ii) 2017 at p.72-83; (iii) 2018 at p.84-95; (iv) 2019 at p.96-107; (v) 2020 at p.108-119; (vi) 2021 at p.120-130; (vii) 2022 at p.131-141.

Flat 60 Naxos Building: (i) 2016 at p.142-147; (ii) 2017 at p.148-153; (iii) 2018 at p.154-158; (iv) 2019 at p.159-164; (v) 2020 at p.165-170; (vi) 2021 at p.171-176; (vii) 2022 at p.177-182.

Flat 39 Seacon: (i) 2016 at p.183-188; (ii) 2017 at p.190-195; (iii) 2018 at p.196-201; (iv) 2019 at p.202-207; (v) 2020 at p.208-214; (vi) 2021 at p.215-220; (vii) 2022 at p.221-227.

13. On 30 November 2023, Mr Kharlamov filed what purported to be a Reply to the Respondent's Case (at p.236-290). This had been drafted by Mr Kharlamov (Senior). This was not the "brief supplementary reply" for which provision had been made in the Directions. Mr Kharlamov (Senior) rather took it is an opportunity to raise a number of new issues.

14. The Respondent unsuccessfully applied to strike out this Reply. On 11 December, a Procedural Judge gave Mr Kharlamov permission to rely on the Reply, but permitted SRCL to respond and extended the time for filing the Hearing Bundle. On 29 December, the Procedural Judge confirmed that it was only Mr Kharlamov who had applied to amend his case. On 15 January 2024, SLCL filed its response (at p.291-299).

15. A table of the service charge items in dispute has been provided at p.232-234.The Respondent's Legal Arguments are at p.228-231.

16. On 15 January 2024, the Respondent filed the Hearing Bundle. On 16 January, the Applicants applied to exclude a number of the documents included in the Bundle. On 17 January, the Procedural Judge directed that SLCL should file a response and that the application would be heard by this Tribunal as a preliminary issue. On 19 January, SLCL filed its response.

17. On 18 January 2024, the Applicants filed their Supplementary Bundle (589 pages). On 22 January they served a "Continuation Supplementary Bundle (151 pages). No provision had been made for it in the Directions.

The Hearing

18. The Applicants appeared in person. Mr Kharlamov and Mr Williams both spoke in support of their cases. At the end of the first day, Ms Collantine nominated Mr Andrii Kharlamov (Senior) to represent her. Mr Williams took a somewhat more pragmatic position than Mr Kharlamov. He welcomed the disclosure of the additional documentation which explained how the service charges had been computed. Mr Williams' witness statement is at p.747-749 and Ms Collantine's statement (at p.765-766). All the Applicants gave evidence.

19. The Tribunal had to restrain Mr Kharlamov (Senior) who often sought to develop his own arguments, rather than those raised by Ms Collantine in her Scott Schedule. Mr Kharlamov (Senior) had drafted his son's Reply, during a period when his son was undergoing a course of chemotherapy. Mr Kharlamov (Senior) was keen to advance the arguments that he had included in his son's Reply, albeit that these formed no part of Ms Collantine's case.

20. The Applicants have filed three Skeleton Arguments, one in respect of each application. The authorities upon which they rely are included in their Bundles.

21. Mr Paul Letman (Counsel) appeared on behalf of the Respondent. He was accompanied by Mr Mark Fairweather, from his instructing solicitor, Fairweather Law. Mr Letman provided a Skeleton Argument and a Bundle of Authorities.

22. Mr Letman adduced evidence from the following:

(i) Mr David Johnson, who has been a director of SLCL since February 2020. He described himself as "a technical engineer, but an accountant by training". Mr Johnson carries out his responsibilities as director in a voluntary capacity. The Tribunal is satisfied that he has sought to carry out his responsibilities in the best interests of all lessees. His witness statement is at p.649-651.

(ii) Mr Terence Whelan, who is the managing director of Hallmark Property Management Ltd (Hallmark) who have managed Seacon Wharf since 2004. We were somewhat surprised to learn that there has been no written management agreement between SRCL and Hallmark. This reflects the somewhat casual way in which Mr Whelan has managed Seacon Wharf. It has also led to Applicants' scrutiny as to whether SRCL complied with its statutory duties to consult in respect of major works

and a number of QLTAs. Mr Whelan's witness statements are at p.649-651 and p.736-746.

23. At the beginning of the hearing, the Tribunal invited the parties to make short opening statement. The Tribunal then heard brief submissions from the parties on whether we should have regard to the documents which had not been served in accordance with the Directions. We ruled that we would have regard to all the documents which had been served. However, we would give limited weight to any document which took a party by surprise and with which they would not be able to address. In the event, no such issues arose.

24. The Applicants agreed that Mr Letman's Skeleton Argument correctly identified the issues in dispute. We therefore worked through this item by item. On the third day of the hearing, Mr Kharlamov identified a number of additional items which My Letman had not identified in his Skeleton. Finally, we addressed the two Section 20ZA applications.

25. Mr Kharlamov took the lead role in these proceedings. We have therefore used the service charges which he has paid to illustrate the impact of the service charge items which have been challenged. In this decision, we have sought to address all the points that were raised at the hearing. However, we have reviewed the service charge items which have been demanded for the years 2016 to 2022 and in so far as we do not expressly consider them, we are satisfied that they are payable and reasonable.

The Law

The Reasonableness of Service Charges

26. Section 18 of the Landlord and Tenant Act 1985 ("the Act") defines the concepts of "service charge" and "relevant costs":

> "(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 estimate costs incurred or to be incurred by or on behalf of the landlord, or a superior

landlord, in connection with matters for which the service charge is payable."

27. By section 30, a "landlord" includes "any person who has a right to enforce payment of a service charge".

28. Section 19 gives this Tribunal the jurisdiction to determine the reasonableness of any service charge:

> "(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 provision 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."

29. The Supreme Court has recently reviewed the approach that should be adopted by tribunals in considering the reasonableness of service charges in *Williams v Aviva Investors Ground Rent GP Ltd* [2023] UKSC 6; [2023] 2 WLR 484. Lord Briggs JSC (at [14]) recognised that the making of a demand for payment of a service charge will have required the landlord first to have made a number of discretionary management decisions. These will include what works to carry out or services to perform, with whom to contract for their provision and at what price, and how to apportion the aggregate costs among the tenants benefited by the works or services. To some extent the answers to those questions may be prescribed in the lease, for example by way of a covenant by the landlord to provide a list of specified services, or by a fixed apportionment regime. But even the most rigid and detailed contractual regime is likely to leave important decisions to the discretion of the landlord. In the current case, SRCL have a wide discretion as to how Seacon Wharf is managed and how management charges are apportioned. A landlord (or management company in this case) is contractually obliged to act reasonably. This is subject to this Tribunal's jurisdiction under the 1985 Act to determine whether the landlord acted reasonably (see [33]). A relevant factor in this case, is that SRCL is a company which is owned and managed by lessees at Seacon Wharf.

30. The Tribunal highlights the following passage from the judgment of Martin Rodger KC, the Deputy President, in *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC);

> "28. Much has changed since the Court of Appeal's decision in *Yorkbrook v Batten* but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions."

31. Section 20C of the Act permits a tenant to seek an order that all or any costs incurred by a landlord in proceedings before the tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant. The tribunal may make such order on the application as it considers just and equitable in the circumstances.

The Statutory Duty to Consult

32. Section 20 of the Act requires a landlord to consult in two situations:

> (i) "qualifying works" where the relevant contribution of any lessee will exceed £250.
>
> (ii) any "qualifying long term agreement" (QLTA") where the annual contribution of any lessee will exceed £100. Section 20ZA (2) defines a QLTA as "an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months".

33. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. These came into force on 31 October 2003. A summary of these is set out in the speech of Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

> Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

Stage 2: Estimates: The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

Stage 3: Notice about Estimates: The landlord must issue a statement to tenants and the association, with two or more estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

34. Section 20ZA (1) of the Act provides:

> "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."

35. The Tribunal highlights the following passages from the speech of Lord Neuberger in *Daejan*:

> (i) Sections 19 to 20ZA of the Act are directed towards ensuring that tenants are not required to (a) pay for unnecessary services or services which are provided to a defective standard (section 19(1)(b)) and (b) pay more than they should for services which are necessary and are provided to an acceptable standard (section 19(1)(b). Sections 20 and 20ZA are intended to reinforce and give practical effect to these two purposes (at [42]).
>
> (ii) A tribunal should focus on the extent, if any, to which the tenants have been prejudiced in either respect by the failure of the landlord to comply with the Requirements (at [44]). The only question that the tribunal will normally need to ask is whether the tenants have suffered "real prejudice" (at [50]).
>
> (iii) Dispensation should not be refused because the landlord has seriously breached, or departed from, the statutory requirements. The adherence to these requirements is not an end in itself. Neither is dispensation a punitive or exemplary exercise. The requirements are a means to an end; the end to which tribunals

are directed is the protection of tenants in relation to unreasonable service charges. The requirements leave untouched the facts that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by, and what amount is to be paid for them (at [46]).

(iv) If tenants show that, because of the landlord's non-compliance with the requirements, they were unable to make a reasonable point which, if adopted, would have been likely to have reduced the costs of the works or to have resulted in some other advantage, the tribunal would be likely to proceed on the assumption that the point would have been accepted by the landlord. Further, the more egregious the landlord's failure, the more readily a tribunal would be likely to accept that the tenants have suffered prejudice (at [67]).

(v) The tenants' complaint will normally be that they were not given the requisite opportunity to make representations about proposed works to the landlord. Accordingly, the tenants have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Indeed, in most cases, they will be better off, as, knowing how the works have progressed, they will have the added benefit of wisdom of hindsight to assist them before the tribunal (at [69]).

(vi) If prejudice is established, a tribunal can impose conditions on the grant of dispensation under section 20(1)(b). It is permissible to make a condition that the landlord pays the costs incurred by the tenant in resisting the application including the costs of investigating or seeking to establish prejudice (at [58] – [59]).

(vii) Where the extent, quality and cost of the works are unaffected by the landlord's failure to consult, unconditional dispensation should normally be granted (at [45]).

36. Mr Kharlamov referred us to the following passage from the judgment of Martin Rodger QC in Leaseholders of *Foundling Court and O'Donnell Court* [2016] UKUT 366 (LC) at [54]:

> "Nevertheless the primary purpose of the regime established by ss.20 and 20ZA, and by the 2003 Regulations, is to ensure that those who are ultimately responsible for paying for work or services are consulted and practical difficulties which might be encountered by landlords in complying with those obligations cannot dominate their interpretation. Any construction of the statute or regulations which frustrated the clear purpose of the consultation regime would be unacceptable."

37. The Applicants also referred the Tribunal to the decision of HHJ Bridge in *Aster Communities v Kerry Chapman* [2020] UKUT 177 (LC) in which he reviewed the scope of the decision in *Daejan*. On its face, section 20 ZA (1) gives this tribunal a wide discretionary power to dispense with the section 20 consultation requirements. The tribunal can make dispensation conditional on such terms as it thought fit, subject to the conditions being appropriate in nature and effect. The main question was the extent to which the lessees had been prejudiced by the landlord's failure to comply with the consultation requirements. The landlord bore the legal burden of satisfying the tribunal that it was reasonable to dispense with the requirements, but the lessees bore the factual burden of identifying prejudice. Following *Daejan*, this tribunal should grant unconditional dispensation unless lessees could show that they had suffered prejudice. If they showed that they had suffered prejudice, the tribunal might refuse to grant dispensation, but it was more likely that it would grant conditional dispensation. In attempting to establish prejudice, lessees often complained that the failure to consult had deprived them of the opportunity to make representations about the proposed works. However, the mere loss of such an opportunity did not of itself establish prejudice; lessees would normally have to indicate what they would have said had they been consulted.

Qualifying Long Term Agreements

38. Section 20ZA (2) of the Act defines a QLTA as "an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months".

39. In *Corvan (Properties) Ltd v Abden-Mahmoud* [2018] EWCA Civ 1102; [2018] HLR 36, The Court of Appeal construed a management agreement which provided: "The contract will be for a period of one year from the date of signature hereof and will continue thereafter until terminated upon three months' notice by either party." The Court of Appeal upheld the decision of the First-tier Tribunal that correctly construed this was a QLTA. The management agreement provided that the term of the contract was for a period of one year plus an indefinite period which was subject to a right of termination by giving three months' notice. Thus, the agreement had to continue beyond its first year. McFarlane LJ (at [38]) rejected the suggestion that the deciding factor is the maximum length of the period. It is rather the length of the commitment which must be read as the "minimum commitment". Adopting the language of clause 5 itself, the issue is the duration of the "term" the parties have "entered into" in the "agreement"

40. Mr Kharlamov referred the Tribunal to *Poynders Court v GLS Property Management Ltd* [2012] UKUT 339 (LC). However, this decision was overruled by McFarlane LJ (at [39]):

> "If this interpretation is correct, it would follow that HHJ Gerald was wrong in *Poynders Court*. Whether the agreement is for a term exceeding 12 months is not about the substance of the management agreement and its various obligations. Rather, it is about whether it is an agreement for a term which must exceed 12 months. In *Poynders Court*, whilst the managing agent may have been "intended" to provide the services for a period extending beyond 12 months, the relevant clause as to the term of engagement did not secure that they were under contract to do so for the period of more than twelve months. The requirement that the contract be for a term of more than twelve months cannot be satisfied simply by the contract being indeterminate in length but terminable within the first year."

The Leases

41. All the leases are in a similar form and are tripartite leases between (i) the Lessor (now MSPL); (ii) the Manager (SRCL) and (iii) the Lessee:

(i) Mr Kharlamov occupies 32 Naxos House pursuant to a lease dated 4 September 2003 (at p.768-814). His flat is described as "Apartment No A8.4". He acquired the leasehold interest in March 2016.

(ii) Ms Collatine occupies 60 Naxos House pursuant to a lease dated 6 September 2004 (at p.816-863). Her flat is described as "Apartment No A6.7". She acquired the leasehold interest in 2012.

(iii) Mr Williams holds 39 Seacon Tower pursuant to a lease dated 15 October 2004 (at p.865-911). His flat is described as "Apartment No B7.1". He acquired the leasehold interest in December 2015.

42. By Clause 8, the Manager covenants with both the Lessor and the Lessee to provide the services specified in the Fourth Schedule. By Clause 10, the Manager is entitled to delegate any of its respective management responsibilities to such managing agents, servants, agents, managers, contractors, solicitors, surveyors and accountants as they consider necessary or desirable.

43. Clause 11 provides for three types of service charge: (i) 11.1: Apartment Service Charge; (ii) 11.2: Estate Service Charge and (iii) 11.3: Parking Service Charge. By Clauses 11.1.1, 11.2.1 and 11.3, these service charges "shall consist of all expenses incurred by the Manager of and incidental to observing and performing the provision of the Fourth Schedule" which is divided into three parts: Part 1 (Apartment), Part 2 (Estate) and Part 3 (Parking).

44. Clauses 11.1.3, 11.2.3 and 11.3.3 gives the Manager the power to charge for additional costs and expenses. This is relevant to the manner in which

SRCL charge for the Millenium Harbour multi-storey car park. Clause 11.3.3 provides (emphasis added):

> "The Manager shall be at liberty to review any additional costs and expenses referred to in this part of the Lease and to add thereto any items of expenditure charge depreciation or other allowance or provision for future anticipated expenditure on or replacement of any installation equipment plant or apparatus or the rental value of any part of the Estate used in connection with the provision of the services thereto not previously included therein and from and after the relevant date of such review such additional items of expenditure charge depreciation allowance provision for future anticipated expenditure or value shall be included in the calculation of the Parking Service Charge and deemed to be included in the heads of expenditure or charge referred to above for all the purposes of this Lease.2

45. Clauses 11.1.4, 11.2.4 and 11.3.4 provide:

> "It is expressly agreed that the intention of the Lessor the Manager and the Lessee in relation to the Apartments Service Charge provisions is that all costs expenses and other liabilities which are incurred by the Manager shall be the subject of reimbursement recoupment or indemnity by the lessees of the Apartments so that no residual liability for any such costs expenses or liabilities shall fall upon the Manager By Clause 15 of the lease, the Lessee covenants to pay the service charge in respect of these services".

46. Schedule 6 specified the Lessee's service charge contributions which for 32 Naxos Building are: (i) the Apartments Service Charge: 1.09% of the Block A Costs; (ii) the Estate Serve Charge: 0.55% and (iii) the Parking Service Charge: 1/82. Clauses 11.1.5, 11.2.5 and 11.3.5 gives the Manager the power to vary these contributions when it becomes "necessary or equitable" to do so. The new apportionment becomes payable upon the Lessee being notified of the variation.

47. The lease makes provision for maintaining a reserve fund in respect of each of the three types of service charge. Thus paragraph 8 of Part 1 (Apartment) of the Fourth Schedule provides for the Manager:

> "To do all things necessary to comply with the obligations contained in or otherwise referred to in the Memorandum and Articles of Association of the Manager relating to the Apartments including the creation of such reserves as the Manager may deem prudent from time to time and the paying of all interest or other financial charges which may be incurred on any monies borrowed for the purposes of any of the Manager's obligations herein or the observance or performance of any of its covenants herein and all

> fees and costs incurred in respect of all Certificates and accounts kept and audits made in pursuance of its obligations under this Lease"

Similar provision is made in paragraphs 13 of Part 2 (Estate) and 8 of Part 3 (Parking)

48. In *Seacon Residents Company Limited v Oshodin* [2012] UKUT 54 (LC), George Bartlett QC, the then President, construed the leases for 5 and 38 Seacon Tower. He accepted an argument that Clause 11 of the lease clearly envisaged in the structure of the leases that the management company was to be completely indemnified by the lessees in respect of "all costs expenses and other liabilities" incurred in carrying out its functions. That was provided for expressly by Clauses 11.1.4 and 11.2.4. When the management company incurred legal costs in providing the services it had covenanted to supply as set out in the Fourth Schedule it was entitled to recover them from the lessees as service charges because they were "costs expenses or other liabilities" incurred by the management company in carrying out its functions. Clauses 11.1.1 and 11.2.1 provided that the service charges consisted of "all expenses incurred by the Manager of and incidental to observing and performing the provisions" of the Fourth Schedule. One of the management company's functions as listed in the Fourth Schedule was (at paragraph 8) to "do all things necessary to comply with the obligations contained or otherwise referred to in the Memorandum and Articles of Association of the Manager."

49. The President concluded at [35]:

> "It is clear that the contra proferentem rule, which is applied as a rule of construction against the landlord who drafted or proffered the lease, ought not to be applied against a management company which did not draft or proffer the obligations imposed on it or the entitlements conferred on it by the lease. Quite apart from the different position of the management company from that of the landlord, it is manifestly undesirable, where, as here, the management company is owned by the lessees and has no independent assets, to construe the lease so that the company is unable to recover expenditure that it has made in accordance with provisions of the lease. In the present case the lease stated expressly at clause 11.1.4 that all costs expenses and other liabilities incurred by the management company were to be the subject of reimbursement by the lessees of so that no residual liability should fall upon the company, and that compels an approach to construction that achieves this objective."

The Background

50. At the commencement of the hearing, the Tribunal invited each of the parties to make an opening statement. Mr Kharlamov described how he had been involved in previous proceedings before this tribunal in 2010 brought by Consort House Management Limited against Nexus Holdings Ltd. He had appeared for the respondent, together with his father (see T1.292-304).

51. In 2020/21, Mr Kharlamov had noticed a significant increase in service charges. He had asked SRCL to justify the increase. On 20 June 2021 (at T1.3), he wrote requesting all documentation in relation to service charges demanded for 2020. He wrote a number of further letters complaining that disclosure had not been made. On 28 November 2022 (at T1.28), he had sent a pre-action letter enclosing a draft application form on behalf of the three applicants.

52. On 21 January 2022, Mr Williams had written to Hallmark complaining of a lack of transparency. He stated that he would withhold his service charges if no proper response was received. He made two complaints to the Property Redress Scheme ("PRS"). On 11 June 2021 (at T1.432-438) and on 21 September 2022 (at T1.424-431), the PRS issued decisions upholding his complaints and awarding compensation. He stated that he tried to reach out to SRCL, but was ignored.

53. Ms Collatine also complained how the service charges had increased in 2021 and 2022. She complained of the delays in executing repairs and gave as an example the delay in repairing the Naxos B lift. She felt that she had been paying too much. She had also complained to the PRS. On 11 December 2020, she had requested her service charge correspondence to be sent by email. Despite this, correspondence had been sent by post. Her arrears had been escalated to solicitors who had sought to charge an administration fee of £432. On 12 July 2022 (at T1-444-450), the PRS declined to waive this fee, but awarded compensation of £216 in respect of Hallmark's failure to communicate by email as she had requested. She felt that had the Respondent responded to her concerns in a timely manner, this application would not have been necessary.

54. Mr Letman stated that there had been a failure by Hallmark to engage with the PRS as their emails had been into to an "info" email address. He noted that there had been mediation, but this had failed to resolve the dispute.

55. Mr Kharlamov was dissatisfied with SRCL's management of Seacon Wharf. The Board of Directors are all tenants. Mr Kharlamov complained that SRCL has not held any AGMs. It seems that its Articles of Association does not require the directors to do so. However, the Articles provide for the steps that a group of shareholders can take if they do not consider the block to be properly managed.

56. Mr Letman disputed that there had been a significant increase in the service charges covered by this application. This seems to be correct from an analysis of the six-monthly service charges paid by Mr Kharlamov in respect of his flat (see T1.214).

Six Monthly Service Charges for Flat 32 Naxos Building			
	Estate	**Block**	**Car Park**
1 January 2016	£901.30	£1,460.37	£152.54
1 January 2017	924.38	1,512.33	254.73
1 January 2018	936.91	1,493.82	156.17
1 January 2019	1,067.59	1,543.29	215.58
1 January 2020	1,033.38	1,576.84	198.21
1 January 2021	1,034.88	1,690.29	191.14
1 January 2022	1,016.83	1,377.02	105.97

57. The Estate is not without its problems. SRCL are responsible for maintaining the river wall frontage and there is corrosion to the steel sheet piling. The balconies have wooden decking. This has raised concern following the Grenfell Tower fire tragedy about the potential cost of works to the cladding and balconies. Pursuant to a deed of variation, the tenants have rights of access to use the facilities at the adjacent development at Millenium Harbour. This includes access to a gym and spa facilities. MSPL also own the freehold of the Millenium Harbour. There has been a long running dispute as to the charges which MSLP is able to pass on to SRCL in respect of these facilities. SRCL then pass these charges down to the tenants.

58. Whenever any explanation has been given to Mr Kharlamov, he has responded with further questions. The Tribunal had been provided with 4,798 pages of invoices. Mr Kharlamov felt that he could query these at will. The Tribunal told him that this was not our role.

59. The Tribunal required the Respondent to produce a number of documents during the course of the hearing. It was apparent that Mr Williams welcomed the greater transparency that this provided.

60. Ms Collantine adopted a somewhat entrenched position. She was adamant that she paid 1/82 (1.2195%) of the Car Park Service charge, despite Mr Whelan's evidence that she paid 1/69 (1.449275%). She gave evidence, that Mr Whelan was wrong and that a schedule that he produced was inaccurate. The dispute was resolved by Mr Whelan producing Ms Collantine's service charge demand that confirmed that she paid 1/69.

61. Hallmark have provided a Schedule (at p.482 to 487) which records the following service charge contributions for the flats:

	32 Naxos Mr Kharlamov	60 Naxos Ms Collatine	39 Seacon Tower Mr Williams
Apartment	1.0960%	1.1607%	0.8437%
Estate	0.5545%	0.5872%	0.4168%
Car Park	1.449275%	1.449275%	1.449275%

1. LON/00BG/LSC/2022/0396

Issue 1: Service Charge Percentages payable by Mr Kharlamov

	Lease	Management Pack	Schedule	Actual
Apartment	1.09%	1.096026%	1.0960%	
Estate	0.55%	0.563224%	0.5545%	0.555%
Car Park	1/82	1.449275% (1/69)		

62. Mr Kharlamov complains that he is not being charged the service charge proportions which are specified in his lease. His lease for 32 Naxos Building is at p.767. His service charge contributions are specified in Schedule 6 (at p.813), namely (i) Apartments Service Charge: 1.09% of the Block A Costs; (ii) the Estate Service Charge: 0.55% and (iii) Parking Service Charge: 1/82.

63. Mr Whelan produced a schedule of the service charge apportionments for all the flats (at p.482-487). This showed that Hallmark are charging Mr Kharlamov the following: (i) Apartments Service Charge: 1.0960% of the Block A Costs; (ii) the Estate Serve Charge: 0.5545% and (iii) Parking Service Charge: 1/82. Mr Whelan than accepted that Hallmark were charging Mr Kharlamov an Estate Service charge of 0.555%. However, the difference is insignificant and will be adjusted for the future.

64. Mr Whelan explained that the service charge apportionments levied by Hallmark reflected from those that they had inherited from Hamptons who had managed Seacon Wharf prior to 2004. He explained that the apportionments for the Apartment and Estate service charges were based on net internal floor area. The figures specified in the leases were those available at the time of the original off plan sale by the developers. When the development was completed, further measurements were made and these were reflected in the revised apportionments. At the hearing, Mr Whelan produced a schedule which suggested that the floor areas had been recomputed in November 2008. The adjusted percentages totalled 100%.

65. The position with regard to the Car Park Service Charge was slightly different. The costs of the multi-storey car park were part of the Millenium Harbour Contribution. The Manager had decided that this should be apportioned equally between 69 lessees who had car parking spaces. Whilst there were originally 82 car parking spaces, only 69 lessees at Seacon Wharf had the benefit of car parking spaces.

66. Mr Letman argued that the leases permitted the Manager to vary the apportionments and that it had done so in accordance with the terms of the lease (see [67] above). In support of his argument, he referred the Tribunal to the Management Pack (at p.949) which had been supplied to Mr Kharlamov on 19 February 2016, prior to his purchase of the flat. The pack (at p.950) specified his charges to be Estate: 0.563224%; Car Park: 1.449275% and Block: 0.563224%.

67. As a secondary position, Mr Letman argued that all the lessees had paid the revised apportionments without dissent for many years. He relied upon *HMRC v Benchdollar Limited* [2009] EWHC 1310 (Ch); [201] 1 All ER 174 in support of his averment that Mr Kharlamov was estopped by convention from disputing the current apportionment. He referred to the judgment of Briggs J (as he was then) at [42]-[44] and [50]. At [42], Briggs approved the concise summary of the relevant principles is to be found in the following passage from the speech of Lord Steyn in *Republic of India v. India Steamship Co Ltd (No 2)* [1998] AC 878 at 913E-G:

> "It is settled that an estoppel by convention may arise where parties to a transaction act on an assumed state of facts or law, the assumption being either shared by them both or made by one and acquiesced in by the other. The effect of an estoppel by convention is to preclude a party from denying the assumed facts or law if it would be unjust to allow him to go back on the assumption: *K Lokumal & Sons (London) Ltd v. Lotte Shipping Co Pte Ltd* [1985] 2 Lloyd's Rep 28 ; *Norwegian American Cruises A/S v. Paul Mundy Ltd* [1988] 2 Lloyd's Rep 343 ; Treitel , The Law of Contract , 9th ed. (1995), pp. 112-113. It is not enough that each of the two parties acts on an assumption not communicated to the other. But it was rightly accepted by counsel for both parties that a concluded agreement is not a requirement for an estoppel by convention."

68. The Tribunal is satisfied that the proper inference to be drawn from the information provided to Mr Kharlamov on 19 February 2016, is that the Manager had varied the apportionment of the service charges in accordance with the lease, at some date prior to 2016. It is probable that this was done once the development had been completed and more accurate measurements were possible of the respective sizes of the flats. At this time, it was known that lessees at Seacon Wharf had the benefit of 69 spaces in the multi-storey car park.

69. In the alternative, if we are wrong on this, the Tribunal is satisfied that Mr Kharlamov is now estopped from disputing the apportionments which have been demanded and which he has paid since 2016.

Issue 2: Reserve Fund Contributions

70. The Applicants argue that the sums demanded for reserve fund contributions have not been payable and are unreasonable. They have put their argument in a number of ways: (i) reserve funds are not costs and are therefore not part of the service charge; (ii) such funds should be reserved for high-cost projects; (iii) such funds should be temporary; (iv) reserves should be "prudent"; (v) the reserves have been excessive; and (vi) there has been a duty to consult.

71. The Tribunal is satisfied that the leases permit the Manager to collect a reserve fund. Provision is made for this in Schedule 4 for each service charge: (i) Apartment (Part 1, paragraph 8); Estate (Part 2, paragraph 13); and (iii) Car Park (Part 3, paragraph 8). The wording of these provisions is set out at [47] above. Mr Kharlamov argued that the phrase "from time to time" suggested that a reserve fund could only be collected for a limited period. We reject this construction. In setting a budget for a year, the directors of SRCL should consider whether it is prudent to accumulate a reserve fund and the size of any reserve fund for each head of service charge expenditure.

72. The Respondent produced a Planned Maintenance Programme (at p.499-505). This is reviewed every year and informs any decision about the size of the reserve fund. At the request of the Tribunal, the Respondent produced:

(i) a Summary of the reserves between 2016 and 2022. This is broken down between Naxos Building and Seacon Tower.

(ii) The Excel spread sheet which the SRCL Board had considered prior to agreeing the budget for 2023. This included an analysis of the reserves.

Summary of Reserves				
Year	Opening Balance	Transfer	Expenditure	Closing Balance
2016	£625,738	£45,372	(£61,604)	£783,667
2017	783,667	43,578	4,713	835,841
2018	835,841	52,878	(34,516)	858,989
2019	858,989	52,878	38,457	956,786
2020	956,786	68,077	(59,197)	1,021,598
2021	1,021,598	231,978	210,391	991,247
2022	991,247	230,078	(128,149)	1,093,720

73. The Tribunal is satisfied that the reserve fund contributions which have been demanded have been reasonable. The reserves are substantial. However, the Manager has had to contemplate some large items of expenditure:

(i) The River Wall Frontage: We were told that the steel sheet piling is starting to corrode. The cost of the works is estimated at £200k with fees at £40k.

(ii) The Replacement of the Decking on the Balconies: The cost of works is estimated at £400k and scaffolding: £90k.

(iii) The Naxos Building: Lifts A & C: £60k. On 13 September 2022, Hallmark served a Notice of Intention. On 5 April 2023, Hallmark served the Notice of Estimates. The lowest estimate was £86,950.

74. The Applicants should be reassured by the fact that any reserve fund contributions that they have made are held by SRCL on trust for them (see section 42 of the Landlord and Tenant Act 1987).

The Millenium Harbour Contribution – Issues 3, 4 and 5

75. A Deed of Variation to Grant of Easements ("the Deed of Variation") imposes an obligation on the Lessor (i.e. MSPL - the freeholder, rather than SRCL – the Manager) to pay a contribution to the freeholder of the adjoining estate at Millennium Harbour towards the costs of maintaining services, infrastructure and facilities at Millennium Harbour which are shared by and benefit the lessees at Seacon Wharf. The Applicants' leases impose an obligation on the Manager to indemnify the Lessor against these costs. This is known as the "Millennium Harbour contribution". The facilities include a gym and a spa. The Applicants are then obliged to pay this as part of their service charge.

76. The Deed of variation, dated 20 September 2001 (at p.565), was granted by Ballymore Properties Limited ("the Grantor") to Rhodin Limited ("the Grantee"). At the time, Ballymore Properties Limited was the freeholder and developer of Millenium Harbour, whilst Rhodin Limited was the freeholder of Seacon Wharf. By Clause 6, the Grantee covenants to contribute a "fair proportion" of the costs incurred by the Grantor in carrying out its obligation.

77. Under paragraph 2 of the Third Schedule of the Applicants' leases, the Lessor grants the Lessees the use and enjoyment of the neighbouring land known as the Millenium Harbour. Part 2 of the Fourth Schedule of their leases relate to the Estate Service Charge. By paragraph 16, the Manager covenants to:

> "Observe and perform the covenants referred to in clause 6 of the Deed of Variation and indemnify the Lessor against all claims actions proceedings costs damages expenses and demands in respect of any breach non-performance or non-observance thereof".

78. Thus, SRCL pass on these costs to the Lessees as an estate service charge. The Seacon Wharf multistorey car park is part of a larger building which also includes the car park for Millennium Harbour. The vehicular access to the Seacon Wharf car park is through the Millennium Harbour part of the building. SRCL has decided to pass on the cost of the carparking spaces to the Lessees who have carparking spaces. It relies on its powers under Clause 11.3.3 to do so (see [46] above).

Issue 3: The Millenium Harbour Estate Charges

Millenium Harbour – Estate Charge						
2016	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**
£75,000	109,666	76,800	105,000	175,735	86,270	95,000
Mr Kharlamov's 0.5545% contribution ranged from £415.87 to £974.45 pa						

79. MSPL is now the freehold owner of both Seacon Wharf and the Millenium Harbour. The Millenium Harbour charge has generated a longstanding dispute between MSPL and the SRCL. SRCL complain that MSPL have demanded excessive contributions, whilst refusing to provide disclosure of the underlying accounting records and accounts.

80. SRCL have appointed Seddons Law LLP ("Seddons") to act for them in connection with this dispute. It seems that they have advised that any charge demanded by MSPL from SRCL is not a "service charge" as defined by section 18 of the Act, presumably because it is payable by "the Manager", rather than by "a tenant". SRCL must therefore challenge the reasonableness of any charge demanded by MSPL in the civil courts. However, the charge demanded by SRCL from the Lessees is a service charge within the jurisdiction of this Tribunal.

81. The history to this dispute is complex and is illustrated by the following Chronology:

(i) On 20 July 2020, MSPL demand £429,766 from SRCL for the years 2011-2019.

(ii) On 15 December, SRCL paid £214,883.

(iii) On 19 April 2021, SRCL paid a further sum of £214,883.

(iv) On 7 July 2012, MSPL's agent, Y&Y, demanded £2,954,120 including £347,745 for 2020, a car parking contribution of £15,515 for 2020 and an additional contribution of £1,690,660 for 2011-2019.

(v) On 13 April 2022, MSPL served a Section 146 Notice as a first step to forfeiting SRCL's lease.

(vi) On 17 August 2023, MSPL issued a further demand for £1,097,75.

82. SRCL have considerable concerns about the conduct of both MSPL and Y&Y Management Limited, its managing agents. The litigation is ongoing and Mr Johnson states that SRCL is anxious to maintain confidentiality of information concerning the dispute. In his Reply, Mr Kharlamov suggests that the estates at Seacon Wharf and Millenium Harbour should be merged and managed as a single estate. This is not the view of SRCL.

83. Mr Whelan states that the directors of SRCL have challenged the sums demanded by MSPL which they consider to be excessive. They have sought to keep the charges within the parameters of what is reasonable. This is evidenced by the decision of MSPL to cancel charges totalling £1,690,851.

84. Mr Johnson described how SRCL is concerned that MSPL might either forfeit its lease or exercise its right under the lease to assume the management of Seacon Wharf if it defaults on its obligations. Were MSPL to assume the management of Seacon Wharf, it would be entitled to levy a management fee of 20% on top of the service charge.

85. In his Reply, Mr Kharlamov now seeks to suggest that this is a QLTA. The Tribunal does not accept this. It is not an agreement into which, the Respondent, as "Manager", has entered. It is an obligation which arises from the leases to which the Applicants are parties.

86. Although the Applicants raised their liability to pay the Millennium Harbour Contribution in their Scott Schedules, the significance of this issue did not become apparent because of the numerous other issues which they had raised. Had the significance of this issue been highlighted to a Procedural Judge, the Tribunal could have considered joining MSPL as a party to these proceedings.

87. The Tribunal accept that the directors of SRCL have found themselves in a difficult position. They are accountable to all the lessees. We are satisfied that the directors have acted in the best interests of the lessees in seeking to protect their position. SRCL have sought to keep these charges to a minimum. The evidence before us relating to this dispute is limited. There are understandable reasons for this. Having regard to all the circumstances, we are satisfied that the sums demanded as service charges have been reasonable. The sums demanded, have reflected the sums that SRCL have felt it necessary to charge to the service charge account, having regard to the demands made by MSPL.

Issue 4: The Millenium Harbour Legal and Professional Charges

Millenium Harbour – Legal and Professional Charges						
2016	2017	2018	2019	2020	2021	2022
£16,588	8,975	67,669	10,149	117,143	20,217	9,096
Mr Kharlamov's 0.5545% contribution ranged from £49.77 to £949.56 pa						

88. In their Scott Schedule, the Applicants contend that these legal costs are not chargeable under the lease. They further claim that they have gained no benefit from this expenditure.

89. In his Reply, Mr Kharlamov now contends that the Respondent should have made an application to this Tribunal to challenge the sums demanded. He suggests that it is "just speculation" that MSPL might have forfeited SRCL's lease.

90. We can deal with these submissions briefly:

(i) We are satisfied that Clause 11.2.4 entitles SRCL to charge these costs as an estate service charge (see [45] above). This view was confirmed by the Chamber President in *Seacon Residents Company Limited v Oshodin* [2012] UKUT 54 (LC) (see [48] to [49] above).

(ii) We are satisfied that SRCL have sought to act in the best interests of the lessees in handling this difficult litigation with MSPL. There has been a real risk that MSPL might forfeit the leases.

(iii) Significant legal costs have been incurred. However, very large and unsubstantial sums have been demanded by MSPL. We are satisfied that these charges are reasonable. SRCL have secured a significant reduction in the sums demanded.

(iv) We are satisfied that SRCL have acted on legal advice from Seddons that the High Court is the appropriate forum for any dispute between SRCL and MSPL. The Applicants have not applied to join MSPL as a party to these proceedings.

Issue 5: Multi-storey Car Park

Millenium Harbour – Multi-storey Car Park						
2016	2017	2018	2019	2020	2021	2022
£7,500	7,500	7,500	10,500	12,903	8,730	8,730
Mr Kharlamov's 1.4493% contribution ranged from £108.70 o £187.00 pa						

91. In the Scott Schedule, the Applicants complain that the Respondent has failed to provide copies of the relevant contracts upon which these sums have been demanded and have failed to provide the invoices. There is no

contract to be disclosed. The Respondent has disclosed the relevant invoices (at Inv.25-36).

92. In his Reply, Mr Kharlamov now argues that they should not be charged to the Car Park service charge. The Tribunal is satisfied that SRCL has a discretion to charge it in this way. It is manifestly reasonable to charge this to those lessees who have the benefit of a car parking space. The Tribunal is satisfied that the sums demanded from the lessees have been reasonable and payable.

Qualifying Long Term Agreements – Issues 6, 7, 8 and 9

93. The Applicants argue that the Respondent has entered into a number of QLTAs in respect of which the Respondent has failed to consult. In such circumstances, the contribution from any lessee would be limited to £100 pa (see [38] to [40] above).

Issue 6: Water Supply Charges

Water (an Estate charge)						
2016	2017	2018	2019	2020	2021	2022
£55,054	7,099	31,022	29,731	25,829	29,568	32,874
Mr Kharlamov's 1.0960% contribution has averaged £330.64 pa						

94. Water is supplied to Seacon Wharf by Thames Water, the statutory contractor. It is levied as an Estate service charge. The sums charged in 2016 and 2017 seem to reflect the vagaries of the manner in which the bills have been levied. The average charge of £330 is substantially less than a residential occupier would normally pay for their water. However, the Applicants contend that this was a QLTA and that the liability is therefore limited to £100 pa. The relevant invoices are at Inv.3,082-3,456.

95. In 2001, when Seacon Wharf was being constructed, Thames Water agreed to provide a communal water supply. Demands were initially issued by Thames Water. On 4 December 2008 (at Inv.3120) Castle Water issued an invoice. They continued to do so for the next four years. Since September 2022 (at Inv.3247), Thames Water have issued the demands.

96. The Applicants contend that there was a change of supplier. This was a QLTA. SRCL should have consulted the lessees. Their water charges are therefore capped at £100 pa. The Applicants rely on the following dicta of Lewison J (as he was then) in *Paddington Basin Developments Ltd v West End Quay Estate Management Ltd* [2010] EWHC 833 (Ch); [2010] 1 WLR 2735. Lewison J was considering whether the landlord should have consulted on an estate management deed. At [42], he observed (emphasis added):

> "I accept that there would have been limited (if any) scope for the tenants to have nominated an alternative service provider; and that West End Quay Estate Management Ltd might have found it difficult to prepare more than one proposal. However, I do not consider that the fact that a landlord proposes to enter into a long term agreement with a monopolist (e g a water company) is a reason for excluding such an agreement from the definition of qualifying long term agreements or necessarily excluding it from all the consultation requirements.

97. Mr Letman stated that there had been no change of supplier. At all material times, Thames Water has been the statutory supply. However, Thames Water had appointed Castle Water to provide the retail services to the business customers of Thames Water. There was an issue as to whether the communal supply to Seacon Wharf was a business supply (to be billed by Castle Water) or a domestic supply (to be billed by Thames Water). It had now been accepted that this was a domestic supply.

98. Mr Letman therefore argues that there was no duty to consult for the following reasons:

(i) Water supplied by a statutory undertaker and monopoly undertaker is not a QLTA.

(ii) If there was a QLTA, the relevant agreement would have been made in 2001 when Seacon Wharf was being constructed. At that time there would have been no tenants with whom to consult. Relying on *BDW Trading Ltd v South Anglia Housing Ltd* [2013] EWHC 2169 (Ch); [2014] 1 WLR 920, no duty to consult could arise in these circumstances.

(iii) In any event, the Service Charge (Consultation Requirements) (England) Regulations 2003 came into force on 31 October 2003, so would not have applied to any such agreement.

99. The Tribunal agrees with Mr Letman that this was not a QLTA upon which SRCL was obliged to consult.

Issue 7: Lift Maintenance

100. The Respondent had initially contended that there was no QLTA for the maintenance of the lifts. On the third day of the hearing, Mr Whelan produced a schedule summarising the three maintenance lift contracts for the Seacon Wharf. He also provided the contracts and various invoices. The Respondent's case on this issue has been far from satisfactory.

101. There are three lifts at Seacon Tower and two at Naxos Building. These are Apartment charges in respect of which Mr Kharlamov (32 Naxos Buildings) pays 1.0960%, Ms Collantine (60 Naxos Buildings) 1.1607% and Mr Williams (39 Seacon Tower): 0.8437%.

102. Mr Letman conceded that these were all QLTAs. However, he contended that for only one Applicant, Mr Williams, did the charge exceed the statutory threshold and this was by a nominal amount.

103. The Schedule did not include VAT or reflect the service charge contributions of the three Applicants. The Tribunal has revisited the schedule and made the following calculations which would suggest that none of the lessees have been required to pay more than £100 pa:

(i) From 1 January 2016 up to 31 January 2020, the contract was with Omega. The annual fee (inc of VAT) was £8,640 for Seacon Tower and £7,200 for Naxos Building. We compute that Mr Kharlamov would pay £78.91; Ms Collantine: £83.57, and Mr Williams: £72.90. None paid more than £100 pa.

(ii) On 1 March 2020, SRCL entered into a contract with Lift Works. This was revised on 11 February 2022. The annual fee (inc of VAT) was £2,516.40 for each lift. Thus, the annual charge for Naxos Buildings was £7,549.20 and for Seacon Tower was £5,032.80. We compute that Mr Kharlamov would pay £82.74; Ms Collantine: £87.62, and Mr Williams: £42.46. None paid more than £100 pa.

(iii) On 21 October 2022, SLRC entered into new contracts for the three Naxos lifts at a cost (inc of VAT) of £4,464 pa. We compute that Mr Kharlamov would pay £48.93 and Ms Collantine: £51.81. Neither paid more that £100 pa.

Issue 8: Window Cleaning

Cleaning: windows and internal common areas						
2016	2017	2018	2019	2020	2021	2022
Naxos Building						
£14,384	10,536	13,957	13,889	3,780	1,184	10,834
Seacon Tower						
£14,130	10,310	13,652	13,562	3,723	1,177	10,602
Mr Kharlamov's 1.0960% contribution ranged from £12.90 to £154.86 pa						

104. The Applicants submit that window cleaning is a QLTA and that their contribution is capped at £100 pa. SRCL respond that there is no contract. The contract is oral. There is no fixed term. It could be cancelled at any time.

105. The Tribunal accepts this argument. The minimum commitment is not for more that twelve months. The low level of charges 2020 and 2021, the period of the Covid-19 lockdowns, indicates the informal nature of the agreement.

Issue 9: Management Fees

Management Fees						
2016	2017	2018	2019	2020	2021	2022
Naxos Building						
£28,784	29,504	30,390	30,390	31,606	31,928	32,886
Seacon Tower						
£27,402	28,087	28,930	28,930	30,087	30,394	31,610
Mr Kharlamov's 1.0960% contribution ranged from £300.33 to £346.45 pa						

106. The Applicants do not challenge the size of the management fee which for Mr Kharlamov has ranged from £250.27 to £288.71 (exc VAT). They rather contend that it is a QLTA and that their contribution is limited to £100 pa.

107. Mr Whelan states that there has never been a signed contract between SRCL and Hallmark. The management agreement has therefore been terminable by notice, such notice to expire at the end of the service charge year. Mr Fairweather made a witness statement (at p.697) in which he describes the steps taken to trace any written agreement. He has identified (i) an unsigned draft agreement between St James, the developer, and Hallmark, dated 5 February 2004 (at p.665); (ii) an unsigned draft agreement between SRCL and Hallmark dated 7 October 2008; (iii) an unsigned draft agreement between SRCL and Hallmark dated 26 October 2009; and (iv) an unsigned draft agreement between SRCL and Hallmark, dated 1 January 2010 (at p.675).

108. By Clause 2(a) of the draft agreement, dated 1 January 2020, the initial period of the contract is "one year less one day from 1 January 2010". Clause 2(c) provides:

> "After the initial period the Agreement shall continue on the terms set out herein and either of the parties may terminate the agreement on the anniversary of the Commencement date of 1 January 2011 by giving at least six months notice in writing to the other Party"

109. Mr Kharlamov (Senior) argued that the earliest date on which SLCL could give notice was on 1 January 2011, and that the earliest date upon which the agreement could end would be 30 June 2011. It would thus be a QLTA. Alternatively, he argued that it was a QLTA because it had run for 14 years and could only be determined by six months' notice.

110. Had the draft agreement been signed, the Tribunal is satisfied that this would not have been a QLTA. We are concerned with the "minimum commitment" (see *Corvan (Properties) Ltd* at [39] above). On 1 June 2021, the agreement could be determined on 1 January 2011 by giving the requisite six months' notice.

111. This draft agreement was not signed, but we are satisfied that it reflected the terms of the oral agreement between the parties. At any time, this oral agreement could be determined by reasonable notice. The unsigned agreement contemplated that "reasonable notice" would be six months' notice expiring at the end of a service charge year (namely 31 December).

Service Charges

Issue 10: Surplus Service Charges

112. The Applicants complain that they are consistently overcharged for services, resulting in a year end surplus. They contend that they should be compensated by the payment of interest in respect of alleged delays in crediting the surplus monies. SRCL compute that the difference between the budgeted figures and an actual spend of some £1m per year, has over the last 7 years ranged from between 4.04% and 13.7% (in 2019).

113. The Tribunal accepts the Respondent's argument that the setting of any budget is not an exact science. We have regard to the RICS Service Charge Residential Management Code (3rd Ed) which advises (at [7.3]) that it is prudent to slightly over-estimate the total level of funds required to the development for the following year. We note that SLRC hold any service charge payments under a statutory trust for the paying lessees.

Issue 11: Wages

Wages						
2016	2017	2018	2019	2020	2021	2022
£166,799	169,995	148,071	174,862	175,735	177,820	198,054
Mr Kharlamov's 0.5545% contribution ranged from £821.05to £1,098.21						

114. In their Scott Schedules, the Applicants complain of the sums included in the service charge account for wages. This is an Estate charge. Mr Kharlamov complains that since SRCL has not provided any documentation as to this cost item, he is unable to assess its reasonableness and correctness. He contends that nothing is payable. The other Applicants support this contention.

115. Mr Whelan notes that no particular challenge has been raised or specified by the Applicants. The concierge staff are directly employed on behalf of SRCL by Knightrose Property Care which is a company connected to Hallmark. This head of expenditure relates to the wages of

the concierge staff. Mr Whelan has provided a breakdown of some of these expenses at p.1,611-1,616.

116. The Tribunal is satisfied that the sums demanded are payable and reasonable. The Applicants tenants do not understand the jurisdiction of this tribunal. It is not our role to carry out an audit of the service charge accounts. It is rather for the Applicants to establish a prima facie case that the sums included in the service charge accounts are not payable or are unreasonable (see [30] above).

Issue 12: Legal, Professional and Company Secretarial Fees

Legal Professional and Company Secretarial Fees						
2016	2017	2018	2019	2020	2021	2022
£1,000	1,131	1,092	-		1,096	
Mr Kharlamov's 1.0960% contribution ranged from £10.96 to 12.40 pa.						

117. The Applicants complain of this modest Apartment charge on the basis that invoices have not been provided. The residual challenge seems to be that it is not open to SRCL to pass on the expenses relating to the operation of the Management Company through the service charge. The Tribunal disagrees. The cost of filing annual returns and complying with the Companies Act is essential to the provision of the services. Were the Management Company to be struck off the Register of Companies, there would be no legal entity to provide the services. Seacon Wharf would deteriorate and the leases would be unmarketable.

Issue 13: Directors' Insurance

Director's Insurance						
2016	2017	2018	2019	2020	2021	2022
-	-	£1,001	1,006	1,010	1,042	1,549
Mr Kharlamov's 0.5545% contribution ranged from £5.55 to £8.59						

118. In their Scott Schedules, the Applicants complain that these modest sums of "directors and officers". They complain that SLRC has not provided any invoices. And they are therefore unable to assess the reasonableness and correctness of these charges. They contend that nothing is payable. SRCL respond that the direction did not require disclosure. Such disclosure has now been provided. Mr Kharlamov repeated his argument that it is not open to SRCL to pass on the expenses relating to the operation of the Management Company through the service charge.

119. The Tribunal disagrees. Dr Johnson described how it is difficult to find lessees with the skills and time to serve on the Board. Given the extensive and expensive litigation with which the Board has had to deal, it is manifestly reasonable for them to take out insurance to protect

themselves from any claim relating to the performance of the duties that they carry out without payment for the benefit of all lessees.

Miscellaneous Item's raised in Mr Kharlamov's Reply

120. Mr Kharlamov confirmed that the following items are no longer challenged: (i) Estate pedestrian and vehicle entry door repairs; and (ii) The reasonableness of the insurance and the energy broker costs.

Issue 14: Gardening

Gardening						
2016	2017	2018	2019	2020	2021	2022
£21,587	15,855	17,751	9,233	12,471	15,623	9,544
Mr Kharlamov's 0.5545% contribution ranged from £51.20 to £119.70						

121. In his Reply, Mr Kharlamov complains about the cost and quality of the gardening. He states that the gardeners only attend once a week for three hours. He suggests that they attend more than is necessary to trim the grass and the hedges. He states that during the Covid-19 lockdown they only attended once every two months.

122. Mr Whelan responds that the grounds of the estate include lawns at the front and back (the riverside elevation) as well as between 40 and 50 trees and trellises with climbers. These are illustrated in the photograph at p.593. Under the planning obligation for Seacon Wharf, SRCL is responsible for maintenance of the adjoining public square which also includes trees and planters. To ensure these are properly maintained a regular gardening service is provided with weekly visits. Mr Whelan does not believe that a more infrequent service would suffice. He has seen no evidence to suggest that the gardening services are provided at other than a reasonable cost.

123. Mr Whelan denies that there was any reduction in the service during the Covid-19 lockdown. The only letter of complaint that Mr Kharlamov was able to identify was an email, dated 22 June 2022, from Ms Collantine (at T.101). She complained about the use of carcinogenic weedkillers and suggested that organic weed killers should be used. Mr Whelan stated that he took up this suggestion.

124. The Tribunal is satisfied that the sums demanded are reasonable and payable. We cannot accept that the gardeners only attended every two months during Covid-19. The grass would have needed to be cut. Had it not to be cut regularly during the summer months, there would soon have been complaints. There is no evidence of such complaints.

Issue 15: Costs relating to the Clifton Restaurant Dispute

125. Mr Kharlamov complains that unreasonable legal costs in the sum of £8,270 were incurred in respect of disputes with the Clift restaurant over the period of 2018-2020. The Clifton Restaurant is on the estate, at ground floor level under the extension to the multi-storey car park.

126. Mr Whelan describes how there have been various disputes with the restaurant over the years. In his second witness statement, he summarises the dispute:

> "First, they allege that their service charge contribution is limited to estate costs and not block costs. However, the 'estate service charge covenants' by the manager (the landlord in these proceedings) in the fourth schedule of the Clifton Restaurant lease clearly extend to block costs, for example the covenant to keep 'main structures' in repair. Second, the Restaurant has a defective extraction system comprising two flues. The first flue is redundant. Both the first flue and the second flue are blocked by grease and fat causing a fire hazard. Britain Hadley have advised that the flues need to be removed. The Restaurant owners say it will be sufficient to install inspection hatches, although in Britian Hadley's view the blockages are too far gone for this approach. Third, the extraction system has been installed through a flat roof causing damage to the roof and water ingress into the building. The Restaurant owners have tried to claim the costs of remedying the damage caused by water ingress on the estate's insurance policy. We have resisted the claim because the damage is not caused by an insured risk and the effect of paying the claim is to increase the insurance costs to other leaseholders. Fourth there has been a dispute concerning the electricity supply to the Restaurant, as we discovered that the Restaurant was taking this from the main supply to the estate. The landlord engaged a consultant to investigate. In the end, the technical and legal issues to make good the claim meant that we did not proceed. There was no evidence for example that the restaurant realized that they were using the estate supply."

127. Mr Kharlamov (Senior), who had drafted his son's Reply, presented this part of his challenge. The Tribunal asked him to identify the invoices that he was seeking to challenge. Kharlamov identified the following from the 4,798 pages of invoices: (i) Cooper Burnett Solicitors (30.7.18) (p.1,678): £1,790.40; (ii) Cooper Burnett Solicitors (20.12.18) (p.1,680): £592.80; (iii) Brittain Hadley (14.2.19) (p.1,714): £375.00. These are fees charged by a surveyor to inspect the incoming electrical supplies; (iv) Cooper Burnett Solicitors (30.8.19) (p.1,721): £429.00; (v) Cooper Burnett Solicitors (30.3.20) (p.1,729): £1,278.00; (vi) Cooper Burnett Solicitors (24.6.20) (p.1,735): £1,920.00. These add up to £6,385.20 and £375 of this relates to surveyor's fees.

128. This was unfortunate dispute between the Manager and a commercial tenant. However, it was one that SRCL had to resolve. We are satisfied that these costs are recoverable pursuant to the terms of the leases and are reasonable.

Issue 16: Application under Section 20C and Refund of Tribunal Fees

129. In the light of the decisions that we have reached, we are satisfied that it would not be just and equitable in the circumstances to make an order under section 20C of the Act. Very substantial costs have been incurred by the Applicants in bringing this application. It has failed. SRCL will be entitled to pass on their reasonable cost of these proceedings through the service charges. This will be borne by all the lessees, including the Applicants.

130. In the light of our findings, we are further satisfied that it would not be reasonable to make any order for the refund of the tribunal fees of £300 which have been paid by the Applicants.

2. LON/00BG/LDC/2023/0104

131. On 17 April 2023, SRCL issued this application seeking retrospective dispensation from the statutory consultation procedures in respect of works to bring the Naxos Core B lift back into service. This is one of three lifts in Naxos Building. The works involved the installation of a new lift motor and associated works. The lift became non-operational in June 2022 and was brought back into service in October 2022.

132. On 13 September 2022 (at App.81), Hallmark sent the lessees a Stage 1 Notice of Intention. SRCL stated that the three lifts at Naxos Building were 18 years old and were approaching the latter stages of their economic design life. Repairs were required to all three lifts and SRCL had appointed Butler and Young Lift Consultants to advise on the works that were required. Butler and Young would survey each of the lifts and advise on the required works. The lessees were invited to comment on the proposed works by 16 October 2022 and to nominate a contractor from whom an estimate should be sought.

133. On 16 September 2023 (at App.83), Hallmark sent a Notice of Estimates. Before Butler and Young could carry out their surveys, SRCL needed to bring the Core B Naxos lift back into service. A new motor was required at a cost of £20,707.69 (inc VAT). The estimate had been provided by Omega City Lifts. Scaffolding would also be required at a cost of £5,820, together with a new lift drive (£8,681.92). Various other costs were identified. SRCL would be seeking to recover a sum of £14,820 which had been paid to Liftworks as their repairs had proved to be ineffective. Written observations were invited by 20 October 2022. Hallmark stated

that it would normally have obtained three quotes, but because of the urgency of the works, it would be making an application to this tribunal for dispensation in respect of the total costs incurred to date together with the costs of the new lift drive and motor.

134. On 28 April 2023, the Tribunal gave Directions (at App.65). These stated that the Tribunal would determine the application on the papers, unless any party requested an oral hearing. Three lessees requested an oral hearing. By 9 May 2023, SRCL was directed to send to the leaseholders by email, hand delivery or first-class post: (i) copies of the application form (excluding any list of respondents' names and addresses) unless already sent by the applicant to the leaseholder/sublessee; (ii) if not already provided in the application, a brief statement to explain the reasons for the application; and (iii) the directions. The Applicant was further directed to display a copy of these in a prominent place in the common parts of the property.

135. By 23 May 2023, any lessee who opposed the application was directed to complete a Reply Form which was attached to the Directions and send it both to the Tribunal and to the Applicant. The leaseholder was further directed to send the Applicant a statement in response to the application.

136. Three lessees objected to the application (at App.78-87): (i) Mr Kharlamov (32 Naxos Building); (ii) Ms Collatine (60 Naxos Building); and (iii) Mr Williams (39 Seacon Tower). Mr Williams has no standing to object to the application as he does not hold a lease in respect of any flat at Naxos Building and will not be required to contribute to the cost of the works. They raise the following issues:

(i) There was undue delay in repairing Naxos Lift B which broke down on 9 June 2022 and was not repaired until 19 October 2022. The lessees were prejudiced by 4.5 months' delay.

(ii) The Notice of Intention was "unfair" as it did not provide "all specific technical details of the works".

(iii) The Notice of Intention did not comply with the statutory requirements as SRCL had not obtained at least two estimates. The Notice referred to works which had already been executed.

(iv) Had SRCL consulted at an earlier stage, the lessees could have provided "their quotes from their contractors".

(v) The lessees have been prejudiced by the poor quality and level of the maintenance services.

(vi) The lessees referred to the decision of HHJ Bridge in *Aster Communities v Kerry Chapman* (see [37] above). Where the lessees do

not have the expert evidence to dispute the necessity of the works, a Tribunal may make it a condition of dispensation that the landlord pays the lessee's reasonable costs of instructing an expert.

137. On 30 May 2023, the Applicant filed a Statement in Response. SRCL reject the suggestion that they delayed in repairing the Naxos Lift B. Liftworks, the then maintenance contractor, started works, but were unable to bring the lift back into service. At the end of July, Liftworks left site stating that they were concerned for the safety of their workmen. On 2 August 2020, SRCL appointed Unique Lifts who carried out various repairs. These were ineffective. On 1 August 2022, SRCL appointed Omega City Lifts. They had originally installed the lifts and succeeded in reinstating Naxos Lift B. SRCL denied that the lessees had suffered any prejudice. Their position was contradictory: on the one hand, they were complaining about the delay in repairing the lift; whilst on the other hand, they were contending that the works should have been delayed whilst the full statutory procedures were followed.

138. In their Skeleton Argument, Mr Kharlamov and Ms Collatine argue that had SRCL consulted with the lessees prior to the commencement of the works, they would have warned SRCL of the consequences that might arise through their mismanagement. Had SRCL tested the market of lift services, this is likely to have led to some alternative contractors being brought on board to provide more competitive and skilled services. All the problems that arose, could thus have been avoided.

139. The Tribunal is satisfied that it is reasonable to grant retrospective dispensation from the statutory consultation requirements in respect of the consultation requirements without condition in respect of the lift repairs which were executed in 2022. The failure to seek more than one estimate was justified by the urgent need for the works.

140. Ms Kharlamov and Ms Collantine have failed to adduce any evidence that they have suffered prejudice. SRLC served the Stage 1 Notice of Intention. The lessees did not respond to this Notice. They did not suggest that the proposed works were not required. Neither did they nominate a contractor from whom an estimate should be sought. The Act does not provide for lessees to obtain quotes from their own contractors. They are rather given the opportunity to nominate a contractor whom the landlord should invite to tender for the works. SRLC served a Notice of Estimates. They stated that the works were urgent and that this precluded them from testing the market by obtaining two further estimates. Two contractors had carried out ineffective repairs. There was therefore merit in going back to the contractor who had originally installed the lifts. The lessees were required to establish that they had suffered prejudice as a result of the failure to consult. They have failed to establish any such prejudice.

141. In their Skeleton Argument, Mr Kharlamov and Ms Collatine seek to proffer advice with the benefit of hindsight. SRCL would not have appointed either Liftworks or Unique Lifts had they known that they would be unable to repair the lifts. This application rather relates to SRCL's decision to appoint Omega City Works to carry out the more substantial repairs. At this stage, SRCL did not seek further estimates as the works had become the more urgent. Their decision seems to have been vindicated by the fact that Omega City Works put the lift back into use within a matter of ten weeks.

142. The Tribunal does not make order under section 20C of the Landlord and Tenant Act 1985. Neither does it make it a condition of dispensation that SRCL should not pass on the costs of this application through the service charge.

3. LON/00BG/LDC/2023/0199

143. On 19 July 2023, SRCL issued this application seeking retrospective dispensation from the statutory consultation procedures in respect of two QLTAs for the supply of electricity to Naxos Building and Seacon Tower for the periods: (i) 12 August 2018 to 31 July 2020 with Engie Power Ltd ("Engie") and (ii) 1 August 2021 to 31 July 2023 with British Gas Trading Ltd ("British Gas"). This application has been required because SRCL had overlooked the fact that these contracts were QLTAs which were subject to the statutory duty to consult.

144. SCRL have provided copies of the two contracts:

(i) The contract with Engie ("the First Agreement"), dated 12 March 2018, is at App.190-197.

(ii) The contract with British Gas ("the Second Agreement"), dated 1 August 2021, is at App.199-235.

145. In its application, SRCL describe how the Fourth Schedule of the lease (paragraph 8) of the flats at Seacon Wharf require it to pay for electricity in various parts of the estate and to keep various parts properly lit. This is essential for the health and safety of the residents. SRCL had failed to recognise that these two contracts were QLTAs which were subject to the full consultation procedures. Had it done so, it would have recognised that the process would take several months to complete and that an application for dispensation would have been required in any event. Any delay would have prejudiced the cost saving to be secured through the procurement process. SRCL suggest that no prejudice has been caused to the lessees. SRCL used Bionic Services Ltd ("Bionic"), an independent broker, to test the market. The broker suggested the two-year contracts. SCLR claim that they achieved a large cost saving through these agreements. The second agreement secured a saving of some £52,000

compared with two separate one year agreements over the same period. A saving was also achieved through the first agreement, albeit of a smaller amount.

146. On 29 August 2023 (at App.181), the Tribunal gave Directions which were amended on 3 November 2023. A Procedural judge directed that this application should be listed to be heard at the same time as the two other applications which this tribunal is required to determine.

147. By 4 September 2023. SRCL was directed to send to the leaseholders by email, hand delivery or first-class post: (i) copies of the application form (excluding any list of respondents' names and addresses) unless already sent by the applicant to the leaseholder/sublessee; (ii) if not already provided in the application, a brief statement to explain the reasons for the application; and (iii) the directions. The Applicant was further directed to display a copy of these in a prominent place in the common parts of the property.

148. By 9 October 2023, any lessee who opposed the application was directed to complete a Reply Form which was attached to the Directions and send it both to the Tribunal and to the Applicant. The leaseholder was further directed to send the Applicant a statement in response to the application.

149. On 8 October 2023, three lessees objected to the application (at App.238-250): (i) Mr Kharlamov (32 Naxos Building); (ii) Ms Collatine (60 Naxos Building); and (iii) Mr Williams (39 Seacon Tower) ("the Active Respondents"). They raise the following issues:

(i) SRCL's failure to recognise that these contracts were QLTAs is described as "unreasonable" and "unacceptable".

(ii) The lessees dispute the suggested savings. Further, they suggest that any savings achieved would not be relevant to the issue as to whether dispensation should be granted.

(iii) SRCL should have obtained an expert's report detailing the cost savings.

(iv) The lessees were prejudiced as they were denied the right to be consulted and their rights were "violated".

(v) The lessees have now been further prejudiced by having to oppose the application. They estimated their costs (as at 8 October 2023) at £1,200.

150. On 30 October 2023 (at App.252-256), the Applicant filed a Statement in Response signed by David Johnson, a director of SRLC. SRCL have also served witness statements from (i) Mr Terence Whelan (at App.258-

265) who is a director of Halmark Property Management Ltd, the managing agents; and (ii) Mr Francesco Mosca (at App.267-274) who is a directoor of SRCL.

151. Since 1 August 2010, Mr Mosca has been the director involved in arranging the electricity supply to Seacon Tower and Naxos Building. For a number of years, SRCL have used Bionbic as its broker. Bionic is one of the major energy brokers in the UK for small businesses with an excellent reputation. Bionic recommended the First and Second Agreements as achieving best value for SRCL. Bionic has confirmed that savings were achieved. Mr Johnson has carried out his own analysis (at App.274) which suggest savings of £9,714 on the First Agreement and £60,444 on the Second Agreement.

152. SRCL have obtained an analysis prepared by Data Energy Management Services Ltd (at App.262-265). They were not involved in arranging the two contracts. Again, these seem to suggest that substantial savings were Achieved through these two-year agreements. Mr Lederman suggested savings of £13,888 and 15,249 for Seacon Tower and £15,348 and £16,847 for Naxos Building.

153. In their Skeleton Argument, the Active Respondents suggest that SRCL failed to "make a proper and due test and research of the electricity suppliers' market and did not request for different electricity suppliers' quotes in the case of two years contracts". They suggest that these amount to "serious management faults" by SRCL. Had the consultation been arranged, some alternative contractors could have been identified to provide more competitive and cheaper quotes. Ignorance of their statutory obligations is no reason for the tribunal to grant dispensation. Any cost savings would not be a sufficient reason to grant dispensation. They will be prejudiced if the costs of this application are passed on to them through as a service charge. They conclude that there are no grounds for granting dispensation. They make an application under section 20C of the Act to prevent SRCL from passing on the costs of this application through the service charge.

154. The Tribunal has had regard to the sums included in the service charge accounts for "electricity including metering services" for Seacon Wharf: 2016: £42,962; 2017: £53,729; 2018: £43,199; 2019: £28,455; 2020: £30,406; 2021: £32,266; and 2022: £39,362. These support SRCL's case that it has secured good value for the electricity supply at a time when there have been significant increases in the price of electricity.

155. The Tribunal is satisfied that it is reasonable to grant retrospective dispensation from the statutory consultation requirements in respect of the statutory consultation requirements in respect of the supply of electricity with (i) Engie Power Ltd, dated 12 March 2018 and (ii) British Gas Trading Limited, dated 1 August 2021.

156. The statutory consultation procedures are part of the statutory armoury to ensuring that lessees are not required to (a) pay for unnecessary services or services which are provided to a defective standard and (b) pay more than they should for services which are necessary and are provided to an acceptable standard. In the current case, it is recognised that an electricity supply is required. SRCL entered a two-year contract in order to secure best value. The lessees have not shown that they have suffered any prejudice. Rather, they seem to have benefited from cheaper electricity.

157. It is regrettable that SRCL and Hallmark did not recognise that these were QLTAs in respect of which there was a statutory duty consult. It is probable that this would not have come to light but for the service charge challenge that has been brought be the three Active Respondents.

158. In practice, it would not have been possible for SRCL to comply with the statutory consultation procedures. They could have served a Notice of Intention notifying the lessees that they were minded to procure electricity under a two-year agreement in order to secure best value. It is most unlikely that any lessee would have objected to this. However, it would not have been possible to consult on whether to accept any proposed contract. No offer would be held open for the period of six weeks necessary to complete the consultation process. Electricity prices change by the hour. SRCL would be obliged to accept an offer within a matter of hours. SCLR acted on the advice of its broker, Bionic.

159. However, SCLR should have recognised that these were QLTAs and should have sought dispensation. Had they done so, it is probable that the Tribunal would have determined the application on the papers.

160. The Tribunal therefore makes it a condition of the dispensation that the Applicant should not be able to recover any of its costs relating to this application incurred up to 9 October 2023, the date by which the lessees were required to notify SCLR that they were minded to oppose the application. 193 out of the 202 lessees decided not to oppose the application. The three Active Respondents who opted to oppose it, must accept the consequences of their decision to do so. This Tribunal has found that they had no grounds for so doing.

161. The Active Respondents seek an order under section 20C of the Landlord and Tenant Act 1985. The Tribunal is satisfied that it would not be just and equitable to make such an order.

Notification of this Decision

162. The Tribunal will send a copy of this decision to SRCL, Mr Kharlamov, Ms Collatine and Mr Williams. The Tribunal directs SRCL to send a copy of this decision (be email or post) to all the other lessees at Seacon Wharf,

together with a short explanation as to why it is being sent to them, namely that they are respondents to the dispensation applications in LON/00BG/LDC/2023/0104 and/or LON/00BG/LDC/2023/0199) and the nature of these applications.

Judge Robert Latham
11 March 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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

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

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

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

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).