FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**LON/OOAC/LSC/2022/0263**
Property	**:**	**Princess Park Manor, Royal Drive, London N11 3FL**
Applicant	**:**	**Brookstream Properties Limited**
Representative	**:**	**Ellodie Gibbons of Counsel instructed by Brady Solicitors**
Respondents	**:**	**The leaseholders of the Property**
Represented Leaseholders	**:**	**Those leaseholders listed in the attached Schedule headed 'Schedule of Participating Leaseholders'**
Representative of Represented Leaseholders	**:**	**Rupert Cohen of Counsel instructed by Forsters LLP Solicitors**
Type of Application	**:**	**For the determination of the liability to pay a service charge**
Tribunal Members	**:**	**Judge P Korn** **Mrs A Flynn MRICS**
Date of hearing	**:**	**11 and 12 September 2023**
Date of Decision	**:**	**1 November 2023**

DECISION

Description of hearing

This was a face-to-face hearing.

Decision of the tribunal binding on the Applicant and all Respondents

(1) The building insurance premiums should be apportioned equally between all flats, and the policy of allocating a higher proportion to the newer block should cease.

Decisions of the tribunal binding only on the Applicant and all Represented Respondents

(2) The building insurance premiums for the service charge years 2020/21, 2021/22 and 2022/23 are reasonable in amount and fully payable.

(3) The Represented Respondents' contribution towards the cost of the window refurbishment works is limited to £250 each.

(4) The management fee is reduced to £250 + VAT per unit for each of the service charge years 2020/21, 2021/22 and 2022/23.

(5) The book-keeping charges are disallowed in their entirety for each of the service charge years 2020/21, 2021/22 and 2022/23.

(6) In relation to the charges for the entryphone systems payable pursuant to the Megadene contract, these are reduced to £50 per unit for each of the service charge years 2020/21, 2021/22 and 2022/23.

Agreed point

(7) The Applicant agrees that the Respondents should be credited for any sums that they have paid by way of insurance premiums in excess of the sums that they would have paid if the insurance premium had been apportioned on a pro-rata basis across the whole estate for the service charge years 2020/21, 2021/22 and 2022/23.

Introduction

1. The Applicant initially sought a service charge determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") in respect of the apportionment of building insurance premiums. Subsequently those of the Respondents who are listed in the attached Schedule headed 'Schedule of Participating Leaseholders' ("**the Represented Leaseholders**") made an application to widen the dispute to include the other issues set out in paragraph 3 below.

2. The Property is a renovated listed building comprising 277 flats, with an additional 83 flats in a new building and a gym run by Nuffield Health. The Respondents are between them the long leaseholders of the individual flats within the Property, and the Applicant is their landlord. It is common ground between the parties that the Respondents' leases are in an identical form for all purposes relevant to this application.

3. The disputed issues were agreed at the hearing to be the following, all in respect of the 2020/21, 2021/22 and 2022/23 service charge years:

- The reasonableness of the **apportionment** of building insurance premiums.
- The reasonableness of the **amount** of building insurance.
- The cost of window refurbishment.
- The reasonableness of the management fees.
- The cost of book-keeping charges.
- The charges under the 'Megadene' agreement re the door entry system.

Parties' respective submissions

Apportionment of building insurance premiums

4. In its application the Applicant states that since the 2020/21 service charge year it has been apportioning building insurance premiums between the different blocks at the development by allocating a greater proportion of the premium to the newer block, East Wing/Phase 6, than to the older blocks in the original building known as Phases 1 to 5.

5. The Applicant understood when making the application that this method of apportionment might not be correct, hence the need to make the application to clarify the position. At the hearing, it was confirmed on behalf of the Applicant and the Represented Respondents that they were in agreement that the current method of apportionment was incorrect. Their joint view was that the building insurance should be apportioned equally between all units as previously.

6. The remainder of the Respondents have been silent on this issue.

Amount of building insurance premiums

7. The Represented Respondents state that the building insurance premiums appear to be unreasonably high and that the Applicant has not justified the process by which the particular policy and premium have been selected with reference to the steps taken to assess the current market: see Upper Tribunal decision in *Cos Services v Nicholson (2017) UKUT 382 (LC)*. They argue that the responses from the Applicant to the information on insurance sought by the Represented Respondents either were wrong or omitted the critical point that the premium was a portfolio premium. In addition, the Applicant only provided some of the information a day before the hearing. The Applicant has not clarified the information taken to the market by the broker, whether a commission was paid, what information was given to the broker and why there was such a large increase in premium in respect of the old block.

8. In her witness statements, Sinead Lisibach of Comer (the Applicant's managing agents) states that the Applicant uses a broker to select insurance policies and that the broker approaches the market to obtain the best available rates. There was a large fire in March 2021 and the resulting insurance claim was £960,000. As a result of that claim the insurance premiums have increased significantly. She does not accept that the increases are attributable to 'in house' handling of insurance-funded repair works by companies associated with the Applicant. No commission is paid to Comer. She has requested, but not yet received, from the previous broker details of historic brokerage fees and commission payments.

9. At the hearing, Ms Gibbons for the Applicant said that, based on the evidence, the insurance broker was unconnected to the Applicant and no commission was paid. There was no evidence that the cost of insurance was outside the market norm, and the insurance for the Applicant's various properties was arranged by way of bulk buying of different policies for different categories of property. Regarding the Represented Respondents' comparative evidence, the letter from Warwick Estates (see below) was not persuasive proof as the claims history and building construction details were both missing from that letter.

10. Mr Cohen for the Represented Respondents summarised the points made in written submissions and said that the best evidence as to what would be a reasonable premium was to be found in an email from Jennifer Horner of Warwick Estates dated 23 June 2023 in which she quotes advice received from their insurance brokers as follows: *"We have feedback from the market that on the face of it the premium and excesses seem incredibly 'excessive' and providing we can have full risk information (5 years CCE, construction and a pre-cover survey)*

we can certainly make a substantial saving. I know this isn't exactly giving figures but as the indication is a 25% saving".

Window refurbishment

11. The Represented Respondents state that in most of the years between 2018 and 2021 the window refurbishment programme makes up 50% of the cost of the maintenance works. They also state that there has been no statutory consultation in respect of the window refurbishment programme. Also, the window works have taken many years and little progress has been made with the project. Throughout the works, scaffolding has remained in situ and is often not in use and makes the Property look ugly. The increased costs incurred in scaffolding, due to the Applicant's failure to complete this project in a timely manner, are not reasonable.

12. At the hearing Ms Gibbons for the Applicant referred to the relevant lease provisions by way of submission that the cost was recoverable under the terms of the leases. It was accepted by the Applicant that the window frames formed part of the demise, but under clause 3.1 of the sample lease the tenant's repairing obligations excluded anything that the landlord covenanted to repair, and by reference to clause 5.1 and to Part 2 of Schedule 7 she argued that window refurbishment constituted a landlord's repairing obligation and therefore the cost could be recovered through the service charge.

13. In relation to the statutory consultation point, Ms Gibbons said that there were competing arguments as to whether consultation was required in this case but that the Applicant was not asking the tribunal to make a finding that consultation was not required. Instead, the Applicant's position was that the Respondents had not suffered any relevant prejudice. The work had been done over a 10 year period and paid for on a day rate, and so the Applicant was not locked into a binding contract under which it was under an obligation to proceed in the same manner in respect of all of the window refurbishment works. There was no credible evidence that the work could have been carried out more cheaply, with Mr Nicholas' evidence just relating to 2 flats in the new block, one of which was on the ground floor and therefore cheaper to access. In addition, ODL had made good when asked to do so, there had been some consultation with the informal residents' association and generally the Respondents had failed to discharge the factual burden to show that some prejudice had occurred.

14. As to whether the costs had been reasonably incurred, Ms Gibbons said that there was no evidence that they had not been.

15. In written submissions and at the hearing Mr Cohen for the Represented Respondents said that the demise under each lease

includes the window frames and that there is nothing in the leases that makes the cost of window refurbishment a service charge item.

16. In relation to statutory consultation, Mr Cohen asserts that leaseholders did suffer prejudice as a result of the failure to consult. The charges were opaque and unevidenced and the work was carried out by a sister company. There was no scrutiny of invoices and it was unclear how much time had been spent on refurbishing each window.

17. Mr Cohen also states, by reference to relevant copy photographs in the hearing bundle, that the work was of poor quality, there had been 15 to 20 complaints about the work, the cost of £1,489.27 per unit is not reflective of the market, and that the 1 year guarantee offered by ODL was also not reflective of the market.

Management fees

18. The Represented Respondents had initially argued that the management agreement with Comer was a qualifying long-term agreement ("**QLTA**") within the meaning of section 20ZA of the 1985 Act and that the Applicant had failed to consult on it despite being under a statutory obligation to do so. However, at the hearing they conceded that it was not a QLTA.

19. The Represented Respondents do, though, continue to challenge the management fees on other grounds. They state that the management agreement entered into by the Applicant with Comer does not appear to be one that has been negotiated at arm's length. Brian and Luke Comer are the directors of the Applicant and have significant control of its shareholding.

20. The Represented Respondents also aver that the management of the Property is generally poor. In particular, service charge statements have not been served in accordance with the leases, leaseholders are not told clearly how service charges are apportioned across the various units, there is a general lack of transparency about the connections between the Applicant and its managing agent and the companies to which services contracts are awarded, Comer has failed to comply with the statutory consultation requirements with respect to major works and qualifying long-term agreements, and responses to requests for information are provided piecemeal and slowly only after much chasing.

21. The Applicant denies that the standard of management is poor. In particular, service charge statements have been served in accordance with the terms of the leases, invoices relating to costs are available for inspection by appointment and all requested information has been provided.

22. At the hearing, Ms Gibbons said that the alternative quotation obtained by the Represented Respondents from Warwick Estates of £250 per unit was not genuinely comparable. The quotation assumed that the Property was being managed by a right to manage company and it only covered the day-to-day fee. The management fee in the present case was £290 per unit which was not outside the market norm.

23. Mr Cohen said that the management fees should be capped at £225 per unit as this would be a fair reflection of the service actually provided given that there was no consultation in respect of the window refurbishment and in his submission the service charge statements were not compliant.

Book-keeping charges

24. The Represented Respondents state that book-keeping services are contracted to Beckfield Limited which appears to be an associated company of the Applicant. They also argue that book-keeping should be part of the managing agents' responsibility and fee and should not be charged separately.

25. The Applicant states that these charges represent value for leaseholders in relation to the tasks performed.

Megadene contract – Door entry system etc

26. The Represented Respondents state that the Applicant has disclosed an agreement dated 1 April 2022 with Megadene Limited ("Megadene") for the supply and maintenance of i) the digital video door entry system; ii) the CCTV and ii) the electronic vehicles gates. The term of the agreement is 20 years, and it would therefore seem to be a QLTA. The agreement does not appear to have been negotiated at arm's length in that Megadene appears to be an associated company of the Applicant. Furthermore, the agreement with Megadene provides for the Applicant to make payment for the provision of CCTV services. These services are paid for separately by the Applicant, using service charge funds, for services provided by a company named Opecprime Developments Limited ("ODL") and to another company known as Gamma. Brian and Luke Comer hold all the shares in ODL and accordingly ODL is another company that is associated with the Applicant.

27. The Represented Respondents state that the sums paid to Megadene are unreasonable on the basis that like services can be obtained on the open market for much lower expenditure. Further or alternatively, it is unreasonable for the Applicant to rent video entry equipment for a yearly fee, when purchasing a video entry system would save cost in the medium term. The Represented Respondents' research indicates that a one-off installation of a permanent system would cost in the region of

£300-£800 per flat, not allowing for economies of scale that may be achieved by a bulk order.

28. Ms Gibbons for the Applicant referred the tribunal to the decision of the Upper Tribunal in *Corvan (Properties) Limited v Maha Ahmed Abdel-Mahmoud (2017) UKUT 0228 (LC)* and said that in assessing whether a contract was long enough to constitute a QLTA one needed to look at the length of the minimum commitment. In the present case, even if it could be argued that the termination provisions were onerous there was no obligation to continue with the contract beyond one year.

29. As regards whether the contract was a fair contract or an unduly onerous one, Ms Gibbons said that there had been no complaints about the system itself and therefore clearly in practice Megadene had been repairing it quietly and efficiently. The system had also been upgraded, and Megadene had never refused to deal with any problems. Furthermore, there had been no increase in charges over a significant period.

30. At the hearing Mr Cohen argued that the contract was very uncommercial and was also between sister companies and that nothing should be payable by leaseholders. In the alternative, they should only have to pay for the cost of reasonable maintenance of the equipment as per the quote from Seymour Surveillance Systems in the hearing bundle. This would give a total cost of £4,450 or £12.36 per unit. Further in the alternative a reasonable charge would reflect the cost of installing the equipment owned by Megadene plus the cost of maintenance, and this is calculated as leading to a charge of £61 per unit.

Ms Lisibach's evidence

31. As noted above, Sinead Lisibach of Comer has given two witness statements in support of the Applicant's position. In cross-examination she accepted that there were various linked companies that operated under a co-operative agreement but denied that this meant that they were more likely to choose each other when deciding who to use to provide services for the Property.

32. Although her answers were slightly unclear, Ms Lisibach appeared to accept when cross-examined on the point that the Applicant had provided the Represented Respondents with very little information on insurance until very shortly before the hearing, and it was put to her that this hampered the ability of the Represented Respondents to obtain comparable evidence. It was also suggested to her that the rise in the insurance premium could not be attributable to the fire, as the fire related to the new block. As regards the type of insurance that was in place, Ms Lisibach confirmed that the Applicant had portfolio insurance in place, although it took a while to establish that what this

meant in practice was that the Applicant bulk-bought different policies for different categories of property. Ms Lisibach disagreed that there had been no market testing of the insurance premiums when the point was put to her.

33. In relation to the window refurbishment, it was put to Ms Lisibach that the work was done by a sister company (ODL) and that its invoices were never challenged. She accepted this point but added that Comer did check that the works had been carried out. She also accepted that the contract had never been tendered and that ODL had been doing the work since 2010. Regarding the various complaints that had been made about the quality of the work, Ms Lisibach accepted that complaints had been made but said that ODL had gone back on each occasion and made good. They also gave a 1 year guarantee and she did not accept that this was below the market norm.

34. In relation to the management fees, Ms Lisibach accepted that Comer had been awarded the contract without there having been a competitive process but did not accept that Comer's fees were much higher than the market.

35. In relation to the book-keeping charges, Ms Lisibach did not accept that book-keeping was a service that Comer should be providing as part of the management agreement, but she accepted that there had been no competitive tendering in respect of this service despite the service again being provided by a sister company.

36. In relation to the Megadene contract, it was put to her that the arrangement was for one sister company to loan equipment to another sister company and to get paid by leaseholders for the loan and maintenance of the equipment. Mr Cohen also pointed out other concerns about the contract and she conceded in response that she had not read the contract carefully before signing it. She also accepted that it was not competitively tendered. As regards the ownership status of the equipment, Ms Lisibach said that she thought that Megadene now owns it all but she did not have evidence to support this.

37. On being referred to a copy invoice from Gamma Systems, Ms Lisibach agreed that if there were problems with the Megadene equipment Gamma was generally called out to fix them, but she accepted that any such problems would arise out of Megadene's own obligations under the Megadene contract. It was put to her that leaseholders were therefore being charged for the fixing of problems which were Megadene's responsibility to fix as part of its own contract. In response to further questions she then conceded that the cost of the Megadene contract could perhaps be lower.

Mr Nicholas' evidence

38. Nicholas Nicholas is a chartered accountant and has given two witness statements on behalf of the Represented Respondents. He is also joint leaseholder of Flat 314.

39. In his witness statement he expresses concern about a lack of information and communication afforded to leaseholders. He also sets out his concerns regarding the charges under the Megadene contract, the cost of refurbishment works and the reasonableness of the insurance premiums.

40. Specifically in relation to the refurbishment works he states that an alternative quote has been provided by Bauhaus for works to flats 353 and 314 which is significantly cheaper than the average of the cost of the works carried out by ODL.

41. In cross-examination in relation to the Megadene contract he said that he had never had a problem with the door entry system and it was put to him that this was because it was well-maintained. In response he commented that it was a very basic system.

Tribunal's analysis

Apportionment of building insurance premiums

42. We note that it is common ground that the leases are in an identical form for all purposes relevant to this matter. Part One of Schedule 7 to the lease of Apartment 86 defines "Service Charge" as *"a fair proportion of the Service Costs to be conclusively determined … by the Landlord …"* and "Service Costs" are themselves defined as including *"buildings insurance referred to in clause 5.3"*. Clause 5.3 contains a covenant by the landlord to insure the Property, and therefore the cost of insuring the Property is included within "Service Costs". The tenant is obliged to pay the Service Charge, and there are standard provisions regarding the payment of an interim service charge followed by a balancing adjustment once the actual Service Charge is known.

43. It follows that leaseholders should each be charged a "fair proportion" of the total building insurance premiums. The Applicant now proposes charging each leaseholder the same amount and contends that this is consistent with charging each leaseholder a fair proportion. It also wishes to apply this approach retrospectively in respect of the years 2020/21 to 2022/23 and to reverse the approach of allocating a higher proportion of the insurance premiums to the newer block. The Represented Respondents agree with this approach and none of the other Respondents has objected to this approach.

44. Whilst it might be possible in the future to come up with a different method of apportionment which also meets the test of charging each leaseholder a "fair proportion", we confirm on the basis of the information and evidence before us that charging each leaseholder the same proportion is consistent with the terms of the leases and that the previous system of allocating a higher proportion to the newer block is not justified.

Amount of building insurance premiums

45. We note the concerns expressed by the Represented Respondents regarding the quality and lateness of the information supplied by the Applicant. However, we do not accept that ultimately there was insufficient information available on which to assess the reasonableness of the insurance premiums.

46. Much was made by the Represented Respondents about the alleged lack of robustness of the process gone through by the Applicant, including an alleged lack of clarity as to whether any commission was paid, and about what the Applicant meant by the concept of a portfolio policy. However, although Ms Lisibach was quite a hesitant witness and did not perform particularly well under pressure, she was in the end able to explain the way in which the Applicant insured its various properties by way of bulk buying of different policies for different categories of property. She also confirmed that no commissions had been paid to Comer, albeit that she was unable to comment either way as to whether any commission had been paid to the Applicant itself.

47. The evidence shows that the Applicant has been using a broker and that the broker approaches the market. The evidence also shows that there was a large fire in March 2021 and that the resulting insurance claim was £960,000. The Applicant has plausibly stated that as a result of that claim the insurance premiums have increased significantly, and we are not persuaded by the suggestion by the Represented Respondents that the location of the fire demonstrates that it should not have had a material effect on future premiums.

48. The alternative evidence relied on by the Represented Respondents is in the form of an email from Jennifer Horner of Warwick Estates dated 23 June 2023 in which she quotes advice received from their insurance brokers. Even assuming that the advice has been set out in full it does not constitute an alternative quotation and it expressly acknowledges that the advice is given without the benefit of some material items of information.

49. We accept that the Applicant has been reticent in providing certain pieces of information. However, we have considered the age of the old block, the claims history, the Applicant's explanation of its portfolio policy, the existence of a broker and the evidence (such as it is) of

market testing, as well as the lack of a credible alternative quote having been provided by the Respondents. We have then looked at the amount of the insurance premiums (£268,708 in 2020/21, £347,334 in 2021/22 and £603,738 in 2022/23) in the light of the above factors, and we are not persuaded that the amount charged in any one of the disputed years is unreasonable, including the year after the fire when the premium increased by a large amount.

Window refurbishment

50. On the question of whether the cost of window refurbishment is payable as a service charge under the leases, Schedule 2 of the sample lease defines the Property as including the window frames. However, Part Two of Schedule 7 sets out the services provided by the landlord in respect of which the service charge is payable and this includes (in paragraph 1 *"repairing … maintaining … and cleaning the … main structure outside and foundations of the Building"*. In addition, under clause 3.2 the tenant is obliged to paint the inside wood and other elements of the interior but not any part of the exterior. Furthermore, the tenant's repairing obligations under clause 3.1 expressly excludes any part of the Property which the landlord covenants to repair.

51. The lease provisions relating to the repair and maintenance of the window frames could and should have been drafted more clearly. In the absence of clearer drafting our view is that the cost of refurbishment of the window frames is recoverable as a service charge. The landlord is obliged to repair, maintain and clean the outside of the building and can include the cost of doing so in the service charge. The tenant, by contrast, has no decorating obligations in respect of the outside, including the outside of the window frames. In addition, even though the window frames form part of the Property the tenant is not responsible for their repair and maintenance where (by virtue of another provision in the lease) the landlord is responsible.

52. In our view, the more reasonable – and the only fully workable – conclusion is that the only party responsible for decorating the window frames (i.e. the landlord) must have been intended to be responsible for their repair and maintenance. The window frames were therefore intended to be included within the landlord's repair and maintenance obligations in paragraph 1 of Part Two of Schedule 7 and therefore excluded from the tenant's repairing obligations under clause 3.1.

53. Therefore, the cost of window refurbishment is in principle recoverable through the service charge.

54. We therefore now turn to the issue of statutory consultation. The Applicant concedes that it did not carry out a section 20 consultation process in relation to the window refurbishment, but it argues that the

Represented Respondents have not demonstrated that they suffered any relevant prejudice as a result.

55. The evidence indicates, as submitted by the Represented Respondents, that the work was carried out by a sister company and that the basis of charging was extremely unclear. We therefore accept that the Represented Respondents have provided prima facie evidence of prejudice. In response the Applicant has not offered any substantive evidence to the contrary and it has not made any submissions on the question of whether it would be appropriate to grant dispensation on terms and, if so, what those terms might be.

56. In conclusion, therefore, the Applicant failed to carry out a section 20 consultation process in relation to the window refurbishment, the Represented Respondents have demonstrated prima facie evidence of prejudice, and the Applicant has neither rebutted the presumption of prejudice nor made any case for the granting of dispensation on terms. It follows that as a result of the Applicant's failure to consult and its failure to show why dispensation should be granted the tribunal should limit the amount payable by each of the Represented Respondents to £250.

57. The Represented Respondents have also challenged the reasonableness of the total cost of the window refurbishment works. On the basis of the evidence before us, whilst there might be an argument for some reduction in the total cost on grounds other than lack of consultation, there is some evidence that defects were remedied by the contractor at no extra cost and in any event there is insufficient evidence to justify a reduction below £250 per unit.

Management fees

58. The Represented Respondents challenge the reasonableness of the management fee of £290 + VAT per unit. Part of the basis of their challenge is that £290 + VAT is considered by them to be above the market norm.

59. The Represented Respondents' evidence of the market norm is in the form of an alternative quote from Warwick Estates of £225 + VAT for their basic service or £250 + VAT for their premier service. However, the quote assumed that they were being instructed by a "fully formed RTM company", which is not the case. Also, the list of services included differs to some extent from the list of services provided by Comer. Furthermore, it is not uncommon for managing agents to discount their rates to attract new business, and the existence of a lower alternative quote does not by itself demonstrate that the amount being charged by Comer was unreasonable.

60. In our view and based on our experience of the market, £290 + VAT per unit is within the parameters of the market norm, albeit that it might be toward the outside of that norm. However, this assumes that a good service was being provided, and we do not consider that Comer provided a good service. They failed to consult on the window refurbishment programme, they have presided over an opaque set of decisions involving the carrying out of work by sister companies without much evident scrutiny, and we also have concerns about the terms of the Megadene contract (see later) negotiated or overseen by Comer.

61. In the circumstances we consider that the management fee should be reduced to £250 + VAT per unit to reflect those failings whilst also recognising that Comer did appear to carry out certain other functions in a competent manner.

Book-keeping charges

62. There is nothing in the Applicant's evidence which demonstrates why this function could and should not have been included by Comer as part of its services, and indeed the management agreement is in our view easily wide enough to cover this work.

63. Accordingly, there is no justification for this work to be charged for on top of the management fee and therefore the book-keeping charges are disallowed in their entirety.

Megadene contract – Door entry system etc

64. The initial duration of the Megadene contract is expressed as follows: *"This Agreement shall commence on the signing hereof and shall be for the period ending 31st March of the year the Installation is completed and the following ONE years (the Initial Term)"*. It was therefore entered into for a term in excess of 12 months.

65. Under section 20ZA(2) of the 1985 Act, *""qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months"*. The reference to subsection (3) is a reference to any regulations which might come to limit what constitutes a qualifying long term agreement. Paragraph 3 of the Service Charges (Consultation Requirements) (England) Regulations 2003 ("**the 2003 Regulations**") set out certain limitations but none of these apply to the present case. The Megadene contract is therefore a qualifying long term agreement (QLTA). Under paragraph 4(1) of the 2003 Regulations *"Section 20 shall apply to a qualifying long term agreement if relevant costs incurred under the agreement in any accounting period exceed an amount which results in the relevant*

contributions of any tenant, in respect of that period, being more than £100". Paragraph 4(2) states that *""accounting period" means the period – (a) beginning with the relevant date, and (b) ending with the date that falls twelve months after the relevant date".* Pursuant to section 20(4) to (7) of the 1985 Act, the limit of £100 having been specified the amount of the leaseholders' contributions is limited to £100 per accounting period (i.e. £100 per year) unless the consultation requirements have been complied with or dispensed with in relation to the QLTA in question.

66. It is common ground that there was no statutory consultation in respect of the Megadene contract. There is also no application for dispensation before us in relation to the Megadene contract. Therefore, the Represented Respondents' contributions are limited to a maximum of £100 per leaseholder per year.

67. Should the Represented Respondents' contributions be limited even further? In our view there are significant problems with this contract, and we agree with the Represented Respondents that it is a commercially onerous contract for the Applicant to have taken on and that the evidence indicates that Comer made no attempt to negotiate it properly or even to scrutinise it.

68. The Represented Respondents submit by way of primary argument that their contributions should be zero, but we do not accept this as the evidence indicates that Megadene does provide some maintenance services under that contract. Whilst we were shown copies of invoices from a third party, we were given what we consider to be credible evidence that any sub-contractors invoice Megadene who then absorb those charges rather than passing them on to leaseholders on top of the charges payable under the Megadene contract. Their secondary argument is that they should only have to pay for the cost of reasonable maintenance of the equipment as per the quote from Seymour Surveillance Systems, which would give a total cost of £12.36 per unit. Their tertiary argument is that a reasonable charge would reflect the cost of installing the equipment owned by Megadene plus the cost of maintenance, and they calculate this as £61 per unit.

69. Clearly, as stated in the above paragraph, a costing of zero would not be realistic. Nevertheless, the tribunal finds the Represented Respondents' alternative arguments persuasive as regards the comparables that were produced by them, albeit that we do not accept that the benefits of the Megadene contract to leaseholders are so limited as to justify a reduction to as low as £12.36 per unit. Having regard to the comparables and to the other evidence that was provided about costs and also having regard to its own experience, the tribunal has therefore undertaken an exercise in aggregating these costs, albeit in what necessarily has to be quite a broad-brush approach. Having done this, in our view it is appropriate to reduce the charges in such a

way as to take into account both the length of the contract and the possibility of failures in the system over the length of the contract. This has led the tribunal to arrive at a figure which equates to £50 per flat per year.

Cost applications

70. The parties reserved their position on costs at the hearing.

71. Any cost application by either party must be sent by email to the tribunal, with a copy to the other party, by **5pm on 15 November 2023**.

72. Any written submissions by either party **objecting** to any cost application made by the other party must be sent by email to the tribunal, with a copy to the other party, by **5pm on 29 November 2023**.

Name: Judge P Korn **Date:** 1 November 2023

RIGHTS OF APPEAL

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

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

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

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