FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**CAM/00KG/LDG/2024/0007**
Applicants	**:**	**(1) LEGAL AND GENERAL AFFORDABLE HOMES LIMITED** **(2) LEGAL & GENERAL AFFORDABLE HOMES (AR) LLP** **(3) LEGAL & GENERAL AFFORDABLE HOMES (SO) LLP** **(4) LEGAL & GENERAL AFFORDABLE HOMES (CAPITAL) LIMITED** **(5) LEGAL & GENERAL AFFORDABLE HOMES (DEVELOPMENT 3) LIMITED** **(6) LEGAL & GENERAL AFFORDABLE HOMES (INVESTMENT 1) LIMITED** **(7) LEGAL & GENERAL AFFORDABLE HOMES (INVESTMENT 2) LIMITED** **(8) LEGAL & GENERAL AFFORDABLE HOMES (INVESTMENT 3) LIMITED** **(9) LEGAL & GENERAL AFFORDABLE HOMES (DEVELOPMENT 4) LIMITED**
Representative	**:**	**Ranjit Bhose KC, instructed by Trowers & Hamlins LLP**
Respondents	**:**	**Various Shared Ownership Long Leaseholders**
Properties	**:**	**All properties accommodating dwellings let to any of the Respondents**
Type of application	**:**	**For dispensation under section 20ZA of the Landlord & Tenant Act 1985**
Tribunal members	**:**	**Judge Bernadette MacQueen** **Mr A Kapur**

Date of hearing : 28 November 2024

Date of decision : 13 January 2025

DECISION

Decision of the Tribunal

1. The Tribunal determines that there was no requirement to consult upon each Varied Management Agreement as these agreements were not qualifying long term agreements for the reasons set out in this decision.

2. The Tribunal determines that there was no requirement to consult upon each 2024 Restated Management Agreement as these agreements were not qualifying long term agreements for the reasons set out in this decision.

3. Despite the findings at 1. and 2. above, the Tribunal nevertheless considered whether or not it would be reasonable to dispense with the statutory consultation requirements. In respect of each of the thirteen Varied Management Agreements (including the Varied Management Agreement with Southern (Optivo) which has been extended beyond 30 September 2024) the Tribunal finds that it is reasonable to dispense with the consultation requirements for the reasons set out in this decision.

4. In respect of the six 2024 Restated Management Agreements the Tribunal finds that it is reasonable to dispense with the consultation requirements for the reasons set out in this decision.

5. In granting this dispensation the Tribunal imposes the following conditions:

    a. In the event that any Applicant appoints a replacement Provider in place of an existing Provider, whose annual "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) is higher than that of the Respondent's existing Provider, it must write to the Respondents concerned and explain the reasons for the change and appointment.

    b. For the 2024 Restated Agreement with Karbon, the maximum "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) that a Respondent may be required to pay for the year until 30 September 2025 is £424.83 (excluding VAT).

    c. For the 2024 Restated Agreement with Regenda, the maximum "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) that a Respondent may be required to pay for the year until 30 September 2025 is £241.31 (excluding VAT).

6. In the event that the First to Ninth Applicants and Southern (Optivo) enter into an agreement in materially the same form as the 2024 Restated Agreement, there be dispensation from the said requirements to consult in respect of that agreement. This is subject to the following conditions:

    a. In the event that any Applicant appoints Southern (Optivo) as a replacement Provider in place of an existing Provider, where

its annual "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) is higher than that of the Respondent's existing Provider, it must write to the Respondents concerned and explain the reasons for the change and appointment.

b. The maximum "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) that a Respondent may be required to pay for the year until 30 September 2025 is £367.77 (excluding VAT).

7. The Applicants will bear the costs of making this Application themselves and will not seek to recover any of those costs from any of the Respondents.

Introduction

1. The Applicants sought an order pursuant to s.20ZA of the Landlord and Tenant Act 1985 ("the Act") for dispensation from the consultation requirements under Schedule 1 to the Services Charges (Consultation Requirements) (England) Regulations 2003 (the Regulations) in relation to a number of long-term agreements.

2. By way of background, the Applicants confirmed to the Tribunal that the first applicant is part of the Legal & General Group and is a private registered provider of social housing, specialising in the provision of both shared ownership and also social/affordable rented housing, in newly-built properties throughout England.

3. The Legal and General Group also comprises a number of other private registered providers, and they include the second to the fifth

Applicants. The sixth to ninth Applicants are currently going through the registration process to be registered providers of social housing.

4. This application concerns only shared ownership properties.

The Hearing

5. On 28 November 2024, this application was heard via Cloud Video Platform (CVP). The properties to which this application relates are spread across different regions of the Tribunal and therefore the Tribunal permitted one application to be made. CVP allowed Respondents from various locations to attend the hearing.

6. Ranjit Bhose, KC, appeared on behalf of the Applicants. A number of Respondents attended the hearing and gave evidence to the Tribunal.

7. The Tribunal was provided with a core bundle and a full bundle consisting of 1,465 pages divided into five lever arch folders. The bundle contained relevant documents including the Applicants' and Respondents' statements and statement of case. Additionally, Counsel provided the Tribunal with a skeleton argument and bundle of authorities.

Preliminary Issue – Additional Witness statement

8. The Applicants sought to rely on a third witness statement made by Douglas Pope, Head of Service Model Program employed by Legal & General Affordable Homes (Operations) Limited ("LGAH"). The Applicants sought permission for this statement to be admitted so that Douglas Pope could update the Tribunal and Respondents of the

current position in relation to matters already detailed in Douglas Pope's first and second witness statements.

9. The Respondents did not object to the additional statement being included.

10. The Tribunal allowed the statement to be admitted. In reaching its decision, the Tribunal considered the overriding objective and in particular Rule 3(2)(c) of the First-tier Tribunal (Property Chamber) Rules 2013, and determined that allowing the inclusion of the statement enabled parties to fully participate in the proceedings as the statement provided updating information. The Tribunal accepted that there was no prejudice caused to Respondents as the third witness statement updated parties on matters previously referred to. Additionally, parties had had time to consider the statement as it was sent to parties prior to the hearing commencing.

Background to the Application

The Original Management Agreement (Original MA)

11. Douglas Pope, on behalf of the Applicants, told the Tribunal that in 2018 a procurement exercise was undertaken by the First Applicant in order to establish a network of organisations capable of delivering a full range of housing management services to rented and shared ownership homes in any part of England. The Tribunal was told that this was completed so that the Legal and General Group could acquire, develop and work with other organisations to provide affordable housing across the country.

12. It was not disputed that at the time when this exercise was undertaken, the Applicants had not granted any leases and therefore there was no requirement to consult leaseholders under the Regulations as there were no leaseholders to consult.

13. In his first witness statement, and in particular at pages 149 to 152 of the bundle, Douglas Pope described the procurement exercise. His evidence to the Tribunal was that approximately 140 organisations expressed an interest in the invitation to tender, with 33 organisations submitting a first stage bid. Of those, 22 of the highest performing organisations were then invited to the second stage of the process. At this second stage organisations were invited to:

    a. Provide a tender price (as an annual unit price per property) for one or more of six regions within England, namely London, South East, South West, Midlands, North East and North West. (It was therefore possible for organisations to provide a different price for different regions if they chose to tender for different regions), and
    b. Indicate which local authority areas within each of the regions for which they had provided a tender price they would wish to manage properties.

14. Following the second stage, the First Applicant appointed the two organisations for each local authority area which had submitted the two lowest bids for the region, save for London where three organisations were appointed. Thirteen organisations were then appointed. These providers entered into separate agreements with the First Applicant to provide housing management services (the Original MA) as follows:

Provider	Date of Agreement
Flagship Housing Group Limited	1 October 2019
Richmond Housing Partnership	3 October 2019
Great Places Housing Association	4 October 2019
Karbon Homes Limited	7 October 2019
Regenda Limited	7 October 2019
Optivo	9 October 2019
Pinnacle Housing Limited	9 October 2019
Accord Housing Association Limited	21 October 2019
Chelmer Housing Partnership Limited	25 October 2019
Jigsaw Homes Group Limited	29 October 2019
Saxon Weald Limited	1 November 2019
Stonewater Limited	4 November 2019
Raven Housing Trust Limited	12 November 2019

15. The Applicants confirmed that the terms of each of the Original MAs were materially the same, apart from the fee per unit which differed in each agreement. Each Original MA was for a potential term of 10 years, being the initial term of 5 years with a potential 5 year extension.

16. By the terms of the relevant leases each Respondent covenanted to pay a service charge to the First Applicant, which included charges toward the costs of housing management services provided for each property. This included the fee incurred by the First Applicant from the providers.

17. The Applicants highlighted three changes that had occurred since the Original MAs were entered into namely:

    a. The Management Agreement with Accord Housing Association Limited was terminated and the Properties they managed were transferred to Pinnacle Housing Limited.
    b. Saxon Weald Limited contacted the First Applicant to increase fees.
    c. Following a name change on or about 16 December 2022, Optivo transferred their involvement to Southern Housing.

18. The Applicants submitted that the Legal and General Group required flexibility as to which group entity would in the future grant new shared ownership leases, and flexibility as to which group entity may in future hold the reversions of the properties. Therefore, the Applicants needed arrangements so that services provided by each provider to the First Applicant may also be provided to the other Applicants on the same terms as the existing arrangements. These arrangements needed to cover both the situation where new shared ownership leases of properties were granted and also where there was a transfer of reversions from the first Applicant to other Applicants. The Applicants explained that this was the background to their entering Varied Management Agreements and also 2024 Restated Management Agreements.

Varied Management Agreement (Varied MA)

19. The Applicants told the Tribunal that between 3 February 2022 and 1 March 2022, the First Applicant entered into a Deed of Variation, the Varied Management Agreement (Varied MA), with each of the providers, and that the second to fifth Applicants were parties to the Varied MA.

20. By way of example, the Applicants provided a copy of the Varied MA made between the First to Fifth Applicants and Great Places Housing Association within the core bundle at pages 296 to 302 which the Tribunal considered.

21. The initial term of each Varied MA was to end at 5pm on 30 September 2024, but the Original MA allowed for a five year extension to 30 September 2029. The Applicants told the Tribunal that the following seven providers had accepted the five year extension:

    a. Flagship Housing Group Limited
    b. Great Places Housing Association
    c. Karbon Homes Limited
    d. Regenda Limited
    e. Southern Housing (Optivo)
    f. Pinnacle Housing Limited
    g. Chelmer Housing Partnership Limited

2024 Restated Management Agreement (2024 Restated MA)

22. The Applicants confirmed that agreement had been reached with the seven providers listed above namely Flagship Housing Group Ltd, Great Places Housing Association, Karbon Homes Limited, Regenda Limited, Southern Housing (Optivo), Pinnacle Housing Limited and Chelmer Housing Partnership Limited, to further vary the terms of the Varied MA by way of a 2024 Restated Management Agreement (2024 Restated MA). The Applicants confirmed that the following agreements have been entered into:

Provider	Date of Agreement
Flagship Housing Group Ltd	7 October 2024
Great Places Housing Association	14 October 2024
Karbon Homes Limited	7 October 2024
Regenda Limited	15 November 2024
Pinnacle Housing Association Limited	28 October 2024
Chelmer Housing Partnership Limited	18 November 2024

23. The Applicants further explained that at the date of the hearing, Southern (Optivo) had not entered into a restated agreement. Instead, the Varied MA with Southern (Optivo) had been extended on its same terms by agreement as permitted by clause 3 of the original agreement.

24. As to the 2024 Restated MA, the Applicant confirmed that the terms of each 2024 Restated MA with each Provider are the same, with the exception of Pinnacle Housing Association which is not a registered provider of social housing and therefore is not regulated by the Regulator of Social Housing.

25. For completeness, the Applicants told the Tribunal that the Varied MAs with six of the other Providers who are not party to the 2024 Restated MA have been brought to an end prior to the hearing of this Application. Properties managed by these providers (namely Richmond Housing Partnership, Accord Housing Association Limited, Jigsaw Homes Group Limited, Saxon Weald Limited, Stonewater Limited and Raven Housing Trust Limited) have been transferred to another Provider by way of 364 day agreements. The Applicant stated at paragraph 21 of their amended statement of case that dispensation

was no longer sought in relation to the Varied MA with these six providers as by the time this application is determined, these agreements will all have ended. However, the Tribunal considered these agreements given that they formed part of the application before the Tribunal.

26. This application therefore relates to:

    a. each of the 13 Varied MAs (including the varied MA with Southern (Optivo) which has been extended beyond 30 September 2024) namely:

Provider	**Date of Agreement**
Flagship Housing Group Limited	1 October 2019
Richmond Housing Partnership	3 October 2019
Great Places Housing Association	4 October 2019
Karbon Homes Limited	7 October 2019
Regenda Limited	7 October 2019
Optivo	9 October 2019
Pinnacle Housing Limited	9 October 2019
Accord Housing Association Limited	21 October 2019
Chelmer Housing Partnership Limited	25 October 2019
Jigsaw Homes Group Limited	29 October 2019
Saxon Weald Limited	1 November 2019
Stonewater Limited	4 November 2019
Raven Housing Trust Limited	13 November 2019

and

b. the 2024 Restated MA with the following six providers namely:

- Flagship Housing Group Limited
- Great Places Housing Association
- Karbon Homes Limited
- Regenda Limited
- Pinnacle Housing Limited
- Chelmer Housing Partnership Limited

c. The application also is for dispensation in the event that the Applicants and Southern (Optivo) enter into an agreement in materially the same form as the 2024 Restated Agreement.

27. The changes in the 2024 Restated Agreement from the Varied MA are summarised in Douglas Pope's second witness statement at page 164 of the core bundle as follows:

i. The Sixth to the Ninth Applicants are added as parties.
ii. The Applicants have developed a housing management software platform (Brolly) and therefore the 2024 Restated MA includes provisions that require the use of that platform.
iii. Provisions relating to fire safety and building safety are updated to reflect the changes in the law.
iv. The data protection provisions are updated and also to reflect the use of Brolly.
v. Provisions to reflect changes made by the Regulator of Social Housing's Regulatory Standards, in particular the new Consumer Standards (introduced in 2024).
vi. Pricing mechanism updated to reflect anticipated growth in properties under management of the providers and to incentivise the management of additional properties.

vii. Provisions made which anticipate new properties being taken on by the providers and the revisions of properties being transferred between Applicants.

viii. Changes to reflect how services are provided.

28. The First Applicant remains the landlord of all the Respondents as at the date of the hearing, save for those Properties where transfers of the reversions to the Fourth Applicant or the Sixth Applicant have now taken place.

29. Douglas Pope stated in his evidence to the Tribunal that the unit fees of the Providers remain based on the unit fee which was set as part of the 2018-19 procurement. Clause 10.3.2 of the Original MA (which is also incorporated into the Varied MA) provides for an annual variation in the unit fee based on a CPI formula. This mechanism is carried in the 2024 Restated MA. The Contractual provisions continue to provide for an exceptional uplift, but this is a matter for the Applicants to agree in their discretion.

30. In order that the Tribunal could consider the 2024 Restated MA, a copy of the 2024 Restated MA made between the Applicants and Great Places Housing Group is found at page 303 of the core bundle, and the agreement with Pinnacle is at page 823 (bundle 3 of 5). The introduction to the agreement states that the 2024 MA is a variation to the Original MA and Varied MA pursuant to the right to vary (clause 39 of the Original MA) and right to extend (clause 3 of the Original MA) (page 308 of the core bundle).

31. The Applicants state that as a result of the dispensation they will be able to:

    i. Seek to recover from each Respondent the unit cost it incurs under the 2024 Restated MA with their existing provider.
    ii. Seek to recover from shared ownership leased of properties yet to be leased, the unit costs it incurs under the 2024 Restated MA with the Provider who will be appointed to provide services to that particular property.
    iii. Within each region appoint any of the other providers who tendered for that region in place of the existing provider, and similarly recover from the Respondent (or future lessee) the unit costs it incurs under the 2024 restated MA with that replacement provider.
    iv. Appoint a provider pursuant to the terms of the 2024 Restated MA in place of one of the 364 day agreements and recover from the Respondent (or future lessee) the unit costs it incurs under the 2024 Restated MA.

Each new registered provider will be able to:

    i. Where the revision of a property is transferred to it, seek to recover from each Respondent the unit cost it will incur under the 2024 Restated MA with an existing provider.
    ii. Seek to recover from shared ownership lessees of properties yet to be leased the unit cost it incurs under the 2024 Restated MA with the provider who will be appointed to provide Services to that particular property.
    iii. Appoint a replacement provider in place of the existing provider, and recover from the Respondent (or future lessee) the unit costs it incurs under the 2024 Restated MA with that replacement provider.

The Applicants further submitted and the Tribunal accepts that as the effect of the dispensation sought is that a replacement provider may be appointed to provide services to existing properties, every Respondent of a Property which may be the recipient of services by that replacement provider is a respondent to this application:

i. In respect of the 2024 Restated MA with existing providers; but also

ii. In respect of the 2024 Restated MA with any potential replacement providers for their property.

Are the Varied MAs and/or the 2024 Restated MAs Qualifying Long- Term Agreements that are required to be consulted on in advance within the meaning of section 20ZA Landlord and Tenant Act 1985?

32. The first question for the Tribunal to determine was whether or not the Varied MA or the 2024 Restated MA were Qualifying Long-Term Agreements (QLTA) that required consultation within the Regulations.

33. It was the Applicants' position that the statutory definition of a QLTA is an agreement entered into by or on behalf of the landlord or a superior landlord for a term of more than 12 months. As stated above, it is agreed and accepted that the Original MA was entered into before any leases were granted and so there was no requirement to consult. By the time of the Varied MA and the 2024 Restated MA there were many Respondents, however the Varied MA and 2024 Restated MA sought only to vary the Original MA.

34. Clause 39 of the Original MA provides that the agreement may be varied by the parties "entering an agreement supplemental to or varying it". Clause 34.1 of the Original MA entitled the first Applicant to assign the agreement to another group or entity, and clause 34.2 allowed for the agreement to be novated.

35. The Varied MA and 2024 Restated MA did however add new parties. The question is whether the addition of these new parties means that a new agreement was created rather than it being a variation. It was submitted by the Applicants that the Varied MA and 2024 Restated MA took effect as a variation and there was no requirement to consult. Counsel referred the Tribunal to *Saunders v Ralph (1993) 66P&CR 335 (QB)* where it was held in that case that the addition of a party was not a novation but rather was a variation. The original agreement continued in existence and the documents adding another party expressed no intention to surrender the original agreement.

36. However, it was acknowledged that the authorities on this matter do not provide a simple test that can be applied. Counsel referred the Tribunal to *Langston Group Corp v Cardiff City FC [2008] EWHC 535 (Ch)*, where Briggs J stated that it will always be relevant to know why the question is being asked as to whether a new party being added means that there is a new agreement.

37. It is the Applicants' position that in the context of this matter, the purpose of asking the question is to know whether the statutory obligation to consult applies to the agreements. It is therefore submitted on behalf of the Applicants that the Varied MA and the 2024 Restated MA are only variations of the Original MA. Further, the definition of a QLTA does not cover a case where a landlord proposes to vary an agreement it has already entered into, and finally that schedule

1 of the Regulations would be impossible to comply with in this matter in any event.

38. Turning to the specific provisions in this case, the Tribunal finds that the Varied MA and the 2024 Restated MA took effect as a variation only and accepts the Applicants' position.

39. Turning firstly to the Varied MA, the Tribunal accepts that the Varied MA did not make any substantive changes to the Original MA; it simply added parties. The Provider is bound by the terms of the original MA to each of the Second to Fifth Applicants on the same terms. The Second to Fifth Applicants will be liable to the Provider for its fees and the Varied MA will exist for the remainder of the term of the Original MA.

40. In reaching this decision the Tribunal considered the Varied MA as provided within the bundle (page 272 of the core bundle), Clause 2.1 provides that "the Provider agrees to provide the Services to the New RPs on the terms of the Original Agreement as if references to LGAH were references to each New RP (save as expressly provided below…" Clause 2.2 provides that "the New RPs each agree to engage the Provider to provide the Services and to comply with the terms and conditions set out in the Original Agreement save as explicitly varied by the terms of this Agreement". Clause 2.3 provides "The Original Agreement (as varied by this Agreement) shall subsist for the remainder of the Term. The provisions of Clause 3.3 of the Original Agreement shall operate such that any extension to the Original Agreement shall require the agreement for the Provider and each RP and shall be binding on each RP." Further Clause 11 provides "Future variations to the Original Agreement shall require the written agreement of the Provider and each RP".

41. Turning to the 2024 Restated Agreement, the Tribunal accepted the evidence of Douglas Pope which summarised the relevant changes from the varied MA and that the 2024 Restated Agreement was a variation. The variations made are as follows:

    a. Recital E records that the parties to the Varied MA have agreed that it is a variation of the Original and Varied MA pursuant to the right to vary (clause 39) and extended (clause 3) (core bundle page 308).

    b. Recital F records that the Sixth to Ninth Applicants are also parties (core bundle page 308).

    c. There are no material changes to the Services provided under the Original and Varied MA but there are new specific requirements, such as fire safety.

    d. The agreement is to subsist for the 'Term': clause 3.2 (core bundle page 319). This is a period of 5 years from and including the 'Extended Term Commencement Date', being 1 October 2024 (core bundle page 311). It is subject to earlier termination but cannot be extended.

    e. The 'Annual Fee' , Clause 1.1 (page 308 of the core bundle) continues to be calculated by multiplying the 'Unit Fee' by the number of properties allocated from time to time to the Provider under the agreement. This is subject to a new provision under which there will be reductions in the Unit Fees where the Provider is managing more than a certain number of properties (500 in the case of Great Places, but differing between

Providers). The Annual Fee continues to cover all the Services save for those specifically excluded by the definition of 'Annual Fee Services' (core bundle page 309). The Applicants state that this is materially the same as under the Varied MA.

f. Clause 10.3 makes further provision for the Annual Fee (core bundle page 328). It provides that the Unit Fee may only be varied in one of the following ways:
    i. By a CPI indexed uplift applied each year on the 'Review Date': clause 10.3.2.(a). This is the same as under the Varied MA.
    ii. In accordance with clause 16.3: clause 10.3.2.(b). This is a new provision which will enable an Applicant to reduce the Unit Fee where it decides to remove a particular service, temporarily or permanently (core bundle page 340).
    iii. By agreement pursuant to any change in service under specified clauses: clause 10.3.2.(c). These are the same as under the Varied MA save that:

        a. Where properties are owned by the Fourth Applicant, they may be subject to additional reporting requirements (because of the fund which may invest in it). It is recognised this may have an impact on the Annual Fee. New clause 7.9 (core bundle page 323) makes procedural provision for this.
        b. Clause 16.2, which is concerned with 'Change in Services' (core bundle page 339), has been improved to provide a procedure to be followed. New clause 16.4 is concerned with changes to the 'Assurance Framework' which may result in increased costs to a Provider.
    iv. A submission can be made by a Provider to revise the unit fee but the Applicants are not bound to agree. (This is the same as the Varied MA.)

Tribunal Decision – The Requirement to Consult

Was each Varied MA a QLTA which was required to be consulted upon under Schedule 1?

42. 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 12 months".

43. Regulation 1(3) of the Service Charges (Consultation Requirements) (England) Regulations 2003 (Authorities Bundle – page 11) is focused on new agreements not variations as the wording used is "intends to enter":

> " These Regulations apply where a landlord— (a) intends to enter into a qualifying long term agreement to which section 20 of the Landlord and Tenant Act 1985 applies on or after the date on which these Regulations come into force"

44. Further ""the relevant matters", is defined within the Regulations as "the goods or services to be provided or the works to be carried out (as the case may be) under the agreement". The wording is focused on proposed rather than existing.

45. Further Schedule 1 paragraph 5 (11) of the Regulations states that "Each proposal shall contain a statement as to the provisions (if any) for variation of any amount specified in, or to be determined under, the proposed agreement". The regulations therefore envisage variations to agreements being made without the need for consultation.

46. For the reasons set out above, the Tribunal finds that the Varied MA is a variation to the Original MA and the providers are to provide services under the Original MA to the Second and Fifth Applicants on the same terms as the Original MA. The Tribunal therefore finds that in the context of the Varied MA, the addition of parties does not amount to a novation. The Original MA provides for variation and also provides for the First Applicant to assign to other group entities. The provider is bound to provide the services under the Original MA to each of the Second to Fifth Applicants on the same terms as the Original MA. Further, the Second to Fifth Applicants will be liable to the Provider for its fees in relation to the properties allocated to the Provider and this continues for the remainder of the term of the Original MA.

47. In relation to the addition of new parties, as set out above, the Tribunal accepts the Applicants' analysis of *Saunders v Ralph (1993) 66 P&CR 335 (QB)* whereby a landlord and tenant agreed to the tenant's son becoming a joint tenant with his father. It was held by Jowitt J that there had not been a novation; the original tenancy continued in existence, having merely been varied. It was emphasised that the documents effecting the addition of the son expressed no intention to surrender the original tenancy. In particular, at page 343 of the judgement, Jowitt J rejects the proposition that the addition of a party to a contract is impossible to achieve except by novation. Further, Jowitt J concludes that there seems to be a very wide latitude given to parties to vary an existing contract.

Was each 2024 Restated MA a QLTA which was required to be consulted upon under Schedule 1?

48. For the reasons set out above, the Tribunal finds that the 2024 Restated MA is a variation to the Original MA and Varied MA. The Tribunal accepts the analysis of Douglas Pope in terms of the additions made by the 2024 Restated MA.

49. The Tribunal finds that the addition of new parties in the context of this matter does not mean that a new agreement was entered into.

Should the Tribunal dispense with the Statutory Consultation requirements in respect of the Varied MAs and/or the 2024 Restated Agreements?

50. Despite the Tribunal's findings in relation to the requirement to consult, the Tribunal nevertheless continued to consider whether or not dispensation should be granted.

51. The Applicants' position is that the Tribunal should grant dispensation and referred the Tribunal to *Daejan Invenstements Ltd v Benson [2013]*. The Applicants' position is summarised in their skeleton argument and statement of case. The Applicants emphasised that the Tribunal should focus on whether the failure to comply with the Regulations has caused the lessees prejudice. It is the Applicant's position that none of the Respondents will suffer prejudice if dispensation is granted in relation to the Varied MA or the 2024 Restated MA (including the proposed agreement with Southern (Optivo)).

52. The Tribunal was provided with statements and statement of cases from the Respondents, which are found within the bundle, which the

Tribunal has read. Additionally, the Tribunal heard oral evidence from Respondents at the hearing.

53. The main comments made by the Respondents can be summarised as follows:

i. Increase in Unit Fee

The Respondents submitted that where there was an increased unit fee because a replacement provider was used, the lack of consultation meant that the Respondents had not had the opportunity to comment on this. Further it was suggested that a blended management fee should be considered to take account of the range in price between shared ownership and tenanted properties.

In reply, the Applicants submitted that there was no prejudice to the Respondent because the unit fee had been arrived at through a two part competitive procurement exercise undertaken in 2018. Further, the Applicants submitted that a landlord is not bound to appoint the contractor whose estimate is the lowest. Further, each Respondent can take issue with the costs incurred as section 27A of the Act means that tenants can bring an application to this Tribunal so the Tribunal can determine the payability and reasonableness of service charges.

ii **Housing management services required by different providers were not the same.**

Respondents commented that a one size fits all approach that they believed the Applicants had adopted meant that there was a disparity between what some tenants needed and what they received. Additionally, several Respondents commented that

there were overlapping services meaning that they paid duplicated management fees.

In reply, the Applicants submitted that there was no prejudice to the tenants. The services in the Varied MA and the 2024 Restated MA are the same as the range of housing management services provided in the Original MA and are intended to include services that may reasonably be required to be undertaken over the life of the agreement. The Applicants submitted that having one unit fee per region per property provides certainty and was the way that the Applicant tendered with Providers.

Further the Applicants submitted that if additional services were required the unit fee would be lower because of the economies of scale secured through the 2019 tender process.

Finally, the Applicants denied that there are any overlapping services provided by the provider and any other manager. The Respondents should not be paying any duplicated fees. Although outside the scope of this case, Douglas Pope agreed to look at specific queries that were raised within the hearing.

iii **Providers' Performance**

The Respondents pointed to examples of poor performance and, in particular, stated that the lack of consultation meant that they were unable to comment on the standard of service they were receiving.

Douglas Pope in his evidence to the Tribunal explained that a performance management and assurance framework was in place and that providers' performance was monitored through key performance indicators. He confirmed that there is monitoring of performance through the Varied MA and 2024 Restated MA. Further the Applicants submitted that Providers are aware that if their performance is not satisfactory, they can

be replaced. Given the way the agreements were tendered and operate, a pool of providers are available and can be used at short notice, which, the Applicants submitted, is an advantage.

iv Alternative Quotations

The Respondents confirmed that they had tried to identify the suppliers they would have nominated if the consultation had taken place, but confirmed that companies they had approached had not been prepared to provide any quotes or information.

54. In reply to all of the Respondents' points, the Applicants submitted that the Respondents will not suffer prejudice if dispensation is granted in relation to any of the Varied MAs or 2024 Restated MAs. Dispensation will make no difference to a Respondent where the Varied MA / 2024 Restated MA is made between the First Applicant and the Respondent's existing provider. The Respondent will continue to receive the same Services from the same Provider. Additionally, the terms of the Varied MA are the same as those of the Original MA and the Applicants further submitted that the terms of the 2024 Restated MA are actually more beneficial than the terms of the Original MA.

Tribunal Decision - Should the Tribunal Dispense with the Statutory Consultation requirements in respect of the Varied MAs and/or the 2024 Restated Agreements?

55. The Tribunal finds that the Respondents will not suffer prejudice if dispensation from consultation is granted in relation to the Varied MAs and the 2024 Restated MA. The Tribunal therefore finds that it is reasonable to dispense with all the requirements of Schedule 1 to the Service Charges (Consultation Requirements) (England) Regulations

2003 in respect of each of the Varied MAs and each of the 2024 Restated MAs.

56. Section 20ZA(1) of the Act provides that a Tribunal may dispense with consultation requirements if it is "satisfied that it is reasonable to dispense with the Requirements". The Tribunal reminded itself of the Supreme Court decision in *Daejan Investments Ltd v Benson [2013] 1 WLR 854* where it was held that the existence or absence of prejudice to lessees due to non-compliance with the Regulations was the fundamental consideration. The Tribunal should not concern itself with whether the non-compliance was serious and egregious or only technical and minor. Further, the Supreme Court in *Daejan* indicated that the issue on which the Tribunal should focus when considering an application for dispensation*:*

> " must be the extent, if any, to which the tenants were prejudiced…by the failure…to comply…"

57. Lord Neuberger referred (at paragraph 65) to relevant prejudice, saying the only disadvantage of which tenants "could legitimately complain is one which they would not have suffered if the [consultation requirements] had been fully complied with, but which they will suffer if an unconditional dispensation were granted".

58. Applying this analysis to the present case, the Tribunal finds that the Respondents will not suffer prejudice if dispensation is granted for the Varied MA or 2024 Restated MA. Dispensation will make no difference to a Respondent where the Varied MA or the 2024 Restated MA is made between the First Applicant and the existing Provider. This is because the Respondent will continue to receive the same service from the same provider. The Tribunal accepts the analysis of the Applicants that in this situation, the terms of the Varied MA are the same as the

Original MA, and that this includes the Unit Fee. As to the 2024 Restated MA agreement the Tribunal accepts that the terms are no less beneficial than the Original MA and accepts that the additional requirements, particularly in relation to the Housing Regulator's compliance framework, enhance the agreement. In relation to Unit Fees, whilst it is true that some fees are higher than under the Original or Varied MA, this is because of the operation of the Original MA. The Tribunal accepts the Applicants' reassurance that going forward, any increase is likely to be limited to the annual CPI increase.

59. Turning to the situation where the reversion to a Respondent's lease is later transferred to one of the Applicants and that Applicant contracts with the existing provider, the Tribunal again accepts that this will make no difference to the Respondent as the services would be provided by the same provider on the same terms. There can therefore be no prejudice in this.

60. In the situation where an Applicant appoints a replacement provider, the Tribunal accepts that the 2024 Restated MA would be materially the same as the agreement with the existing provider. Whilst the unit fee would be different, the Tribunal accepts that the unit fee will be arising out of the competitive tender process that took place before the Original MA was entered into, as well as the negotiation that took place.

61. Turning to the Respondents' specific objections as set out above, the Tribunal notes and accepts the replies given by the Applicant to the objections raised by the Respondents. Specifically, the Tribunal accepts the evidence of the Applicants that they undertook a five stage procurement exercise in late 2018 to secure services of established organisations who were experienced in the affordable housing market on a long term contract for 10 years. The Tribunal accepts the evidence

of Douglas Pope and in particular his explanation of the steps undertaken in the tender process as set out at pages 150 to 152 of the core bundle. The Tribunal is therefore satisfied that, as a result, the Applicants had tested the market and built a pre-selected group of eligible suppliers. If a new consultation exercise were undertaken, the existing Providers would not be bound by the existing unit fees.

62. Further, the Tribunal accepts the evidence of the Applicants that if Providers were selected on a scheme-by-scheme basis or on shorter contracts this would mean that economies of scale could not be achieved such that exist under the present arrangements.

63. The Tribunal further accepts the Applicants' reasons for entering into the Varied MA and 2024 Restated MA, and in particular the need for them to have the ability to transfer reversions of existing leases from the First Applicant to another Applicant. This will mean that investors who require their investment to be ringfenced can have this achieved, however the landlord of any Respondent will still be within the L & G Group. Any transfer of a reversion will be a change of form not substance. There will therefore be no disadvantage to the Respondents.

64. The Directions issued by the Tribunal in this case dated 17 June 2024 (page 9 of the core bundle) confirmed that Respondents wishing to oppose dispensation may need to identify (for example) what observations they would have made or what suppliers they would have nominated if the consultation requirements had been complied with. The Respondents were invited to provide the Tribunal with evidence to show what difference this would have made.

65. The Tribunal did not have before it any evidence of suppliers the Respondents would have nominated if the consultation requirements had been complied with. Whilst it is acknowledged that Respondents told the Tribunal that they had difficulty obtaining this information, there is no evidence before the Tribunal of suppliers that Respondents would have nominated.

66. The Tribunal finds that for the reasons set out above there is no prejudice to the Respondents and that it is therefore reasonable to grant dispensation. However, in making this finding the Tribunal acknowledges that in the cases of Karbon, Regenda and Southern (Optivo) no agreement has yet been reached as to the 2024/25 unit fee. The Tribunal therefore finds that, given this uncertainty, it is reasonable to grant dispensation subject to the conditions offered by the Applicant in order to limit the recoverable unit fee for 2024/25 for Karon, Regenda and Southern (Optivo).

Conditions to be Imposed

67. The Applicants offered conditions that limit the recoverable unit fee for 2024/25 for Karon, Regenda and Southern (Optiovo) to the fee it would have been under the Original MA (i.e CPI increases only). For any later years, the contractual provisions will continue to apply with any shortfall borne by the relevant Applicant.

68. It is the Applicants' position, which the Tribunal accepted, that the conditions ensure that any relevant prejudice to the Respondents is removed.

69. The Applicants propose the following conditions:

"a. In the event that any Applicant appoints a replacement Provider in place of an existing Provider, whose annual "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) is higher than that of the Respondent's existing Provider, it must write to the Respondents concerned and explain the reasons for the change and appointment.

b. For the 2024 Restated Agreement with Karbon, the maximum "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) that a Respondent may be required to pay for the year until 30 September 2025 is £424.83 (excluding VAT).

c. For the 2024 Restated Agreement with Regenda, the maximum "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) that a Respondent may be required to pay for the year until 30 September 2025 is £241.31 (excluding VAT).

In the event that the First to Ninth Applicants and Southern (Optivo) enter into an agreement in materially the same form as the 2024 Restated Agreement, there be dispensation from the said requirements to consult in respect of that agreement. This is subject to the following conditions:

a. In the event that any Applicant appoints Southern (Optivo) as a replacement Provider in place of an existing Provider, where its annual "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of

that agreement) is higher than that of the Respondent's existing Provider, it must write to the Respondents concerned and explain the reasons for the change and appointment.

b. The maximum "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) that a Respondent may be required to pay for the year until 30 September 2025 is £367.77 (excluding VAT).

70. The Applicants further offered a condition that the Applicants will bear the costs of making this application themselves and will not seek to recover any of those costs. The Tribunal accepts this and makes this condition.

71. Finally, Iago Lopez in his written submission suggested a condition that the Applicants and any new registered providers will terminate the Varied MAs at the end of the 5 year initial term, as defined in these agreements. The Tribunal does not make this condition as the Tribunal finds that this would be too restrictive and is also satisfied that the conditions imposed are reasonable.

Decision

The Tribunal finds as follows:

i. There be dispensation from the requirements to consult in respect of each of the 13 Varied Management Agreements. This includes the Varied Management Agreement with Southern (Optivo) as has been extended beyond 30 September 2024.

ii. There be dispensation from the said requirements to consult in respect of each of the 6 2024 Restated Management Agreements.

iii. The dispensation in respect of the 2024 Restated Agreements is subject to the following conditions:

a. In the event that any Applicant appoints a replacement Provider in place of an existing Provider, whose annual "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) is higher than that of the Respondent's existing Provider, it must write to the Respondents concerned and explain the reasons for the change and appointment.

b. For the 2024 Restated Agreement with Karbon, the maximum "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) that a Respondent may be required to pay for the year until 30 September 2025 is £424.83 (excluding VAT).

c. For the 2024 Restated Agreement with Regenda, the maximum "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) that a Respondent may be required to pay for the year until 30 September 2025 is £241.31 (excluding VAT).

4. In the event that the First to Ninth Applicants and Southern (Optivo) enter into an agreement in materially the same form as the 2024 Restated Agreement, there be dispensation from the said requirements to consult in respect of that agreement. This is subject to the following conditions:

a. In the event that any Applicant appoints Southern (Optivo) as a replacement Provider in place of an existing Provider, where its annual "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) is higher than that of the Respondent's existing Provider, it must write to the Respondents concerned and explain the reasons for the change and appointment.

b. The maximum "Unit Fee per Property for the first … properties" for "Shared Ownership" (as defined by clause 1 of that agreement) that a Respondent may be required to pay for the year until 30 September 2025 is £367.77 (excluding VAT).

5.It is a further condition of the terms of all of these dispensations that the Applicants will bear the costs of making this Application themselves and will not seek to recover any of those costs from any of the Respondents

Section 27A of the Act

These dispensation proceedings do not decide whether service charges are payable or unreasonable and do not stop any party from making an application to the Tribunal under section 27A of the Act to determine payability and or reasonableness of service charges.

Name: Judge Bernadette MacQueen Date: 13 January 2025

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).

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 20

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section "relevant contribution", in relation to a tenant and any works or agreement, is the amount, which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

Section 20ZA

(1) Where an application is made to a leasehold valuation 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.