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**FIRST-TIER TRIBUNAL**
**PROPERTY CHAMBER**
**(RESIDENTIAL PROPERTY)**

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| **Case Reference** | : | **LON/00AT/LSC/2013/0098** |
| **Property** | : | **Flat 7, Devonshire House, School Road, Hounslow, Middlesex TW13 1QX** |
| **Applicant** | : | **Mr B Singhal** |
| **Representative** | : | **In person** |
| **Respondent** | : | **The Hilliard Property Co Limited** |
| **Representative** | : | **Wallace LLP** |
| **Type of Application** | : | **Determination of liability to pay and reasonableness of service charges** |
| **Tribunal Members** | : | **Mr T Powell LLB**<br>**Mr M Taylor FRICS**<br>**Mr J Francis** |
| **Date and venue of Hearing** | : | **3 July 2013 at 10 Alfred Place, London WC1E 7LR** |
| **Date of Decision** | : | **31 July 2013** |

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**DECISION**

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## Summary of the tribunal's decisions

(1) All of the sums challenged by the applicant (apart from the charge for solicitors' costs which was withdrawn) are reasonable and payable by him;

(2) However, the tribunal draws the parties' attention to its specific findings concerning the insurance: if the full amount of the insurance premium for the 12 months from 1 November 2009 (i.e. £4,219.86) had been included in the accounts to 31 March 2010 (which were not available to the tribunal) and had that premium already been paid by leaseholders as part of those accounts, then the further charge of £2,462 for the period 1 April 2010 to 1 November 2010 would not now be payable in addition. The parties are to resolve this themselves but if unable to do so, they should write to the tribunal within 14 days in accordance with paragraph 84 of this decision; and

(3) The tribunal declines to make an order under section 20C of the Landlord and Tenant Act 1985.

## The application

1. This was an application for a determination of liability to pay and reasonableness of service charges. The application had been brought by Mr Bhupendra Singhal, the long leaseholder of flat 7, Devonshire House, School Road, Hounslow, Middlesex TW3 1QX. Mr Singhal purchased the property on or before 2002 as an investment and it has been tenanted since then. The freeholder is Halliard Property Company Limited, ("Halliard"), part of the Freshwater group of companies. A leaseholder-owned company acquired the right to manage the building on 8 May 2010 (although there was a dispute about the exact date, about which see below).

2. In his original application, received by the tribunal on 13 February 2013, Mr Singhal disputed:

- For the period 01/04/2003 to 31/03/2004, service charges relating to the replacement of electrical services (total cost: £21,851; Mr Singhal's 10% share: £2,185.10);

- For the period of 01/04/2004 to 31/03/2005, service charges relating to various other works (total cost: £2,332; Mr Singhal's share: £233.20);

- For the period of 01/04/2010 to 07/05/2010 (when the right to manage was acquired from the freeholder), all items on the service charge certificate dated 18 July 2011 (Mr Singhal's share: £635.40), a solicitors' fee of £600 and interest of £106.52.

3. In addition, the application raised several questions, which Mr Singhal sought to be answered by the tribunal including:

- Whether the landlord had complied with the consultation requirement under section 20 of the 1985 Act in respect of the 2004 and 2005 works;

- Whether the works were within the landlords obligations under the lease, whether they were necessary and/or whether they were works of maintenance and repair, or improvement.

4. At the pre-trail review on 6 March 2013, it was clear that Mr Singhal had already paid the 2003-2005 service charges, many years previously. The tribunal raised a concern that the disputed items were very old and that the landlord may have difficulty locating documents relating to such expenditure. The tribunal also expressed the view that Mr Singhal had not given sufficient reasons in his application as to why he now disputed those service charges.

5. The tribunal gave directions for the preparation of the case to a hearing. These included a requirement for Halliard to send Mr Singhal copies of all relevant documents relating to the 2003-2005 works by 28 March 2013; for Mr Singhal to prepare a statement of case and a schedule of items in dispute, supported by documents and alternative quotes by 12 April 2013; and for Halliard to respond to that schedule and provide its own statement, with invoices, proof of payments and other documents by 3 May 2013. It was Mr Singhal's responsibility to prepare, file and serve the bundles of documents by 18 June and a hearing was set for Wednesday, 3 July 2013.

6. Although neither party made a complaint to the tribunal before the hearing, it appears that the parties did not comply strictly with the directions order. In particular, Halliard did not provide disclosure by the 28 March 2013 and, athough Halliard's solicitors had requested an extension for disclosure for 13 April 2013, that date was not met either. Having no choice but to wait for Halliard's documents, Mr Singhal did not submit his detailed case by the 12 April; however, he did serve a statement of case, together with a schedule of the items in dispute and documents in support, by 8 May 2013.

7. Having heard nothing further from Halliard, Mr Singhal then filed and served his bundle of documents on 27 June 2013. His bundle crossed with a lever arch file of documents from Halliard, which was also filed with the tribunal and served on Mr Singhal, on 26 June 2013.

## The hearing

8. At the hearing on 3 July 2013, the tribunal was provided with a skeleton argument prepared by Ms Nicola Muir, a barrister instructed on behalf of Halliard, and some additional documents from Mr Singhal, which he asked should be added to the back of his bundle.

## Preliminary application

9. Mr Singhal said that Halliard had failed to comply with the tribunal's directions that had been made at the pre-trial review. He had only received Halliard's bundle of documents at a very late stage, less than a week before the hearing. There had been a lot to read and he had had difficulty taking it all in. He had not had an opportunity to respond to the bundle of documents, as the directions had provided. As a result of the delay, Mr Singhal complained that he had been caused huge prejudice and he therefore made an application for the tribunal to reject Halliard's response, in its entirety.

10. On behalf of Halliard, Ms Muir pointed that Mr Singhal had also been late in particularising his statement of case and in providing his bundle of documents. Until Halliard had received the detailed statement of case and the Scott schedule from Mr Singhal, the company was unable to know what case it had to answer. In effect, Mr Singhal was seeking to re-open service charges he had paid 10 years previously. The relevant documents had not just been lying around and, realistically, the landlord had been put into an impossible position. Ms Muir complained that Mr Singhal could have challenged the particular service charges at any time in the last 10 years but, having done so at a very late stage, the tribunal should take into account the documents which had been found and which related to the matters in dispute. She suggested that Mr Singhal needed to rely on the documents himself, in any event, in order to prove his case and the appropriate way forward was for the tribunal to proceed with the hearing, taking into account the landlord's documents, which Mr Singhal had had the opportunity to read.

## Decision on the preliminary application

11. After break of 10 minutes the tribunal gave its decision to the parties, namely that the documentation provided by Halliard would not be rejected, but that Mr Singhal was entitled to an adjournment of the hearing at Halliard's cost, if he required a greater opportunity to read, digest and respond to those documents.

## Reasons

12. The reasons for the tribunal's decision were that both parties had been in breach of the tribunal's directions, neither party had complained to the tribunal in the period between the pre-trial review and the hearing, the bulk of the service charges in dispute were 10 years old and had already been paid by Mr Singhal, his delay in challenging the service charges put Halliard into extremely difficult position, it had taken them a considerable time to locate and copy the documents relating to the service charges in dispute and the bulk of the documents in the lever arch file were relevant to the determination that the tribunal was being asked to make.

13. In so far as Mr Singhal may be prejudiced by Halliard's delay, the tribunal made it clear that it was his absolute right to have an adjournment of the hearing (at Halliard's cost) to give him more time, if that is what he wished. The tribunal's decision balanced the interests of parties and the interests of justice.

14. Mr Singhal made it clear that he did not wish to have adjournment of the hearing under any circumtances. He said that if the tribunal had decided not to reject Halliard's evidence, he still wanted the matter to proceed on that day. He did not require any additional time that morning to read the documents; all he asked was that the tribunal bear in mind the effect that the late service had had on his case and to make due allowance for this when considering his case.

15. The tribunal then proceeded to deal with all of the issues in dispute in the Scott schedule, starting with the electrical works which were by far and away the greatest in value, and then dealing with the other issues in turn. It should be noted that although the Halliard documents had been served on Mr Singhal very late in the day, during the hearing he then demonstrated a fairly impressive working knowledge of those documents, and he was able to make cogent and relevant submissions in relation to them, for which the tribunal is grateful.

## The tribunal's decisions on the substantive disputes

16. The tribunal's determinations and its reasons on the items in dispute are set out below.

### 2003 electrical works

17. Mr Singhal complained that no works were needed as the electrical installations were in fine working order at the time. In any event, the cost of the works was excessive, he had not been consulted before the works were carried out and/or the landlord had split the works into many contracts to avoid the requirement for consultation. Finally, he

argued the work was not so much work of maintenance, but work of improvement, which Mr Singhal claimed was not chargeable under the terms of the lease.

## The tribunal's decision

18. The tribunal determines that the full amount of the major electrical works, in the sum of £21,851 is payable and reasonable. Mr Singhal's share is 10%, namely £2,185.10

## Reasons for the tribunal's decision

19. In his application form, Mr Singhal described flat 7 as a two-bedroom flat in a purpose-built block of flats. The tribunal had no evidence of the date of construction, but the papers included a conveyance dated 1919 and photographs of the building suggested that it may have been constructed in the 1920s. The lease to flat 7 itself was dated 5 April 1984 and it ran for 99 years from 25 March 1978. An examination of the Land Registry freehold title showed that the earliest lease of the building was dated 5 July 1979. Therefore, by the time that the electrical replacement works were proposed, the wiring and the electrical fittings in the building were more than 24 years old, perhaps considerably older than that.

20. By letter dated 14 August 2003, Halliard served a notice of intended works, as required by section 20 of the Landlord and Tenant Act 1985. The proposed works were said to be "the renewal of the worn out electrical mains, distribution boards and associated equipment, lighting and small power services, to the common parts to the building. The works will also include the renewal of the electrical mains connection to each flat".

21. Halliard's papers also included a detailed electrical specification for the replacement of all the electrical services to Devonshire House.

22. Although the tribunal would like to have seen the reports on the electrical installation upon which the specification was based, it accepted Halliard's explanation these were no longer available, 10 years after the event. The tribunal is satisfied from the specification it has seen, from the age of the block and, therefore, from the age of the existing electrical wiring, that the work was justified. The need for new electrical fittings was also borne out by the photograph of the old, disconnected light fittings supplied by Mr Singhal himself.

23. With regard to the cost, the tribunal noted that the cheapest of the two quotes had been accepted, £16,378.38 as against £20,600 (both exclusive of VAT), and that both contractors were independent of the landlord. Mr Singhal failed to give a figure that he was be prepared to

pay for the electrical works and did not produce any evidence or alternative quotes in support of his allegations that the costs incurred were excessive. In the tribunal's experience an overall cost of just over £21,000 (including VAT) for such works is not excessive and, in the circumstances outlined above, it is a reasonable amount to charge leaseholders through the service charge.

24. With regard to consultation, the requirements under section 20 of the 1985 Act were those which pre-dated the changes brought about by the Commonhold and Leasehold Reform Act 2002. Halliard had complied with the requirements of section 20(4) as original drafted, by providing two estimates, one of them at least from a person wholly unconnected with the landlord. Copies of those estimates had to be included with the notice, which on the face of the letter of 14 August 2003 they were. Leaseholders were given one month to which to make comments or observations.

25. Mr Singhal complained that he had not personally received a copy of the notice of works. He said that he had purchased the flat in 2002, but lived at another address in Cranston Close, Hounslow, Middlesex DW3. He complained that the notice of works must have been sent by the landlord to the flat itself and that, as a result, he had not been properly consulted. When pressed, Mr Singhal said that his brother-in-law had been living at the flat at the time and he claimed that his brother-in-law would have passed on any notice that had been received at the flat. As he did not do so, Mr Singhal was not even sure the notice had been sent to the flat, underlining he said the failure to consult him about the works.

26. It was said on behalf of Halliard that it had been placed in impossible position, trying to prove service of the notice of works 10 years after the event. The company had only kept the master copy of its letter to leaseholders, which was the practice at the time, not copies of the individual letters sent to leaseholders.

27. While Mr Singhal had produced some correspondence about Halliard's alleged failure to write to him at his home address in Cranston Close, that correspondence post-dated the notice of works to leaseholders.

28. Mr Singhal had produced no evidence to the tribunal to suggest that he had provided the Cranston Close address to the landlord prior to August 2003, or at all, nor had he produced any earlier complaints about the lack of communication from the landlord to Cranston Close.

29. Taking all matters into consideration, the tribunal concluded that the landlord had indeed been placed in impossible position, trying to prove service of a notice of works 10 years after the event. It was satisfied that notices had been sent to leaseholders, and to Mr Singhal, at least to the flats in the building. With regard to flat 7, the tribunal noted that in

the Land Registry leasehold title, Mr Singhal's address was given as "7 Devonshire House" and not Cranston Close, and therefore concluded that the landlord was entitled to serve the notice of works at the flat itself. Furthermore, there was no evidence to suggest the landlord had any other address for Mr Singhal at the time.

30. The tribunal also noted in passing that the lease itself provides in clause 3(d) that any notices or legal proceedings required to be served under the lease shall be sufficiently served on the lessee if posted or left addressed to the lessee at the flat.

31. Even if there had been a defect in the consultation procedure (which would be contrary to the tribunal's findings) Halliard's barrister raised the prospect of an application being made to the county court (under the original section 20(9)) for an order to dispense with all or any of the relevant requirements. In the light of the findings above, the tribunal is satisfied that a court would have no difficulty in saying that the landlord had acted reasonably in this case (being the test at the time) and, in the spirit of the recent Supreme Court decision of *Daejan Investments Ltd v Benson & Ors* [2013] UKSC 14, dispensation would be given.

32. With regard to the allegation that the works were an "improvement", the tribunal is conscious that there is always an element of improvement when repair works are undertaken to old installations. The tribunal does not accept that these electrical works were improvements and Mr Singhal produced no evidence (for example, in the form of an independent report or assessment, either contemporaneous or recent) to suggest that these works constituted an "improvement". In any event, clause 2(2)(a)(vi) of his lease states that the services charges may include "the cost of all other services which the Lessor may at its absolute discretion provide or install in the said Buildings for the comfort and convenience of the lessees." In the tribunal's view that clause would cover the renewal of the electrical works if, for any reason, they were held not to constitute works of repair.

**Garden maintenance**

33. The total value of garden maintenance in 2003 was £1,565 of which £156.50 was claimed against Mr Singhal. His complaint was simply that "no maintenance was done during this period".

34. Although this item was not included in the original application form, Halliard produced details of some of the invoices raised in respect of this service charge item between March 2003 and February 2004. The gardening work was undertaken by a company called Prompt Refurbishing Ltd. Mr Singhal complained that this company appeared "to be doing everything for the landlord" and that it was simply

incredible that this could be so. Although he had not been living in the flat at the relevant time, his brother-in-law who was the tenant had complained to him about the lack of gardening and cleaning in the building. Mr Singhal also said that there had been numerous complaints by other leaseholders in the building.

**The tribunal's decision**

35. The tribunal determines that the full amount of the gardening maintenance charge was payable and reasonable.

**Reasons**

36. Mr Singhal had no personal knowledge of whether any gardening was carried out or not. Although he gave oral evidence about what his brother-in-law had told him 10 years ago, there was no letter or witness statement from the brother-in-law to confirm this. Mr Singhal's explanation was simply that his brother-in-law "worked in Cardiff" and was not accessible.

37. There was evidence provided by Halliard that gardening work had been done and paid for. There was no evidence from Mr Singhal that gardening had not been carried out or that there had been contemporaneous (or any) complaints by him or by other leaseholders about the lack of gardening.

**Asphalting**

38. The cost of carrying out asphalting works to balcony walkways in 2003 was £822 in total. In addition, there was a charge for applying sealant to walkway joints abutting the properties at £388. In both cases Mr Singhal said that "no work was needed as items/part of the property was working in fine order. No work was carried out".

**The tribunal's decision**

39. The tribunal determines that the full costs of the asphalting works and sealing works are payable and reasonable.

**Reasons**

40. Mr Singhal had no personal knowledge as to whether or not the asphalting works had been carried out. He produced no evidence to support his allegation. On the contrary, there was very strong documentary evidence that the works had been done. This consisted of two invoices relating to asphalting and two invoices relating to

associated silicon sealing works. In addition, the costs appeared in contemporaneous service charge accounts produced at the time.

**Renewing windows to the common parts & renewing a window and door frame**

41. The total cost for the window works in 2003/2004 was £2,233 for renewing the windows to the common parts and £169 for renewing a window and door frame.

42. Mr Singhal said that no work was needed, that the costs were excessive, no consultation was carried out and that it was an unfair attempt by the landlord to split one item into many.

**The tribunal's decision**

43. The tribunal determines that the costs of renewing the windows and the door frame are all payable and reasonable.

**Reasons**

44. The tribunal was satisfied there was a need for work to the windows. An expenditure authorisation dated 14 April 2003 sets out the works required to the windows and states that these works are an "insurance risk requirement". While it was unfortunate there was no evidence from insurers to support their requirements, the tribunal was not surprised after such a long period of time. In any event, the reason for the works was given as: "Windows defective and time worn. Beyond economic repair". The quotes obtained were to replace timber box sash windows and to match existing uPVC windows, which the tribunal accepts is a sensible approach to minimise future maintenance. The landlord obtained two quotes and selected the cheaper of the two.

45. For his part, Mr Singhal produced no evidence to support his allegations. With regard to the consultation process, for the reasons given above in relation to the electrical works, the tribunal found no evidence from Mr Singhal to suggest that consultation had not properly taken place.

46. The works were clearly separate matters and there was no justification to support Mr Singhal's allegation that the landlord had deliberately split the costs to avoid consultation.

**Repairs and redecorations**

47. The 2003/2004 costs were: £1,050, following water ingress; £877, following another instance of water ingress; £591, for renewal of the

side entrance gate, lock and side panel; and £225, for redecorations to the wall adjacent to the ground floor entrance.

48. Mr Singhal said that the costs were excessive, no consultation was carried out and this was unfair attempt by the landlord to split one item into many.

**The tribunal's decision**

49. The tribunal determines that the costs of repairs and redecorations are payable and reasonable.

**Reasons**

50. The documents established that the works were carried out and were in respect of four separate items. It is correct that there was no consultation in relation to these matters, but the only item to be affected was that for repairs and redecorations, which was only £50 above the consultation limit. As before, the tribunal had no doubt that dispensation would be granted by a court, since the landlord had acted reasonably in carrying out repairs and redecorations following water ingress in property, at a level that was very close to consultation limits.

51. Mr Singhal produced no evidence to suggest that the costs were excessive in any way and the tribunal did not find them so.

**Fabricating and fixing steel door**

52. The costs claimed by the landlord were: £1,350 for the steel door and frame to the front entrance; £752, for installing new timber to the second front door frame (at the side of the building); and £300, for wood dressing around the door.

53. Mr Singhal's complaints were the same as for previous service charge items. With regard to the apparent requirement of insurers for two steel doors to be inserted, one to the front entrance and one to the side entrance, Mr Singhal questioned why was only one steel door inserted and the other not?

**The tribunal's decision**

54. The tribunal determines that the costs of fabricating and fixing the steel door and related works were all payable and reasonable.

## Reasons

55. The evidence was that only one steel door was inserted; and an analysis of the invoices showed that only the cost of one steel door had been charged to leaseholders, with timber work and dressing to the other door at the side of the building.

56. The fact that insurers had required two steel doors to be inserted, did not affect the payability of the cost of the insertion of one steel door, or the timber work to the second entrance. There was evidence produced by Halliard that the previous condition of the doors to the building was a security risk and there were recommendations for replacement in a crime prevention report.

57. There was no evidence that Mr Singhal had complained about the need for these works, the standard of them or their cost at the time. There was no evidence from Mr Singhal that the amount spent on the doors was unreasonable, for example, in the form of alternative quotes.

58. In the tribunal's experience the costs claimed by the landlord for this work were not obviously unreasonable. Two quotations had been obtained and, for the reasons given above in relation to electrical works, the tribunal were satisfied that consultation had been carried out (a section 20 notice was contained within the Halliard papers) and even if it may have been defective (about which there was no evidence), this was a case where dispensation would readily be granted by the court.

## Disputed service charges for the period 1 April 2010 to 7 May 2010

59. The initial challenge by Mr Singhal was because leaseholders had acquired the right to manage in mid-2010 and, as a result, Halliard was no longer entitled to claim service charges after the right to manage had been acquired. However, it appeared that Mr Singhal was labouring under a misapprehension as to the date when the right to manage had been acquired from Halliard.

60. The decision of this tribunal that the RTM company had acquired the right to manage was made on 14 December 2009, but it was not sent to the parties until the 18 January 2010. The decision became final 21 days thereafter, when the time for appeal expired (as a result of section 90(4) of the 2002 Act). That means that the right to manage was acquired on or about 8 May 2010. It was therefore clear that Halliard *was* entitled to raise service charges of leaseholders for period 1 April 2010 to 7 May 2010, which was precisely what it had done.

61. Within that period Mr Singhal challenged the cost of: electricity to the common parts, some £666 in total; re-making joints and renewing a

connecter to a down pipe, £134; repairs and renewals to the common parts lighting, £231; the emergency lighting maintenance contract, £217; the budget-costing in respect of renewals and roof covering, £410; insurance, £2,462; an accountant's fee of £1,896; the landlord's solicitors' fees of £600 (which in fact were withdrawn by Halliard); and interest arrears of £106.52.

62. The reasons for challenging these items given by Mr Singhal reflected many of those referred above; he either disputed that works or services had been carried out or claimed the costs were excessive, or stated that the demands for service charges were not accompanied by a summary of statutory rights and obligations. There were more detailed complaints relating to the insurance, which are set out below.

## The tribunal's decision

63. The tribunal determines that all of the costs demanded in this period are payable and reasonable.

## Reasons

64. The tribunal started by considering the allegations that the demands sent by Halliard were not accompanied by a summary of the statutory rights and obligations of the tenant.

65. The tribunal heard and accepted brief oral evidence from Mrs Vicky Hawkins, the credit control manager for Halliard. She said that the physical production of the paper demands automatically produces the requisite summaries, which are stapled to the letters. Mr Singhal said that he had only received *copies* of the demands by e-mail, sent to him in December 2012, and that these copies had not included the statutory summary. That was disputed by Mrs Hawkins, who said that the e-mail versions of the invoices would have automatically have been included the summary of statutory rights and obligations.

66. While the documentation was a little inconclusive, Mr Singhal did produce what appeared to be some original demands, with the management company strap line in blue print, all of which were stapled in the top left hand corner. Mr Singhal tried to explain the staple marks away by saying that he himself had stapled the demands together and that the marks were not as a result of any action on behalf of management company attaching the summary of statutory rights.

67. Despite this, the tribunal is satisfied on the balance of probabilities that the requisite summary of statutory rights and obligations had been provided to Mr Singhal. This is what the tribunal would expect in the ordinary course of events from an experienced property management company. In any event, the challenge appeared to be purely technical

and the tribunal accepted Ms Muir's submission that any defect in provision of a statutory summary had been cured by Halliard providing a copy in the bundle, which had now been served on Mr Singhal.

**Electricity to the common parts**

68. The tribunal accepted Halliard's evidence while the right to manage took affect on 8 May 2010, the RTM company did not begin paying electricity bills for the building until some time later. Halliard continued to pay the amounts due and was entitled to recover these amounts from leaseholders. There were a number of copies in the bundle relating to the electricity charges and valid demands for payment had been made. There was no evidence from Mr Singhal that the costs were excessive.

**Re-making joints and renewing connector downpipe**

69. The tribunal accepted that this work had been put in place before the RTM company took over, but the work was done after that date. Once again, Halliard had provided copies of the invoices relating to these works and Mr Singhal had produced no evidence to establish either that the works were not carried out or that the costs were excessive.

**Repairs and renewal to commonparts lighting**

70. Once again, there was documentary evidence in the hearing bundle that the work had been carried out before the RTM company had been acquired, but it was invoiced by Halliard afterwards. There was no evidence from Mr Singhal relating to this item to support his allegations.

**Emergency lighting maintenance contract**

71. There was documentary evidence that this was an ongoing contract, where works were invoiced after the RTM company had taken over. There was no evidence from Mr Singhal in relation to this matter.

**Budget-costing in respect of renewal of roof coverings**

72. The tribunal accepted the documentary evidence, namely invoices that showed that the costs were incurred during the year ended 31 March 2008. While the amount was not included in the statement of service charge expenditure for that year, it was noted in the accounts for that year that the costs would be included later, in the statement for the year in which the relevant consultation letters were issued and agreed. There was a copy of a section 20 notice in the bundle and the

consultation was continuing at the date that the right to manage was transferred.

73. There was no evidence produced by Mr Singhal to support his allegations.

**Insurance**

74. Quite a large part of Mr Singhal's case was that there had been a personal injury claim by a third party against the RTM company but that, when the company tried to make a claim on the landlord's insurance, Halliard had denied the validity or existence of this insurance, as regards that claim.

75. The tribunal accepted the landlord's evidence, which was confirmed by documents in the hearing bundle, that on 1 November 2009 the landlord had entered into insurance with Zurich for a period of 12 months. The premium for the 12 months was £4,219.86, representing a monthly charge of £351.66.

76. Mr Singhal's main complaint was that the landlord had denied the validity/ existence of its insurance policy at a time when a third party had made a personal injury claim against the RTM company. Mr Singhal said that he should not have to pay for insurance policy that he could not claim against.

77. However, the tribunal determined that the real issues were: whether insurance was in place, was it at a reasonable cost and was the landlord entitled to claim that cost back from the leaseholders through the service charge?

78. Mr Singhal's produced no evidence that the cost of insurance was unreasonable and the amount charged was not obviously excessive.

79. Mr Singhal also provided no evidence about the nature of the third party personal injury claim against the RTM company or about the validity of such a claim, or otherwise. Although Mr Singhal was able to demonstrate that the personal injury claim had been put to the landlord and rejected, there was no documentary evidence to say that the existence of insurance had been denied by the landlord.

80. For Halliard, Ms Muir submitted that the RTM company should have insured the building themselves but, not having done so, the landlord was entitled to continue its insurance. Halliard rejected Mr Singhal's argument that the cost of insurance was not payable simply because a claim against it had been rejected. Of the full premium, Ms Muir argued, £2,462 was the amount payable for the period between 1 April 2010 and 1 November 2010.

hear his counterclaim for damages and, in any event, the counterclaim was subject to him proving the cause of the leaks.

90. The counterclaim related to damage caused by water penetration into flat 7 in July 2002 and July 2006. In respect of the first leak, Mr Singhal incurred charges of £430 for repairs, which he claimed together with interest £361. In respect of the leak in July 2006, he claimed £800 with interest.

91. For several reasons the tribunal was unable to entertain these claims by Mr Singhal. First, the tribunal accepted that the counterclaims would be statue-barred. The claims do not arise under the 12-year limitation period for claims under a lease, because they are claims in nuisance where the time limit is 6 years.

92. Also, these are not claims in relation to service charges but something entirely different, so that no right of set off arises.

93. In any event, on Mr Singhal's own evidence (a letter to Halliard's solicitors dated 8 May 2013) the cause of both leaks was the overflow of bath water, which is not a liability of Halliard as landlord, but a liability incurred by the tenants of the flat above.

94. For all of these reasons, no deduction is to be made from the sums for which Mr Singhal is otherwise liable to pay landlord by way of service charges.

## Application under s.20C of the 1985 Act

95. In his application to the tribunal Mr Singhal applied for an order under section 20C of the 1985 Act, which gives the tribunal power to make an order that the landlord's costs should not be treated relevant costs for any future service charges. Mr Singhal said that the landlord had been grossly unreasonable and had created hurdles at every step in the last ten years. He also said there was no provision in the lease in the recovery of costs.

96. The tribunal makes no finding as to whether or not the lease allows the landlord to recover its costs through the service charge, and makes no comment on whether or not the position may be complicated by the existence of the right to manage. However, the tribunal's various determinations above mean that Mr Singhal has lost on almost all counts and, therefore, the tribunal declines to make an order under section 20C.

## Concluding remarks

97. By delaying between 9 and 10 years to challenge service charge items that he had already paid, Mr Singhal placed the landlord in an impossible position. While Halliard may be criticised for the delay in producing its documents, at the end of the day the documents it did produce provided sufficient evidence to justify the charges. Despite having been given a clear steer in the directions as to the evidence that would be needed to establish a coherent case, Mr Singhal failed to provide any satisfactory evidence to substantiate his challenge to those charges.

98. At the start of the hearing, the tribunal made a preliminary determination that it should accept the late evidence presented by Halliard. By the end of the hearing, the tribunal was satisfied that it had made the correct decision. Although the tribunal would have granted an adjournment of the hearing to Mr Singhal had he asked for one, there is no doubt that he would have had an uphill struggle to successfully challenge the service charge items in the light of the contemporaneous documentation in support of them.

**Name:** T J Powell **Date:** 31 July 2013