9573

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	**MAN/36UD/LSC/2013/0090** **MAN/36UD/LSC/2013/0100** **MAN/36UD/LBC/2013/0013** **MAN/36UD/LDC/2013/0019**
Property	:	**Flat 4, 18 Langcliffe Avenue, Harrogate, HG2 8JQ**
Applicants	:	**Ms Suzanne Haidar: MAN/36UD/LSC/2013/0090** **Langcliffe Place Ltd: MAN/36UD/LSC/2013/0100** **MAN/36UD/LBC/2013/0013** **MAN/36UD/LDC/2013/0019**
Respondents	:	**Ms Suzanne Haidar: MAN/36UD/LSC/2013/0100** **MAN/36UD/LBC/2013/0013** **MAN/36UD/LDC/2013/0019** **Langcliffe Place Ltd: MAN/36UD/LSC/2013/0090**
Type of Applications	:	**Landlord & Tenant Act 1985 – S27A** **Landlord & Tenant Act 1985 – S20C** **Landlord & Tenant Act 1985 – S20ZA** **Commonhold & Leashold Reform Act 2002 – Section 168(4)**
Tribunal Members	:	**K M Southby (Judge)** **J A Jacobs (Expert Valuer Member)**
Date of Decision	:	**19 November 2013**

DECISION

DECISION

1. The Tribunal finds that there has been no breach of covenant by Ms Haidar.

2. The service charge payable by Ms Haidar to LPL for 2006 to 2012 is as set out in **schedule 1** below, less such sums as have already been received.

3. The Tribunal grants retrospective dispensation in respect of those items for which s20B consultation was not previously obtained.

4. The future budgets for 2013 to 2015 are determined to be reasonable save as amended in respect of the timetable as per **schedule 2** below.

5. The costs of the proceedings are not recoverable from Ms Haidar personally and are not to be added to the service charge account.

PRELIMINARY

6. The Tribunal received an application dated 31 May 2013 from Ms Haidar under s 27A and s20B of Landlord and Tenant Act 1985 in relation to the following years:
   a. 2007/08 (s20B amended to s27A)
   b. 2009/2010 (s20B)
   c. July 2010/Feb 2011 (s20B)
   d. 2011 (s20B)
   e. 2012 (s27A and s20B)
   f. 2013 (s27A)

7. The Tribunal has received three applications all dated 19 June 2013 from Langcliffe Place Limited as follows:
   a. S20ZA Landlord and Tenant Act 1985 – 2006 to 2013
   b. S27A Landlord and Tenant Act 1985– 2012 -2015
   c. S168(4) Commonhold and Leasehold Reform Act 2002 – 2011-2013

8. It was noted that this matter has been before the Tribunal previously under case number MAN/36UD/LSC/2011/0091 which made orders regarding service charge payable in respect of the years 1/7/05 – 30/6/06 and 1/7/06 – 30/6/07, and also for the service charge period 24/12/10 to 25/12/11. The Tribunal restates the position set out at the CMC, namely that it will not reconsider issues during these periods which have previously been before the Tribunal.

9. It is however open to the Tribunal to consider whether the findings of the previous Tribunal have been properly implemented and reflected in the subsequent service charge accounts.

10. Following the Case Management Conference the Tribunal were asked to consider the following issues covering the following time periods.

S27A L&T Act 1985	S20B L&T Act 1985	S20ZA L&T Act 1985	S168 CLRA 2002
1/7/2007 to 24/12/2007		1/7/2007 to 24/12/2007	
25/12/2007 – 24/12/2008		25/12/2007 – 24/12/2008	
	25/12/2008 – 24/12/2009	25/12/2008 – 24/12/2009	
	25/12/2009 – 24/12/2010	25/12/2009 – 24/12/2010	
			25/12/2010 – 24/12/2011
25/12/2011 – 24/12/12	25/12/2011 – 24/12/12	25/12/2011 – 24/12/12	25/12/2011 – 24/12/12
25/12/2012 – 24/12/13		25/12/2012 – 24/12/13	25/12/2012 – 24/12/13
25/12/2013 – 24/12/14			
25/12/2014 – 24/12/15			

11. It was noted by the Tribunal that much confusion has ensued from the original accounting period by previous managing agents Glen Charter Properties Limited being 1 July to 30 June, and the Service Charge year running 25 December to 24 December. It was agreed by all parties that it would provide most clarity if the December year end was used throughout and the Tribunal therefore adopts this in so far as it is consistent with any other constraints.

BACKGROUND

12. The Property is a large three storey house constructed circa 1900 which has subsequently been extended and converted into six (now five) residential units, probably within the last 40 years. It is situated in a desirable residential area of Harrogate within a street of other similar large detached houses, albeit that some have also been converted into flats whilst others remain in single occupancy.

13. Ms Haidar occupies flat 4 which comprises approximately half of the first floor. Flats 5 and 6 on the second floor have been combined into one larger flat occupied by Mr and Mrs Nelson-Boden.

14. Until February 2011 the freehold of the Property was owned by Glen Charter Properties Limited, assisted informally in the management of the Property by Mr and Mrs Nelson-Boden. It appears that during this period Glen Charter Properties Limited departed in no small measure from the terms of the lease. In addition it appears that they did not keep adequate, if any accounts, and did not provide adequate, if any documentation.

15. In February 2011 all of the leaseholders except Ms Haidar, having formed Langcliffe Place Limited (LPL), bought the freehold. Mr and Mrs Nelson-Boden took over management of the Property on behalf of LPL on an informal and unpaid basis. It would appear that LPL, and thereby Mr and Mrs Nelson-Boden as the volunteer property managers, inherited a historic compliance vacuum in respect of the service charge accounts.

THE PROPERTY

16. The Tribunal inspected the property on 19 November 2013 in the presence of the parties and Ms Haidar's father Mr Houghton. Upon inspection 18 Langcliffe Avenue, Harrogate ("the Property") was observed to be a built of stone, brick/pebbledash and with decorative "Tudor" panels of timber and render. The roof is mixture of pitched and flat roofs, and flats 1 and 3 incorporate round corner conservatory rooms beneath a recently renewed leaded 'turret' dome. The grounds consist of well-kept lawn with large borders, hedges and mature trees, tarmac and paved pathways, and a drive giving access to one garage per flat. It was observed that the garage for Flat 2 has a newer garage door in white, whilst the remaining garages for flats 6, 5, 4 and 3 displayed older doors in black.

17. Flats 1 and 2 have their own separate entrances on the ground floor. Flats 3, 4, and the amalgamated flat 5/6 share a staircase situated in a side addition to the property, with a covered external porch and a small internal porch at first floor level giving on to the doors to flats 3 and 4 and containing their electricity meters and the meter for the common parts. This staircase extension has large single glazed timber windows, the frames of which the Tribunal were informed require attention.

18. The rear half of the main roof was renewed in or about 2007. The Tribunal noted areas of damage within the communal stairwell to internal decorations caused historically by roof leaks at various levels of the building. These are awaiting redecoration following work to repair coping stones. The Tribunal were informed that work was also required to a stone boundary wall which is being toppled by tree roots, and replacement work to the tarmac on the driveway following the felling of a mature tree. The front half of the roof is due for renewal, a new fire alarm system needs to be installed and renewal of the carpet in the common parts is also planned.

THE LEASE

19. The Tribunal was informed that all the flat leases are not in precisely the same terms although the differences between them were not set out by LPL. The Applicant's lease dated 6 November 1973 was produced. It creates a term of 99 years from 25 December 1972 and provides at clause 3(6) for the leaseholder to contribute one sixth of the service charge defined in Schedule 4 to the lease. Separately and additionally, the lease requires the leaseholder to pay one sixth of the insurance costs (clause 1)

and one sixth of the cost of grounds maintenance (clause 3(10)). The Lease does not allow for collection of a reserve fund.

20. Schedule 4 provides for a service charge year ending on 25 December and requires the leaseholder to pay one sixth of the annual service charge cost, defined as

"the aggregate of the sums expended or liabilities incurred by the Lessor in each year...in connection with the maintenance of the building and provision of services in respect thereof in accordance with the covenants on the part of the Lessor contained in Clause 5 hereof and all reasonable fees charges and expenses payable to any Solicitor Accountant Surveyor Agent or Architect whom the Lessor may from time to time necessarily employ in connection with the maintenance of the building."

Paragraph 3 of Schedule 4 states that the leaseholder shall pay a quarterly sum in advance on account of the service charge in such sum

"as the Lessor's surveyor shall estimate as being a reasonable interim sum"

and the paragraph continues by stating that as soon as possible after the end of the service charge year

"the amount of the annual service cost and the said service charge for each such year shall be ascertained and certified by the Lessor's surveyor whose certificate shall be conclusive and binding on the Lessees and the Lessor and the Lessor's Surveyor shall as soon as practicable after the issue of such certificate serve the Lessee with a copy thereof and any balance of the said service charge remaining payable by the Lessees after giving credit for the said interim quarterly payments shall be paid by the Lessees of any balance found to be repayable to the Lessees shall be repaid to them on the twenty fifth of March next following the [service year end] *or within fourteen days after a copy of such certificate shall have been served on the Lessees whichever is the later."*

21. The Tribunal on 5 December 2011 determined that this provision creates a condition precedent to the creation of liability for payment of service charges under clause 3(6) of the Lease. The Tribunal concluded that following the decision in *Rita Akorita v Marina Heights (St Leonards) Limited* [2011OUKUT 255 (LC), no service charges are payable under this lease provision unless or until paragraph 3 of Schedule 4 is complied with. Whilst the present Tribunal is not bound by the previous Tribunal's decision it endorses this analysis.

22. Section 18 of the Landlord and Tenant Act 1985 defines a service charge as

"an amount payable by a tenant.....

(a) which is payable, directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs."

The Applicant's contributions to buildings insurance premiums and the cost of grounds maintenance payable under separate (non-service charge) provisions of the lease are nevertheless service charges over which this Tribunal has jurisdiction, but are not affected by the requirement for ascertainment and certification by the Landlord's surveyor.

THE HEARING

23. At the hearing Ms Haidar appeared in person assisted by her father Mr Houghton and her partner Mr Tallis. Mr and Mrs Nelson-Boden represented LPL. The Tribunal also had the benefit of bundles of documents and written representations produced by both parties.

S168 COMMONHOLD AND LEASEHOLD REFORM ACT 2002

24. The application by LPL for Breach of Covenant under the Commonhold and Leasehold Reform Act relates to non-payment of service charges since 2011 by Ms Haidar. In reality this issue dates back to the previous Tribunal decision in December 2011 and concerns a difference between the parties in the interpretation of that decision in respect of the years ending 30 June 2006 and 30 June 2007. The Tribunal is currently also asked to consider the period between 30 June 2007 and the present through the various cross applications. It is apparent that whether or not there has been a breach of covenant for non payment of service charge or insurance premiums depends upon a reconciliation of those sums which are due from Ms Haidar to LPL, and those which have been paid by Ms Haidar to LPL. Accordingly to address the application for Breach of Covenant the Tribunal has addressed the issues chronologically from 2006 onwards.

25. The 2011 decision states at paragraph 1 that:

"No service charges for the years ending 30 June 2006 and 30 June 2007 shall be paid by the Applicant."

26. Ms Haidar informed the present Tribunal that as a consequence of that decision she anticipated her service charge account for the end of 2011 being credited for the full sum that she had paid during that 2006/2007 period. It is common ground between the parties that the sum which Ms Haidar paid during that period is £3211.46.

27. LPL interpreted the decision as applying only to the sum of £1110.35, being the sum in Ms Haidar's 2011 application which related to the period

year ending 30 June 2006 and year ending 30 June 2007. This sum was due for payment in June 2007 but was not invoiced until March 2010 and therefore fell outside the 18 month period during which the sum could be validly demanded in accordance with s20B of The Landlord and Tenant act 1985. It appears to be their contention that as Ms Haidar paid the other sums in advance on account of future service charges s20B and the 18 month time limit does not apply

28. The Tribunal does not have the benefit of the submissions and documentation which formed the basis of the previous decision, and no case law in respect of s20B is referred to in the previous decision.

29. The Tribunal however notes that LPL have to date only refunded £962.70 (being the amount which put Ms Haidar's service charge balance back to nil at the point when LPL took over the account from Glen Charter Properties Limited. The balance of £128.25 which on LPL's own case is due to Ms Haidar remains uncredited to her account.

30. The Tribunal notes that no appeal in respect of the previous decision was lodged by either party. It is not open to the Tribunal to revisit the issues previously decided within the period of time which the previous Tribunal has already ruled upon. The decision is unambiguous at paragraph 1 in stating that no service charges for the years in question were payable by the Applicant. Paragraph 16 of the decision offers further clarification, stating

"No service charge accounts were prepared for the period after 1 July 2005 until undated accounts were produced in March 2010. The Respondent [LPL] was unable to produce any other written reference to service charges between 3 June 2006 and March 2010... It follows that as there was no effective demand for recovery of service costs incurred in the service charge years ended 30 June 2006 and 30 June 2007 within the 18 month period after they had been incurred and no written notification under section 20B(2), no contribution towards those costs is recoverable from the Applicant [Ms Haidar]"

The present Tribunal therefore gives effect to the natural meaning of the previous decision, and observes that it is not open to parties to subvert the Tribunal and appeal process by imposing their own interpretation upon a Tribunal decision. The previous decision was clear in its reasoning, and if LPL disagreed with that reasoning the correct route was by way of appeal not non-compliance with the order of the Tribunal.

Years ending 30 June 2006 and 30 June 2007

The Tribunal therefore concludes that in accordance with the ordinary meaning of the previous Tribunal's decision no service charge is payable by Ms Haidar to LPL for this period, and any sums paid by her in respect

of this period are to be refunded. These sums were agreed between the parties to be £3211.46 and therefore the sum of £3211.46 is to be refunded by LPL to Ms Haidar.

Year ending 24 December 2007

The application received in respect of the remainder of 2007 up to 24 December 2007 was an application by LPL under s 20ZA for retrospective dispensation. It was agreed between all parties, and the Tribunal accepts that there were no items during this period which required section 20 consultation therefore the need to determine the application falls away.

RETROSPECTIVE CERTIFICATION

31. LPL provided as part of their bundle a series of documentation from a surveyor in respect of the years 2006 to 2012 which they contend fulfil the terms of the lease. Within this documentation are service charge reconciliation and expenditure reports with certificates attached for the years 2006 to 2012. For the years 2012 and 2013 there are also estimated service charge and expenditure reports.

32. The Tribunal heard representations from Ms Haidar and from Mr Tallis on her behalf that these certificates do not comply with the terms of the lease. Mr Tallis argues that the reports for 2006 to 2012 are merely a desktop accountancy reconciliation of expenses that were incurred not the surveyor's estimation and reconciliation that the lease envisaged. It is argued that to comply with paragraph 3 of schedule 4 the surveyor needs to first estimate the reasonable interim sum, and then secondly ascertain and certify the service charge for each year.

33. If both of these elements are conditions precedent for a valid demand of service charges under clause 3(6) of the lease, then it follows that the documentation produced by LPL for 2006 to 2011, being without estimates does not fulfil the terms of the lease. It further follows that it would be virtually impossible for there to be retrospective fulfilment of the terms of the lease, as a surveyor would find it professionally difficult if not impossible to estimate service charges for years which had already taken place.

34. The Tribunal does not accept this argument. Instead the Tribunal is of the view that the estimation element of the lease is in relation to the forthcoming year, but does not bite upon past years. That is to say that the absence of estimation in respect of future service charges does not render those service charges subsequently unpayable when demanded in arrears. The Tribunal therefore concludes that the surveyor's certificates as produced by LPL satisfy the terms of the lease and therefore the service charges from 2006 to 2011 become payable subject to the findings in respect of charges demanded out of time, as per the previous Tribunal

decision referred to above, and subject to the findings in respect of consultation and dispensation below.

Year ending 24 December 2008

35. For the 2008 service charge year, although Ms Haidar amended her application at the CMC from an application under s20B of the Landlord and Tenant Act 1985 to an application under s27A of the Landlord and Tenant Act 1985, no issue was taken with the service charges as a whole or any specific elements of it, and no evidence was put to the Tribunal as to how they were believed to be unreasonable.

36. LPL provided evidence which the Tribunal accepts that there were no items requiring s20 consultation during this period and therefore there is no need for the Tribunal to determine the s20ZA application for retrospective dispensation.

37. The Tribunal therefore concludes on the basis of the evidence before it that the service charges for this period are reasonable and reasonably incurred.

Year ending 24 December 2009

38. The Tribunal was presented with an application by Ms Haidar that there had been a lack of s20 consultation during this period, and a cross application from LPL for retrospective dispensation. It was agreed between the parties that the relevant contract was for replacement windows for which Ms Haidar was asked to contribute £654, and it is common ground that no consultation took place.

39. The Tribunal was presented with evidence from LPL that although the process wasn't followed the Leaseholders were driving the process and that as the process went on for over a year LPL suggest that Ms Haidar had ample opportunity to comment. It appears that Ms Haidar, having just lost her job, did not have the money at that time to contribute to the works and asked the other leaseholders to pay her share as an interest free loan, which they did, and were subsequently paid back.

40. LPL rely on the case of *Daejan Investments Limited v Benson and Others [2011] EWCA Civ 38*, arguing that in the absence of evidence from Ms Haidar that she has suffered prejudice as a result of the failure to consult, then dispensation should be granted. LPL further produced letters from the other leaseholders stating that they did not consider that they had suffered any prejudice. They also argued that it was incumbent upon her as tenant to contribute to the process.

41. In response Ms Haidar conceded that having lost her job at the time this was not her primary priority. She asserted that she considered that she was prejudiced at the time as she was not able to assess whether or not

competitive quotes were obtained or to offer her opinion on whom should be asked to quote.

42. The Tribunal having considered representations form both parties did not find there to be evidence that Ms Haidar had suffered prejudice as a result of the failure to consult. Accordingly the Tribunal decides to grant retrospective dispensation from the consultation provisions.

Year ending 24 December 2010

43. It was agreed by the parties that no works exceeded the threshold for consultation during this period and therefore the Tribunal does not need to consider the application for dispensation.

Year ending 24 December 2011

44. This period was the subject of determination by the previous Tribunal and this Tribunal does not seek to reopen matter previously decided. This period is relevant only in respect of alleged breach of covenant for non payment of service charge.

Year ending 24 December 2012

45. The Tribunal is asked to determine whether the service charge for the year ending 2012 is reasonable and reasonably incurred. The Tribunal had the benefit of the surveyor's estimate and reconciliation account plus his certification. The Tribunal note that this service charge year is properly certified in accordance with the terms of the lease.

46. The Tribunal heard evidence from LPL as to the nature and extent of the works done following the electrical inspection, the work to the lead dome which followed a s20 consultation and repairs to a section of the boundary wall.

47. Ms Haidar argued that the level of service charge was unreasonable and that work could have been done more cheaply. Ms Haidar had made efforts to present the Tribunal with alternative quotes but the tribunal accept her assertion that it is difficult to obtain retrospective quotations for works which have already been completed.

48. Having had the benefit of inspecting the property and having weighed up the evidence presented to it the Tribunal concludes that the 2012 service charge was both reasonable and reasonably incurred and is therefore payable in full by Ms Haidar to LPL.

Breach of Covenant for years ending 24 December 2011, 2012 and 2013

49. It is LPL's contention that Ms Haidar is in breach of covenant under the lease as follows:
    a. For years 2011, 2012 and 2013 - under Schedule 4 section 3 of the lease in respect of service charge as set out above

b. For years 2012 and 2013 - under clauses 1 & 3 of the lease which state that Building insurance contributions shall be paid as rent and free from deductions

50. For the reasons set out above in the year ending 24 December 2011 Ms Haidar was due a credit on her account of £3211.46 in relation to 2006 and 2007.

51. LPL submitted that even on Ms Haidar's figures by her failure to pay subsequent quarterly service charge payments she had exhausted the amount of credit due back to her and was consequently in breach of covenant. They also argue that the building insurance premiums should have been paid in any event free from any deductions.

52. The Tribunal finds it difficult to reconcile LPL's assertions of Ms Haidar's breach of covenant for the years 2011, 2012 and 2013 with their assertions that the service charges for the years 2006 to 2013 are now payable following their efforts in obtaining retrospective certification. It is unconscionable that Ms Haidar could be in breach of covenant for the service charges for 2011 and 2012 given that the accounts for these years were not certified under the terms of the lease until 31 August 2013, save in respect of insurance and grounds maintenance which do not require certification.

53. LPL rely on paragraph 3 of schedule 4 of the lease for their breach of covenant claim. The Tribunal notes from the same paragraph of the lease a requirement for the Landlord to credit back sums due to the Tenant within fourteen days of the date of service of the surveyor's certificate.

54. The surveyor's certificates for 2006 to 2011 were issued on 21 August 2013. As at 19 November 2013, the date of the hearing, the full amount due to be refunded to Ms Haidar, even on LPL's own case, has not been applied to Ms Haidar's account.

55. In addition the Tribunal notes that the obligation to pay sums on account under paragraph 3 of schedule 4 only arises following the surveyor's estimate. Ms Haidar was therefore not obligated to pay sums on account until she received a surveyor's estimate which happened for the first time for the period 26/12/11 to 31/12/2012. It is unclear precisely when this was received but the surveyor's estimate is dated 15 February 2012, so clearly no sums were due from Ms Haidar on account until this date at the earliest.

56. If 15 February 2012 was the first point in time where service charges were due on account, and 4 September 2013 (being 14 days after the 21st August) was the first point in time where the service charges for 2008, 2009, 2010 and 2011 (with the exception of grounds maintenance and

insurance) became payable it follows therefore that far from being in breach of covenant for the years 2011 and 2012, Ms Haidar had in fact paid far more than she was obliged to pay at that time due to the combination of the terms of the lease and the conduct of the parties.

57. Ms Haidar informed the Tribunal that she assumed the sums she had paid on account would be used to offset any sums owing, paying the oldest first, but that she had never seen a statement showing any credit applied. The Tribunal considers this to be a reasonable expectation on Ms Haidar's part and notes that Ms Haidar's credit of £3211.46 would have more than paid for the insurance element which forms the basis of the other element of LPL's breach of covenant claim. The Tribunal has not been asked to comment on whether or not there has been a breach in respect of payments for grounds maintenance which also do not require certification, but the Tribunal notes that the same principles would apply, albeit that the certified accounts do not distinguish clearly which elements of the service charge are specifically grounds maintenance.

58. The Tribunal observes the complete absence in the LPL paperwork provided to the Tribunal of any statements of Ms Haidar's account since LPL took over management showing payments due and received. The Tribunal had the benefit of statements of account from the previous management company Glen Charter Properties Limited calculated to 29/06/11 but no equivalent statements thereafter. The Tribunal is strongly of the view that statements of this kind would not only have made it possible for the Tribunal to have arrived at a precise figure when reaching its decision, but also might well have made it clearer to Ms Haidar what the position on her account was.

59. The Tribunal finds that on the evidence presented to it, any breach of covenant for non payment by Ms Haidar, if indeed such a breach occurred, was a purely technical breach occurring on or around 4th September 2013 when the retrospectively certified accounts were re-served upon her. At this point in time the matter was pending determination by the Tribunal in any event. The Tribunal therefore does not find that LPL's application for breach of covenant can be supported by the evidence presented and concludes that no breach of covenant has occurred.

60. This however does not exonerate Ms Haidar from her obligations to pay reasonable and reasonably incurred service charges which are now properly demanded in accordance with the terms of the lease. The Tribunal therefore orders that the following sums are payable by Ms Haidar to LPL less such sums as have already been received.

Schedule 1

Year	Date certified	Sum demanded	Amount payable by Ms Haidar to LPL
2006	21 August 2013	3211.46	0
2007	21 August 2013	(combined sum over 2006 and 2007)	0
2008	21 August 2013	483.44	483.44
2009	21 August 2013	1595.87	1595.87
2010	21 August 2013	625.97	625.97
2011	21 August 2013	1508.73	1508.73
2012	6 March 2013	2328.67	2328.67

61. The Tribunal notes the statements made by Mr and Mrs Nelson-Boden that LPL does not have any money with which to refund Ms Haidar. However the Tribunal does not accept that this excuses LPL's failure to credit Ms Haidar's account in the correct amount. LPL suggested that refund might be made by way of a renegotiated term on Ms Haidar's lease. Whilst it is not open to the Tribunal to order this, it is noted that this may be a constructive route towards a final resolution of this matter.

Future budget for year ending 24 December 2013, 2014 and 2015

62. LPL made applications to the Tribunal under s27A of the Landlord and Tenant Act 1985 to determine whether their proposed budgets for future years were reasonable.

63. No issue was taken by Ms Haidar in respect of the following repeated items:
    a. Professional fees
    b. Utilities
    c. Cleaning
    d. Garden Maintenance
    e. Services
    f. Insurance

64. Ms Haidar questioned the reasonableness of the proposed works to the building, the cost and the prioritisation of those works.

65. The Tribunal were provided with evidence from Mr and Mrs Nelson-Boden as to how they had arrived at the budget figures, the surveyor's estimates for the proposed works, the original building survey from 2011 which identified low, medium and high priority items.

Windows

66. The Tribunal considered Ms Haidar's argument that the windows in the communal area could be repainted and repaired, however the Tribunal agreed with LPL's argument that in the long run it would be more cost effective to replace them. However, this expense should be deferred with no cost expended on the windows, including repainting, whilst other major works are being carried out.

Fire Alarm

67. LPL specifically sought guidance from the Tribunal as to whether the fire alarm system quotes which they had obtained were in the view of the Tribunal reasonable. These quotes were for a more comprehensive system which in the Tribunal's view is wholly appropriate for the nature of the property, and the budgeted cost of which in the basis of the evidence presented to the Tribunal is reasonable.

Garage Doors

68. The Tribunal was asked to specifically clarify whether or not the garages and the garage doors were covered by the service charge provisions under the lease. In the absence of provision of the complete set of leases and in the absence of the plans referred to within the leases which were provided the Tribunal is not able to provide clarification on this point. However the tribunal observed the garage door to flat 6 to open satisfactorily, and observed the handle to be missing from the garage door for flat 5. It was further observed that whilst the older garage doors were black, a newer garage door for flat 2 had been installed by the tenant directly in accordance with discussions between the tenants recorded in previous correspondence.

69. The Tribunal concludes that whilst it cannot definitively state whether or not the costs of repairs to the garages and garage doors fall within the service charge as defined in the lease, it can provide the following assistance, in that in the view of the Tribunal repairs to the garage doors more extensive than repairing the missing handle and repainting doors to match one another would not be reasonable to apply to the service charge account in the current or immediate future rounds of maintenance.

70. Given the age, character, location and state of repair of the building, which has not been fully maintained over a significant period of time, there are substantial number of items of work which could be done to the Property. The Tribunal finds the sums budgeted for each item to be reasonable but distinguishes between those items on the list which are necessary and those which are merely desirable. Given the scale of the necessary items, in the interests of reasonableness it is the Tribunal's opinion that desirable works must be postponed until after the necessary.

71. Those items which in the Tribunal's view are necessary in the next three years, and the order of prioritisation are as follows:

Schedule 2

2014	– Fire Alarm Replacement as per estimate of £3024
	– Boundary wall repairs
2015	– Roof
2016	– Replacement Windows
Post 2016	– Redecoration
	– Recarpeting
	– Repainting and repair of garage doors
	– Re-tarmac driveway

72. The Tribunal observes that additional items may become necessary during the course of this period, and in the absence of a sinking fund the Tribunal does not seek to tie the hands of LPL in respect of urgent additional works which are both reasonable and reasonably incurred.

COSTS

73. The Tribunal was asked to consider an application by LPL that their costs of the proceedings should be recoverable against Ms Haidar personally. The Tribunal also considered a counter application from Ms Haidar that costs of the proceedings should not be added to the service charge account. The Tribunal considered representations form both parties, the outcome of the case and the conduct of the matter by both parties throughout. The Tribunal considered that the proceedings could have been avoided had LPL either given effect to the natural meaning of the previous decision, or appealed that decision if it disagreed with that conclusion. Ms Haidar was entitled to query the absence of consultation, and was entitled to expect to receive a credit on her service charge account. In view of this the Tribunal concludes that it would be wholly inappropriate for Ms Haidar to bear the cost of the proceedings herself, and also inappropriate that the sums should be added to the service charge account. The Tribunal therefore makes an order under s20C of the Landlord and tenant Act 1985 that the costs of these proceedings should not be added to the service charge account.