9982

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	:	**LON/00AM/LVT/2008/0006**
Property	:	**1-9 Classic Mansions, Well Street, London E9 7QH**
Applicant	:	**Keeney Construction Ltd**
Representative	:	**Mr Michael Walsh, counsel, instructed by Legal Solutions Partnership**
Respondents:	:	**(1) Dr Zoe Brooke (Flat 1)** **(2) Holdmanor Limited (Flat 2)** **(3) Ms Clare Banner and Mr David Banner (Flat 3)** **(4) Mr Phineas Glover (Flat 4)** **(5) Mr Gareth Mcconnell (Flat 5)** **(6) Twillam Limited (Flat 6)** **(7) Ms Natalie Sutton (Flat 7)** **(8) Mr Timothy Jones (Flat 8)** **(9) Mr Frank Parkinson (Flat 9)** **(Being the current lessees of 1-9 Classic Mansions, Well Street, London E9 7QH)**
Representative	:	**Mr B R Maunder Taylor, chartered surveyor**
Type of application	:	**For compensation under section 38 (10) of the Landlord and Tenant Act 1987**
Tribunal members	:	**Angus Andrew** **Mr D I Jagger MRICS** **Mrs L L Hart**
Date and venue of hearing	:	**7 May 2014** **10 Alfred Place, London WC1E 7LR**
Date of decision	:	**30 May 2014**

DECISION

DECISION

1. The applicant is to pay the following compensation within 28 days from the date of this decision:-

    a. To Dr Zoe Brooke, the sum of £7,797;and

    b. To Holdmanor Limited, the sum of £4,707; and

    c. To Twillam Limited, the sum of £4,565.

2. The applicant may not recover any of its costs incurred in the compensation application from the above three respondents through the service charge.

APPLICATION, PREVIOUS DECISIONS AND HEARINGS

3. On 12 August 2008 the applicant applied to the tribunal to vary the leases of 1-9 Classic Mansions. The application was made under section 35(2)(f) of the Landlord and Tenant Act 1987 ("the 1987 Act"). In that application the then lessees of the 9 flats were named as the respondents. The application was considered by a differently constituted tribunal on 9 and 10 December 2009 and the tribunal issued its decision on 27 January 2010. Then as now the respondents were represented by Mr Bruce Maunder Taylor and during the course of the hearing in December 2009 he applied on their behalf for compensation pursuant to the provisions of section 38(10) of the 1987 Act. In its decision the tribunal varied the leases and at paragraph 30 concluded that compensation should be paid *"to the Lessees"*. The tribunal gave directions for the determination of that compensation on the basis of written representations and without an oral hearing. The tribunal reconvened on 29 July 2010 and by its decision issued on 25 August 2010 it ordered the applicant to pay compensation of £72,238.80.

4. The applicant appealed the decision of 24 August 2010 that ordered compensation of £72,238.80. In a decision dated 11 July 2013 His Honour Judge Huskinson set aside the compensation decision largely on the grounds of procedural irregularities. In his concluding paragraph he said that *"the question of compensation must be remitted for a fresh decision by the LVT which should be the subject of a hearing at which the appellant has the opportunity to appear and give evidence"*.

5. The question of compensation would normally have been reconsidered by the tribunal that issued the decisions of 27 January and 25 August 2010. However, both Mrs Burton and Mr Collins (the chairman and surveyor member) have long since retired and consequently the compensation issue was listed for a hearing before us.

6. At the hearing the applicant was represented by Mr Walsh, a barrister, whilst Mr Eric Shapiro, a chartered surveyor, gave expert evidence on its behalf. The respondents were represented by Mr Bruce Maunder Taylor, a chartered surveyor, who also gave expert evidence on their behalf.

PARTIES

7. At the start of the hearing we sought to establish the identity of the respondents who had simply been named in the previous first-tier tribunal decisions as the "Lessees of 1-9 Classic Mansions". As observed the respondents named in the original application were the then current lessees of the 9 flats. Five of those flats had subsequently been sold but no application was made to this tribunal to substitute the buyers of those flats for the previous lessees. Mr Maunder Taylor said that he was instructed by the current lessees and both he and his clients had assumed that the current lessees were the respondents. To the extent that there might be any doubt about the matter he formally applied for permission to substitute the buyers of the 5 flats that had been sold for their sellers. After a short adjournment to consider the matter Mr Walsh opposed the application saying that it was made far too late in the day.

8. Rule 10 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ("the 2013 Rules") deals with the substitution of parties. Rule 10(1) enables a tribunal to *"give a direction adding, substituting or removing a person as an applicant or a respondent"*.

9. We drew the parties' attention to the upper tribunal's decision of 11 July 2013. The front cover of that decision names each of the respondents and they are not the same as the respondents listed in the original 2008 application. Mr Maunder Taylor informed us that the upper tribunal had made enquiries to establish the identity of the then current lessees and of its own volition had listed what it believed to be the current lessees in the decision of 11 July 2013. In fact it had been given incorrect information in that for example the directors of two flats owned by limited companies were recorded as respondents.

10. On the basis of Mr Maunder Taylor's submissions it was apparent that the original respondents who had sold their flats had no continuing interest in the litigation and had passed the baton to their buyers who were funding Mr Maunder Taylor's costs and who were at risk if the applicant should seek to recover any of the costs of these proceedings through the service charge. The applicant would not obviously be prejudiced by the substitution: indeed as will become apparent it stood to gain from it. For

each of these reasons and having regard to the conduct of the upper tribunal when the matter came before it we consented to Mr Maunder Taylor's application.

11. Mr Walsh subsequently handed in a schedule of the current lessees taken from the proprietorship registers of the leasehold titles and those lessees are identified on the front page to this decision as the respondents.

Background

12. Classic Mansions consist of three broadly similar detached blocks each of which comprises 9 flats on 3 upper floors with a number of ground and basement floor commercial units. In this decision we call the three blocks collectively, "Classic Mansions" and the block containing flats 1-9 Classic Mansions, "the Block". The freehold reversion to Classic Mansions was originally owned by the same company: in the late 1980s that was Laronstates Ltd. It seems that it granted long residential leases of most if not all of the 27 flats in Classic Mansions. Copies of the leases of flats 1 and 3 were included in the hearing bundle. In the recital to the leases *"the Building"* is effectively defined as Classic Mansions, that is all 3 blocks including the 27 flats and the ground and basement floor commercial units. The tenants' obligations to pay the service charge is contained in clause 3(27) and using the lease of flat 1 as an example commences in the following terms:

"To pay to the Landlord without any deduction by way of further rent a sum equal to 4.34 per cent (representing the rateable value of the Demised Premises as a percentage of the total rateable value of the Building)..."

13. Thus although the service charge percentages are fixed it is apparent that they were calculated on the basis of relative rateable values. That methodology was common in residential buildings prior to the abolition of the domestic rating system although it was generally not adopted in mixed use developments such as this because commercial property was more highly rated than residential property.

14. At some point the freehold reversion to each of the 3 blocks was sold so that each block came under separate ownership. When that occurred is not entirely clear but it was suggested that it happened after the grant of the lease of flat 1 in March 1987 and before the grant of the lease of flat 3 in June 1989. Although flat 3 is virtually identical to flat 1 the service charge percentage in the lease of that flat is put at 11.31% although it is again stated to be calculated by reference to the rateable value of the flat.

15. The applicant acquired the freehold reversion to the Block in August 2000. It clearly had difficulty in recovering a 100% of its costs through the service charge provisions of the residential and commercial leases. Furthermore

the Block as a whole had fallen into a state of considerable disrepair. The tribunal in 2009 inspected the Block and commented in its decision that it was *"of a shabby and neglected appearance"*. Mr Shapiro very frankly said in evidence that there was *"no question that a major works project should have been completed a long time ago"*. The applicant did not however remedy the disrepair for which it was responsible under the terms of the residential leases and it has not done so to this day. No explanation has ever been offered for this delay and in the absence of an explanation it is not unreasonable to conclude that work has been deferred pending the outcome of this protracted litigation.

16. Instead it made its application in 2008 to vary the leases. Firstly is sought to vary the definition of the "Building" so that in future it would include only the Block rather than Classic Mansions as a whole. Secondly it sought to vary the service charge percentage in the residential leases by substituting percentages calculated by reference to internal floor areas for the percentages previously calculated on the basis of relative rateable values.

17. The application was successful and both variations were ordered. The following table records the original and varied service charge percentages for each of the nine flats:-

Flat Number	Original percentage	Varied percentage
1	4.34%	9.84%
2	4.00%	7.32%
3	11.31%	7.33%
4	12.27%	9.84%
5	4.00%	7.32%
6	4.11%	7.33%
7	3.88%	5.96%
8	-	6.02%
9	3.40%	8.53%
Total	**47.31%**	**69.49%**

18. The lease of flat 8 did not include a service charge percentage. The figure had simply been left blank and the obvious explanation is that the figure was omitted by mistake. In the event we were told that the lessee of flat 8 had always paid a service charge notwithstanding the omission in the lease. It should also be said that in practice the service charges were always calculated by reference to the Block costs rather than the Classic Mansion costs.

19. Paragraph 30 of the decision of 27 January 2010 is pivotal to this decision and is in the following terms:

"The effect, however, is to increase the residential Lessees' total share of the property's service charges from 47.31% under the present Leases, to a total of 69.49% (including the new contribution from Flat 8). The variation is a material departure from the present Leases – the terms of which the Landlord knew or should have known when he entered into them- to the financial disadvantage of the Lessees taken together, and to all but two of them individually. The Tribunal concludes, in the exercise of its discretion under s.38(10) of the 1987 Act, that compensation should be paid to the Lessees, having regard to their increased share of the cost of the prospective future service charges".

20. At the hearing we also drew the parties attention to the final sentences of paragraph 31 of the decision that reads as follows:

"Following a determination on compensation the draft Order submitted at the hearing will be updated as necessary and duly issued. It in any case requires a typographic amendment to the effect that the application is under s.35, not 37".

STATUTORY FRAMEWORK

21. It was common ground that any compensation found to be payable to respondents should be calculated in accordance with section 38(10) of the 1987 Act that reads as follows:

"(10) where a tribunal makes an order under this section varying a lease the tribunal may, if it thinks fit, make an order providing for any party to the lease to pay, to any party to the lease or to any other person, compensation in respect of any loss or disadvantage that the Tribunal considers he is likely to suffer as a result of the variation".

MR MAUNDER TAYLOR'S POSITION, AS EXPERT

22. Mr Maunder Taylor contended that paragraph 30 of that decision required us to order compensation to the respondents collectively as a group on the basis that the service charge contributions of the 9 residential lessees had increased from 47.31% to 69.49%. He contended for total compensation of £77,538.80 of which there were two components.

23. The first component related to the respondents' increased liability of 22.18% (69.49% - 47.31%) for future annual service charges. He took £12,150 as a reasonable annual service charge cost for the Block. That sum included a reserve fund contribution of £1,000. The respondents' increased liability for the service charge cost is £2,695. He then capitalised

that sum in perpetuity at a rate of 7% per annum to produce a capital sum of £38,500 that he said would compensate the respondents for their future increased service charge liability.

24. The second component related to the cost of the outstanding refurbishment works that on the basis of Mr Shapiro's evidence should have been completed many years ago. Relying on a brief costed schedule of works prepared by W.P.M (London) Limited Mr Maunder Taylor put the cost of the refurbishment works at £176,009 including VAT and professional fees. The respondents' collective liability for this cost having increased by 22.18% they should receive compensation of £39,038.80. Thus they were entitled to total compensation of £77,538.80 (£38,500 + 39,038,80).

MR SHAPIRO'S POSITION

25. Mr Shapiro's primary argument was that the variation ordered by the decision of 27 January 2010 resulted not in an increase in the respondents' collective service charge liability but in a decrease. Consequently they could not be entitled to any compensation. His reasoning for this assertion stems from the original definition of "the Building" in the recital to the residential leases to which we have referred. That is the building was defined as Classic Mansions as a whole including all 27 residential flats and the ground and basement floor commercial units. On that basis the respondents were originally liable to pay 47.31% (or 51.79% if one adds an estimated rateable proportion for flat 8) of the total service charge cost of Classic Mansions. Adopting Mr Maunder Taylor's estimated annual service charge cost of £12,500 for the Block he multiplied that figure by 3 to produce a service charge cost for Classic Mansions of £37,500. Applying the original service charge percentages to that figure he concluded that the respondents would originally have had a collective service charge liability of £19,421.24. However that reduces to £8,686.25 by applying the varied service charge percentages to the service charge cost of the Block.

26. In the event that we are against him on his primary argument Mr Shapiro's secondary argument was that that the only appropriate way to calculate any compensation to be paid under clause 38(10) is by reference to the diminution in the capital value of each of the 9 flats resulting from any increased service charge liability. On the basis of his professional experience he considered that, save in wholly exceptional circumstances, an increased service charge liability would not reduce the capital value of a flat. To put it another way a prospective purchaser of a flat would not seek to renegotiate his offer price on the basis of an increased service charge liability that, as he put it, would in real terms cost no more then the price of a packet of cigarettes per week. Thus the respondents had suffered no loss and were not entitled to any compensation.

27. If however we were against him on both his primary and secondary arguments Mr Shapiro contended that in any event Mr Maunder Taylor

had over capitalised his estimate of the respondents' increased annual service charge liability and had overestimated the cost of the refurbishment works that it was suggested would shortly be commenced.

28. As to the former Mr Shapiro pointed out that the respondents were unlikely to retain their leases for the duration of the lease terms and that it would be appropriate to capitalise the increase service charge liability on the basis of 3 or 5 years purchase. That approach resulted in compensation of just over £9,000 (3 years purchase) or £15,000 (5 years purchase).

29. Returning to the major works project Mr Shapiro's evidence was that consultation notices had been issued and the specification has been put out to tender. Included in the hearing bundles was a tender analysis report prepared by Benjamin Mire, chartered surveyor. He recommended acceptance of the lowest adjusted tender of £102,875.60 received from R&B Decorators. The higher tenders included one from WPM (London) Ltd in the sum of £154,059. In his expert report Mr Shapiro put the total cost including professional fees at £118,141. However, under cross examination he accepted that he had omitted VAT and agreed that VAT at 20% should be added to that figure. Thus any compensation should be awarded on the basis of that figure plus VAT rather then the higher figure contended for by Mr Maunder Taylor.

Issues in dispute

30. The issues raised in this case can be encapsulated by the following questions?

    a. What is the effect of paragraph 30 of the decision of 27 January 2010?

    b. What is the correct basis for calculating any compensation to be paid to the respondents?

    c. What if any compensation should be paid to the respondents?

    d. Should we make an order under section 20C of the 1985 Act?

REASONS FOR OUR DECISION

What is the effect of paragraph 30 of the decision of 27 January 2010?

31. It was common ground that the tribunal's decision of 27 January 2010 and in particular paragraph 30 had not been overturned on appeal. At the end of the hearing Mr Walsh suggested that there was a dormant appeal

against that decision before the upper tribunal. However even if that is correct it is a matter for the upper tribunal and not for us.

32. In its decision of 27 January 2010 the tribunal made two variations. The first was to vary the definition of the "Building" so that it included only the Block rather than Classic Mansions. The second was to substitute service charge percentages calculated on the basis of internal floor areas for those said to have been calculated on the basis of relative rateable values.

33. The theoretical effect of the first variation was to reduce each respondents service charge liability by two thirds or 66.67% and conversely to reduce the applicant's cost recovery by a similar proportion or percentage. The effect of the second variation was to increase the service charge liability of 7 of the 9 respondent's and to reduce the liability of the other 2 (the lessees of flats 3 and 4).

34. It is however apparent from paragraph 30 that the tribunal only ordered the payment of compensation to the respondents in respect of the second variation. The decision does not explain why the tribunal failed to consider the payment of compensation to the applicant in respect of the first variation. There are however three obvious reasons.

35. Firstly and most significantly because the reduction in the respondents' service charge liability was purely theoretical. The service charges had always been calculated by reference to the Block costs rather than the Classic Mansion costs. Thus the first variation did not result in the applicant suffering a loss or disadvantage. Secondly because the applicant did not apply for compensation. Thirdly because the first variation corrected an obvious mistake in the leases. It is apparent that the service charge percentages were calculated by reference to the relative rateable values of either all the units in the Block or in the case of flats 3 and 4 the residential units in the Block. Certainly they cannot have been calculated by reference to the total rateable values of Classic Mansions as stated in the leases.

36. Mr Maunder Taylor reads too much into paragraph 30 when he suggests that we must award compensation to the respondents collectively. The tribunal was simply explaining that compensation was to be awarded only in respect of the second variation. In the final sentence of that paragraph the tribunal concluded: *"compensation should be paid to the Lessees, having regard to their increased share of the cost of the prospective future service charge"*. That phrase cannot be read as a direction that compensation must be awarded on a collective basis. Such an interpretation is not consistent with the tribunal's conclusion that the service charge liability of flats 3 and 4 should be substantially reduced and that the liability of the other lessees should be increased by differing amounts. Equally it cannot have been intended that the lessee of flat 8 would receive compensation when he had always paid a service charge and the omission of the correct percentage was clearly an error that required correction.

37. In answer to our question Mr Maunder Taylor was unable to explain how any collective compensation would be apportioned between the respondents. Although there is nothing to prevent the respondents from agreeing to collectively share any compensation, such an agreement could not bind us in the exercise of a statutory discretion.

38. Consequently and for each of the above reasons we are satisfied that we must consider the payment of compensation to the respondents individually in respect of only the second variation.

What is the correct basis for calculating compensation?

39. As far as Mr Shapiro's primary argument is concerned his reasoning is fundamentally flawed. He has conflated the first and second variations and concluded that no compensation should be paid to the respondents. However as observed in the previous section of this decision the tribunal in its decision of 27 January 2010 ordered compensation in respect of only the second variation.

40. That apart the polarised position taken by the two experts was not helpful. Even less helpful was Mr Maunder Taylor's suggestion that we should have regard to the hypothetical world of enfranchisement valuations when calculating the amount of any compensation to be paid to the respondents. Equally we did not draw any assistance from previous enfranchisement decisions.

41. Mr Maunder Taylor's formulaic approach would have surprising consequences. The capitalisation of the future increased service charge would give a windfall to a lessee who sold his flat shortly after the award. Section 38(10) provides for the payment of compensation to *"any party"* so that compensation can be paid to a landlord as well as a tenant. Many applications under section 35(2)(f) are made by tenants seeking a reduction in their service charge liability because the landlord recovers more than 100% of its service charge costs as a result of the total service charge percentages exceeding 100%. On Mr Maunder Taylor's analysis a landlord facing such an application would be entitled to compensation. Part IV of the 1987 Act provides a mechanism for curing defective leases. Having provided that mechanism it seems unlikely that Parliament would have intended that the cure would be effectively nullified by the award of compensation. Indeed Mr Maunder Taylor's approach would result in the payment of compensation by the respondents to the applicant, which was certainly not what he intended.

42. Although we had more sympathy with Mr Shapiro's approach it is as Mr Walsh conceded not the only approach that can be used in assessing compensation. The variation of lease provisions of the 1987 Act have been in place for 17 years and tribunals have adopted a commonsense approach to the issue of compensation. Section 38(10) confers a wide discretion. The section envisages a three stage processes. We must first identify any

loss or disadvantage that may be suffered by any of the respondents as a result of the variation. We must then decide if we should exercise our discretion and award compensation. Finally if we do decide to award compensation, we must quantify it. That is the approach that we have adopted in following paragraphs.

What if any compensation should be paid to the respondents?

43. We deal firstly with the leases of flats 3 and 4. Their service charge liabilities were reduced by significant percentages. They have suffered neither a loss nor a disadvantage and cannot be entitled to compensation.

44. We deal next with the lessees of flats 5, 7, 8 and 9. All four lessees purchased their flats after both the application to the tribunal in August 2008 and after the hearing on 9 and 10 December 2009. The lessee of flat 9 purchased his flat 6 days before the tribunal issued its decision whilst the lessees of flats 5, 7 and 8 purchased their flats well after the decision was issued. None of them either submitted a witness statement or gave oral evidence identifying any loss or disadvantage that they suffered as a result of the variation. Mr Parkinson (the lessee of flat 9) must have been aware that his service charges liability might be increased whilst the other three lessees must have been aware of the decision of 27 January 2010 that increased their service charge liabilities. Mr Maunder Taylor's suggestion that they might have paid higher prices for their flats to reflect the possibility of an award is unsupported by any evidence and is fanciful. No rational buyer of a flat would agree to pay a higher price relying on the hazard of an uncertain and potentially costly compensation claim. In short these four lessees bought their flats in full knowledge that they might have to pay increased service charge contributions and in the absence of any evidence to the contrary we are satisfied that none of them suffered a loss or disadvantage as a result of the variation. Indeed the prices that they paid for the flats would have reflected the disrepair of the Block and would have been discounted accordingly.

45. Finally we turn to the lessees of flats 1, 2 and 8 who all purchased their flats well before the application to the tribunal. Dr Brooke purchased flat 1 in July 1999, Holdmanor Ltd purchased flat 2 in March 2004 and Twilllam Ltd purchased flat 6 in June 1988. The second variation will result in an increase in their service charge liability.

46. We deal firstly with the ongoing annual service charge, which Mr Maunder Taylor put at £12,500 per annum for the Block although that estimate was disputed by Mr Shapiro. The respondents' increased liability for that service charge has to be seen in the context of the second variation. It is apparent that the tribunal considered that the apportionment of the service charge costs on the basis of relative rateable values placed an unfair burden on the applicant who it seems was either directly or indirectly responsible for the service charge contributions due from the ground and basement floor commercial units. That is no doubt because under the old

rating system commercial property was relatively more highly rated then residential property. The tribunal corrected that unfairness by reallocating the service charge percentages on the basis of relative internal floor areas. Thus it is clear that prior to the variation these respondents had paid too little whilst after the variation they would pay a fair share. The advantage that they enjoyed prior to the variation fell to be set off against any increased service charges that would be paid in the future. Consequently taken over a period of time they have not suffered any loss or disadvantage and it would not be appropriate to award any compensation in respect of their increased share of the ongoing annual service charge cost.

47. Different considerations however apply in respect of the refurbishment cost because it is not an ongoing liability and is only paid once. If the applicant had maintained the Block in accordance with its repairing obligations the refurbishment works would have been completed long before the leases were varied and these three respondents would have paid a lower share of the cost. The higher share of the cost that they would now have to pay was a direct consequence of the variation. These three respondents had therefore suffered a loss or disadvantage as a result of the variation. Furthermore their loss was quantifiable and they were entitled to be compensated for it. We therefore consider it reasonable and appropriate to exercise our discretion and award compensation to these three respondents.

48. The amount of compensation is their increased share of the refurbishment cost resulting from the variation. Mr Maunder Taylor estimated the cost of the proposed refurbishment work at £176,009 whilst Mr Shapiro estimated it at £118,141 plus VAT, totalling £141,769. We prefer Mr Shapiro's estimate of the refurbishment cost because it results from a competitive tender and is supported by an independent tender analysis included in the hearing bundle. Consequently we adopt Mr Shapiro's estimate of £141,769 for the cost of the refurbishment works.

49. Dr Brooke is the lessee of flat 1. As a result of the variation her share of the estimated cost will increase by 5.5% (9.84%-4.34%). We therefore order the applicant to pay her £7,797.

50. Holdmanor Ltd is the lessee of flat 2. As a result of the variation its share of the estimated cost will increase by 3.2% (7.32%-4%). We therefore order the applicant to pay it £4,707.

51. Twillam Ltd is the lessee of flat 6. As a result of the variation its share of the estimated cost will increase by 3.22% (7.33%-4.11%). We therefore order the applicant to pay it £4,565.

52. Finally we consider when the compensation should be paid. Neither Mr Walsh nor Mr Maunder Taylor suggested that we should increase the estimates to reflect future inflation and neither did they suggest that we should simply order a reduction in the respondents' share of the future

actual cost. Consequently it was implicit in both their arguments that any compensation for the increased refurbishment cost should be paid now and not when the work is completed.

53. Although payment now might give the respondents a potential advantage it would compensate them for the almost inevitable increase in the estimated cost resulting from inflationary pressures in a tightening market. Furthermore it removes a potential incentive for the applicant to further delay essential work that is long overdue. Consequently and for each of these reasons we order the compensation to be paid in 28 days.

Should we make an order under 20C of the Act?

54. To the extent that costs might be recovered through the service charge the right to recover them is a property right which should not be lightly disregarded. Section 20C however provides that a tribunal may *"make such order on the application as it considers just and equitable in the circumstances"*. Those words permit us to take into account the conduct of the parties in deciding whether to make an order.

55. The lessees of flats 3, 4, 5, 7, 8 and 9 failed in their applications for compensation that were largely ill-conceived. As far as they are concerned there are no grounds for making an order under section 20C.

56. We have ordered compensation to the lessees of flats 1, 2 and 6 and to that extent they have been successful in their application. Furthermore the compensation is a consequence of the applicant's failure over a long period of time to fulfil its repairing obligations under the leases and that is conduct that we are entitled to take into account. Consequently and for each of these reasons it is just and equitable to prevent the applicant from recovering any of its costs incurred in the compensation application from Dr Brooke, Holdmanor Ltd and Twillam Ltd through the service charge.

DIRECTIONS

57. The formal order giving effect to the variation has yet to be issued. It is presumably required by HM Land Registry. That would normally be a matter for the tribunal that made the variation but it is no longer in harness. On the basis of the tribunal decision of 27 January 2010 the completion of the order requires only a short correction. The parties should be able to agree the terms of the order and it should be submitted to us in the form of a consent order for signature by **20 June 2014**. In the event that the parties are unable to agree the formal order either party may apply in writing for further directions by **27 June 2014**.

Name: Angus Andrew **Date: 30 May 2014**