10070

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(LEASEHOLD VALUATION TRIBUNAL)

Case Reference	:	**MAN/00CG/LSC/2011/0076**
Property	:	**128 Cliff Street, Sheffield S11 8FA & others**
Applicant	:	**Miss Hazel St Clair Oliver & others**
Respondent	:	**Sheffield City Council**
Type of Application	:	**Service Charge**
Tribunal Members	:	**Ms S O Greenan** **Mr M Bennett** **Mrs B Mangles**
Date of Decision	:	**28 May 2014**

DECISION

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1. This decision relates to an application made by Ms Hazel St Clair Oliver in relation to charges payable by her to Sheffield City Council ("SCC").

Procedural history

2. On 5th August 2011 Ms St Clair Oliver applied to the Leasehold Valuation Tribunal pursuant to sections 27A and 19 of the Landlord and Tenant Act 1985 for determination of the payability of service charges in respect of the property in which she lives at 128 Cliff Street, Lansdowne, Sheffield. In particular she sought to query the charges for:

    a. Roofing and associated works carried out from 2008 to 2009;
    b. Cleaning services from 2004 to 2010;
    c. Buildings insurance from 1998 to 2011;
    d. Management fees from 2006 to 2010.

3. In addition Ms Oliver sought a declaration under section 20C of the 1985 Act to prevent Sheffield City Council from recovering its costs of the application as part of the service charge.

4. Directions were given on this application on 7th September 2011. At that stage this application was one of three applications made to the LVT by Ms Oliver which were live. The other applications were cases no MAN/00CG/LXC/2011/0034 and MAN/00CG/LIS/2011/0072. Those applications also related to service charges but focused on service charges arising out a major programme of refurbishment being carried out by SCC to the estate in which Ms Oliver's home is situated.

5. A direction had been given to permit other occupiers to join these proceedings if they wished to do so, and by 24th November 2011 26 other occupiers wished to join the proceedings as parties, and were joined. They had signed a document prepared by Miss Oliver indicating that they wished her to act as their representative in these proceedings.

6. Miss Oliver has assisted the co-applicants in this case on a voluntary basis and without any gain to herself.

7. It was directed originally that all three applications should be heard at the same time. That direction was reviewed as the litigation progressed and it became clear that attempting to deal with all three applications together would cause complications as potentially different Respondents were involved, and the applications involved substantially different disputes of fact. There were 17 leaseholders involved as parties in applications no 0034/0072. 26 leaseholders were parties to application no 0076. Only 8 leaseholders, including Ms Oliver, were parties to both applications. It was therefore directed on 1st February 2012 that this application and applications 0034 and 0072 should be heard separately, and that those two applications should be determined first.

8. Those applications were determined in 2012.

9. Following the determination of those applications, further directions were given on this application on 24th June 2013 when a pre-hearing review took place in Sheffield. During that hearing the status of the co-applicants was discussed. At that stage Miss Gill was intending to play an active part in the proceedings and at the final hearing, although subsequently she opted not to do so. Miss Oliver indicated that she expected that her role would be to continue to represent the other co-applicants, who had signed documentation (in the bundle) indicating that they wished her to represent their interests.

10. SCC informed the Tribunal that it would treat any decision in relation to Miss Oliver's applications as applicable to the co-applicants. None of the 26 leaseholders who had become co-applicants in this application had provided a separate statement of case to Ms Oliver or sought (other than in the case of Ms Gill) to play an active part in the proceedings. None of them

had raised any issues specific to the service charges on their individual properties.

11. It appeared to the Tribunal that the co-applicants intended simply to benefit from the application to their individual properties of any decision made in Ms Oliver's favour by the Tribunal. This was an entirely reasonable position for them (and for Ms Oliver) to take. If Ms Oliver were successful on any point she raised, the Tribunal would thereafter have to give directions as to the application of its decision to the co-applicants, if necessary requiring SCC to submit calculations and to provide further disclosure, if that were needed to check those calculations. On that basis, detailed disclosure in relation to the service charges paid by each individual co-applicant, and related matters, was not needed for the Tribunal to make its decision in principle. The Tribunal therefore ordered disclosure of invoices for service charges in relation to Miss Oliver and Miss Gill, but not for the other co-applicants.

12. This approach was discussed in detail during the hearing on 24th June 2013, and explained at length to Miss Oliver.

13. Application 0076 was listed for hearing on 21st and 22nd January 2014.

14. The Tribunal had determined when giving directions on 7.9.11 that the following issues arose in this application:

    a. Whether the roofing works were reasonably carried out;
    b. Whether the roofing works were carried out to a reasonable standard?
    c. Whether the Respondent has failed to comply with section 20 of the Landlord and Tenant Act 1985 in relation to supplying information about the cost of the roofing works;
    d. Whether the charges relating to buildings insurance are reasonable and whether they have been reasonably incurred;

e. Whether the cleaning charges have been reasonably incurred and are in a reasonable amount;
f. Whether the Applicant is in breach of the section 20 consultation procedure in relation to variation of and/or extension of the existing cleaning contract;
g. Whether the management fees have been reasonably incurred and are in a reasonable amount;
h. Whether the Respondent is entitled to include within its management costs the costs occasioned by applications to the LVT.

15. Ms Oliver filed her statement of case on 29th September 2011. The Respondent filed its statement of case in reply on 6th October 2011.

16. At the hearing on 21st and 22nd January 2014 Sheffield City Council was represented by Justin Bates of counsel. Ms Oliver represented herself. The other Respondents present were Michael Briggs (78 Exeter Drive) and Gwendolyn Connerton (439 Washington Road). Also present was Ms T Piercey representing her mother Stella Piercey of 349 Washington Road. Ms Piercey was not able to attend the second day of the hearing. On the second day Mr Ahmed (118 Cliff Street) and Ms Stepford O'Keefe (152 Cliff Street) attended.

Background

17. Ms Oliver is the owner of 128 Cliff Street, a three bedroomed maisonette situated on the ground and first floors of a five storey block on the Lansdowne Estate in Sheffield. The estate was built between 1968 and 1974.

18. The Tribunal viewed the estate at a site inspection on the first day of the hearing. The flats and maisonettes are in blocks of non-traditional

construction of varying heights, with flat roofs. Prior to the works which are the subject of this dispute, the roof covering consisted of mastic asphalt over a thin (15mm) layer of insulation. The design of the blocks includes deck-access walkways, and balconies. There are communal staircase at the ends of blocks giving access to each level, and some blocks are linked to others by bridges. The walkways and bridges are open to the elements and were finished with a mastic asphalt covering.

19. Ms Oliver holds the property pursuant to a lease entered into between Sheffield City Council and Ms Oliver on 25th September 1989. The lease contains the following provisions in respect of charges:

> "1... (B) In addition to the rent a service charge (hereinafter called "the Service Charge") to be determined and levied in accordance with the provisions contained in Part III of the said Schedule hereto.
> (C) In addition to the rent a charge (hereinafter called "the Estate Charge") being such reasonable contribution as the Council shall from time to time require ... to the costs expenses and outgoings lawfully incurred or to be incurred by the Council in respect of the upkeep or regulation for the benefit of the locality (that is to say the Housing Estate of the Council) of which the Building forms part or any part of such locality... such Contributions to be made in respect of such of the benefits to the said locality or part thereof...
> 3. The lessee HEREBY FURTHER COVENANTS with the council as follows: -
> (1) (b) to pay upon demand being made therefore by the Council the Service Charge and the Estate Charge at the times and in manner hereinafter provided
> (29) ... to pay to the Council from time to time as part of the Service Charge a reasonable part of the costs and expenses which the Council may from time to time incur or estimate to be incurred in carrying out repairs and improvements to the structure and exterior of the demised premises and the Building (including drains gutters and external pipes) and making good any defect affecting that structure and keeping in repair and improving the communal area and other parts of the Building... in order to maintain the same at a reasonable level of keeping in repair and improving any installation connected with the provision of those services.
> 30. To reimburse tot the Council upon demand from time to time throughout the term hereby granted the sum or sums of money paid by the Council pursuant to the

provisions of Clause 4(4)(i) hereof and expended by them in effecting or maintaining the insurance of the demised premises such sums becoming payable to Council immediately following the expenditure of such sums by the Council....

4. THE Council hereby covenant with the Lessee...

(4) (i) To take out and maintain throughout the term hereby granted an insurance policy in respect of the demised premises and the structure and exterior of the Building the same...

6. In this Lease unless the context otherwise requires: -

(vi).....There shall be added to the sum demanded by any account rendered by the Council to the Lessee towards the administrative costs and expenses of the council in the determination of the amount of and collection of such account such additional sum being either TEN PER CENTUM of the amount of the account (before the addition of value added tax or any other tax thereon) or the sum of FIVE POUNDS (whichever shall be the greater).

PART III

SERVICE CHARGE PROVISIONS

SECTION 1

THE SERVICE CHARGE

1. The service charge payable by the Lessee shall be a fair proportion to be determined by the City Treasurer or other duly authorised officer of the Council (in accordance with such formula as the City Treasurer or other duly authorised officer of the Council shall determine) of all costs expenses and outgoings incurred or estimated to be incurred by the Council in respect of or for the benefit of the Building...

2. The aforementioned obligations on the part of the Council in respect of which the Service Charge shall be attributable and paid by the Lessee in respect of the demised premises are (but not by way of limitation) as follows: -

(A) Keeping in repair and improving the structure and exterior of the demised premises and the Building (including drains gutters and external pipes) and the making good of any defect affecting that structure...

(D) The grant to the Lessee (in common with others) of the enjoyment of premises facilities or services by virtue of the provisions herein contained or implied on the part of the Council...

(E) The administrative costs (including accounting audit and management costs) of managing the Building including the costs of employing and paying employees of the Council or professional advisers agents or contractors in and about the performance of any of the obligations on the part of the Council in this Lease contained or implied.

(iii) Each Contribution shall be determined by the City Treasurer... before the commencement of each accounting year as being a reasonable amount of the said costs expenses and outgoings referred to..."

The law

20. Section 19 of the Landlord and Tenant Act 1985 provides:

"(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period—

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly."

21. Section 27A of the Landlord and Tenant Act 1985 provides:

"[(1) An application may be made to [the appropriate tribunal] for a determination whether a service charge is payable and, if it is, as to—

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made."

22. Section 20 of the Landlord and Tenant Act 1985 provides:

"20 Limitation of service charges: consultation requirements]

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

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

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

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

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

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

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

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

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

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

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

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

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

23. Section 20C of the Landlord and Tenant Act 1985 provides:

"(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court[, residential property tribunal] or leasehold valuation tribunal [or the First-tier Tribunal], or the [Upper Tribunal], or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application."

24. The test of reasonableness under section 19 has been considered in numerous cases. The Tribunal found helpful the guidance set out by HH Judge Mole QC in Regent Management v Jones [2010] UKUT 369 (LC) where he said:

"The test is whether the service charge that was made was a reasonable one; not whether there were other possible ways of charging that might have been thought better or more reasonable. There may be several different ways of dealing with a particular problem of management. All of them may be perfectly reasonable. Each may have its own advantages and disadvantages. Some people may favour one set of advantages and disadvantages, others another. The LVT [now the appropriate tribunal] may have its own view. If the choice had been left to the LVT it might not have chosen what the management company chose but that does not necessarily make what the management company chose unreasonable."

25. The Tribunal also considered the decision in the case of *Forcelux v Sweetman* [2001] 2 EGLR 173:

"The question I have to answer is not whether the expenditure for any particular service charge item was necessarily the cheapest available, but whether the charge that was made was reasonably incurred.

But to answer that question, there are, in my judgment, two distinctly separate matters I have to consider. First, the evidence, and from that whether the landlord's actions were appropriate, and properly effected in accordance with the requirements of the lease, the RICS Code and the 1985 Act. Second, whether the amount charged was reasonable in the light of that evidence"

26. The Tribunal also had regard to view of the Lands Tribunal as expressed in the case of *Veena SA v Cheong* [2003] 1 EGLR 175:

"... The question is not solely whether costs are 'reasonable' but whether they were 'reasonably incurred', that is to say whether the action taken in incurring the costs and the amount of those costs were both reasonable."

Roofing works

27. On 25th July 2007 SCC sent Ms Oliver and the other leaseholders on the estate a document setting out its reasons for carrying out the roofing works (A76). That document was prepared by Chris Lake, an assistant investment manager. That document indicated that SCC intended to replace any roof covering which was defective or coming up to the end of its notional life expectancy. This work would involve: laying tapered insulation boards, and then a main layer of insulation; and laying a preparation layer of Thermoglass roofing felt, which would be hot bonded.

Works to the walkway coverings and balcony coverings were also proposed. The document indicated that in the view of SCC it was not cost effective to repair these items one off basis, so a wholesale programme of repair and replacement was needed. The intention was that the works would be beneficial to the life expectancy of the building as a whole, reduce fuel costs and approve the appearance of the building.

28. On 27th July 2007 SCC gave notice to Miss Oliver of intention to enter into a long term agreement in relation to the roofing works. That document indicated that the intended work was the renewal of the existing flat felt roof with a high performance roofing system, and repair and renewal of the mastic asphalt covering to the deck access walkways, bridge walkways and private balconies. The programme of works was expected to take three years to complete. The work was considered necessary because the existing flat roof and walkway surfaces had come to the end of their life expectancy and continued maintenance was not cost effective.

29. Miss Oliver wrote to SCC on 6th August 2007 asking for further details in relation to the works to her block, and suggesting that the surface of the walkway did not need renewal, though a few coats of paint might help. She asked for a quotation relating to works for her individual block, and an opportunity to nominate her own contractor.

30. A further letter was sent by SCC on 16th August 2007 stating that further information regarding the proposed work would be available in early November 2007 and that there would be an opportunity to nominate a contractor.

31. On 22nd August 2007 Miss Oliver replied asking for further information. That letter refers to a telephone conversation she had had with an official from SCC, and it seems that as a result of that a meeting was arranged at Miss Oliver's home, on 6th September involving Miss Oliver, a local councillor, Cllr Creasy, Grace Nicholson, the investment co-ordinator for

SCC's leasehold management team (and author of the letter), and Mr Lake, the assistant investment manager, who could answer any technical queries. On 3rd September Miss Oliver wrote to SCC confirming that this meeting was due to take place, expressing gratitude at SCC's giving greater recognition to the needs and concerns of leaseholders, many of whom were older people, and asking whether other matters, in addition to the roofing works, could be discussed at the meeting.

32. On 11th September 2007 Miss Oliver wrote again to SCC summarising what had been discussed at that meeting. She noted that Mr Lake had "succinctly explained the process of proposing, tendering, awarding of contract and the carrying out of the necessary work in relation to the Roofing Contract, which includes the re-surfacing of walkways. I was pretty amazed at the extent of the work involved." She had expressed a concern about the cost, and the view that the council had neglected the properties for years, and that leaseholders were being expected to be involved in repair/maintenance costs resulting from neglect, which was, in her view, unfair.

33. On 25th September 2007 Ms Nicholson again wrote to Miss Oliver informing her that meetings at which leaseholders could discuss the proposed works were to be held on the estate in October. On 27th September Miss Oliver replied indicating that she was unable to attend the meeting for her part of the estate.

34. On 19th December 2007 Miss Oliver wrote to SCC stating that she understood that the invitation to tender for the works had recently been advertised, and a number of bids received. She asked for clarification of the likely total cost of the work, based on its most competitive price received. She indicated that she did not believe that her balcony needed to be re-surfaced, as she had tiled it herself (thereby covering over the original asphalt surface). She again complained that the works were made necessary by years of neglect.

35. On 17th December 2007 Miss Oliver had a meeting with Miss Nicholson, at which she was provided with documents in relating to the specification for the roofing works. She asked for drawings associated with those documents, and was supplied with those on 22nd December 2007.

36. On 30th December 2007 Ms Nicholson wrote to Miss Oliver stating that based on the most competitive tender received the total cost to her of the roofing works and works to the access deck would be £2,994.21. This was broken down as to £2,253.12 for the roofing works and works to the access deck; £600 for the balcony cost (if required); and a "communal cost" of £141.08. That "communal cost" related to works to the communal stairwells and bridge links. That letter noted that Miss Oliver had been able to view the two most competitive tenders at the consultation meeting which had taken place on 17th December. It appears from subsequent correspondence that Miss Oliver wished to inspect all the tender submissions, but was not permitted to do so at that stage because some information was not available.

37. In relation to all the work apart from the communal works, the figure was reached by using the cost quoted for the block in which Miss Oliver's dwelling was situated and dividing it by the number of dwellings. In relation to the communal works, a group of adjacent blocks (referred to as a superblock) comprising 202 dwellings was used as the basis for the quotation, and the figure divided by 202 to give the cost per dwelling.

38. On 17th February 2008 Miss Oliver wrote to SCC indicating that she believed that she should be entitled to inspect all the tender bids. On 8th April 2008 John Mothersole, interim chief executive of SCC, replied to her apologising for the fact that some of the information had not been available to her when she had visited SCC's offices on 17th December 2007, and attaching a copy of the final tender report which detailed all the bids which SCC had received for the project. The document showed the costs

for Miss Oliver's block, and for her property, and for adjoining blocks and properties.

39. Miss Oliver replied to this letter (her letter is not fully dated) indicating that she did not believe that she had received all the information to which she was entitled, and that she felt that she was being victimised.

40. The contract was awarded to the lowest bidder, Briggs Amasco, who delivered a certificate of practical completion for the entirety of the works on 27th February 2009.

41. The work proposed was carried out during 2008 to 2009 and Miss Oliver was sent an invoice on 26th August 2009 showing the total cost to her as being £2,544.21. This comprised £2,253.13 for works to her block (the roofing and access deck works) and £141.08 for the communal works to the "superblock". The balcony cost, included in the original estimate, was excluded. An administration fee of £150 was added to the cost.

42. Following receipt of the invoice Miss Oliver wrote to SCC on 2nd September 2009 indicating that she did not regard SCC as having discharged its duty to consult under section 20 of the Landlord & Tenant Act 1985 and that she was not required to pay more than £250. She was however willing to pay £500 in full and final settlement of the invoice in the hope of avoiding a formal dispute.

43. SCC (by Ms Nicholson) replied to this letter on 14th October 2009 asserting that the appropriate consultation had been carried out, and offering an option of payment by instalments. Miss Oliver responded to that on 14th December 2009 by indicating that she would pay no more than £250 and would pay that by instalments of £50 per month.

<u>The consultation issue</u>

44. Miss Oliver's case, as set out in her application, did not raise a failure to consult in accordance with section 20 of the 1985 Act as an issue. She did raise it however in her witness statement and wished the Tribunal to deal with the issue. The Tribunal accepts that it was appropriate for it do so.

45. The roofing works were works to which Schedule 2 Part 1 of the Service Charges (Consultation Requirements) (England) Regulations 2003 apply. Those regulations require the landlord to give notice in writing to the tenants of the intention to enter into such an agreement, to have regard to observations made to it, to prepare a proposal and to give notice of it to the tenants, to have regard to observations made regarding the proposal, and to state his response to any such observations within 21 days.

46. Miss Oliver does not contend that SCC failed to discharge any of those obligations. She indicates in her witness statement that her complaint in relation to the consultation process is that she was not permitted to see all the tender documents. It appears that she was shown the documentation from the successful bidder, Briggs Amasco, and the next lowest tenderer, but not from the other bidders.

47. Miss Oliver believes that the failure to permit her to see this documentation constitutes a failure to consult within the meaning of section 20 of the 1985 Act.

48. It appeared to the Tribunal that at times Miss Oliver struggled to understand the technical nature of consultation under section 20 and the relevant regulations.

49. The Tribunal finds that, this being a qualifying long term agreement where public notice is required, the relevant regulations are those found in Schedule 2 to the 2003 Regulations (referred to above) and as such there is no obligation on SCC to show Miss Oliver the tender documents.

50. It was not alleged by Miss Oliver that there had been any other non-compliance with the consultation process, and the Tribunal found, looking at the documentation supplied by SCC and summarised above, that it had complied with the requirements of the Regulations.

51. In the circumstances Miss Oliver's contention that the costs recoverable are limited by the regulation 6 of the 2003 Regulations to £250 is misconceived and the Tribunal finds that the costs are not so limited.

The works

52. Applying the law as summarised above, the Tribunal regards it as being necessary to consider two questions: first, was the action of SCC in carrying out these works appropriate and within the provisions of the lease; secondly, were the costs reasonable.

53. The Tribunal heard evidence for SCC from Steve Parker, Home Ownership and Revenues Manager, and Richard Hawson, Investment Manager.

54. Mr Parker had provided a detailed witness statement. His evidence related mainly to the other issues arising in this dispute. Mr Hawson had also provided a detailed witness statement and he dealt in detail with the roofing works.

55. Both witnesses were asked questions by Ms Oliver.

56. Mr Howson indicated that during the period 2000 to 2005 there were regular complaints to SCC from residents on the Lansdowne estate of water ingress and dampness. In particular a local councillor (Cllr Creasey) had sent a written report dated 23rd November 2006 detailing problems of this nature. The Tribunal was provided with a copy of that report which showed that occupiers of flats on the top deck of the blocks were complaining of such problems.

57. Prior to this during the period 1998 to 1999, when some funds had been available, the roofs of six blocks on the estate had been replaced by SCC. The condition of the roofs, and the problems which were developing with them, were therefore already known to SCC.

58. Complaints had also been received from the local residents' association, and from numerous tenants/occupiers individually.

59. As a result in December 2008 SCC commissioned a survey of the roofs from Briggs Amasco, an independent roofing contractor. The work was carried out by a particular individual, Mr Bonney, who had worked on the estate during its construction in the mid-1960s, and who therefore had particular knowledge of the construction of the roofs, walkways and balconies. A copy of that survey was provided. The author, Mr Bonney, stated that the roof coverings had deteriorated and recommended works which he regarded as essential. Those works were complete replacement of the roofs replacement of asphalt coverings to the access decks, and to the bridges. A detailed specification was provided (in accordance with SCC's instructions).

60. Mr Howson indicated that discussion with Mr Bonney elicited further detail about the problems with the roofs: the fibreboard insulation underneath the top layer of mastic asphalt was wet as water was penetrating through cracks in the mastic asphalt. There was standing water to areas of the roof. The insulation was not working as insulation because it was permanently wet.

61. Although in theory the life of a mastic asphalt roof could be up to forty years (these buildings were, by 2009, about forty five years old) expansion and contraction cracking tends to occur which reduces the lifespan.

62. Repairs to cracks did not work well; new material had to be used and further cracks would develop. Repairs carried out were not successful and further complaints would result.

63. Mr Howson had a high opinion of Mr Bonney. He had spent his entire career in the roofing industry and the company for which he worked specialised in this type of roofing construction. A SCC surveyor, deployed by Mr Howson, worked with Mr Bonney on carrying out the survey, and concurred with his view. Mr Howson did not accept a suggestion that Briggs Amasco had recommended that the roofs be replaced because they hoped to get the work.

64. Mr Howson indicated in his evidence that the decision that the roofs should be replaced was taken on the basis of the totality of the information available to SCC. That included Mr Bonney's report and his advice to SCC; the observations of their own surveyor; the report and survey provided by Cllr Creasy; its own knowledge, derived from its repairs system, of the number of complaints in relation to water ingress, linked to problems with the roofs and walkways. Mr Howson had himself been involved in collating information on the latter point.

65. In relation to the walkways, Mr Howson stated that the surfaces of the access decks and bridge links had deteriorated over time and were observed to need replacement. This deterioration could itself lead to water penetration into dwellings and into the structure of the buildings. There was a particular concern about such water penetration because the structure includes beams made from high alumina cement concrete. This substance is particularly vulnerable to the effects of water penetration and can lose its strength if it becomes saturated with water, as a result of a particular process of chemical reaction. Removing the existing roof covering would permit examination of the HAC beams immediately underneath, and an assessment of the extent to which this process had

already occurred. It was therefore of some importance to keep the building waterproof for the future.

66. Consideration was given to the installation of pitched (as opposed to flat roofs) to the blocks, but the cost would have been prohibitive. The decision was taken that the flat roofs should be retained, and the existing covering removed and replaced with high-performance roofing felt, a material which had become available in the 1990s. It had a life expectancy of at least twenty-five years. The alternative was to use mastic asphalt again: this would have a life expectancy of forty years, but was very much more expensive. The replacement included the installation of a vapour control layer, new insulation bonded to underlay, and the high performance roofing felt.

67. The covering of the walkways was replaced with mastic asphalt, into which chippings were rolled to provide a non-slip surface.

68. The work was carried out in 2008 to 2009. It was regarded by Mr Howson, and by SCC, as a success. In the years since the work was done there had been little in the way of complaints about water ingress from the roofs, walkways, balconies and bridge links.

69. The Tribunal accepted the evidence of Mr Howson in its entirety. It was not substantially challenged by Ms Oliver.

70. Ms Oliver was critical of the fact that SCC had not produced its own survey of the roof condition. Her view was that SCC should have used its own surveyors/technical officers to produce a survey, which should have been circulated to the tenants, before any decision about the works was taken. This was put by her to Mr Howson. His response was that there would have been costs associated with producing such a piece of work. If an in-house quantity surveyor had been used to produce the specification, rather than the work being done by Mr Bonney (together with the surveyor

deployed by SCC) that would have cost (as an internal figure) at least £4,000. A separate survey and written report would have cost at least £2,000, and would have told SCC what it already knew.

71. Mr Howson was asked why the work could not have been carried out at some point in the future. He indicated that if it had been delayed, there would have been an increasing volume of complaints about water ingress, with associated costs in the form of repairs, and compensation claims from tenants. There would have been more complaints from local councillors. The work would have needed to be done sooner rather than later in any event. Additionally, SCC was intending to, and did, embark on a programme of replacing the cladding and insulation to the exterior of the building and the roofing works needed to be undertaken before this was done.

72. The Tribunal found that SCC was entirely justified in replacing the roofs to the blocks of flats on this estate at the time and in the manner which it did. SCC's decision-making process could not be criticised: it took into account all the material available to it in reaching its decision both as to whether replacement should be carried out, timing, and the material and method used for the replacement. It did not rely simply on the report of Mr Bonney. The Tribunal did not accept the suggestion of some form of collusion between Mr Bonney and SCC. His report confirmed what SCC knew by its own observations. It would have been known to all those involved that if SCC decided to go ahead with the work, a competitive tendering process would have to be undertaken, and that Mr Bonney's firm would only succeed in obtaining the tender if succeeded through that process.

73. As far as the cost of the work was concerned, it was apparent that the price obtained by SCC was the best obtainable on a competitive basis. It was reasonable for SCC to go ahead with the Briggs Amasco tender after going through that process.

74. SCC approached the charging for each occupier as set out in paragraphs 37 above. This divided the cost of the roofing and deck works between the properties in each block, and the bridge/communal works within each "superblock". This was in the view of the Tribunal a reasonable approach to the division of the cost. The replacement of the roof benefited all the tenants of the block, not simply those on the upper floors: it prevented deterioration of the structure of the block generally. The bridges and communal stairways were a part of the blocks and of the estate: although the user of these facilities by individual tenants might vary depending on the position of their dwellings in the block, and the destinations which they tended to visit, attempting to differentiate between individual dwellings on the basis that some might use the bridge links more than others would led to potential unfairness, and it was difficult to know how such an exercise might sensibly have been approached.

75. Ms Oliver raised a particular issue in relation to the non-slip coating to the decks, which she found unattractive and difficult to keep clean. The Tribunal looked carefully at the coating during its inspection of the property, and had regard to the fact that it was necessary for SCC to ensure that the decks had a safe surface for pedestrian traffic. The Tribunal could not find anything to criticise in the granular anti-slip coating.

76. The Tribunal's findings on this issue are therefore as follows:

    a. The works carried out by SCC to the roofing, access decks and bridge links were works of repair and fell squarely within the provisions of clause 3(29) of the lease;
    b. The works were appropriate and indeed necessary;
    c. The cost of the works was reasonably incurred;
    d. The division of the cost between the dwellings in each block was divided in a rational and reasonable manner.

Cleaning services

77. In relation to cleaning services the Applicants wished the Tribunal in particular to consider:
    a. Whether the Council had complied with the requirements of section 20?
    b. Whether the charges for cleaning were reasonable?
    c. Whether the contract had been awarded to SCC on unfair terms?

78. The Tribunal notes in passing that the issue of cleaning costs had been considered in a previous LVT application made by Miss Oliver under case no MAN/OOCG/LSC/2007/0013. On this occasion Miss Oliver had challenged the cleaning costs for the year 2005 to 2006. The Tribunal on that occasion had observed:

"...we accept the figures for cleaning contract costs and estate management team support costs... They are reasonable for the amount and standard of the work carried out. From our inspection the quality of the work is just about satisfactory. A figure of £3 per week is fairly typical for services of this type in developments of this nature. It may be that the large area covered by the contract... produces from time to time some very minor element of cross-subsidy by one block of another. This will equal out over time and does not, in terms of the management of large estates, produce an unfair or unreasonable result."

79. On 10th December 2004 SCC gave written notice to Miss Oliver (B47) that it intended to enter into a contract for cleaning for the estate and other areas. This was once again a long term agreement for which public notice was required. This notice complied with the requirements of the regulations (summarised above).

80. The contract for which tenders were being invited covered what SCC refers to as the Central Area, and includes a number of estates. The total number of dwellings involved was originally 1962, but the number has been reduced by demolition to 1696.

81. On 25th May 2005 a document headed Notice of Proposal was sent to Miss Oliver. This indicated that eight contractors had expressed an interest, and four had been short-listed. Only three of those four submitted a tender. SCC's in house service, Transport and Commercial Services, had been selected as the preferred contractor. Details of how and when the proposal could be inspected were provided. The contract was for a three year period with an option to extend for two years. The new contract began on 1st October 2005.

82. Transport and Commercial Services were the lowest of the three bidders, although the contract was awarded on criteria which included quality as well as price.

83. The element of service charge paid by Miss Oliver for cleaning during the year 2004 to 2005 was £216.02. Over the five years of the new contract (2005 to 2010) she was charged a total of £663.57, or £132.71 per annum. The highest figure charged during a year in that five year period was £159.34, and the lowest £102.37

84. The annual figure referred to in the previous paragraph consists of two elements. The larger element is the cost charged under the cleaning contract. There is a smaller element which is a charge attributed to each dwelling for additional cleaning and support from estate officers.

85. Miss Oliver stated in her Statement of Case dated 29th September 2011 that she had received the Notice of Intention. She had attempted to look at the proposal by visiting by appointment to inspect the proposals. She was told that she could not see them, for reasons of commercial confidentiality.

86. SCC however subsequently did make the tender bids available for inspection. Miss Oliver saw them on 28th July 2005.

87. Miss Oliver points out in her statement of case that the total price for the contract was £796,000. That works out, split over the 1962 dwellings, at £85.62 per annum per dwelling. She therefore regarded the annual charges as summarised above, as being excessive.

88. The Tribunal heard evidence from Mr Parker on this subject. His evidence was that the cleaning contract provided for one weekly full clean and one spot clean. The full clean involved "a good fettle" of all the communal areas, litter removal generally, and removal of any bags of rubbish not properly placed in the communal bin stores. Communal bin rooms had to be cleansed. Graffiti was to be removed if possible, and reported if not. A detailed specification was provided (B53). The spot clean was less thorough, but the contractors would carry out cleaning which was visually necessary, and remove dumped rubbish.

89. In addition to this regular service, a "responsive" service was provided by the estate officers as part of their wider duties. This involved removing litter, debris, dumped bags of rubbish, fly tipping and so on. It was particular needed on a Monday morning.

90. In relation to the contract cleaning costs, this was charged on a block by block basis. The charge for each block was calculated on the basis of the number of dwellings but also how difficult the block was to clean. That depended partly on the design, and also how challenging the block was to keep clean historically.

91. In relation to the responsive cleaning, a council officer, Mr Auckland, was involved in obtaining information from the estate offices and calculating what part of the estate officers' time was spent on cleaning. He also

calculated how much in the way of consumables (cleaning materials) was used by the estate officers. A figure was arrived at for the Landsdowne and Hanover estates together, and then divided by the number of dwellings on the two estates (1696). Around 148 hours per week was being spent by estate officers on that type of cleaning.

92. SCC produced a full breakdown of the cleaning costs for the years which were the subject of the application (B57). The charge had varied relatively little over the years.

93. The quality of the cleaning was monitored. SCC produced copies of annual reports by Mr Anderson, a senior estates management officer, who monitored the cleaning (B59 – 62). He found standards on the estate generally to be grade B (where A was the highest and D the lowest).

94. From 2010 onwards the cleaning to the estate has been carried out inhouse. The contract was therefore not put out to tender again, and the cleaning has continued to be carried out by SCC's own service.

95. Miss Oliver accepted in her evidence that the cleaning was priced per block. She accepted that there were now 1696 properties in the Central Area.

96. In relation to the previous application regarding the cleaning costs of 2005 to 2006, Miss Oliver explained that she had not raised the consultation issue previously, and wished this issue to be considered. She felt that she had erred in concentrating on the issue of cost.

97. Miss Oliver felt that the service which was being provided was substandard. It was not up to the contractual specification. It was only operating five days per week, not seven days per week. The standard of service was patchy, and litter-picking was not carried out daily.

Cleaning: the consultation issue

98. The cleaning contract was a qualifying long term agreement for which public notice was required. It was covered by Schedule 2 part 1 of the Service Charges (Consultation Requirements)(England) Regulations 2003. There was no requirement to make the tender bids available for inspection, although it appeared that, after an initial refusal, Miss Oliver was given an opportunity to see the original bids at SCC's offices.

99. Miss Oliver did not take issue with any other part of the consultation process in relation to the entering into of this contract. She did object to the fact that the contract had been extended without a further consultation. It was the view of the Tribunal however that, as the original contract had contained express provision for an extension by agreement of the parties, no fresh contract was being entered into, and the requirement to consult simply did not arise.

100. Miss Oliver was unhappy about the fact that the contract had been taken back completely in house from 2010 onwards, without any further consultation. The Tribunal was not being asked to consider charges made after that change of contract, so it was not necessary to consider this point.

Cleaning: reasonableness

101. The Tribunal which dealt with the 2005 to 2006 charges had found that they were reasonable. At that point the total charge was £159.34 per annum. The charge had been less than that in every subsequent year: in 2006 to 2007, £102.37; in 2007/8, £130.25; in 2008/9, £134.13; in 2009/2010, £137.48.

102. The Tribunal had inspected the development on the first day of the hearing. On that visit, standards of cleaning appeared to be good. Little in

the way of graffiti was visible; the estate was reasonably free of litter; and communal areas were not strewn with rubbish bags or abandoned items.

103.Two members of the Tribunal had visited the development on two previous occasions in 2011 and 2012, in connection with a previous application by Miss Oliver. Although those visits had not specifically been directed at considering cleaning, the purpose of the visit had included getting a feel for general levels of maintenance and appearance on the estate. On neither occasion had it appeared that cleanliness of the common parts and communal areas was not being maintained to a satisfactory standard.

104.Miss Oliver's case was the responsive cleaning service should be available 7 days per week. The Tribunal regarded this as being unrealistic in view of the modest sums being charged. It was available during normal working hours five days per week. This would mean that on odd occasions litter or items of dumped rubbish would be left for up to 48 hours. This was not unacceptable in the context of this type of residential development.

105.The Tribunal had regard to the fact that the sums charged were very modest. The cost was less than £3 per week. It was the firm view of the Tribunal that the charge for these services was an entirely reasonable one in the context of what was provided, and that the nature of those services was appropriate for an estate of this kind.

106.The Tribunal concluded therefore that the services provided were reasonable, and that the charge made for them was reasonable.

Insurance

107.Evidence in relation to this issue was provided for the landlord by Mr Parker. He indicated that insurance was arranged pursuant to SCC's obligations under the lease for all its leasehold properties on a citywide basis. The provider was selected by competitive tendering, but each

contract was for a four or five year period. Selection was based on a combination of price, service and administration, claims handling, and the willingness to enter into a long term agreement which included a notice period for price increases.

108. In 1998 the contract was awarded to Cigna Insurance. In 2002, it was awarded to Zurich Insurance, and a further contract was awarded to Zurich in 2007. In 2011 the contract was awarded to Acumus Ltd.

109. A section 20 consultation process was undertaken before the award of the contract to Zurich in 2007: SCC produced the relevant documents. A further section 20 consultation was undertaken before the award of the contract to Acumus: the documents were included in the trial bundle.

110. During the period when Cigna Insurance were the provider, between 1998 and 2002, the cost of insurance was lower than either before or after this period. In the last year before Cigna took over (1997-8) the charge passed on to Miss Oliver was £95.18. During the four years when Cigna were the insurer, the cost was £36.56 on average per annum, although the figure went up slightly each year.

111. It was the evidence of Mr Parker that Cigna had ceased to operate in this market at the time when the contract was re-tendered. The contract was awarded to Zurich, based on the criteria set out above. The evidence of Mr Parker was that, although the criteria included matters other than price, on each occasion when the contract has been re-tendered, the successful tender has in fact been the cheapest.

112. Over the five years of that contract the cost of insurance was as follows:

2002	£52.15
2003	£54.76
2004	£56.40

2005	£58.66
2006	£67.75

113. The contract was re-tendered and again awarded to Zurich in 2007. For the next four years the invoiced costs were:

2007	£70.88
2008	£74.38
2009	£83.61
2010	£124.99

114. From 2011 the contract was awarded to Accumus, and during the first two years of that contract the charges were:

2011	£111.14
2012	£117.12

115. The evidence of Mr Parker was that at no stage had Cigna re-entered the market or had any other cheaper contractor entered the market.

116. Mr Parker told the Tribunal that SCC was paid an "agreed administrative services" fee, sometimes referred to as commission, by the insurer. This covered the cost to SCC of undertaking the administration of the policy, including maintaining the database of customers and property information, calculating the premiums, invoicing, taking payment and banking, recovery of the premium, dealing with inquiries from solicitors when leasehold properties were sold, and general office expenses relating to the policy.

117. On the Zurich policy the commission paid was 25%. On the Accumus policy it is 20%.

118. Mr Parker had produced the cost of administering the policy for the year 2011-12. The total cost was £41,743. This was actually somewhat less than the administrative services/commission for that year, which was £35,385.55.

119. The cost of buildings insurance per leaseholder was based on the RICS guidelines and calculated by a surveyor at the time the property had been valued prior to sale. To calculate the figure for each property the sum insured is multiplied by the contracted rate per thousand, and 6% insurance premium tax added.

120. Tenanted properties let by SCC are covered under a city-wide policy which covers catastrophic loss. SCC has an excess of £500,000 under this policy, so in effect it self-insures for most claims.

121. Miss Oliver raised various concerns in relation to insurance:

a. The administrative services fee should not be passed on to leaseholders;
b. All properties, whether leasehold or tenanted, should be insured under the same policy;
c. The re-building costs of the blocks should be re-evaluated on a regular basis.

122. In relation to the overall cost of the insurance, the Tribunal found that SCC had put the contract out to tender and had on each occasion accepted the lowest figure, although price was not the only criterion. Miss Oliver did not put any evidence before the Tribunal to indicate that insurance of this kind was available at a lower cost. The fact that the cheapest insurer, Cigna, was no longer in the market, told its own story. The Tribunal was satisfied that SCC had on each occasion the contract was re-tendered adopted an appropriate procedure to ensure the best value for the leaseholders.

123. Miss Oliver maintained that the lease required all properties in each block to be insured under the same policy. The relevant covenant provides:

> "4 (4) (i) To take out an maintain throughout the term hereby granted an insurance policy in respect of the demised premises and the structure and exterior of the Building bounding the same in the joint names of the Council and the Lessee in the full reinstatement value thereof from time to time determined by the Council with a reputable insurance company nominated from time to time by the Council against the risk of loss and damage ....."

124. The Tribunal did not accept that a proper reading of this clause required SCC to put in place for leasehold properties an insurance policy which covered the entire block, including tenanted properties. It required SCC to put in place a policy which covered the leasehold property itself, and the structure and exterior in so far as it pertained to that property, and which would re-imburse the leaseholder if that structure and exterior were damaged. This did not imply that each physical block or building had to be covered under the same policy.

125. The evidence before the Tribunal was that, if such a method of insuring the properties was adopted, the cost to leaseholders would increase. It would be necessary for SCC to put in place a policy with a modest excess (the current leaseholder policy had an excess of £100). The Tribunal accepted the evidence of Mr Parker that tenants tend to look after their properties less well than leaseholders, and that there would be more claims. Potential insurers would be aware of this, and the premiums under such a policy would accordingly be higher. Those higher premiums would be charged to the leaseholders, who would receive no benefit from the additional insurance obligations taken on in relation to the non-leasehold properties.

126.There would of course be a significantly increased cost to SCC in providing a much higher level of cover to the non-tenanted properties. Although this would not impact directly on leaseholders, it would have an effect on the overall housing budget, which might impact on SCC's ability to provide other services and to maintain its estates.

127.The Tribunal concluded that Miss Oliver was arguing that SCC should embark on a course of conduct which would be likely to increase, rather than reduce, the amount she was paying for insurance. It did not accept that the approach she put forward would provide value for money.

128.In principle a landlord may receive a fee for providing administrative functions on behalf of an insurer: *Williams v Southwark LBC* (2001) 33 HLR 224. The Tribunal accepted the evidence of Mr Parker that SCC did not make a profit from this fee, as the cost of administering the policy exceeded the fee. An example of the figures for the most recent year was provided at B45. The shortfall was not charged directly to the leaseholders.

129.The Tribunal found that, if SCC did not provide the administrative services to the insurer, this work would have to be carried out by the insurer itself. This would be a much more complicated procedure for the insurer: for example, it would have to obtain SCC's database of properties, and then manage it; it would have to contact leaseholders direct in relation to claims; it would have to chase unpaid invoices individually. If the insurance contract were entered into on this basis, the premiums would be higher, because they would reflect the increased cost to the insurer.

130.The evidence to the Tribunal of Mr Parker was that the valuation of each leasehold property was updated each year on an indexed basis, using the original right to buy figure. Each time a property in a block was sold, the valuation of that property was used to re-index the valuations of the other leasehold properties in that block. Thus the valuations for each property

were kept reasonably up to date. The Tribunal regarded this as a reasonable and proportionate approach.

131. The Tribunal regarded Miss Oliver's criticisms of the approach taken by SCC to insurance as misguided. She was suggesting changes in the method of insuring her property which would, if implemented, increase the cost to her.

132. The Tribunal found that the charges paid by Miss Oliver for insurance were reasonable, and that the cost of insurance was reasonably incurred by SCC.

Management charges

133. The management charges which Miss Oliver sought to challenge were as follows:

2006/7	£40
2007/8	£40
2008/9	£40
2009/10	£36.05

134. Miss Oliver pointed out in her application that SCC did not charge a management fee prior to the year 2005/6. As she was required to pay a 10% administration fee on each invoice, the real cost of the charge was £44.

135. Miss Oliver raised as an issue the basis of the charge. She pointed out that the Tribunal had indicated that management fees should be calculated on a percentage, rather than a flat fee. She also raised a concern that the Tribunal was charging for losses in previous LVT decisions.

136.Miss Oliver referred to the decision of the LVT in a previous case in which she was concerned: *Oliver v Sheffield City Council* MAN/00CG/LSC/2007/0013. In that case the Tribunal found as follows:

> "The service Charge claimed of £234.18, made up of £159.34 for cleaning, £13.55 communal Electricity, Management £40 and Administrative Fee £21.29 (10%)....
> It is not unreasonable for a lessor to charge a management fee for the management of the services. The Lease provides for such at Paragraph (E) of section I of part III. Additionally the Lease, at paragraph 5, provides for the administrative costs of "determination and collection "of the Service Charge account. (10% or £5, whichever is the greater).
> Mangement charges would normally include the determination and collection of the account, but the Lease is clear and specific. The respondent is entitled to its 10%. A round sum management fee of £40 is not justified and the respondent offers no explanation as to how it is calculated. Given the very limited extent of the service items, the fact that the management functions of the estates management team are included in the costs and the fact that the determination and collection is to be separately charged for, means that a much lower than normal management fee should reasonably be charged.
> In all the circumstance a figure of 7.5% would be reasonable in place of the £40."

In that particular case that produced a charge of £13.04.

137,Miss Oliver also referred to the decision of the LVT in *Grant v SCC* MAN/00CG/LSC/2009/0040. This decision related to a flat in the same block, no 138, owned by Mr Grant. In that case Miss Oliver, who was assisting Mr Grant at the hearing, invited the Tribunal to apply the 7.5% figure determined in the previous case to Mr Grant's service charges. In that case the Tribunal determined that a reasonable management fee for each of the years 2005 to 2008 would be £20.

138.Although the Tribunal must have regard to the previous decisions, they are not binding upon it, and the Tribunal must reach its decision in this case on the basis of the evidence and submissions presented to it.

139.The Tribunal heard evidence from Mr Parker on this issue. He indicated that the guidance of the Audit Commission to local authorities required them to recover from leaseholders the true cost of home ownership management, so that services provided to leaseholders are self-financing and not subsidised by tenants. The cost of providing services was recharged by two methods: first, an administration charge of 10% towards the administrative costs of SCC in determining the amount of service charges, and in collecting them; second, a management fee which recovers the balance of the costs.

140.The costs covered by these charges included calculating service charges, collecting and accounting for service charge payments, carrying out s20 consultations, running customer surveys, providing newsletters and operating a leaseholders' forum, monitoring service agreements, covering office costs etc.

141.The salaries of the staff involved were taken into account, together with some direct overheads.

142.Mr Parker indicated that during the years 2005 to 2008 the total costs of leasehold management were apportioned equally across leaseholders, and a flat fee charged. Following the decision in *Grant v SCC,* SCC reconsidered its approach and from 2008 onwards has charged a management fee which includes a fixed element and a variable figure based on the block the property is in. The figure for 2009/10 was calculated on this basis.

143.Mr Parker referred to the Core Cities Survey for 2010/11 which showed that the average management charge for a leasehold property in Shefffield was £58. This was the second lowest figure in a group of nine large metropolitan authorities. The lowest figure was £37 (Birmingham) and the highest £189 (Bristol and Newcastle). SCC produced similar reports for the

previous two years which showed a similar distribution of charges: in each year SCC's charges were among the lowest.

144. SCC produced a calculation for each of the years concerned. This figure was reached by calculating a figure for the leasehold management running costs, including employee costs, printing etc, and Sheffield Homes Management and technical costs, deducting the administration costs received, and dividing what remained between the number of leasehold properties.

145. In 2006/7 this per capita figure was £40.03, but SCC pegged the fee at £40. In 2007/8 the figure was £41.08, again pegged at £40. In 2008/9 a different method of calculation was used. The average fee per property that year would have been £36.60. However SCC instead adopted a different approach: a standard charge of £25 was charged to every leaseholder. In the case of Miss Oliver's block, additional charges were made for management of the cleaning service (£4), the communal electricity (£2), the repairs service (£8), and an additional £1 relating to the height of the block. This gave a total fee of £40.

146. In 2009/10 the traditional method of calculating the management fee on a per capita basis produced a fee of £43.04. The fee charged to Miss Oliver was calculated on the basis of a leasehold management standard charge of £29, and management charges of £4.70 in relation to cleaning and £2.25 for communal electricity. This gave a total of £36.05.

147. The Tribunal found that SCC was entitled to charge a management fee in accordance with the provisions of the lease. It was apparent that a number of different approaches to the calculation of the fee were possible. Those included using a percentage figure, adopting the flat rate approach used by SCC for the first two of the years in question, and the mixed approach adopted for the third and fourth year.

148.The Tribunal had in mind that the charges were modest. They were of course significant sums to the leaseholders, but it was reasonable for SCC to adopt a method of calculation which was not overcomplicated.

149.In the case of *Bingham v Sheffield CC* MAN/00CG/LSC/2009/0040a leaseholder had complained of the £40 flat management fee. In that case the Tribunal noted that the method of charging was changing and that in future the leaseholder would apparently be charged only 87.5% of the fee. On this basis, the Tribunal reduced the fee for the previous three years by £5 per annum, using the future charging method as an indicator of an appropriate method in the past.

150.In the current case, the Tribunal was provided with a full calculation of the management fee for each of the years in question.

151.The Tribunal did not regard charging a flat fee, when the amount involved was modest, as an unreasonable approach. Although such a fee would not reflect the management relating to a particular property, or a particular block, the majority of the management functions discharged by SCC would tend to benefit leaseholders generally, either directly or indirectly, and this basis of calculation was particularly transparent. The Tribunal noted that much of the criticism of SCC in *Oliver* [2007] related to the lack of information provided about the calculation of charges: that was not an issue in this case.

152.The Tribunal understood that, following criticism from the Tribunal in previous cases, SCC had adopted a different charging basis which sought to reflect to some extent the expenses associated with each block. This was a reasonable approach to calculation.

153.The Tribunal therefore concluded that the management fees charged to Miss Oliver over the four year period which was in contention were reasonable. They were based on SCC's management costs. In the first two

years there was a slight undercharge, because of SCC's decision to cap the figure.

154.The Tribunal noted the evidence provided as to levels of management charges in other authorities. Adding the administration fee and the management fee together, it was apparent that SCC was one of the cheaper of the nine authorities involved in the Core Cities comparison. It was the view of the Tribunal that SCC was charging no more as a management fee than was reasonable, and that the evidence suggested that it kept its costs down compared with other large metropolitan public sector landlords.

Other matters

Section 125 notices

155.Miss Oliver raised concerns in relation to the effect of the section 125 notice served in relation to her property. A copy of the Housing Act 1985 notice was provided. It was not dated but the text of the notice indicated that the reference period was 1987 to 1991.

156.The effect of a section 125 notice is to provide a cap on repair costs during the first five years of the lease to those for which estimates are provided in the notice.

157.Miss Oliver was invoiced for the roofing works on 25.8.09. The cap imposed by section 125 therefore did not apply. The reference period had expired over a decade previously.

Miss Oliver's request for an adjournment

158.On the first day of the hearing Miss Oliver requested an adjournment of the proceedings. She put forward two principal grounds for this: first, SCC had been late in serving copies of the bundle which it had prepared on certain of the co-applicants who had requested a bundle.

159.The Tribunal had at an earlier hearing made the following direction:

> "The Respondent shall prepare in consultation with Ms Oliver and Ms Gill a trial bundle no less than 14 days before the full hearing of this application and shall supply copies as follows;
>
> i) To Ms Gill and Ms Oliver
>
> ii) To the Tribunal (3 copies)
>
> iii) To any applicant who has notified the Respondent that he/she wishes to receive a copy of the trial bundle, the Respondent having written to the applicants no less than 21 days before the full hearing to ascertain if they require a trial bundle."

160. SCC was late sending out letters to the co-applicants enquiring about whether bundles were required. They were not sent out until about 7th January 2014. They were probably received by the co-applicants the following day, though it appears from Miss Oliver's submissions that at least one co-applicant did not receive them until 10th January 2014.

161.Miss Oliver was contacted by SCC and invited to collect her bundle on 6th January 2014 from their offices. She was told that she would need a trolley to collect it, and she declined to do so. Quite properly, she required SCC to deliver it to her. She received it on the afternoon of 7th January. This was one day late. There was a clear breach by SCC of the directions given, which required service of the bundle not less than 14 days before the hearing, that is, by 4pm on 6th January 2014.

162.Miss Oliver raised prior to the hearing and at the first day of the hearing her concern that she had not had adequate time to prepare for the hearing because of the late arrival of the bundle. A small number of co-applicants had requested bundles and these had been supplied, but they had had only about 13 days to read the bundles and to discuss them with Miss Oliver if they wanted to do so.

163.The Tribunal made it clear to SCC that it regarded its failure to comply with the direction as regrettable. Nevertheless the Tribunal considered that Miss Oliver was not prevented from putting her case fairly by late provision of the bundles. Most of the material in them was already familiar to her, having been sent to her by SCC in the past, or served as part of the exchange of evidence in these proceedings, and/or disclosed during previous proceedings. She was extremely familiar with the issues in this case and the supporting documentation, having already prepared copious submissions based on it. The Tribunal took the view that Miss Oliver had a sufficient knowledge of the material relevant to the case to conduct the hearing fairly. It was made clear to her that if at any stage she needed time to consider any particular documentation, that would be afforded to her as far as was practicable during the course of the hearing.

164.As far as the co-applicants were concerned, Miss Oliver was representing their interests and from their point of view, the primary concern was that she should be in a position to do that, which she was. No co-applicants attended the hearing specifically to complain that they were unable to discuss matters with Miss Oliver because of late service of bundles, or made any representations in writing to that effect. None of the co-applicants had indicated that they were seeking to play a more active role in the proceedings at the hearing stage.

165.In the circumstances the Tribunal took the view that to adjourn the proceedings was unnecessary. The hearing could proceed on a fair basis. To delay further an application made in 2011 would in itself have involved potential injustice.

166.In addition it appeared to the Tribunal during the course of the hearing that Miss Oliver was well-prepared for the hearing and entirely familiar with the contents of the bundles. The other co-leaseholders who attended the hearing also appeared at ease with the issues being discussed, on

occasions asking questions themselves, and prompting Miss Oliver from time to time.

167. In addition Miss Oliver complained to the Tribunal and sought an adjournment on the basis that SCC's skeleton argument and caselaw in support was not served on her until 15th January. In compliance with the directions, it should have been served on 13th January.

168. Again the Tribunal noted and criticised SCC for failing to comply with the directions given. The skeleton argument was a relatively brief document of some 37 paragraphs. It did not take any novel points or raise any new matters. It referred to caselaw and copies of what was referred to were attached. Miss Oliver had demonstrated in her written submissions an ability to deal with the citation of caselaw and had frequently cited cases herself. In all the circumstances the Tribunal did not regard Miss Oliver as being significantly disadvantaged by the late service of these documents, and found that it would be disproportionate and indeed unnecessary to adjourn the proceedings to give her more time to consider a skeleton argument which rehearsed points with which she was already familiar.

SCC's failure to provide a breakdown of the costs other than for Miss Oliver and Miss Gill

169. On 24th June 2013 the Tribunal directed:

"The Respondent shall by 4pm on 27 August 2013 provide the applicants, Ms Oliver and Ms Gill (and any other applicant who has given notice under paragraph 1 herein) with the following documentation:

(i) Invoices relating to insurance for 128 Cliff St in tabulated form from 1998 to 2012.

(ii) For each property which is the subject of the application copies of section 125 notices served by the Respondent.

(iii) A copy of the executed lease and identification of the relevant covenant(s) in the lease.

(iv) Invoices for cleaning services from 2004 to 2010 relating to 128 Cliff Street and 119 Cemetery Road.

(v) Documentation relating to the section 20 consultation for the current cleaning contract for the subject properties.

(vi) Invoices in relation to the management fees for 128 Cliff Street from 2006 to 2010"

170. SCC complied with this direction. Miss Oliver complained that invoices for insurance, cleaning and management fees had not been provided for the properties of the co-applicants. Disclosure of those documents had not been ordered because, as the Tribunal had indicated at the case management conference, SCC had indicated that it would be bound by any decision made in principle on Miss Oliver's application. It was not therefore necessary for the Tribunal to see the invoices for each individual property. Such disclosure would have added to the volume of paperwork without assisting the Tribunal. The Tribunal did not regard Miss Oliver's complaint with regard to the absence of this paperwork as justified.

Section 20C

171. Miss Oliver sought an order under section 20C preventing SCC adding the costs of these proceedings to the costs to be included in the service charges.

172. The effect of the Tribunal's decision is that Miss Oliver has not succeeded on any aspect of the application before the Tribunal. Save in relation to its late service of trial bundles and its skeleton argument, SCC had conducted the litigation properly and reasonably. Those defaults in relation to documentation are not sufficient to justify the exercise of the Tribunal's discretion in favour of Miss Oliver. In the circumstances, it would not be

within the exercise of the Tribunal's discretion to make an order under section 20C in favour of Miss Oliver.

Additional matter

173. Miss Oliver expressed concern before and during the hearing in relation to the inclusion in the bundle by SCC of the part of her application form which indicated that she was entitled to a fee waiver. She regarded this as a breach of her human rights. She wished the Tribunal to make a determination in relation to this issue.

174. The Tribunal declined to do so for the following reasons:

d. It was not relevant, directly or indirectly, to the issues which the Tribunal had to decide;
e. It was not a matter which had any impact on the progress of the case, or the procedure adopted;
f. It was not a matter over which the Tribunal could have exercised any jurisdiction;
g. In so far as Ms Oliver's criticism was justified, it was in the view of the Tribunal more properly something which she should have raised direct with Sheffield City Council, through its complaints process, proceeding beyond that to the Local Government Ombudsman, if she was not satisfied with how it was dealt with internally.

SARAH GREENAN
27th May 2014