FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case References	:	BIR/00FY/LIS/2017/0044; BIR/00FY/LDC/2018/0003; BIR/00FY/LIS/2018/0005
Property	:	Apartment 13 Park West, Derby Road, Nottingham NG7 1LU
Applicant	:	Ms Sarah Jane Saunders
Representative	:	Mr Neil Healey, MPM Limited
Respondent (1)	:	Park West RTM Company Limited
Representatives	:	Mr Matthew Wayman, LMP Law Limited; Ms Tamsin Cox, Counsel
Respondent (2)	:	Holding and Management (Solitaire) Limited
Type of Application	:	(1) Application under section 27A of the Landlord and Tenant Act 1985 for the determination of the payability and reasonableness of service charges in respect of the subject property (2) Application under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order in relation to the liability to pay an administration charge relating to the subject property (3) Application under section 20C of the Landlord and Tenant Act 1985 for an order for the limitation of costs (4) Application to dispense with specified consultation requirements provided by section 20 of the Landlord and Tenant Act 1985 under section 20ZA of that Act
Tribunal Members	:	Judge David R Salter (Chairman) Mr Ivan Taylor FRICS (Valuer)
Dates of Hearing	:	19 March 2018, 24 April 2018
Date of Decision	:	6th December 2018

DECISION

Preliminary matter

1 On 13 February 2018, the Regional Judge issued Directions relating to an application by the leaseholder, Ms Layla Babadi (Ms Babadi), of Apartment 65, Park West, Derby Road, Nottingham NG7 1LU relating to the payability and reasonableness of service charges for the service charge years 2016/17 and 2017/18 respectively for this property (case reference: BIR/OOFY/LIS/2018/0005) and which named Park West RTM Company Limited as the Respondent. The Regional Judge found that this application to the extent that it raised the issue of the service charge for the service charge year 2016/17 was identical to the application made in this regard by the Applicant, Ms Sarah Jane Saunders, in case reference BIR/OOFY/LIS/2017/0044. Consequently, the Regional Judge directed in exercise of his case management powers under Rule 6(3)(b) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 ('the Tribunal Rules') that both sets of proceedings should be consolidated and that they should be heard together.

2 In these Directions, the Regional Judge also indicated that he had added the freeholder of the property, Holding and Management (Solitaire) Limited, as the second Respondent to the application made by Ms Babadi. However, he further directed that, as Park West RTM Company Limited had acquired the right to manage the buildings known as Park West, the second Respondent should play no part in the proceedings. Nevertheless, the second Respondent should be sent a copy of the Tribunal's decision.

3 In addition, the Directions included an opportunity to object for any of the parties to either application.

4 Following subsequent e-mail correspondence between Ms Babadi and the Tribunal, Ms Babadi applied in an e-mail dated 28 February 2018 to the Tribunal for an order under Rule 23 of the Tribunal Rules whereby the application made by Ms Sarah Jane Saunders (BIR/OOFY/LIS/2017/0044) should be specified as the lead case in respect of the common issue, namely the 'service charge year 2016/2017 in the sum of £1,872.49'. In that e-mail, Ms Babadi also applied under Rule 23(2) for her related application (BIR/OOFY/LIS/005) to be stayed pending the decision of the Tribunal in the lead case. In a letter dated 5 March 2018, the first Respondent, Park West RTM Company Limited, raised no objection to Ms Babadi's e-mail application.

5 On 12 March 2018, the Regional Judge issued Directions which identified the common issue in the applications made by Ms Sarah Jane Saunders and Ms Babadi as the 'Service Charge year 2016/2017 in the sum of £1,872.49', specified that the application made by Ms Sarah Jane Saunders should be the lead case in relation to that common issue, and stayed Ms Babadi's related application pending the decision of the Tribunal in the lead case. The Directions also indicated that the decision of the Tribunal in the lead case in relation to the common issue would be binding on all the parties to Ms Babadi's application, subject to Rule 23(6) of the Tribunal Rules which enables a party to Ms Babadi's application to apply in writing to the Tribunal within 28 days for a direction that such decision is not binding.

6 In the light of the resolution of this preliminary matter, subsequent references in this decision are to Ms Sarah Jane Saunders (Ms Saunders) and Park West RTM Company Limited (Park West RTM) in their respective capacities as the Applicant and the first Respondent in case BIR/OOFY/LIS/2017/0044.

Introduction/General Background

7 This is a decision made in respect of an Application ('the Application') by Ms Sarah Jane Saunders (Ms Saunders), who is the leaseholder of Apartment 13, Park West, Derby Road, Nottingham NG7 1LU ('the subject property') which was dated 13 November 2017 and received by the Tribunal on 22 November 2017. Ms Saunders seeks the following - first, under section 27A of the Landlord and Tenant Act 1985, a determination of the payability and reasonableness of service charges in respect of the subject property ('*section 27A application*') for the period 1 April 2016 to 31 March 2017; secondly, under Paragraph 5 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, an order in relation to the liability to pay "an administration charge in respect of litigation costs" ('*2002 Act application*'); and, thirdly, under section 20C of the Landlord and Tenant Act 1985, an order for the limitation of costs incurred by Park West RTM in connection with these proceedings to the extent that all or any of those costs are not to be taken into account in determining the amount of any service charge payable by Ms Saunders ('*section 20C application*'). Park West RTM employs Walton and Allen Management Limited ('W & A') as managing agents.

8 This decision also incorporates the Tribunal's finding in relation to an application by Park West RTM (BIR/OOFY/LDC/2018/0003) dated 17 April 2018, which was made in the course of these proceedings and relates to the *section 27A application*, for an order under section 20ZA of the Landlord and Tenant Act 1985 for dispensation, insofar as was necessary, of the consultation requirements provided for by section 20 of that Act ('*dispensation application*').

9 Directions were issued by a procedural judge on 7 December 2017 and by the Regional Judge on 13 February 2018 and on 12 March 2018 respectively. The former related to the Application and were concerned, principally, with the processes associated with the preparation and submission of statements of case and related documents by parties to that Application.

As indicated above in the consideration of the preliminary matter (see, paragraphs 1-6), subsequent Directions issued on 13 February 2018 directed, *inter alia,* that application (BIR/OOFY/LIS/2018/0005) made by Ms Babadi be consolidated with the Application, and that proceedings relating to these applications should be heard together, whilst Directions issued on 12 March 2018, in pursuance of Rule 23 of the Tribunal Rules, directed that the Application be treated as the leading case in respect of the common issue in each of the applications, namely the 'Service Charge year for 2016/2017 in the sum of £1,872.49' and that Ms Babadi's application be stayed pending the decision of the Tribunal in the Application. The latter Directions also indicated that the decision of the Tribunal in relation to the common issue would be binding on all the parties to Ms Babadi's application, subject to the invocation of Rule 23(6).

10 Statements of case and related documents were duly filed by Ms Saunders and Park West RTM respectively.

11 The Tribunal inspected the building known as Park West within which the subject property is situated, externally, on 19 March 2018 in the presence of Ms Saunders and her representative, Mr Healey, the representatives of Park West RTM, namely Mr Wayman and Ms Tamsin Cox of Counsel, Mr Simon Temporal and Mr Brent Weightman of W & A, and Ms Babadi. Thereafter, an internal inspection of Apartment 65 was undertaken at the invitation of Ms Babadi, primarily, to view the external elevations from inside the building.

12 Following the inspection, a Hearing was held on the same day at Nottingham Justice Centre, Carrington Street, Nottingham. In addition to Ms Saunders and, her representative, Mr Healey, and Mr Wayman and Ms Tamsin Cox of Counsel for Park West RTM, Ms Babadi and Mr Temporal were present; the former as an interested party, the latter to give evidence in his capacity as Property and Estate Director of W & A and in pursuance of his initial witness statement. Mr Healey and Ms Cox presented the cases for Ms Saunders and Park West RTM respectively. The latter submitted a skeleton argument to the Tribunal upon which she relied in making her presentation on behalf of Park West RTM. The Application was part-heard on 19 March 2018.

13 The Hearing resumed on 24 April 2018 at the Nottingham Justice Centre. In the meantime and at the request of the Tribunal, Mr Temporal had submitted a supplemental witness statement dated 17 April 2018. Also, the *dispensation application* was made on behalf of Park West RTM. The *dispensation application* was not heard on 24 April 2018, and, consequently, the Tribunal issued Directions on 27 April 2018 which provided Ms Saunders with an opportunity to respond in writing to that application with a right of reply in writing reserved for Park West RTM. Written representations in respect of the *dispensation application*, which were dated 14 May 2018 and 21 May 2018, were submitted on behalf of Ms Saunders and Park West RTM respectively.

Facts

14 The Application relates to the subject property which is situated in one of three purpose-built blocks of apartments constituting Park West, 158 Derby Road, Nottingham NG7 1LU (Park West) which was constructed circa 2003. Each block has a communal staircase and a passenger lift and comprises seven storeys. In total, there are 87 apartments within the development. An inner forecourt provides access to and egress from the apartments. The subject property is located in Block B. Park West is adjacent to a building known as the Cigar Factory, a four-storey block of apartments, to which it is connected by a walkway. The Cigar Factory has a service charge which is distinct from the service charge of Park West.

Park West is bounded by Derby Road, Ilkeston Road, Elliott Street and Hermon Street. It is situated within a reasonable distance of Nottingham City Centre.

15 Ms Saunders is the registered leasehold owner of Apartment 13, Park West, a title which she holds under the terms of a lease dated 2 December 2003 and made between (1) Seasongreet Limited, (2) Holding and Management (Solitaire) Limited, (3) Capital Invest Limited and (4) Sandra Healy and granted for a term of 999 years from 1 January 2003 ('the lease'). Ms Saunders was registered as the leasehold owner of Apartment 13 on 29 August 2008.

16 The second Respondent, Holding and Management (Solitaire) Limited owns the freehold of Park West and the Cigar Factory. Park West RTM is a Right to Manage Company. It is responsible for the management of Park West and, as indicated above, employs W & A to assist with that management. Ms Saunders is not a member of Park West RTM.

17 The lease provides for the payment of a service charge by the leaseholders of Park West in accordance with the terms of clause 3.2. The meaning of 'Service Charge' is given in clause 1.7 of the lease. The lease also provides for the payment by the leaseholders of a 'Special Contribution', which means, according to clause 1.8, any amount which the Company (Holding and Management (Solitaire) Limited, the second Respondent), (or, presumably, by inference its delegate, Park West RTM), 'shall reasonably consider necessary for any of the purposes set out in the Fifth Schedule…for which no or inadequate provision has been made within the Service Charge and for which no or inadequate reserve provision has been made under the Fourth Schedule, Part II,

paragraph 2(ii)'. Clause 3.4 of the lease provides that the leaseholders shall 'pay to the Company on demand any due proportion…specified in clause 1.8…of any Special Contribution that may be levied by the Company.' The Fifth Schedule relates, specifically, to 'purposes for which the Service Charge is to be applied', but, also applies, in view of the wording of clause 1.8, to the purposes for which the 'Special Contribution' is to be applied. The purposes set out in the Fifth Schedule include, *inter alia*, first, the costs incurred in management, for example, the costs and expenses incurred in the collection of rents and service charges and the costs, fees and expenses paid to duly appointed managing agents, and, secondly, the costs of decoration and repair of the exterior of Park West. In the latter respect, the Fifth Schedule, Part II, paragraph 1(a) provides that redecoration of the exterior of Park West shall be undertaken:

'As often as may in the opinion of the Company [*Holding and Management (Solitaire) Limited*] be necessary to prepare and decorate in appropriate colours with good quality materials and in a workmanlike manner all the outside rendering wood and metalwork of the Block [*Park West*] usually decorated.'

18 Leaseholders are also obliged to observe and perform the obligations set out in the Third Schedule to the lease (clause 3.1). These obligations include the following obligation in paragraph 2(b) of the Third Schedule:

'To pay to the Company [*Holding and Management (Solitaire) Limited*] on a full indemnity basis all costs and expenses incurred by the Company or the Company's Solicitors in enforcing the payment by the Lessee of any Rents Service Charge Maintenance Adjustment Special Contribution or other monies payable by the Lessee under the terms of this Lease.'

The Application – Background

19 The Application relates to the service charge demanded of Ms Saunders in the sum of £1,872.49 payable for the period 1 April 2016 until 31 March 2017 to the extent that it consists of certain costs of and arising out of major works ('the works') comprising, broadly, the external cleaning and redecoration of Park West.

20 Following a consultation under section 20 of the Landlord and Tenant Act 1985 ('*section 20 consultation*') conducted by W & A on behalf of Park West RTM, the contract to undertake the works was awarded to Building Transformation at a price of £81,254.68. The works were to be undertaken by abseiling rather than through the use of scaffolding.

21 W & A took responsibility for the management of the works prior to their commencement (pre-commencement project management) and for their management whilst those works were being undertaken (project management during the site period). Initially, the costs for such project management were £32,798.61 and £10,250.00 respectively.

22 Additional costs were attributed to the appointment of an Architect (to carry out an inspection, produce a report and recommend appropriate finishes to be applied to Park West) for a fee of £750.00, the provision of a secure welfare unit (portable toilet) for the use of site operatives in a location adjacent to Park West at a cost of £4,231.25, and the appointment of a CDM-C co-ordinator (to provide advice and assistance on various matters relating to health and safety) for a fee of £1,250.00.

23 More specifically, the works to the extent that they are material to the Application were described in the course of the *section 20 consultation* as follows:

'**EXTERNAL CLEANING AND DECORATIONS TO THE PARK WEST BUILDINGS.**

Using an abseil company who will secure themselves to the building roof; abseil down and pressure clean all elevations; apply two coats of masonry paint to render and two coats of stain to timber cladding; wash, rinse and leather off existing powder coated window frames, patio doors and glazing.

To pressure clean all elevations; apply two coats of Cream masonry paint to the existing rendered surfaces; apply 2...coats of woodstain...to the existing external timber full height cladding.

a Courtyard elevations

b Elliott Street elevation

c Ilkeston Road elevation

d Herman Street elevation

e Derby Road elevation

Miscellaneous

e Clean out all existing guttering...

CONTINGENCY

Architects Fees

g To carry out an inspection, produce a report and recommend appropriate finishes to be applied to this listed building within the Canning Circus conservation area.

Health and Welfare Facilities

h To provide a secure welfare unit for the use of site operatives; includes lighting, heating, toilet, washbasin, hot and cold running water, sink unit, microwave oven, table and chairs and drying room. This is a minimum requirement under CDM-C and HSE legislation. This will be located in the fenced off area adjacent to Elliott Road.

CDM-C Co-Ordinator

i To provide suitable and sufficient advice and assistance in order to help compliance with duties, ensure that the project is notified to HSE, Co-ordinate design work, planning and other preparation where relevant to health and safety, identify and collect pre-construction information and advise the client on the need for surveys etc., promptly provide pre-construction health and safety information, manage the flow of health and safety information, advise on the suitability of the initial construction phase health and safety plan and the arrangements made to ensure that welfare facilities are on site from the start and produce the health and safety file.

Fees & Management Costs

j *Pre Commencement Project Management:*
Pre Commencement Section 20 Works; To included liaising with all sub-contractors, suppliers, CDM-C Co-Ordinator, producing documentation, material

specifications, liaising with architect, provide Bill of Quantities, programme of works, site visits to meet with various contractors, and all pre-start administration costs.
Project Manager
Quantity Surveyor
Planner/Programmer
Administration

k *Project Management – Site Period*
Section 20 Works; To included Project Management fee for liaising with all sub-contractors, suppliers, CDM-C Co-Ordinator, producing documentation and monitoring progress of works, liaising with architects and contractors, continued programming of the works by Planner/Programmer, daily site visits by Project Manager, cost control by the Quantity Surveyor and all administration costs required to complete the works.
Project Manager
Quantity Surveyor
Planner/Programmer
Administration'

The Application - Issues in Dispute

Section 27A application

24 In her Application, Ms Saunders set out the following questions which she wished the Tribunal to decide:

a. Has the RTM Company complied with the consultation requirements under Section 20 for the first set of works? If not, is the Tenant's liability for these major works capped at £250?

b. If the RTM Company has complied with the consultation requirements for the first set of works:

i) Were the first set of works defective?

ii) Is the tenant liable for the Architects fee of £750?

iii) Is it reasonable to pay £4,231.25 (for each block) to hire a secure welfare unit?

iv) It is reasonable to pay the managing agent £1,250 to act as a CDM-C Co-Ordinator.

v) Is it reasonable the managing agent should be paid £32,798.61 for Pre-Commencement Project Management given failings identified and overall cost?

vi) Is the cost of £10,250 to Project Manage the Site Period reasonable?

c. Should the RTM Company have undertaken a second S20 Consultation prior to entering into a new contract for works proposed to start in Spring 2018?

d. Is the Tenant entitled to an equitable off-set for damages against the RTM Company for the RTM Company's breach of Covenant to Repair, given this work was needed in 2012 (when Consultation was started and abandoned)? What is the extra amount now payable in 2017 – the extra cost on top of what the Tenant would have paid in 2012?

25 Subsequently, Ms Saunders made no submissions and adduced no evidence, either in her statement of case, witness statement or, through Mr Healey at the Hearing, in relation to questions c) and d). As a precursor to her challenge to each of the substantive matters identified in parts i) to vi) of question b), Ms Saunders questioned in her oral and written evidence the validity of the *section 20 consultation* which had been undertaken. Subject thereto, matters pertaining to each of the substantive matters in question b) were pursued by Ms Saunders within the context of the generic disputes which she identified in her statement of case as arising between the parties in relation to the *section 27A application*. These were outlined as follows:

'1.1.1 **DISPUTE 1 – The management fees charged by the Managing Agent (36% of total cost) to oversee these basic works are unreasonable due to non-performance of some tasks stated, duplication of other tasks and (generally) being excessive in nature; a figure of 0-10% would be more reasonable and in-line with industry norms.**

1.1.2 **DISPUTE 2 – The relevant major works were not of a reasonable standard** – The works were halted after a few weeks and have never recommenced. To date, the reason for this has not been fully disclosed to any lessee.'

26 Park West RTM rejected each of the above submissions made by Ms Saunders and responded, broadly, as follows.

27 First, Ms Cox stated in her skeleton argument, upon which she relied in presenting the case for Park West RTM, that Park West RTM had performed the required consultation exercise.

28 Secondly, as to the above generic disputes identified by Ms Saunders, Park West RTM in its statement of case refuted Ms Saunders' submissions that the project management fees, which had been charged, were unreasonable in that tasks had not been completed or that there had been duplication of tasks, and that, generally, they were excessive. Park West RTM also asserted that there was a need for the architect and CDM-C co-ordinator to perform their respective tasks. In Park West RTM's opinion, following interventions on the part of W & A, the works had been completed to a reasonable standard.

Ms Cox added that the sums expended on the works and which had been challenged were reasonable and proportionate in the circumstances and arose out of Park West RTM's determination to limit the cost of the works, particularly by avoiding expenditure on very extensive scaffolding; the net result was to decrease the overall cost, as an approach using scaffolding would have cost £100,000.00 more than was spent; the works had been completed and to a reasonable standard, notwithstanding failures of Building Transformation, because Park West RTM and W & A had expended significant time and effort in bringing Building Transformation to account and in ensuring that the works were completed 'timeously and properly'. She indicated that the actual costs of the works, including the management costs, were less than was predicted in the *section 20 consultation* (including the costs of resolving problems with the standard of work undertaken by Building Transformation) and were reasonable within the meaning of the Landlord and Tenant Act 1985 ('the 1985 Act').

2002 Act application

29 In her Application, Ms Saunders made an application, the *2002 Act application*, for an order of the Tribunal which would reduce or extinguish her liability to pay "an administration charge in respect of litigation costs". The subject matter of this application comprises two charges, each of £60.00, which had been included in her service charge

account for 2017 for non-payment of service charge. These charges were described as 'late payment admin fees'. Park West RTM opposed the making of such an order.

Section 20C application

30 In her Application, Ms Saunders made an application, the *section 20C application*, for an order of the Tribunal that costs incurred by Park West RTM in connection with the proceedings before the Tribunal should not be included as part of the service charge payable by her. Park West RTM opposes the making of such an order.

31 The parties' submissions on each of the above applications and on the matters to which they give rise are set out in paragraphs 39-87 of this Decision.

Statutory frameworks

32 The relevant statutory provisions for the *section 27A application, the 2002 Act application* and the *section 20C application* are as follows.

Section 27A application

33 Section 27A of 1985 Act, so far as material, 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.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to-

(a) the person by whom it would be payable,
(b) the person to whom it is payable,
(c) the amount which would be payable,
(d) the date at or by which it would be payable, and
(e) the manner in which it is payable.

34 Sections 18 and 19 of the 1985 Act provide-

18(1) In the following provisions of this Act 'service charge' means an amount payable by a tenant of a dwelling as part of or in addition to rent-

(a) which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose-

(a) 'costs' includes overheads, and
(b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier of later period.

19(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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

2002 Act application

35 Paragraph 1 of Part 1 of Schedule 11 to the 2002 Act, so far as material, provides for the meaning of "administration charge" as follows:

1(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling house as part of or in addition to the rent which is payable, directly or indirectly-
...
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

1(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither –
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in the lease.

36 Paragraph 2 of Part 1 of Schedule 11 provides that a variable administration charge is payable only to the extent that the amount of the charge is reasonable.

37 Paragraph 5 of Part 1 of Schedule 11 to the 2002 Act, so far as material, provides for liability to pay administration charges as follows:

5(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) may be made in respect of a matter which-
(a) has been agreed or admitted by the tenant,
(b) has, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of a determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment…

Section 20C application

38 Section 20C of the 1985 Act, so far as material, 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…the First tier-Tribunal…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.

…

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Submissions

Section 27A application

Dispute 1

39 The following paragraphs (40-75) summarise the submissions of the parties relating to the *section 20 consultation (validity), management costs (pre-commencement and project management (site period) and the specific costs* for the A*rchitect, health and welfare facilities and the CDM-C co-ordinator*.

Section 20 consultation – validity

40 Initially, Ms Saunders in her witness statement dated 10 January 2018, which accompanied her similarly dated statement of case that had been submitted on her behalf by Mr Healey, referred to a section 20 consultation relating to the external painting of Park West that had been initiated by W & A in 2012 ('2012 consultation'). In this regard, Ms Saunders stated that she received a Stage 1 consultation letter from W & A in March 2012. She added that she did not respond to this letter as she did not wish to suggest any contractor from whom a quote for the proposed work might be sought. Ms Saunders intimated that, thereafter, she did not hear anything further in relation to this consultation. In her statement of case, Ms Saunders indicated that this letter made reference to the painting work that was proposed and, in respect of that work, to the erection of full height scaffolding, the removal of paint and painting equipment and purchase of a pavement licence. At the Hearing, Mr Healey opined that these proposed works may have been undertaken at a lower cost than the cost of the works.

41 In her witness statement, Ms Saunders also outlined the manner in which the *section 20 consultation* which was pertinent to her Application was conducted referring to various consultation letters she received from W & A. Further, as will be seen (see, paragraphs 42-44), Ms Saunders referred in her statement of case to these letters and the notices which accompanied them in furtherance of the *section 20 consultation*.

42 Hence, in her witness statement, Ms Saunders stated that she received the Stage 1 consultation letter relating to the *section 20 consultation* pertaining to her Application from W & A in the post 'in the middle of April 2015'. The letter was dated 13 April 2015. It indicated that there were 30 days within which any suggestions about a company which might be approached to provide a quote for the works should be made and that such suggestions should be submitted no later than 13 May 2015. Ms Saunders intimated that she received this letter a couple of days after 13 April 2015. Ms Saunders opined that this did not allow sufficient days for responses and that the period should have been '30 days after allowing a few days for postage time'. In the event, Ms Saunders said that she did not suggest any contractor to whom an approach might be made.

43 Further, Ms Saunders explained that she received the Stage 2 consultation letter sent by W & A on 4 June 2015. Ms Saunders stated that this letter was dated 1 June 2015 and provided that responses to it should be submitted no later than 1 July 2015. On reading the letter, Ms Saunders said she was concerned about the relative costs of carrying out the works and the project management costs of W & A, the breakdown of the project management costs which included matters which she had not seen in other section 20 consultation exercises with which she was familiar and, in view of the work to be undertaken, the need for and costs of an Architect, health and welfare facilities and a CDM-C co-ordinator. Ms Saunders indicated that she posted a response to W & A within the 30 day deadline, although she could not remember when it was sent nor did she keep a copy of her response. Her recollection was that she raised the following in her response – the suitability of the companies, which had submitted quotes for the external painting at Park West, following checks which she had carried out at Companies House and which showed that Balmoral Interiors Limited was a carpet, rug, floor and wall covering company, whilst Building Transformation Limited was a dormant company; the appointment of a CDM-C co-ordinator when this was a small job; the perceived unreasonably high pre-commencement and site period management fees of W & A; her inquiries in a paint shop which suggested that the proposed two coats of paint on the render with a view to securing a 10 year guarantee would be insufficient in the absence of pre-works and primers/undercoats; the question of whether render should be painted; the appointment of an Architect when Park West is not a listed building and when the works did not involve any redesign, and, finally, the failure of W & A to properly manage Park West and their abandonment of previous consultations.

44 Ms Saunders indicated that she received the Stage 3 consultation letter in August 2015. This stated that the contract for the works had been awarded to Building Transformation. Ms Saunders pointed out that the documents accompanying that letter included a summary of observations, which had been made by leaseholders in response to the Stage 2 consultation letter, although it was stated that any comments received after the deadline of 1 July 2015 were not included. She noticed that her comments were not included within the summary even though her comments had been made within the specified 30 days. Ms Saunders noted that some leaseholders had raised matters which she had highlighted in her response to the Stage 2 consultation letter, namely the high project management fee and the necessity for the appointments of the Architect and the CDM-C co-ordinator. The high cost of the provision of the health and welfare facilities had also been alluded to by some respondents. At the Hearing, Mr Healey suggested that if Ms Saunders' comments had been taken into account the dispute about the costs relating to the works may have been avoided.

45 In her statement of case, Ms Saunders reiterated, *inter alia*, the opinion which she had expressed in her witness statement that the Stage 1 consultation letter (notice) relating to the *section 20 consultation* pertaining to her Application did not allow sufficient time for leaseholders to respond; no time had been allowed in the stated 30 day response period for posting. In this respect, Ms Saunders cited *Trafford Housing Trust Ltd v Rubenstein and others* [2013] UKUT 581 in which, in the opinion of Ms Saunders, the Upper Tribunal decided that for the purposes of determining the date upon which the 30 day consultation period ends the date of the notice was not the date it was printed nor the date upon which it was posted, but rather the date upon which (depending on the means of delivery) it can be expected to be delivered to the person being consulted. From this, Ms Saunders concluded that in relation to the Stage 1 consultation letter (notice) no allowance was made for the posting of the letter (notice) as the letter (notice) was prepared on 13 April 2015 and required a response by 13 May 2015. In this circumstance, she suggested that it could be argued that the absence of an allowance for posting invalidates this notice. Subsequent letters (notices) also failed to meet the 'one calendar month deadline'. However, Ms Saunders accepted that she did not feel that she was prejudiced by this error, because she did not send a response to the Stage 1 consultation letter (notice) and did not plan to nominate any contractor. Ms Saunders confirmed this lack of prejudice at the Hearing.

On Day 1 of the Hearing, Mr Healey submitted that Ms Saunders had presented sufficient evidence to warrant a finding that the section 20 consultation requirements had not been met and that, as a consequence, the £250.00 cap on Ms Saunders' liability to contribute to the cost of the works might be imposed.

46 Ms Saunders added that some confusion had arisen among leaseholders because a simultaneous section 20 consultation exercise had been conducted by W & A for works to the exterior of the Cigar Factory.

47 In her skeleton argument, Ms Cox stated that the *section 20 consultation* had been performed as required by section 20 the 1985 Act and Regulation 7 and Part II of the Fourth Schedule to the Service Charge (Consultation etc.) (England) Regulations 2003 ('2003 Regulations'). In this respect, Ms Cox explained that an initial notice dated 13 April 2015 had been served which set out what works were proposed and the reasons for those works, and invited observations from leaseholders and nominations from leaseholders for contractors to carry out the works, whilst a further notice provided details of two of the estimates which had been received, namely those estimates tendered by PWC and Building Transformation, and observations from leaseholders were invited. Ms Cox stated that the final notice informed leaseholders that the contract for the works had been awarded to Building Transformation. At the Hearing and within the context of this sequence of notices, Ms Cox discounted in the course of questioning Ms Saunders, first, the company searches which Ms Saunders had conducted noting, in particular, that Building Transformation which had been awarded the contract to carry out the works clearly differed from the company in respect of which Ms Saunders had carried out her search, and, secondly, the opinion which Ms Saunders said had been expressed by the paint shop as to the manner in which the painting of Park West should be undertaken – this was neither evidence nor the opinion of an expert.

Ms Cox informed the Tribunal that the leaseholders of Park West were provided with copies of the equivalent notices relating to the Cigar Factory. However, Ms Cox averred that the costs relating to the Cigar Factory were irrelevant to the determination of the Application, because those costs were not charged to the residents of Park West and do not form part of the demand challenged by the Applicant. In his evidence, Mr Temporal confirmed that, initially, estimates had been sought for work to be undertaken on Park West and the Cigar Factory and that the projected costs in the resulting specifications

were apportioned between the two buildings. Ms Cox noted that work had not begun on the Cigar Factory because of insufficient funds.

48 Ms Cox also addressed the question of the validity of the notices which had been raised, specifically, by Ms Saunders in her Application and, subsequently, in her statement of case and witness statement. In this regard, Ms Cox denied Ms Saunders' statement that the section 20 notices served on her by Park West RTM arrived after the date stated in them with the result that Ms Saunders had those notices for a few days less than the 30-day relevant period specified in the Regulations. If, however, Ms Saunders' statement to this effect was taken to be correct, Ms Cox stated that Park West RTM sought dispensation in respect of those few days under section 20ZA of the 1985 Act. In this respect, Ms Cox reminded the Tribunal that Ms Saunders had admitted, expressly, in her statement of case that she suffered no prejudice as a result of the delay which she said had occurred. Further, Ms Cox informed the Tribunal that the section 20 process was streamlined in such a way that such a delay, if it occurred which was not accepted, could not have caused any prejudice. In this respect, Ms Cox indicated that responses from leaseholders were invited by e-mail with the result that time could be saved in replying, and all the details about the works were provided with the notices and, hence, there was no need for leaseholders to visit the Agent's offices to find out details about the works. Moreover, notwithstanding the standard form of wording used in the notices, Ms Cox intimated that late responses from leaseholders were accepted and considered after the various deadlines. In his oral evidence, Mr Temporal informed the Tribunal that W & A had not received a letter from Ms Saunders in response to the Stage 2 consultation notice, but, in his opinion, the matters relating to the works which Ms Saunders recalled raising in her letter were covered in the replies given by W & A to queries raised by other leaseholders.

In her skeleton argument, Ms Cox supported the grant of dispensation, insofar as it was necessary, on the grounds that no prejudice had been suffered, which had been admitted by Ms Saunders, and no suggestion had been made by Ms Saunders that an alteration in the timing would or could have altered the outcome of the section 20 procedure. In doing so, Ms Cox referred the Tribunal to the Supreme Court judgment in *Daejan v Benson* [2013] UKSC 14 ('*Daejan*'). She submitted that there was no justification for imposing a £250.00 cap on the recovery of costs from Ms Saunders.

49 Park West RTM made a formal application for dispensation, the *dispensation application*, which was dated 17 April 2018 and received by the Tribunal on 19 April 2018 (see, paragraph 8), and variously described on Park West RTM's behalf as made 'for completeness' and as a 'formality' in the light of Ms Saunders' persistence on Day 1 of the Hearing with the argument that the section 20 consultation requirements had not been met. The *dispensation application* included a request for it to be heard on Day 2 of the Hearing. However, the Tribunal decided that, in view of the proximity to Day 2, namely 24 April 2018, Ms Saunders should be afforded the opportunity to respond in writing to the *dispensation application*. Accordingly, Directions were issued by the Tribunal on 28 April 2018 which provided for the making of written representations by the parties (see, paragraph 13). The dispensation related to the above submission by Ms Saunders that, in view of the service of the section 20 notices on her by Park West RTM days after the date stated on them, she had been allowed less than the 30 day 'relevant period' provided for in the 2003 Regulations within which to respond to those notices. Without admitting this submission, Park West RTM sought dispensation in respect of the few days to which Ms Saunders had referred pursuant to section 20ZA of the 1985 Act.

50 Mr Healey submitted a written statement on behalf of Ms Saunders in response to the *dispensation application,* which was dated 14 May 2018 and received by the Tribunal on 16 May 2018. In this statement, Mr Healey made the following points. He reiterated the circumstances pertaining to and perceived shortcomings in the service of each of the

section 20 notices on Ms Saunders and stated that Ms Saunders 'does not advance any argument that significant prejudice was suffered, or that she incurred a financial loss as result of the failure to properly consult.' Moreover, Mr Healey repeated that Ms Saunders had indicated, previously, at the Hearing that she did not feel that she had suffered any prejudice as a result of the failure by Park West RTM to give sufficient time for the notices to be received after posting. Consequently, Mr Healey opined that the *dispensation application* was neither inevitable nor absolutely necessary rather it was made simply 'for completeness' and to protect Park West RTM's position. Nevertheless, Mr Healey informed the Tribunal that Ms Saunders did not resist the dispensation sought by Park West RTM. In these circumstances, however, Mr Healey submitted that any dispensation granted should be subject to the 'reasonable' condition that the Tribunal in making its determination in respect of the *section 20C application* finds that no costs incurred in relation to the *dispensation application* should be recoverable through the service charge, or, otherwise, be so granted in the interests of fairness and justice.

51 Park West RTM responded to the written representations submitted by Mr Healey on behalf of Ms Saunders in respect of the *dispensation application* in a written statement of reply submitted by Mr Wayman on its behalf which was dated 21 May 2018 and received by the Tribunal on 22 May 2018. In that reply, Mr Wayman made a number of statements. First, he stated that it was wholly unreasonable for Ms Saunders to put Park West RTM to the cost of making the *dispensation application*, and, in particular, to the cost of dealing with extensive submissions, only to confirm that she did not resist the application. Secondly, Ms Saunders had accepted as part of her application that no prejudice had been caused by the "short" notices served by Park West RTM. In light of this, Mr Wayman considered that it was surprising, therefore, that this matter was regarded as an issue by Ms Saunders during Day 1 of the Hearing and that the Tribunal had been invited to impose the statutory cap on recoverable service charge sums for the works. This prompted Park West RTM to make the formal application for dispensation. Moreover, Mr Wayman added that on Day 2 of the Hearing, despite having considered the original and updated skeleton arguments presented by Ms Cox, heard submissions by Ms Cox dealing with the section 20ZA point, and having read the *dispensation application* which set out Park West RTM's position, Ms Saunders maintained her position that the '"short notices" remained an issue. In these circumstances, Mr Wayman suggested that a reasonable party should at the very least have consented to the *dispensation application* on Day 2 of the Hearing, which Ms Saunders chose not to do.

Consequently, it was submitted by Mr Wayman that it was particularly inappropriate for Park West RTM to have to respond to Ms Saunders' request that the granting of the *dispensation application* should be factored into the Tribunal's determination of the *section 20C application* and, moreover, that Park West RTM should be barred from putting the costs of the *dispensation application* through the service charge regime.

Mr Wayman described Ms Saunders' conduct in respect of these matters as 'risible'.

Management Fees

52 In her witness statement, Ms Saunders indicated that during the *section 20 consultation* she had expressed the view that the 'pre and during work fees proposed by W & A were unreasonably high' bearing in mind that the works comprised 'a basic paint of the outside of the building'. Ms Saunders indicated that the breakdown of the management fees included items which she had not seen in other section 20 consultation exercises with which she had been involved, and, in her opinion, those project management fees were disproportionate to the overall costs of the redecoration works undertaken. Ms Saunders also expressed concern about the need for and, costs of, the Architect, health and welfare facilities and the CDM-C co-ordinator. Ms Saunders re-iterated that other Park West

leaseholders had commented during the *section 20 consultation* on the high project management fee.

In its statement of case, Park West RTM intimated that W & A had carried out a significant amount of work in fulfilling their management function, especially in their liaison with Building Transformation and in securing the completion of the works, and time sheets had been provided to the Tribunal which gave an indication of the volume of work undertaken by W & A in return for the project management fee. Further, in her skeleton argument, Ms Cox opined that Ms Saunders' objection that the project management fees charged by W & A, when aggregated, amounted to a relatively high proportion of the costs of the works was based on an overly simplistic approach. Ms Cox said that details of the work for which monies were required can be found in the second of the section 20 notices. She also alluded to an agreement between Park West RTM and W & A dated 1 April 2016 ('2016 agreement'), which was presented in evidence by Mr Temporal as part of his supplemental witness statement, that provides for the payment of project management fees to W & A in accordance with Schedule 2 to that agreement.

Ms Cox submitted that the costs relating to the appointment of the Architect, the provision of the health and welfare facilities and the appointment of the CDM-C co-ordinator were reasonably incurred and reasonable in amount.

(i) *Pre-commencement Management Costs*

53 In her statement of case, Ms Saunders referred to these costs which were stated by W & A to relate to all tasks prior to the start of the works and which, according to the specification, included meeting contractors on site, issuing notices to leaseholders and contractors, liaising with suppliers and the CDM-C co-ordinator. In Ms Saunders' opinion, the works amounted to a re-paint of the outside of Park West which is required 'every so often', and such an undertaking did not give rise to 'out of the ordinary' project management tasks prior to the commencement of the works. Consequently, Ms Saunders submitted that the pre-commencement management costs of £32,798.61 were too high and unreasonable.

54 In her skeleton argument, Ms Cox made the following points about the pre-commencement management costs which had been incurred by Park West RTM. First, extensive pre-commencement work was required because the works related to a very large building. It was necessary to devise a cost-effective and safe strategy for carrying out the work and to prepare an appropriate schedule of works. During the planning process, it was clear that cleaning the render would neither suffice nor be efficient. As a consequence, it was necessary to find out what finishes could be applied to the render and to take advice with a view to ensuring that any finish which was applied would have a reasonable lifespan. Advice was also required to take account of Park West's location in a conservation area. Secondly, W & A have extensive experience of this type of project and anticipated, correctly, that the works would require 'extensive input of their time'. Much of that time had been spent liaising with leaseholders, especially with those who were unable to pay their share of the costs immediately (payment plans were offered where necessary). This was important because Park West RTM has no independent funds making it imperative that the costs of the works can be collected in full before the works proceed. Thirdly, the pre-commencement time that was spent in ensuring that the works were carried out 'in the best manner and for the best price' meant that an additional £100,000.00 scaffolding cost was avoided. Park West RTM had adduced in evidence a quotation from Tubitt Scaffolding Ltd. dated 18 December 2014 for the supply, erection and design of independent scaffolding 'for the purpose of giving access to all external elevations with a fully boarded scaffold and ladder access' and scaffold for general repairs. This quotation was for '£70,000 for a minimum period of 6 week/s or less and at a rental of £5,500.00 per week or part of a week after the expiration of that period.'

In view of the work undertaken, Ms Cox concluded that Park West will not require redecoration for 'at least 5 more years', and, further, the investigative and planning work would not need to be repeated when Park West next requires redecoration.

55 In his supplemental witness statement, Mr Temporal stated that a saving had been made with respect to the pre-commencement management costs and referred to Exhibit 4 (Budget vs Actual Paid) ('Exhibit 4') to that statement which shows that the saving amounts to £8,650.18 (including VAT) as at 12 April 2018.

56 Ms Cox submitted that it was wholly reasonable for Park West RTM to make the decision to expend the disputed sums in order to ensure that the works were 'economical and carried out as well as possible' and that the sums were reasonable within the context of the 'unusual one-off' nature of the planning required for the works.

(ii) *Project Management – Site Period*

57 In her statement of case, Ms Saunders outlined the activities that were stated by W & A to be within the remit of project management during the site period. She stated that these included liaising with sub-contractors, suppliers and the CDM-C co-ordinator, producing documentation and monitoring the progress of the works, liaising with architects and contractors, continued programming of works, daily site visits by the project manager, and cost control by a quantity surveyor. In addition, she pointed out that provision was made for 'all other administration costs required to complete the works'. Ms Saunders submitted that this description of the work to be carried out by way of project management during the site period appeared to be a 'catch-all list of tasks that anyone could perform in major works and is not bespoke to what was actually required for this specific project'. In her opinion, there was no need to employ a quantity surveyor to cost control the work as it progressed or to liaise with suppliers and architects – these works were without any 'unusualness'. Ms Saunders also queried whether the charges which had been agreed between Park West RTM and W & A satisfied the RICS Code of Practice ('RICS Code') to the extent that the contract between these parties did not provide, as envisaged by the RICS Code, for a menu of charges for duties outside the scope of an annual fee.

58 In respect of the fees charged for project managing these works, Ms Saunders suggested that it is incumbent on the Tribunal to carefully consider 'the constituent parts of the total fee (added to the cost of the works) in respect of what services were actually supplied, who carried them out and whether the rate charged fell within the range of normal market rates' and relied upon the decision of the Upper Tribunal in *London Borough of Lewisham v Luis Rey-Ordieres* [2013] UKUT 14 (LC)). She submitted that a 36% fee is well outside normal market rates for works of a 'pretty standard nature'; a figure of 0-10% would be more reasonable and in line with industry norms. At the Hearing on 24 April 2018, Mr Healey, with the permission of the Tribunal, presented an e-mail sent to him on 24 April 2018 at his request by Thomas Hopson MA MRICS, Associate Director, Encore Estate Management, Nottingham which set out, *inter alia*, the management fees charged on a typical section 20 consultation project by four chartered building surveying firms with whom Encore Estate Management had dealt. This showed a percentage range between 9.5% and 15% plus VAT, and, pertinently, for work value between £70,000.00 and £99,999.00, which encompassed all stages of a section 20 consultation project, that a 10% plus VAT project management fee was charged.

59 In her skeleton argument, Ms Cox explained that the sums expended during the site period were required to ensure that the works were carried out properly and safely with the result that Park West RTM was protected from the risk of poor workmanship and from adverse claims by contractors. This was usual practice, and, therefore, Ms Cox

submitted that it was perfectly reasonable to employ managers to oversee works carried out by contractors.

60 Ms Cox also pointed out that evidence adduced by Park West RTM showed that W & A spent 73 hours in 2017 on work related to Park West, although, as intimated in its statement of case, much work was carried out which was not recorded. She averred that the failure of Building Transformation to carry out the works to the required standard obliged W & A to spend significant time ensuring that Building Transformation returned to Park West with a view to rectifying those matters which were unsatisfactory. In the event, Ms Cox indicated that corrective work undertaken by Building Transformation was not done to the satisfaction of W & A with the result that W & A took steps to ensure that the works were completed to a reasonable standard.

61 In relation to Ms Saunders' contention that the sums expended were beyond market rates and that the market rate is 0-10%, Ms Cox stated that no evidence had been provided by Ms Saunders in support of that contention, other than the e-mail from Tom Hopson of Encore State Management, Nottingham to Mr Healey dated 24 April 2018 to which Ms Cox submitted little, if any, evidential weight should be given, because it was not independent and, simply, a generic statement. In this instance, Ms Cox stated that the figure charged for supervision of the works was approximately 12% of the cost of carrying out the works. She submitted that this is the market rate for the supervision of such works and that, therefore, the amount charged is a reasonable figure.

62 At the Hearing, Mr Healey described the 2016 agreement as a 'unique arrangement'. He questioned Mr Temporal about the charging arrangements for management fees under that agreement and about the differences between those arrangements and the RICS Code and, also, how they differed to the benefit of W & A from the terms of an agreement negotiated between Park West RTM and W & A in 2010, which had been adduced in evidence by Park West RTM. Mr Healey suggested that the charging arrangements in the 2016 agreement were not in accordance with normal practice which, usually, allowed for a fixed fee followed, thereafter, by a menu of charges. Mr Healey submitted that it was possible under the 2016 agreement for W & A to charge on an ad hoc basis once the fees charged had passed beyond the fixed fee threshold provided for in the agreement. Consequently, Mr Healey observed it was not possible to have an idea of likely prospective costs. Mr Healey also queried, in view of Mr Walton's appointment as a director of Park West RTM and his position in W & A, whether the 2016 agreement was conducted at arm's length.

Mr Temporal informed the Tribunal that W & A managed approximately 40 blocks of apartments and estates. He added that each management agreement was negotiated by W & A with a view to meeting the needs of particular clients and that the precise terms of those agreements depended on the outcome of the negotiations.

In Exhibit 4 to his supplemental witness statement, Mr Temporal reported that £12,300.00 (including VAT) had been paid as at 12 April 2018.

(iii) *Additional specific costs*

63 As indicated above (see, paragraph 24), Ms Saunders also challenged certain specific costs which W & A claimed were payable in addition to the contractor's costs and for supplying other services, namely an Architect's fee (£750.00), the cost of providing health and welfare facilities whilst the works were undertaken (£4,231.25) and the cost of appointing a CDM-C co-ordinator (£1,250.00). In each instance, the costs cited were exclusive of VAT.

(i) Architect's Fee

64 Ms Saunders challenged the appointment of an Architect to carry out an inspection, produce a report and recommend appropriate finishes to be applied to Park West. In her opinion, there was no need to appoint an Architect as Park West was not a listed building and the works did not involve any element of redesign. Ms Saunders submitted that the cost incurred (£750.00) was unreasonable, because it was unnecessary to employ an Architect to 'report on the finishes'.

65 Ms Cox stated in her skeleton argument that this was a small sum of money which was required, first, in order to comply with the requirements of the local conservation area, and, secondly, because of the difficulty of finding an appropriate paint to coat the render. Ms Cox referred to examples of other pertinent work carried out by the Architect, and to explanations which had been given to leaseholders during the *section 20 consultation* about the necessity for the Architect's work both of which had been adduced in evidence. Ms Cox explained that once it had been concluded that cleaning of the render was insufficient, it was necessary to ascertain what finish could be applied and how well it would last in order to avoid further costs in the future. She also pointed out that the consequent inexpensive outgoing in obtaining this information was intended to save future costs by providing a lasting finish, and added that such an exercise would not need to be repeated when Park West is next decorated.

Ms Cox asserted that Ms Saunders had failed to provide any evidence to suggest that the information gleaned from the Architect's work could have been obtained more cheaply elsewhere, or that such work was inherently unreasonable. Ms Cox submitted that this cost was reasonably incurred and was reasonable in amount.

At the Hearing, Mr Healey reiterated Ms Saunders' challenge to the appointment of an Architect to carry out the specified tasks. In his oral evidence to the Tribunal, Mr Temporal elaborated upon the Architect's role and pointed out, as had been explained by Ms Cox, that, in particular, the Architect had been involved, with Mr Stevenson, W & A's Construction and Maintenance Director, in the determination that cleaning of the render was insufficient, the resolution after investigative work of which paint was to be used on the render, and, further, with the provision of advice about a third quotation which had been received for the works and which, in view of its cost, was not pursued.

In Exhibit 4 to his supplemental witness statement, Mr Temporal reported that £972.00 (including VAT) had been paid as at 12 April 2018.

(ii) Health and Welfare facilities

66 In furtherance of the question raised in her Application about the reasonableness of the sum expended for the provision of a secure welfare unit during the currency of the works, Ms Saunders in her statement of case queried the legislative basis upon which the expenditure incurred in providing the welfare facility, £4,231.25, could be justified bearing in mind the nature of the works undertaken. Further, Ms Saunders stated she had spoken to other owners and that no welfare unit(s) had been seen by them during the works. In her oral evidence during the Hearing, Ms Saunders said that she had driven past Park West, frequently, during the carrying out of the works, but she had not seen a welfare unit in the vicinity of Elliott Street as provided for in the description of the works. Ms Saunders requested Park West RTM to provide evidence of the expenditure incurred in providing the welfare unit and asserted that the costs incurred were too high. In her opinion, Park West RTM should have obtained at least one other quote. At the Hearing, Mr Healey suggested to the Tribunal that, in his experience, the cost of providing this facility should have been £2,000.00 (plus VAT).

67 Ms Cox informed the Tribunal that the provision of the welfare facilities was explained in the third notice that had been served on leaseholders in fulfilment of the section 20 consultation requirements which had notified leaseholders that the contract for the works had been awarded to Building Transformation; an explanation which indicated that the welfare facilities would be provided by W & A in view of their liability for health and welfare on the site during the works. Ms Cox also explained that the facilities were required in order to satisfy Regulation 13(3)(c) of and Schedule 2 to the Construction (Design and Management) Regulations 2015. Moreover, as stated in Park West's statement of case, the welfare facilities were situated in Elliott Street and adjacent to Park West during the works. Ms Cox referred the Tribunal to an invoice dated 2 November 2016 in which the welfare facilities were described submitted to Park West RTM by W & A.

68 Mr Temporal presented a colour photograph taken from Google Maps and dated September 2016, which showed several welfare units in the designated area in Elliott Street, as Exhibit 11 to his supplemental witness statement.

69 In these circumstances, Ms Cox stated that Park West RTM refuted the unsupported assertion that no welfare unit had been in place in Elliott Street and adjacent to Park West. Similarly, Ms Cox rejected the suggestion by Ms Saunders that the cost of providing this facility was 'too high' and that another quote should have been sought. In this respect, Ms Cox observed that Ms Saunders had failed to provide any quote upon which the Tribunal might rely in order to consider whether the cost incurred was too high.

Further, Ms Cox submitted that since the works were scheduled to take between 8 and 9 weeks (whereas, as Mr Temporal had shown in his evidence, they in fact took longer) the sum disputed by Ms Saunders amounts to just over £500.00 per week, which is a reasonable figure for the provision of such facilities.

70 In Exhibit 4 to his supplemental witness statement, Mr Temporal reported that £5,332.50 (including VAT) had been paid as at 12 April 2018.

(iii) CDM-C co-ordinator

71 In her witness statement, Ms Saunders stated that she had queried why a CDM-C co-ordinator was required for 'this small job as I thought the cost was unnecessary'. Further, Ms Saunders intimated that during the section 20 consultation process, another leaseholder had questioned whether there was a legal obligation to appoint a CDM-C co-ordinator for the works in that the works were not notifiable to the Health and Safety Executive (HSE) and in light of the CDM Regulations 2015, which came into force on 6 April 2015, and which do not include a role entitled CDM-C co-ordinator. Further, Ms Saunders was not satisfied with the response from W & A to this question which, first, accepted that, although there was no requirement to appoint a CDM-C co-ordinator in the sense that the works were not notifiable to the HSE, advice from a CDM-C co-ordinator was still needed to comply with all health and safety issues, and, secondly, acknowledged the change introduced by the CDM Regulations 2015 and added 'because of this we instructed the services of our approved CDM-C person before this change took place and they can act on our behalf until October 2015…there will still be a role for CDM-C after that date but they would have to be employed by the Client or form part of the Architect's role.'

72 Additionally, in her statement of case, Ms Saunders alluded to the costs of W & A in managing the works during the pre-commencement and site periods. This management included the use of a project manager, a quantity surveyor, a planner/programmer, and other administrative staff who, Ms Saunders suggested, might 'undertake a risk assessment and then manage that assessment throughout the entirety of the works' which

would render the appointment of a CDM-C co-ordinator unnecessary. Ms Saunders required Park West RTM to provide documentary evidence of the appointment of the CDM-C co-ordinator for the works and strict proof of expenditure incurred.

73 In these circumstances, Ms Saunders asserted that the charge made in respect of the appointment of a CDM-C co-ordinator was an unreasonable cost. It was a duplication of the fees levied by W & A to manage the works which, Ms Saunders contended, covered health and safety matters.

74 Ms Cox indicated that, as with the provision of the welfare facilities, the appointment of a CDM-C co-ordinator was explained in the third notice that had been served on leaseholders in fulfilment of the section 20 consultation requirements. Further, Ms Cox explained that the employment of the expert services of an external CDM-C co-ordinator, BCA Project Services, was prompted by W & A's liability for health and welfare on the site and with a view, broadly, to advising W & A on any issues arising on site during the works and in order to ensure that W & A were working correctly and in line with HSE guidelines. She added that it was necessary to pay particular attention to health and safety requirements because, in order to save significant costs, it had been decided to adopt a more dangerous methodology for carrying out the works i.e. working by abseiling rather than from scaffolding. Ms Cox also highlighted that BCA Project Services prepared a schedule of services relating to its role as the CDM-C co-ordinator under the CDM Regulations 2007 and, thereafter, wrote a pre-construction report dated September 2016 containing health and safety information relating to the redecoration of the external elevations of Park West. In its statement of case, Park West RTM submitted that the costs so incurred, £1,250.00, were reasonably incurred and that the resultant value gained by Ms Saunders was clearly identifiable.

75 At the Hearing, Mr Healey stated that there was no formal requirement to appoint a CDM-C co-ordinator and, consequently, the Tribunal should not entertain the costs of £1,250.00 in relation to that appointment. He added that the pre-construction report served no purpose as it was not specific to Park West and could be used for any project. In his oral evidence, Mr Temporal indicated that, as Ms Cox had explained, the manner in which the works were carried out i.e. through abseiling necessarily involved significant attention to health and safety. He stated that the CDM-C co-ordinator was needed to assess and to advise upon those risks and that the appointment had been made in the best interests of the leaseholders. Further, in Exhibit 4 to his supplemental witness statement, Mr Temporal reported that £750.00 (including VAT) had been paid as at 12 April 2018.

Dispute 2

76 The following paragraphs (77-83) summarise the submissions of the parties relating to issues concerning the works undertaken and the standard of those works.

The Works – reasonable standard

77 In her statement of case, Ms Saunders made a number of statements about the works, namely that those works were stopped half way through, had not been completed and were not of a reasonable standard. She stated that prior to the Application and over a lengthy period of time, she had sought and been unable to ascertain from W & A and/or their solicitors information about why the works had apparently stopped, save that a letter from W & A which accompanied the March 2017 service charge demand indicated that there were 'concerns about the standard of work' and that a sum of £10,000.00 was required to cover legal action against Building Transformation. In these circumstances, Ms Saunders felt it was necessary for Park West RTM to 'fully explain' the exact nature of the dispute between itself and Building Transformation (together with the status of any

litigation) and with regard to the works to indicate whether plans were in place to complete the works and when, how much has been spent and if any consultation is to be undertaken with a view to the completion of the works.

78 For Park West RTM, Ms Cox stated that prior to 2016 Park West had not been redecorated since it was developed in 2003; a statement which was endorsed by Mr Temporal. Further, Ms Cox indicated that the external render and window frames had been dirty and in need of decoration and minor repair, and it did not appear that Ms Saunders disputed that the works were necessary.

79 In its statement of case, Park West RTM 'advised' Ms Saunders that Building Transformation 'did not carry out the works to the reasonable satisfaction of the Respondent. The Respondent's managing agent carried out a considerable amount of work in making suitable representations to Building Transformation who did return to the development on numerous occasions in order to remedy the works. Ultimately, the Respondent's managing agent stepped in to complete the final aspects of the works.' Consequently, Ms Cox stated that Ms Saunders' submission that the works had not been completed was misconceived and that the works were completed on or around 25 July 2017 – the final element of those works related to the timber cladding in the courtyard of Park West. In his supplemental witness statement, Mr Temporal recorded that Pamela Brangan, a Director of Park West RTM, had signed off the works by telephone.

In his evidence, Mr Temporal also explained that the dissatisfaction with the quality of work undertaken by Building Transformation and the ensuing dispute between Park West RTM and Building Transformation led Park West RTM to instruct solicitors, Freeths LLP, a firm which he believed specialised in construction law, to seek legal redress against Building Transformation. Mr Temporal informed the Tribunal that, in the course of the dispute, Building Transformation commissioned an expert report on the standard of its workmanship at Park West which was written by Bidwells LLP and was dated 26 April 2017. Mr Temporal appended this report to his supplemental witness statement as Exhibit 13. Mr Temporal indicated that whilst this report was not accepted in its entirety by Park West RTM it was instrumental in settling the dispute between the parties. He described the manner in which the dispute was resolved as follows:

'…a settlement agreement had been entered into whereby Building Transformations would carry out further restorative works in return for their outstanding fees. As it became clear to the Respondent that these restorative works would not be completed to the reasonable satisfaction of the Respondent, Building Transformations were excused from their responsibilities under the settlement agreement in return for a lower fee.'

Mr Temporal also appended a number of photographs in various exhibits (6–9) to his supplemental witness statement which showed, respectively, the exterior of Park West prior to the commencement of the works, signs of the issues that were becoming apparent with regard to the quality of the works carried out by Building Transformation (taken on 25 October 2016), evidence of the snagging process and, hence, evidence of the quality of the work undertaken (taken on 4 November 2016, 8 November 2016 and 14 November 2016) and the two final sessions of snagging (taken on 20 February 2017 and 1 March 2017). He was uncertain of the exact date upon which Building Transformation ceased working at Park West, but, as he had intimated, the last snagging session had been on 1 March 2017.

In Exhibit 4 to his supplemental witness statement, Mr Temporal reported that the budgeted contractor cost of the works (£81,254.69 + VAT) for Park West was reduced by £24,003.75 (including VAT) as a result of the resolution of the dispute with Building Transformation relating to the standard of the works. He also informed the Tribunal that the legal costs referred to by Ms Saunders in her statement of case comprised the legal

fees payable by Park West RTM to Freeths LLP for legal services rendered in relation to this dispute and added that there were associated costs incurred by W & A. These fees and costs were referred to in Exhibit 4 and comprised £11,998.72 (including VAT) and £23,650.00 (including VAT) respectively as at 12 April 2018.

80 In his supplemental witness statement, Mr Temporal also informed the Tribunal that the following adjustments had been made to the budgeted costs of the works – an additional cost of £1,622.28 (plus VAT; £1,946.74) for a gutter safe system, and deductions of £600.00 (plus VAT; £720.00) and £375.00 (plus VAT; £450.00) for the area not painted on the Hermon Street elevation of Park West and for cleaning paint off an Audi car respectively.

81 Further, Mr Temporal referred the Tribunal to an independent building survey relating to the condition and state of repair of Park West which had been commissioned by W & A following the completion of the works. Mr Temporal indicated that this report which was written by Cloud Surveyors and dated 1 February 2018 was appended to his initial witness statement. Mr Temporal said that the forward maintenance plan for Park West contained in Appendix 1 of the report and covering the period 2018-2022 showed that only £300.00 had been allowed for external redecoration of Park West over that 5 year period. From this, Mr Temporal stated in his initial witness statement that it was reasonable to assume that the works had been completed to a reasonable standard although it was accepted that some paint splashes remained. However, Mr Temporal pointed out that Cloud Surveyors had 'highlighted to the Respondent that if you wanted to clean all the paint splashes off you would need to erect scaffolding which would not be a viable option or a good use of the service charge.'

82 Ms Cox submitted that the works had been completed properly and to a reasonable standard and that the complaint about the works made by Ms Saunders was without foundation or proper explanation. Ms Cox noted that Ms Saunders is not personally resident at Park West and suggested that it was not apparent from Ms Saunders' evidence that she had actually seen the works at any time. Moreover, Ms Cox observed that Ms Saunders had not submitted any independent evidence as to the standard of the works or any proposal as to the amount that she would consider appropriate to pay for the work which has been done.

83 At the Hearing, Mr Healey said that there were doubts about whether the render should have been painted, but, assuming that painting was an appropriate option, the specification for the works was defective. In his opinion, two coats of paint were inadequate to achieve the required standard which was borne out in the report written by Bidwells LLP that also questioned the use of abseiling to carry out the painting. As to the standard of the work undertaken, Mr Healey made the following points. First, the poor standard of the work undertaken was evident on inspection. Secondly, no preparatory works were undertaken and the paint had apparently been applied to the external render of Park West in a random and uneven manner leaving an unsatisfactory outcome which was particularly evident from the different coats of paints which had been applied to the Ilkeston Road elevation of Park West leaving different shaded strips. Thirdly, there were also many paint splashes remaining of which the splashes on Ms Babadi's balcony, which were observed by the Tribunal during its inspection, by way of example.

Mr Healey also questioned the involvement of W & A in carrying out remedial work on site with a view to rectifying perceived defects in Building Transformation's work. In his opinion, such work did not fall within their remit of managing the works during the site period.

2002 Act application

84 In her statement of case, Ms Saunders objected to two charges, each of £60.00, which had been included in her service charge account in 2017. In that account, these were described as 'late payment admin fees'. Ms Saunders argued that these fees were unfair because they were levied at a time when she was awaiting a response from W & A and their solicitors as to complaints which she had made in relation to the *section 20 consultation*.

85 Ms Cox made a number of points in response to this objection. First, the only 'late payment' fees which had been imposed were not applied in the service charge year (April 2016 – March 2017) which was in issue within the Application. In fact, the first of these fees was included in Ms Saunders' statement of account in June 2017. Consequently, they were not relevant to these proceedings. Secondly, the sums in dispute between the parties amount to only £1,872.69. However, it is clear from her statement of account that Ms Saunders also has significant further arrears in relation to which she has made no express complaint. In this respect, Ms Cox averred that even if Ms Saunders is entitled to withhold payment of the sums subject to the dispute, she is not entitled to withhold sums in relation to which she has no proper objection. This adversely affects other leaseholders and Park West RTM whose only source of income is the service charge. Thirdly, Ms Saunders is obliged to pay such fees in accordance with clause 3.1 and paragraph 2(b) of the Third Schedule to the lease (see, paragraph 18) and the wording on service charge demands sent to Ms Saunders indicates that such sums may be charged. Finally, the fee charged must be reasonable. Ms Cox opined that this test is satisfied when account is taken of the costs incurred in pursuing late payments and the knock-on effects for other leaseholders. Ms Cox also observed that the sum charged is small in comparison to the amounts owed by Ms Saunders in service charge arrears.

Section 20C application

86 Mr Healey indicated that Ms Saunders had been prompted to make her application to the Tribunal for an order under section 20C, primarily, because over a lengthy period of time, exceeding 12 months, she had been unable to secure information from either W & A or their solicitors (to whom she had been directed) about, in particular, various aspects of the works, for example, why the works had stopped, and the dispute relating to those works and its related costs. Mr Healey said that this lack of communication was evidenced in November 2017 when Ms Saunders was informed by the solicitors that 'we are unable to get a meaningful response from our client, so we have cancelled our legal fees charged to you and closed the case'. Mr Healey added that Ms Saunders also believed that it was only right that the (unexplained) high project management fees be challenged. He submitted that, in these circumstances, it was not just and equitable that the costs incurred by Park West RTM in connection with the proceedings before the Tribunal should fall to be paid by leaseholders through the service charge. Similarly, it was not just and equitable, in his opinion, for costs incurred by Park West RTM in connection with the *dispensation application*, which 'was not inevitable or absolutely necessary and to protect the landlord's position' and, in the event, was not resisted by Ms Saunders, to be borne by leaseholders through the service charge (see also, paragraph 50).

87 Ms Saunders' Application was described in various ways by Park West RTM and its representatives. In its statement of case, Park West RTM considered that the Application had been completed in a scattergun manner. Ms Cox, in her skeleton argument and during the Hearing, referred to the Application as 'vague and ill-founded' and 'nebulous and non-specific' and one in respect of which Park West RTM had been obliged to spend monies. Further, Ms Cox added that Ms Saunders' complaints about lack of information had been met by the content of the Hearing bundle submitted on behalf of Park West RTM, and, consequently, in Ms Cox's opinion, these proceedings need not have been

pursued. Ms Cox observed that Ms Saunders' only apparent objection to the costs of the proceedings being recovered, if necessary, through the service charge was that she did not wish the leaseholders to pay them. However, Ms Cox stated that the leaseholders will have to pay in any event as Park West RTM is an RTM company with the prospect, in the absence of recovery, that it will be insolvent. In the circumstances and bearing in mind that Ms Saunders brought matters before the Tribunal without any proper evidence, especially evidence as to 'reasonableness', Ms Cox submitted that it would be inappropriate to deprive Park West RTM of its contractual right to recover its costs in relation to these proceedings through the service charge provisions in the lease.

In reply to Ms Saunders' response to the *dispensation application*, Mr Wayman considered it to be wholly unreasonable to put Park West RTM to the cost of making that application only for Ms Saunders to confirm in her written representations in response to that application that it would not be resisted. Moreover, Mr Wayman asserted that it was an application, which on the basis of the initial evidence given by Ms Saunders that she was not prejudiced by the section 20 notices being 'short' and the evidence available to Ms Saunders on the second day of the Hearing, should 'at the very least have been consented to' by Ms Saunders. In these circumstances, Mr Wayman stated that there were no grounds for Ms Saunders' submission that Park West RTM's costs associated with making the *dispensation application* should not be recovered from the leaseholders through the service charge regime (see also, paragraph 51).

In this reply and on the advice of Ms Cox, Mr Wayman also drew the Tribunal's attention to a 'serious matter' of which he was informed immediately following Day 2 of the Hearing and which he regarded as germane to Ms Saunders' *section 20C application*, namely an e-mail which Mr Healey had written directly to Pamela Brangan on the eve of Day 2 of the Hearing. At this time, Mr Wayman stated that there was no reason for Mr Healey to believe that LMP Law Limited was no longer acting for Park West RTM. Consequently, Mr Wayman contended that if Mr Healey wished to address any question whatsoever to Park West RTM he should have directed that question to LMP Law Limited. Mr Wayman added that had LMP Law Limited been aware of this 'serious transgression' before Day 2 of the Hearing Ms Cox would have referred to it as part of her submissions concerning the *section 20C application*.

Determination

Introduction

88 In making its determination, the Tribunal considered, carefully, the oral and written evidence presented by the parties.

89 The issues raised in the Application are considered and determined in the order in which the evidence submitted by the parties has been presented in this decision, namely the *section 27A application*, the *2002 Act application* and the *section 20C application*. With regard to the former, the Tribunal, in the absence of a case being made by Ms Saunders in her written or oral evidence upon which the Tribunal might make a finding, makes no determination in relation to questions c. and d. in the Application (see, paragraph 24).

Further, the Tribunal makes no finding as to the reasonableness or otherwise of the legal fees incurred in connection with the settlement of the dispute with Building Transformation. In this respect, whilst the Tribunal acknowledges that these legal fees were one of the catalysts for the Application and that, at the request of Ms Saunders in her statement of case, information pertaining to those costs was provided at the Hearing, it considers that neither of these factors brings those costs within the remit of the present Application. It follows that the Tribunal also makes no finding as to the related costs of W & A.

Section 27A application

Section 20 consultation

90 The essence and purpose of a section 20 consultation is encompassed in the following words of Lord Justice Lewison in *The London Borough of Hounslow v Waaler* [2017] EWCA Civ 45 ('*Waaler')*:

" [38]…before carrying out works of any size the landlord is obliged to comply with consultation requirements; and the current requirements are those contained in the Service Charges (Consultation Requirements) (England) Regulations 2003. The landlord must…describe the works proposed to be carried out, and under each of the Schedules to those regulations the landlord must "have regard" to the lessees' observations on his proposals. The obligation to consult goes to the appropriateness of the works proposed by the landlord: *Daejan* at [43]. Although the duty to consult in this context is not a public law duty imposed on the landlord (see *Daejan* at [52]) nevertheless the concept of what amounts to consultation is well developed in public law (see for example *R v North and Est Devon Health Authority, ex p Coughlan* [2001] QB 213). What this means is that the landlord must conscientiously consider the lessees' observations and give them due weight, depending on the nature and cogency of the observations. In the light of this statutory obligation to consult, it is impossible to say that the tenants' views are ever immaterial. They will have to be considered in every case. This does not of course mean the lessees have any kind of veto over what the landlord does; nor that they are entitled to insist upon the cheapest possible means of fulfilling the landlord's objective. But a duty to consult and to "have regard" to the lessees' observations entails more than simply telling them what is going to happen. Given that in every case the tenants will have had the opportunity to make observations on the landlord's proposals I do not consider that the landlord has any further positive duty to inquire into the tenants' views. The statutory consultation process is designed to inform the landlord about the tenants' views.

[39] Once the landlord has consulted the tenants and taken their observations into account, it is then for the landlord to make the final decision. In considering whether the final decision is a reasonable one, the tribunal must accord the landlord what, in other contexts, is described as a "margin of appreciation". As I have said there may be a number of outcomes, each of which is reasonable, and it is for the landlord to choose between them."

91 Should it be contended that the consultation requirements have been breached, an application for dispensation under section 20ZA of the 1985 Act may be made. The proper approach for the Tribunal to take when considering such an application is set out in the Supreme Court's judgment in *Daejan*. In summary, the approach to be adopted is as follows:

a. The Tribunal should identify the extent to which tenants would be prejudiced in either paying for inappropriate works or paying more than would be appropriate as a result of the failure by the landlord to comply with the consultation requirements;

b. That no distinction should be drawn between 'a serious failure' and 'technical error or minor or excusable oversight' on the landlord's part save in relation to the prejudice it causes;

c. The financial consequences to the landlord of not granting a dispensation are not relevant factors when the Tribunal is considering how to exercise its jurisdiction under section 20ZA; and

d. The nature of the landlord is not relevant.

92 In the light of this guidance from the Supreme Court, the primary question for the Tribunal is to consider whether there is real prejudice to the tenant arising from a landlord's breach of the consultation requirements. In this respect, there is a factual burden on the tenant to identify some prejudice, which is financial, that would or might have been suffered as a result of the landlord's failure to properly consult.

93 The Tribunal may grant dispensation on such terms and subject to such conditions as it thinks fit, but any such terms and conditions must be appropriate in their nature and effect.

94 Ms Saunders raised two issues in relation to the manner in which the *section 20 consultation* was conducted, namely the service of the section 20 notices which she submitted did not comply with the requirement to allow a 30 day consultation period and the failure by W & A to include in its written response to matters raised by leaseholders during the consultation the observations which she said that she had made in a letter sent by post pursuant to the second section 20 notice and within the designated consultation period. In respect of each of these issues, the evidence presented to the Tribunal by the parties was conflicting and, to a degree, incomplete. As to the 'short notices', Ms Saunders stated, particularly, that the notices in respect of which a leaseholder response could be made arrived on days that fell within the required 30 day consultation period within which such responses might be submitted. This was denied by Park West RTM although no evidence was adduced as to proof of posting of the notices, for example, a certificate of posting. Nevertheless, Mr Temporal in his evidence made it clear that, regardless of the length of the consultation period, submissions made by leaseholders that were received after the closing date of that period were considered. Similarly, disparities were evident in the positions taken by the parties with regard to the letter which Ms Saunders stated that she had sent to W & A in response to the second section 20 notice. In this respect, Ms Saunders relied upon her recollection of the contents of her letter as she had not retained a copy of it. Park West RTM denied that this letter had been received and, consequently, it had not been possible to acknowledge it in W & A's written comments about matters raised by leaseholders. However, it pointed out that the matters which Ms Saunders said that she had included in her letter had been raised by other leaseholders and these were covered in W & A's written comments on those matters.

In addition to the contrasting stances adopted by the parties on these issues, there was also what might be described as a certain ambiguity in Ms Saunders' evidence in that, whilst raising these issues in her written evidence and persisting with them in her oral evidence on Day 1 of the Hearing, she accepted that she had not suffered any prejudice, most explicitly in relation to the 'short notices'. This persistence would appear to have prompted Park West RTM to make its formal *dispensation application* which, in due course, Ms Saunders did not resist.

In these circumstances, it is difficult for the Tribunal to make conclusive findings on either of the issues raised by Ms Saunders in relation to the propriety or otherwise of the *section 20 consultation*. Although, the Tribunal notes, in passing, that it would appear that W & A dealt diligently with those leaseholders' observations covered by its written comments and that these comments addressed matters which Ms Saunders believes that she raised in her letter.

However, it is also fair to say that even if Ms Saunders' representations as to what she perceived as flaws in that consultation are conceivable her admissions that she did not suffer any consequent prejudice, a conclusion with which assuming the existence of such

flaws the Tribunal would have no reason to disagree, made her ultimate decision not to resist the *dispensation application* a matter of little doubt.

Accordingly, the Tribunal determines, in so far as it can, that, in the absence of prejudice, dispensation as specified in the *dispensation application* from the consultation requirements of section 20 would be in order.

The Tribunal returns to the *dispensation application* in the context of the *section 20C application* in paragraph 119 of this decision.

95 On the assumption that the *section 20 consultation* is treated as completed for the purposes of this Application, the Tribunal makes the following findings in respect of the substantive issues raised in the *section 27A application*.

The payability and reasonableness of service charges

96 The above cited sections 18, 19 and 27A of the 1985 Act (see, paragraphs 33-34) contain important statutory provisions relating to the recovery of service charges in residential leases. In the ordinary course of events, payment of these charges is governed by the terms of the lease which set out the agreement that has been entered into by the parties to the lease. However, these provisions in the 1985 Act provide additional protection to tenants in this instance, broadly, through the application of a test of 'reasonableness'.

97 In these respects, the construction of a lease is a matter of law whereas the 'reasonableness' of the service charge for the purposes of the 1985 Act is a matter of fact. It is accepted that there is no presumption either way in deciding the 'reasonableness' of a service charge. If a tenant provides evidence which establishes a *prima facie* case for a challenge, the onus is on the landlord to counter that evidence. Consequently, a decision is reached on the strength of the arguments made by the parties. Essentially, the Tribunal decides 'reasonableness' on the evidence which has been presented to it (*Yorkbrook Investments Ltd v Batten* [1985] 2 EGLR 100).

98 With regard to the test of establishing whether a cost was reasonably incurred, the usual starting point, and one that was adopted by Ms Cox, is the Lands Tribunal decision in *Forcelux Limited v Sweetman* [2001] 2 EGLR 173 ('*Forcelux*'), which concerned the recovery of insurance premiums through a service charge, in which Mr PR Francis FRICS said:

"[39]...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.

[40] 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 light of that evidence. This second point is particularly important as, if that did not have to be considered, it would be open to any landlord to plead justification for any particular figure, on the grounds that the steps it took justified the expense, without properly testing the market."

99 Subsequently, in the Lands Tribunal decision in *Veena v Cheong* [2003] 1 EGLR 175, Mr PH Clarke FRICS observed:

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

100 Recently, the Court of Appeal analysed the concept of 'reasonably incurred' in section 19(1) of the 1985 Act in *Waaler* in the course of considering whether the cost of replacing windows by Hounslow was reasonable where those windows could have been repaired at a cost that was substantially less than the cost of replacing the windows. The court said that in applying the test of establishing whether a cost was reasonably incurred the landlord's decision making process is not 'the only touchstone'. A landlord must do more than act rationally in making decisions, otherwise section 19 would serve no useful purpose. It is particularly important that the outcome of the decision making process is considered. As HHJ Stuart Bridge said in the later Upper Tribunal decision in *Cos Services Limited v Nicholson and Willans* [2017] UKUT 382 (LC):

"[47] If, in determining whether a cost has been 'reasonably incurred', a tribunal is restricted to an examination of whether the landlord has acted rationally, section 19 will have little or no impact for the reasons identified by the Court of Appeal in *Waaler*. I agree with the Court of Appeal that this cannot be the intention of Parliament when it enacted section 19 as it would add nothing to the protection of the tenant that existed previously. It must follow that the tribunal is required to go beyond the issue of the rationality of the landlord's decision-making and to consider in addition whether the sum being charged is, in all the circumstances, a reasonable charge. It is, as the Lands Tribunal identified in *Forcelux*, necessarily a two-stage test.

[48] Context is, as always, everything, and every decision will be based upon its own facts…"

101 In approaching the question of the 'reasonableness' of the contested costs within the service charge in this Application, the Tribunal is also mindful of the Upper Tribunal decision in *Regent Management Limited v Jones* [2010] UKUT 369 (LC) to which Ms Cox also referred, and, in particular, to the following cautionary words of HHJ Mole QC:

"[35] The test is whether the service charge that was made was a reasonable one; not whether there are 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… 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 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."

102 In the light of this judicial guidance, the Tribunal's discussion and findings in respect of each of the contested matters follows.

Management fees – surveying and project management

103 At the outset, the Tribunal notes that each of the parties accepted that it was necessary to employ professionals to undertake the project management and oversight of the works, although Ms Saunders expressed the following reservations about aspects of the fulfilment of this role by W & A. First, the 2016 agreement between Park West RTM and W & A was not negotiated at arm's length bearing in mind the roles which Mr Walton plays in relation to Park West RTM and W & A respectively. Secondly, the 2016 agreement differed materially from the earlier 2010 agreement entered into by Park West RTM and W & A to the benefit of W & A. Thirdly, the 2016 agreement did not follow the

guidance offered in the RICS Code relating to additional charges leading to the employment of ad hoc charging.

104 Further, it was also evident to the Tribunal that, whilst the evidence presented by Ms Saunders or on her behalf proceeded on the basis of a differentiation between the project management fee relating to the pre-commencement of the works and the project management fee covering the period during which the works were undertaken (the site period), her challenge was to the reasonableness of the totality of those fees. In essence, Ms Saunders argued that the project management fee charged for the works did not accord with the 'industry standard' for this type of project which requires the application of a suitable percentage to the costs for the works in order to ascertain the fee that is payable. In this respect, as the evidence shows, various representations were made by Ms Saunders and Mr Healey about the range of percentages that may be apposite depending on the cost of the works – Ms Saunders suggested between 0-10% in the Application whilst Mr Healey favoured between 9.5-15% (with 10% applying in cases where the cost of the works fell between £70,000.00 and £99,999.00) on the basis of information which he had commissioned from a fellow surveyor; neither of which were commensurate with the 36% management fee which Ms Saunders attributed to W & A in the Application. In contrast, Ms Cox told the Tribunal that the management fee relating to the site period was approximately 12% of the costs of the works and that this was the market rate for the supervision of such works.

105 With regard to the points raised in relation to the 2016 agreement, it is clear that, generally, parties to an agreement are able to agree the terms by which they wish to be bound and that there may be circumstances in which any relationship between the parties may influence the manner in which those terms are framed. However, it does not follow that there is necessarily anything untoward in the latter circumstance and no evidence was presented to the Tribunal to show that the dual role of Mr Walton was instrumental in the negotiation of the terms of the 2016 agreement including the arrangements for payment of the management fee in relation to the works. Nevertheless, it similarly does not follow that the management fee payable in accordance with the 2016 agreement can necessarily be accommodated within the service charge payable by the leaseholders of Park West. For this to happen, such management fee must satisfy the test of reasonableness in section 19 of the 1985 Act. In this respect, the Tribunal does not feel that a comparison with comparable terms in the 2010 agreement, which was not implemented, facilitates the resolution of the question whether the actual management fee payable under the 2016 agreement is deemed to be reasonable. Equally, it is not enough to say, as suggested by Mr Temporal, that the terms of a management agreement, including the terms relating to the charging of a management fee, are negotiated individually with a client's particular requirements in mind otherwise the need for section 19 would be negated, which is not what Parliament could have intended.

More telling, perhaps, in the context of the 2016 agreement, is the substantive guidance provided in that section of the current RICS Code relating to the appointment of managing agents wherein it is stated in clause 3.5 that terms of engagement should include a 'menu' of charges for duties falling outside the scope of the annual fee i.e. provision for additional amounts to be charged outside of standard management issues. In this respect, clause 3.5 also makes clear that 'all charges should be proportionate to the time and amount of work involved and any service or provision of information should be delivered in a reasonable timeframe.' In this regard, there is some strength in Mr Healey's arguments pertaining to the reasonableness of the management fee that the framing of the charging structure in the 2016 agreement, which did not include a menu of charges, made it difficult to anticipate the scale of the management costs associated with the works and to obtain meaningful information from W & A about those costs and the works.

106 In turn, this examination of the project management fee charged in accordance with the charging framework in the 2016 agreement brings into sharp focus its compatibility or otherwise with the 'industry standard' for this type of project management and, further, the bearing this may have on its reasonableness or otherwise. However, in this respect, the Tribunal does not find the variable opinions expressed by the parties, which were unsupported by credible or compelling evidence, as sufficiently indicative of that 'industry standard' or of its application which, on the evidence, makes such a comparison problematic.

107 In the light of the above, the Tribunal finds that the determination of the reasonableness of the management fee charged under the 2016 agreement falls within the Tribunal's knowledge and experience as an expert tribunal. In applying that knowledge and experience, it determines that the total amount of the management fee relating to professional work for the section 20 works which may be regarded as reasonable within the meaning of section 19 of the 1985 Act and for the purposes of this Application should not exceed 12.5% plus VAT of the total net cost of the works.

Architect's fee

108 Ms Saunders challenged the appointment of an Architect in a role that did not require any element of redesign and which was for a purpose, which, principally, involved what she described as a 'report on finishes'. In her opinion, the role of the Architect was unnecessary and related to matters which were within the remit of the managing agents, W & A.

The precise role and function of the Architect is set out in the specification that was made available to leaseholders during the *section 20 consultation* (see, paragraph 23) and evidence was adduced by Park West RTM, notably from Mr Temporal, which showed that the architect had performed the advisory role which this appointment entailed and fulfilled the duties expected of him.

The Tribunal accepts that such a role and its related duties did not necessarily have to be performed by an Architect.

However, the Tribunal finds that it was prudent to seek out professional advice prior to the commencement of the works on the matters referred to in the specification, especially on the questions of whether the render should be painted and, if so, what type of paint should be used, and rejects the notion that the resolution of these matters necessarily fell within the expertise of W & A. In this circumstance, the appointment of an Architect was one of a number of reasonable ways in which this professional advice might have been obtained. Ms Saunders did not submit any evidence to suggest that the advice and information so acquired could have been obtained, otherwise, for a lesser fee. Accordingly, the Tribunal determines that the Architect's fee was reasonably incurred and that it was reasonable in amount.

Health and welfare facilities

109 The specification provides for supply of these facilities for the use of site operatives during the carrying out of the works. It describes the nature of those facilities (see, paragraph 23) and identifies their proposed location in Elliott Street. It was explained to the Tribunal by Park West RTM that expenditure on these facilities in the form of a secure welfare unit (portable toilet) was incurred by W & A to meet health and safety responsibilities in this regard and in order to comply with the relevant provisions of the Construction (Design and Management) Regulations 2015 and, subsequently, invoiced to Park West RTM. In the light of this explanation, the Tribunal is satisfied that there was a sensible rationale for the expenditure incurred.

Ms Saunders challenged such expenditure on two substantive grounds. First, she questioned whether, in fact, the welfare facility had been provided. This was based on her experience of driving regularly past Park West whilst the works were ongoing and on conversations she had held with other leaseholders, but, otherwise, uncorroborated. Secondly and assuming that the welfare facility was provided, Ms Saunders questioned the reasonableness of the sum expended which, in her opinion, was too high; a view which was supported by Mr Healey in his submission to the Tribunal that the cost of providing this facility should have been £2,000.00 (plus VAT). In neither instance, was the Tribunal provided with any independent evidence in support of these propositions.

As to the first ground, the Tribunal is handicapped by the absence of any corroborative evidence in support of Ms Saunders' statement which, in turn, is contradicted by the photographic evidence presented by Park West RTM that shows several welfare units *in situ* in Elliott Street. Further, as to the second ground, the Tribunal attaches little evidential weight to the unsupported statements of Ms Saunders and Mr Healey relating to the reasonableness of the expenditure.

Consequently, the Tribunal concludes that a welfare facility was provided and determines that, in the absence of compelling or persuasive evidence to the contrary, the challenged expenditure was reasonably incurred and that it was reasonable in amount.

CDM-C co-ordinator

110 Ms Saunders challenged the appointment of a CDM-C co-ordinator, whose role and function was described in the specification as, broadly, to advise on matters of health and safety, especially with a view to satisfying HSE requirements, on the basis that it was an unnecessary expense. More specifically, the matters allocated to the CDM-C co-ordinator should have been dealt with by W & A as part of their overall responsibility to manage the project in conjunction with others who were involved for the entirety of the works, there was no legal obligation to appoint a CDM-C co-ordinator as the works were not notifiable to HSE, and the CDM Regulations 2015 do not envisage the appointment of a CDM-C co-ordinator. Mr Healey questioned the utility of the pre-construction report prepared by the CDM-C co-ordinator which he regarded as being not sufficiently directed towards Park West.

The Tribunal accepts that these matters are important considerations. However, it is not persuaded that they lead to the conclusion that the challenge to the appointment of the BCA Project Services as the CDM-C co-ordinator should be successful. In the Tribunal's opinion, the manner in which it was proposed that the works were to be carried out, namely through abseiling, highlighted the need for particular regard to be paid to matters of health and safety generated by this mode of operation. There was no cogent evidence to suggest that either W & A or individuals, such as the quantity surveyor or the planner/programmer for the works, either individually or collectively, had sufficient expertise in this respect. It follows that it was appropriate to rely upon a degree of specialist expertise. In this regard, the Tribunal takes the view that, whatever the formal requirements for the appointment of BCA Project Services was one of the reasonable ways in which this advice might be obtained. In terms of the work undertaken, the Tribunal acknowledges that the pre-construction report could have been more directly focused on Park West, but, nevertheless its contents were still useful. There was no suggestion that the cost of appointing BCA Project Services should be reduced to reflect the perceived generality of the report.

Accordingly, the Tribunal determines that the cost of appointing BCA Project Services as CDM-C co-ordinator was reasonably incurred and that it was reasonable in amount.

Works – reasonable standard

111 The evidence presented to the Tribunal shows that the parties accepted that there was a need for work to be carried out to the exterior elevations of Park West, whereas, "the nub" of the dispute between them related, initially, to the ways in which such work could have been undertaken and, thereafter, whether the work which was undertaken was completed and, if so, to a reasonable standard. In this context, Ms Saunders also questioned the use of abseiling to carry out the work rather than a method that employed the use of scaffolding.

112 As to alternative ways in which the work could have been undertaken, Ms Saunders and Mr Healey on her behalf drew the Tribunal's attention, particularly, to the prospect of cleaning rather than painting the render of Park West, the application of more coats of paint than was provided for in the specification, which had been verbally suggested to Ms Saunders by the paint shop and, as Mr Healey intimated, was evident from the report of Bidwells LLP, in order to obtain the requisite finish, and, generally, expressed doubts about the suitability of abseiling for carrying out the works. In these respects, the Tribunal notes that Park West RTM took independent professional advice, especially from the retained Architect, in relation to matters pertaining to the painting of the building and that no independent, conclusive and compelling evidence was adduced by Ms Saunders or on her behalf in support of the view expressed about the carrying out of that painting – the response to the inquiry in the paint shop is not evidenced and the report of Bidwells LLP, which was commissioned by Building Transformation, was contradicted to some extent by the maintenance plan for Park West for the period 2018-2022 which was prepared by Cloud Surveyors and adduced in evidence by Mr Temporal. Further, *Waaler* makes it clear that following consultation with leaseholders in the course of a section 20 consultation relating to proposed works the final decision about the carrying out of those works lies with the landlord. In this instance, the Tribunal has found that *the section 20 consultation* was completed, even though there were the previously rehearsed difficulties experienced by Ms Saunders (see, paragraphs 42-45). In the event, Park West RTM decided that the works should be carried out by abseiling using a company that was versed in abseiling and with a view to securing a satisfactory completion of the works. In choosing that option, the evidence shows that Park West RTM was mindful that completing the works through the use of scaffolding would have been significantly more expensive. In these circumstances, the Tribunal is satisfied that for the purposes of section 19 of the 1985 Act the decision to use abseiling was reasonable. If this is so, it does not matter that others, including the Tribunal, might have a chosen another reasonable course.

113 In the context of this Application, the making of such a decision raises expectations that the works will be completed and to a reasonable standard. Although Ms Saunders submitted that the works were not completed, the Tribunal was persuaded, on the evidence, that the works were substantially 'completed' albeit in an unorthodox way which, as the evidence reveals, involved W & A arranging remedial works to rectify the perceived shortcomings in the work undertaken by Building Transformation. It is not clear to the Tribunal upon what basis and with what authority W & A arranged for this work to be done. Nevertheless, as Mr Temporal informed the Tribunal, Ms Brangan, one of the Directors of Park West RTM signed off the works as complete, although it was acknowledged that an area in Hermon Street had not been painted for which a deduction from the cost of the works, which was not challenged by Ms Saunders, was made.

As to the separate question of whether the works were undertaken to a reasonable standard, the Tribunal's inspection of Park West revealed on some elevations, as indicated by Mr Healey, what appeared to be uneven application of paint with different shaded strips and, notwithstanding the remedial work, evidence of paint splashes (including those on Ms Babadi's balcony). Clearly, there are shortcomings in the work

that was undertaken, and, hence, the outcome is far from perfect, but the test is not perfection rather it is whether the standard of the work is reasonable. The evidence adduced in the maintenance plan for 2018-2022 showing the anticipated minimal work that will be required on the external redecoration of Park West during that period is instructive and supportive of a finding that the works have been undertaken to a reasonable standard. Further, the case for such a finding is strengthened when the standard of the works undertaken is measured against the actual cost of those works taking into account, in particular, the significant saving on those costs which emanated from the settlement with Building Transformation which was reflected in a substantial discount from the final account of Building Transformation. Accordingly, the Tribunal finds that the works were carried out to a reasonable standard.

Conclusion

114 The Tribunal's findings on the various aspects of the *section 27A application* reflect the positions adopted by Park West RTM, save in relation to the amount of the management fee, as may be regarded as reasonable within the meaning of section 19 of the 1985 Act and for the purposes of the Application, which is represented in the following Table.

Building Transfer	£97,505.62	(incl vat)
less repaid	-£24,003.15	
Architect	£750.00	(incl vat)
H&S	£5,077.75	(incl vat)
CDM	£1,500.00	(incl vat)
Gutter safe system	£1,946.74	(incl vat)
less credit for non painted area	-£1,170.00	
Project management 12.5%	£14,625.84	(incl vat)
TOTAL	**£96,349.31**	

2002 Act application

Payability of administration charges

115 Within the context of this application, paragraph 1(1) of Part 1 of Schedule 11 to the 2002 Act defines an 'administration charge' as an amount payable by a tenant as part of or in addition to the rent, directly or indirectly, where the tenant fails to make a payment by the due date to the landlord. An application which challenges the payability of such charges may be made to the Tribunal under paragraph 5 of Schedule 11. (see, paragraphs 35 -37).

116 In respect of this application, the essence of the dispute between the parties is as follows. Ms Saunders challenged the payability and reasonableness of two administration charges, each comprising £60.00, which were included in her 2017 service charge account for late payment of service charge. In the latter respect, Ms Saunders adduced no evidence as to what might constitute a reasonable amount for such a charge. Ms Saunders does not dispute either that she has withheld payment of her service charge (for reasons associated with her Application) or that her service charge account is in arrears. Whereas, Park West RTM contended that the administration charges were properly applied, because Ms Saunders is not entitled to withhold payment of the service charge, especially those elements of that service charge about which she has not complained. It also averred that the administration charges were reasonable in amount, although it provided no evidence to the Tribunal as to the breakdown of the costs which were covered by the administration charges. Equally, the administration charges were applied to Ms Saunders service charge account on dates that fall outside the service charge period which is the

subject of Ms Saunders' Application, and, therefore, Park West RTM submitted that the Tribunal does not have jurisdiction to make a finding in respect of these administration charges.

117 As a matter of law, the payability of administration charges for late payment of service charge turns on the proper construction of the particular lease: see, *St Mary's Mansions Ltd v Limegate Investment Company Limited* [2002] EWCA Civ 1491. In this instance, the relevant provisions in the lease are clause 3(1) and paragraph 2(b) of the Third Schedule. The latter provides that the tenant has a 'liability to pay…all costs and expenses incurred…in enforcing the payment by the lessee of any…service charge…payable by the lessee under the terms of the lease'. As a matter of construction, the Tribunal finds that the word 'enforcing' in this paragraph means, literally, ensuring observance of the terms of the lease and that this encompasses the application of an administration charge for late or non-payment of the service charge. Such an interpretation means that the application of an administration charge can act as a deterrent to non-payment and may constitute an initial step in prompting payment and securing compliance with tenants' obligations under the lease.

118 The evidence presented to the Tribunal in relation to Ms Saunders' 2017 service charge account shows that the disputed administration charges were applied to that account in June and October 2017 respectively and that, consequently, they fall outside the service charge year to which the Application relates i.e. April 2016-March 2017. Therefore, the Tribunal, presently, has no jurisdiction to adjudicate upon these particular disputed administration charges. Suffice it to say, there is, in the Tribunal's opinion, authority in the lease for the application of administration charges in appropriate circumstances.

Section 20C application

119 The making of an order by the Tribunal under Section 20C is a matter of discretion. It is a discretion which may be exercised having regard to what is just and equitable in all the circumstances of the particular case.

120 Guidance on the exercise of this discretion was given in *Tenants of Langford Court v Doren Limited* (LRX/37/2000). In that case, HHJ Rich said:

> "In my judgment the only principle upon which the discretion should be exercised is to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise.
>
> …there is no automatic expectation of an order under section 20C in favour of a successful tenant, although a landlord who has behaved improperly or unreasonably cannot normally expect to recover his costs of defending such conduct.
>
> In my judgment the primary consideration that the LVT should keep in mind is that the power to make an order under section 20C should be used only in order to ensure that the right to claim costs as part of the service charge is not used in circumstances that makes its use unjust…its purpose is to give an opportunity to ensure fair treatment as between landlord and tenant, in circumstances where even although costs have been reasonably incurred by the landlord, it would be unjust that the tenant or some particular tenant should have to pay them."

121 Further guidance is given in the Upper Tribunal decision in *Conway al v Jam Factory Freehold Limited* [2013] UKUT 0592 in which Martin Rodger QC observed that it is important to consider the overall financial consequences of making an order under

section 20C, and, in particular, that an order made under the section will only affect those persons specified. He also said:

"[75] In any application under section 20C it seems to me to be essential to consider what will be the practical and financial consequences for all of those who will be affected by the order, and to bear those consequences in mind when deciding on the just and equitable order to make."

122 As this judicial guidance makes clear, a Tribunal should not in deciding whether to exercise its discretion under section 20C stray from the principle which underlies the exercise of that discretion, namely whether it is just and equitable in all the circumstances of the particular case to do so.

123 In considering whether to exercise its discretion in relation to Ms Saunders' Application, the Tribunal took into account all the prevailing circumstances, but, particularly, the following.

At the outset, it reviewed the principal circumstances which were germane to the making of the Application namely, the perceived dilatory response by W & A, whilst acting as managing agents, to Ms Saunders' inquiries for information relating to the works which had prompted the Application and which informed the decision of Ms Saunders to withhold payment of the service charge. Thereafter, the Tribunal contemplated aspects of the manner in which the proceedings were conducted. This included a general perception on the part of the Tribunal based largely on the interchanges at the Hearing that relations were strained; a situation which was not particularly conducive to the resolution of the matters in dispute between the parties. And, more specifically, with regard to the matter of dispensation where, in the Tribunal's opinion, the opportunity to resolve this matter might have been taken sooner by Ms Saunders and where, in view of the fact that the possibility of a cap on costs of the works through a failure to meet the consultation requirements of section 20 was explicitly referred to in the Application, a formal application for dispensation by Park West RTM might have been made earlier with a commensurate impact in each instance on the costs of the proceedings.

The Tribunal also acknowledged, in accordance with the above judicial guidance, that the outcome of the Application, which was predominantly in favour of Park West RTM save for the finding of 'reasonableness' in relation to the project management fees, whilst relevant was not determinative of the question of whether or not it should exercise its discretion under section 20C.

The Tribunal was not provided with any evidence relating to the specific financial consequences of the making of an order under section 20C for either party, although, as the evidence shows, the Tribunal was alerted to the significance of service charge revenue to the financial viability of Park West RTM.

In the light of all the circumstances and the backdrop to the issues addressed and determined by the Tribunal in relation to the Application, the Tribunal in exercise of its discretion under section 20C determines that it is just and equitable to make an order in favour of Ms Saunders limited by way of relief to 25% of the costs incurred by Park West RTM in connection with the proceedings before the Tribunal. It should be added that this is not a determination by the Tribunal of the amount of those costs or any part thereof and the Tribunal's order is without prejudice to any subsequent application by Ms Saunders which seeks to challenge such costs on the ground that they are considered to be unreasonable.

Summary of Findings

124 The findings of the Tribunal in relation to the *section 27A application*, the *2002 Act application* and the *section 20C application* may be summarised as follows:

Section 27A application

The Tribunal finds that the *section 20 consultation* was completed with dispensation to the extent specified in the *dispensation application*.

The Tribunal determines that the management fee for the works is £14,625.84 (including VAT) and that the fees/costs for the Architect, health and welfare facilities and the CDM-C co-ordinator were reasonably incurred and reasonable in amount. The Tribunal also determines that the works were carried out to a reasonable standard and to a reasonable eventual total net cost.

2002 Act application

The Tribunal does not have jurisdiction to adjudicate upon the reasonableness or otherwise of the administration charges challenged in this Application.

Section 20C application

The Tribunal makes an order under section 20C limited to 25% of the costs incurred by Park West RTM in connection with the proceedings before the Tribunal.

125 Subject to Rule 23(6) of the Tribunal Rules, this decision is binding on each of the parties to the application made by Ms Babadi to the extent that it relates to the common issue identified in the Directions dated 12 March 2018.

Judge David R Salter

Date: 6th December 2018

Appeal Provisions

126 If any party is dissatisfied with this decision they may apply to this Tribunal for permission to appeal to the Upper Tribunal (Lands Chamber). Any such appeal must be received within 28 days after these written reasons have been sent to the parties (Rule 52 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013).

127 If the party wishing to appeal does not comply with the 28-day time limit, the party shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

128 The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.