

Leasehold Valuation Tribunal: decision

Landlord and Tenant Act 1985 sections 27A, 20ZA and 20C

Address of Premises

The Committee members were

Blair Court,

Mr Adrian Jack

Boundary Road,

Mr Philip Tobin FRICS MCI Arb

London NW8 6NS

Mr Leslie Packer

The Management Company: Blair Court (St Johns Wood) Management Ltd

The Tenants: Mr Andrew Parissis (Flats 13 and 14) and the tenants of the other 75 flats in the block

The procedural history

1. There are two substantive applications before the Tribunal. Firstly an application under section 27A of the Landlord and Tenant Act 1985 by Mr Parissis for determination of his liability for service charges in the service charge year ending 30th September 2007, in particular his liability for his share of the major works of interior decoration at a cost of £96,444.00. Secondly the landlord's application under section 20ZA of the 1985 Act for a dispensation from the consultation requirements in respect of those major works. The respondents to this application are all the tenants in the block.
2. The Tribunal originally heard Mr Parissis' application over two days on 17th and 18th July 2008, but the main issue was whether the management company had a realistic prospect of succeeding on an application under section 20ZA, so that an adjournment should be granted to the management company. At the conclusion of that hearing, the Tribunal acceded to the management company's application for an adjournment. The Tribunal refers to its decision

given after that hearing, which should be treated as incorporated into this decision.

3. At that hearing Mr Ghose of Regency Management (Property) Ltd, the managing agents was called to give evidence on behalf of the management company and Mr Noubar, the chairman of the management company at the relevant time, also gave evidence on the management company's behalf. Mr Parissis then gave evidence and was cross-examined by Ms Pathirana, who was appearing as advocate for the management company.
4. The Tribunal heard the adjourned section 27A application and the fresh section 20ZA application over 23rd and 24th September 2008. The management company was now represented by Mr Edward Denehan of counsel. Mr Parissis continued to represent himself. Mr Simon Gerrard appeared on behalf of his grandmother, Mrs Rubin, the tenant of Flat 51 in the block. Mr Gerrard is the managing director of Martyn Gerrard, a firm of estate agents and property managers.
5. None of the other tenants appeared in that capacity. The directors who came to the hearings were tenants, but attended as directors rather than as tenants.
6. Both Mr Parissis and the management company had made efforts to show what support their respective positions had among the tenants in the block. In the event, fourteen tenants (apart from Mr Parissis and Mrs Rubin) signed a document prepared by Mr Parissis' solicitors which indicated support for Mr Parissis' position. Fourteen tenants (apart from the directors) signed a similar document in support of the management company's position. None of these tenants appeared.
7. At the previous hearing, Mr Parissis had indicated that, if the section 20ZA application were refused, he would concede that £250 was owed in respect of each flat in respect of the major works. At the outset of the resumed hearing he sought to resile from this concession, but after discussions with the Tribunal he again accepted that he could not realistically reduce the charge per flat in respect of the major works to less than £250. Mr Gerrard made the same concession.
8. In the Tribunal's judgment the concessions by Mr Parissis and Mr Gerrard were correct. Whatever criticisms might be made of the works, they were on any basis worth at least £250 per flat.
9. The hearing accordingly proceeded solely on the management company's application for a dispensation under section 20ZA.

10. Mr Denehan made extensive submissions in the morning and into the afternoon of 23rd September. Where appropriate the Tribunal summarised the evidence which had been given at the previous hearing, at which Mr Denehan had not been present so that he was aware of the evidence previously given. Mr Denehan then called Mr Noubar to give evidence. Mr Noubar gave evidence the rest of the afternoon and into the following day. His evidence was followed by Mr Ghose, who was called on this occasion by Mr Parissis and Mr Gerrard. Mr Ghose's cross-examination by Mr Denehan went into the afternoon.
11. Mr Parissis and Mr Gerrard then sought to call Miss Montekhab, who is the current chairman of the management company and was attending the Tribunal in that capacity. Miss Montekhab was thus likely to be a witness hostile to Mr Parissis and Mr Gerrard and it was clear that they wished to call her in order to cross-examine her, rather than call her as their own witness. The Tribunal has no power to order witnesses to give evidence and considers Miss Montekhab's refusal to submit to cross-examination wholly reasonable. It therefore draws no inferences from her failure to give evidence.
12. Mr Gerrard then spent the rest of the afternoon making his submissions.
13. This left the Tribunal in some timetabling difficulties. The case had already been heard over four days. Mr Parissis had already made extensive oral submissions at the first hearing and been cross-examined on behalf of the management company. Mr Gerrard had not been cross-examined by Mr Denehan, but Mr Denehan did not indicate at the conclusion of Mr Gerrard's submissions that it was essential that he be able to cross-examine Mr Gerrard and Mr Parissis.
14. Mr Denehan said that he was willing to make his submissions in closing in writing. Mr Parissis indicated that he would prefer to make oral submissions.
15. The Tribunal considered Mr Parissis' preference, but decided that the costs of an additional hearing to hear further oral submissions by him would be disproportionate. It therefore gave directions for Mr Parissis to make his submissions in writing and for Mr Denehan thereafter to make his closing submissions in writing, thus avoiding the delay involved in a further reconvene. Both these submissions in writing were duly received.
16. Mr Denehan in his closing written submissions said (para 8.2):

“Whilst of course lay persons often do not appreciate the difference between submissions and evidence, the fact that the Company has been denied an opportunity to cross examination these gentlemen [Mr Parissis and Mr Gerrard] on this evidence would, if the evidence is in any way relied upon, constitute a serious procedural irregularity. The only course available to the Tribunal is to treat as inadmissible the evidence given by Mr. Parissis and Mr. Gerrard during their closing submissions.”

17. In the Tribunal’s judgment this misunderstands the nature of Tribunal proceedings, which are intended to be (and are) informal and in which the rules of evidence do not apply. The Tribunal frequently receives evidence from parties and advocates (including professional advocates) in the form of submissions. The fact that evidence has not been subject to cross-examination is a matter which goes to weight, not to admissibility. Of course in relation to Mr Parissis, he had been subject to extensive cross-examination at the first hearing.
18. If Mr Denehan had made it clear at the end of the proceedings on 24th September, that he intended to make this submission unless Mr Parissis and Mr Gerrard submitted to cross-examination, the Tribunal would have raised the matter with them. It has little doubt that both of them would have been happy to be cross-examined. Indeed as we have noted, Mr Parissis’ personal preference was for there to be another hearing at which he could make oral submissions.
19. The Tribunal was obviously keen to avoid a further hearing, because the matter had already overrun, but ultimately it has no alternative but to continue to hear the evidence adduced by the parties until the evidence is complete. If there was no other way of dealing with the matter, the case would have to have been adjourned to another date.
20. After receipt of Mr Denehan’s closing submissions and whilst the Tribunal was considering its decision, Mr Parissis sent further written submissions to the Tribunal. There was no provision for such further submissions and the Tribunal decided to ignore these further submissions. Mr Denehan was entitled to the last word and there must be some finality to the parties’ submissions.

The law

21. Section 27A of the Landlord and Tenant Act 1985 provides that an application may be made to the Tribunal “for a determination whether

a service charge is payable and, if it is” by whom, to whom, when, how and in what sum.

22. Section 19(1) of that Act provides that “[r]elevant 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..”
23. Section 20 of that Act provides:
 - “(1) Where this section applies to any qualifying works... the relevant contributions of tenants are limited [to £250] unless the consultation requirements have been either:
 - (a) complied with in relation to the works..., or
 - (b) dispensed with in relation to the works... by (or on appeal from) a leasehold valuation tribunal.”
 - (2) In this section ‘relevant contribution’, in relation to a tenant and any works... is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works...”
24. The consultation requirements are set out in Part 2 of Schedule 4 to the Service Charges (Consultation Requirement) (England) Regulations 2003. Regulation 8 provides for the landlord to serve on tenants an initial notice which describes in general terms the works proposed to be carried out, and invite within 30 days the making of observations and the nomination by the tenants of a contractor to tender for the work. This we shall describe as the stage one consultation.
25. Under regulation 10 the landlord is obliged to have regard to any observations made by the tenants.
26. Regulation 11 imposes an obligation on the landlord to obtain a quotation from any contractor nominated by the tenants and for the landlord to obtain at least one quotation from an independent contractor. Regulation 11(5)(b) provides that the landlord shall “supply free of charge, a statement (‘the paragraph (b) statement’) setting out:
 - (i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and
 - (ii) where the landlord has received observations to which... he is required to have regards, a summary of the observations and his response to them.”

The landlord is also obliged to make all of the estimates available for inspection and to invite observations from the tenants. This, we shall describe as the stage two consultation.

27. Regulation 12 imposes an obligation on the landlord to have regard to any observations made as part of the stage two consultation. Regulation 13 provides for the landlord to inform the tenants once a contract for the works has been entered.
28. Section 20ZA of the 1985 Act provides that the Tribunal may “dispense with all or any of the consultation requirements in relation to any qualifying works... if satisfied that it is reasonable to dispense with the requirements.”
29. By section 42 of the Landlord and Tenant Act 1987, monies received by way of service charges must be held on trust and under section 42A the monies must be held in a designated trust account.

The consultation carried out

30. In our previous decision, we said that the stage one consultation had not been carried out at all and that the stage two consultation was seriously defective. Mr Denehan asked us to reconsider these views and he took us through the relevant documentation in detail. We did not consider it right to shut him out from making the arguments he wished to on the section 20ZA application and accordingly we have considered our views afresh.
31. The documentary evidence of the consultation was not in dispute. On 1st March 2007 Regency Management (Property) Ltd, the managing agents, sent a long closely typed letter to all tenants headed “Blair Court – March 2007 Service Charge, Ground Rent, etc”. It enclosed a service charge and ground rent demand, a copy of the management company’s audited accounts, the minutes of the 2006 AGM, a letter regarding the 2007 AGM and joining the board as a director and a formal notice of the AGM. The tenants are all shareholders in the management company and there are no other shareholders.
32. On the second page of the letter, after reporting on completed projects, it said:

“Further Major projects to be carried out as follows:
(1) Internal redecorations ground floor lobby and eleven floors lobbies – 2007”

Three further proposed projects are then mentioned and the letter continued:

“It should be noted that the internal redecoration of the block has been brought forward to 2007 at the request of leaseholders. This will cover the ground floor lobby and all eleven landings as one project.”

33. That letter was followed by a letter dated 20th March 2007 from Regency to all tenants. It said:

“The Board of Blair Court (St John’s Wood) Management Ltd have instructed us to carry out the above works and Notice is hereby given in accordance with the requirements of Section 20 of the Landlord and Tenant Act 1985 (as amended).

Scope of works

- (A) Refurbishment of Apartment Corridors and Lift Lobby areas to all 11 floors including new carpet.
- (B) Refurbishment of Fire Exit stairway 11 floors.
- (C) Refurbishment of Entrance Lobby & Service Entrance.”

The letter proceeded to list the tender prices, broken down into items (A) (B) and (C), received from Corecroft Enterprises Ltd (Total £105,750.00), MHR Design (Total £96,444.00) and I & M Property Services Ltd (Total £115,749.00). It continued:

“The Board... have agreed to accept the tender from MHR Design in the total sum of £96,444 (Inc). The cost of the work will be met from the Reserve Fund.

If lessees wish to make any comments on the work, they should do so in writing, addressed to Regency Management (Prop) Ltd within the Statutory 28 days from the date of this Notice.

Work will commence on the expiry of this Notice

Copies of the Quotations for the work are held at the Porters’ Desk for Lessees to inspect if they so wish.”

34. The quotations were based on a short list of works prepared by Miss Yass Mostashari, who was on the board and had been an architect. The list of works was just that: a list. It was not in any way a formal specification as would usually be expected of a surveyor or an architect. We consider the history of the quotations further below.
35. In fact no contract was signed until 28th May 2007.

36. The managing agent subsequently put samples of paint and carpet in the ground floor lobby, so that tenants could comment on the directors' choice. As noted in our first decision, the chief innovation was that the existing mahogany veneered surfaces would be covered in a black "Wenge" varnish. It was common ground that about half the tenants are non-resident and let their flats out, so that these tenants were less likely to see the samples. In any event, however, about five comments were received objecting to the proposed colours or carpet.
37. The directors rejected the objections and on 28th May 2007 signed a contract in the JCT "Building contract for a home owner/occupier who has appointed a consultant to oversee the work". The consultant was named in the contract as the "Blair Court Board of Directors". It was common ground that the works were not supervised by Regency, or by the consultant surveyor used by Regency, Mr Gaussen. Instead the directors themselves supervised the work.

The submissions and decision on the consultation procedure

38. Mr Parissis and Mr Gerrard submitted that the consultation procedure was completely flawed. There was no stage one consultation at all: the letter of 1st March 2007 could not be read as a stage one consultation document at all. The stage two consultation was also bad in that it gave the tenants the impression that the contract had already been let to MHR Design, so that the tenants were able to make only limited observations on matters such as the colour scheme.
39. Mr Denehan by contrast suggested that the breaches were venial. The letter of 1st March 2007 was, he said, an attempt to operate the stage one consultation. It was merely defective. He submitted (para 5.3 onwards of his skeleton argument, omitting footnotes):

"that by Regency's letter dated 1st March 2007... all the tenants were provided with a description, in general terms, of the works proposed. Whilst the March Letter does not state the Company's reasons for considering it necessary to carry out the proposed works, the need for the Works must have been considered and discussed by the tenants, and therefore it was self-evident why the Works were needed.

It is accepted that the March Letter does not invite observations from the tenants, but there can be no doubt that the tenants understood that observations could be made, hence the call for the bringing forward of the Works, and there can be no doubt as to where any such observations could be sent,

namely to Regency. As at the date of the March Letter, it appears no commencement date had been decided upon, so there were no time limits on the tenants.

The March Letter did not invite the tenants to propose a contractor from whom an estimate might be had.

Having said that, the March Letter was a clear notice of intention on the part of the Company to carry out the Works, which works had been considered, discussed and decided upon by the tenants prior to the March Letter, and which the tenants were anxious be carried out sooner rather than later. No question of inspection of the description of the Works arises in the instant case, because the March Letter contained a general description of the Works.

No observations were received as a result of the March Letter, and therefore no question of having regard to observation arises, or responding to them. Similarly there were no nominated contractors, no question of obtaining estimates arises.”

40. The Tribunal does not accept that the letter of 1st March 2007 is merely a defective stage one consultation document. The reference to the internal decoration work is made in a long letter which largely concerns the forthcoming AGM of the management company. It contains very little of the material prescribed for a stage one consultation notice.
41. The Tribunal also notes the evidence of Mr Noubar, who was the chairman of the board at the time, and explained that it was the custom of the block to have discussions at the annual general meeting of the management company, where issues were raised and the views of tenants received. We accept Mr Gerrard’s submission that an ordinary tenant, knowing of this custom in the block, could reasonably assume that the 1st March letter was merely giving advance warning of what would be discussed at the AGM.
42. For all these reasons we consider that the management company was correct in its concession at the first hearing that no stage one consultation was carried out at all. Even if we were wrong on that, the 1st March letter was on any view a grossly defective stage one notice, in that it gave tenants no invitation to comment on the works or to nominate a contractor to quote for the work. In fact, however, the distinction makes no odds: our decision would be the same whether or not the letter was a stage one consultation notice.

43. The stage two consultation was also defective.
44. Mr Denehan submitted (in para 5.9 of his skeleton, again with footnotes omitted) as follows:

“The notice dated 20th March 2007 served by Regency on all the tenants (“the March Notice”) purported to be a notice under section 20; it says so in its title and in its substantive parts. In reality the March Notice purported to be a “*paragraph (b) statement*”. The Company obtained estimates in accordance with sub-paragraphs (5)-(9) in that the estimate were from persons wholly unconnected with the Company, and the estimates were supplied to the tenants, they were attached to the March Notice, and made available for inspection. The March Notice also invited tenants to make comments in writing, albeit that it specified a relevant period of 28 days rather than 30 days.

It is not accepted by the Company that the words “*The Board of [the Company] have agreed to accept the tender from MHR Design...*” would convey to the reasonable recipient of the March Notice that the Company had closed its mind to any comments from the tenants. The reasonable recipient, reading the March Notice as a whole, would understand it to mean that the Company had agreed to accept that tender subject to the comments invited.

The Company received a number of comments from tenants, and these were considered by the Company. The Company also informed the tenants that samples were available for inspection; that was on 8th May 2007.

The Company informed the tenants that the Works were to commence on 1st June 2007 by letter dated 30th May 2007, and the Works were discussed at the AGM on 12th June 2007. The Company was not obliged to comply with paragraph 6 because it accepted the lowest estimate.”

45. The Tribunal agrees with the first quoted paragraph of Mr Denehan’s submissions. The reduction in the time for consultation from 30 to 28 days was a breach of the consultation requirements, but in the Tribunal’s judgment a fairly minor breach.
46. The Tribunal disagrees with the next two paragraphs. The natural reading of the words is that the board had already made its decision. The Tribunal accepts that the words would not necessary imply that a contract had already been signed, but we do not accept that a

reasonable person would read this letter as including an invitation to comment on the tenders received. Most tenants would – quite reasonably in the Tribunal’s judgment – conclude that comments on the tenders or tenderers would be pointless.

47. And this is indeed what happened. There were comments, but they were comments on the detailed matters only, namely the colour and carpet scheme, which at that time had still not been finalised.
48. The Tribunal agrees with the last two paragraphs of Mr Denehan’s submissions, but they do not affect our decision that there was a serious breach of the consultation requirements.

The evidence

49. We shall summarise the evidence. Mr Noubar and Mr Ghose gave evidence at both the first and second hearings, although Mr Ghose was in the peculiar position of being called by the management company at the first hearing and by the tenants at the second hearing.
50. At the first hearing, Mr Parissis explained that he did not live in the block. He rented his two flats out. He had been in the property business himself before he retired to Cyprus and still owned six investment properties in London and four in Cyprus. He knew several contractors whom he could have nominated, if he had had the opportunity. The first he knew that the decoration works were going to start was when he received the letter of 20th March 2007, which he read as meaning the contract had been awarded. He was at that stage in ignorance of the requirements of section 20 of the 1985 Act. The reason for his application under section 27A was his dissatisfaction with the colour scheme. He disliked the black varnish which had been applied and much preferred the original mahogany veneered woodwork. Since he could not directly attack the colour scheme, he attacked the service charge demand made in respect of those works.
51. He did not consider that the block was properly managed, because the directors simply used Mr Ghose and his company, Regency Management (Property) Ltd, as a front for themselves. It was the directors who managed the block: they should have used professionals the major works.
52. Under cross-examination he said that he would have arranged a quote. He then referred to a quotation obtained from Build It All Ltd, whose proprietor was a man named Victor, which he said was cheaper than

the three tenders cited in the letter of 20th March 2007. (It later transpired that Victor's full name was Victor Murtinheira.)

53. At this point we should interpose to deal with a misunderstanding which seems to have arisen out of comments made by Mr Tobin in the course of the evidence of Mr Noubar. There were in evidence three quotes from Build It All Ltd, which were lettered for forensic purposes A, B and C. Only quote B included a quote for the carpet. Mr Noubar's position was that one contractor should do both the decoration and the recarpeting. Since, Mr Noubar said, Build It All Ltd had not quoted for the carpet, they were ruled out of contention as contractors for these major works. Mr Noubar said that he had not seen quote B.
54. The management company subsequently asserted to residents that Mr Tobin said in the course of the evidence about quote B, that quote B was "a fake". This is not the Tribunal's recollection of what was said by Mr Tobin. Mr Parissis was pressing Mr Noubar in relation to quote B and Mr Noubar was continuing to deny that he had seen quote B. Mr Tobin said that the matter really could not be pursued any further: the parties' positions were clear. The Tribunal cannot remember whether he may have said that so far as Mr Noubar was concerned quote B might have been a fake, but the Tribunal is quite sure that Mr Tobin expressed no personal view that quote B was a fake, not least because neither Mr Tobin nor the other members of the Tribunal held that view.
55. At the first hearing Mr Parissis gave the impression that he would probably have nominated Build It All Ltd as his preferred contractor. He said that he knew Victor. In his written submissions after the second hearing he said that "apart from being able to nominate a contractor [he] would also have been able to quote for the works [himself] through a building company [he] owned at that time." He added that he had approached one contractor, James Kennedy, who in a letter dated 30th September 2008 said that he would have quoted for the work at a total cost of £60,000.
56. At both hearings we heard evidence from Mr Noubar, who was the chairman of the board of directors throughout the relevant period. At the second hearing he gave a witness statement (2/5/137) and was cross-examined by Mr Parissis and Mr Gerrard. He said that he moved into the block in 2000 and joined the board the following year. The directors were all unpaid.

57. Shortly after joining the board, he and others became dissatisfied with Regency Management, the managing agents, and its proprietor, Mr Ghose. A motion to change the managing agent was, however, defeated at the AGM and accordingly Mr Ghose's services were retained until very recently, when the board decided to dismiss him and his firm, largely as a result of the current case.
58. Mr Noubar accepted that the board of directors had a very "hands-on" approach to the management of the block, but he said that none of them were lawyers or surveyors. They therefore had to rely on Mr Ghose's expertise.
59. When works to the roof had been done, they were dissatisfied with the consultant surveyor employed by Regency. As a result, when the question of interior decoration arose, they decided not to use Regency to supervise the major works. Instead, they had Miss Mostashari, a member of the board who had qualified as an architect, draw up a list of works and decided to supervise the major works themselves. The works had had a long gestation period and had been discussed at AGM's since 2002.
60. Mr Ghose's evidence at the first hearing was that he had been in property management for over twenty years, during most of which time he managed Blair Court. He was vague as to whether Regency or the board of Blair Court were responsible for section 20 notices.
61. The only documentary evidence of the terms of Regency's appointment was a letter of 3rd November 2004 addressed to Mr Noubar (1/115). Among sixteen heads of duty was:
- "15. Prepare Specifications for Major Works, e.g. Internal and External Decorations, invite Tenders for the works and serve Housing Act Notices as necessary...
A fee of 10% plus VAT is charged for Major Works when a specification is required. These works are supervised by the Company's Surveyor."
62. At the second hearing the Tribunal was concerned as to whether Mr Ghose had received advice from his professional indemnity insurers about his giving evidence, but he told us that his insurers were happy for him to give evidence.
63. Mr Ghose said that he managed two other blocks of Blair Court's size and about ten smaller blocks. His management function at Blair Court was different to that at the other blocks, because Mr Noubar micro-

managed the block. Everything had to be checked with him other than very routine matters. All letters and service charges had to be approved by him. In relation to these major works, he himself had asked some contractors to quote as had Mr Noubar, but the specifications were not all the same and he (Mr Ghose) did not see all the specifications.

64. Mr Ghose said that after e-mails in April 2007 (2/163) there was a meeting between Mr Noubar and a Mr Palamoudian which he attended. Mr Palamoudian was a former director. He raised a number of questions about the quotes which had been obtained and suggested that a separate quote should be obtained from a carpet specialist for the carpet. Mr Noubar refused to listen to Mr Palamoudian's points. Mr Ghose said that his attitude was the directors ran the block and "if you don't like us, vote us out."
65. Mr Danehan cross-examined Mr Ghose about his knowledge of the section 20 consultation procedures. Mr Ghose originally said that he had first learnt of the 2003 amendments to the consultation requirements (which led to the current two stage consultation procedure) about a year before, but he then corrected this answer to say that he had learnt of them about four years before. He said that the other two big blocks which had major works every seven years or so. On those other blocks his consultant surveyor prepared the specification.
66. He said that he prepared the letters of 1st March and 20th March 2007, but on Mr Noubar's instructions. He did not tell Mr Noubar about the changes in the consultation requirements, because he thought that Mr Noubar knew about them, since it was he who took on the control of the management of the block. He said that they did not think a stage one consultation was necessary and his personal view was that the residents would not object. He was not paid separately to prepare the documents. He accepted that the period of 28 days for comments stated in the letter of 20th March was a mistake and should have been 30 days.
67. Mr Gerrard then made his submissions. He explained that Mrs Rubin, his grandmother, had previously been the chair of the board, but had felt intimidated by Mr Noubar and had resigned from the board. He himself was the managing director of Martyn Gerrard. His firm acted as an estate agent and also as managing agents for various blocks. His grandmother would contact him when issues arose in the block and he as her grandson, was happy to assist her.

68. He said that, if there had been a stage one consultation, Mrs Rubin would have asked him for his advice and he would have wanted to look at the specification for the works. He would have pointed out that having the building contractor also quote for the carpets would in his experience be more expensive than having a carpet specialist quote, because the contractor would need to charge an overhead on top of the price of the carpet specialist. Further his firm used four contractors and he would have nominated one of them, if he had been given the chance.
69. The regulations, he submitted, were there to be followed. The essence of them is that the tenants are entitled to make representations. The tenants have been prejudiced by the failure to follow the consultation procedure.
70. He then criticised the specifications, because, even on their own terms, they were incomplete. The specification on 1/118, for example, does not refer to heater covers. There was no proper indication that the black Wange varnish was to be used. As a result the quotations are not comparable, the one against the other. The specification should have been prepared by a surveyor with full details given, as would be expected for such a substantial contract. Mr Palamoudian's attempts to obtain the spec, so that he could obtain a quotation from a contractor, were thwarted by Mr Noubar's e-mailed instructions that he should be given as little as possible.

Dispensation

71. All parties made submissions as to the approach which the Tribunal should take in deciding whether to grant a dispensation under section 20ZA. Mr Parissis and Mr Gerrard both placed reliance on the recent Lands Tribunal decision in *Camden LBC v 37 Leaseholders at 30-40 Grafton Way London WC1* (LRX/185/2006).
72. The Lands Tribunal consisting of Mr Bartlett QC, the President, and Mr Rose FRICS were dealing there with a case where the landlord had failed to carry out any stage two consultation at all. (It had sent the consultation documentation relating to different works.) The landlord applied for dispensation. The Lands Tribunal concluded:
- “33. The principal consideration for the purpose of any decision on retrospective dispensation must, in our judgment, be whether any significant prejudice has been suffered by a tenant as a consequence of the landlord's failure to comply with the requirement or requirements in question. An omission may not

prejudice a tenant if it is small, or if, through material made available in another context and the opportunity to comment on it, it is rendered insignificant. Whether an omission does cause significant prejudice needs to be considered in all the circumstances. If significant prejudice has been caused we cannot see that it could ever be appropriate to grant dispensation.

34. It was urged on us by [counsel for the landlord] that the consequences, for [the landlord] and their tenants, was a material consideration, and indeed an important one. Also material, she suggested, was the unjustified benefit that the leaseholders here would receive in the event that dispensation was not granted. We can accept that the general nature of the provisions, with the £250 limit imposed as the consequence of section 20(1) and section 20ZA, forms part of the background to the consideration of reasonableness. We cannot accept, however, that the particular effects on the landlord or the tenant in the case in question are properly to be taken into account. It is in the very nature of the provisions that the landlord will suffer financially and the tenant will gain financially in the event that dispensation is not given. If it were material to take into account the degree to which the landlord might suffer or the tenant might gain, this would mean that a failure might achieve dispensation if the contract was a very large one but might not do so if the contract was small. We do not think that this could be the effect of the provisions. There would in any event be real practical difficulties for an LVT in dealing with a contention relating to the consequences for the landlord or other persons affected since the evidence relevant to these could be very far-reaching, time-consuming and costly to pursue and potentially inconclusive.

35. The requirements relating to estimates are clearly fundamental in the scheme of requirements. The landlord must obtain estimates (in the plural), must include in the paragraph (b) statement the overall estimate of at least two of them and must make all of the estimates available for inspection. The purpose is to provide the tenants with the opportunity to see both the overall amount specified in two or more estimates and all the estimates themselves and to make on them observations, which the landlord is then required to take into account. In the present case stage 2 was completely omitted. It was a gross error, which manifestly prejudiced the leaseholders in a fundamental way. The fact that LBC went through a tendering process that employed the services of Baily Garner and at various times provided information about the project and its progress does not, in our view, even begin to make good the omission. What the leaseholders were not provided

with was the basic information about the tenders, the opportunity to inspect the tenders and the opportunity to make observations on them, with the council being obliged to take those observations into account and publish them later together with their response to them. The extent to which, had they been told of the estimates, the leaseholders would have wished to examine them and make observations upon them, can only be a matter of speculation. The fact is that they did not have the opportunity and this amounted to significant prejudice.”

73. The Lands Tribunal upheld this Tribunal’s decision not to grant a dispensation.
74. Mr Denehan submitted that the Tribunal was not bound by the Lands Tribunal decision. He said that the Lands Tribunal was wrong in para 33 of its decision to treat prejudice to the tenants as the principal consideration. Since the statute was open-textured, it would be wrong to put a judicial gloss on the considerations which could properly be taken into account.
75. The Tribunal agrees that it is not bound by the Lands Tribunal’s decision. However, it is a highly persuasive authority. Even Mr Denehan was constrained to concede that prejudice to the tenants was a relevant consideration.
76. The Tribunal accepts that there is at least a difference of emphasis between para 33 of the decision and para 35. Para 33 puts stress on “whether any significant prejudice has been suffered by a tenant.” This appears to imply that the Tribunal should carry out an investigation into whether the omission or defect in the consultation process would *in fact* have made any difference. By contrast, para 35 says that the defect in the consultation procedure “manifestly prejudiced the leaseholders in a fundamental way.” Yet so far as appears from the decision, there was in that case no evidence that the tenants would in fact have made comments on the tenders or that, if they had, the landlord would have let the contract to a different contractor. The Lands Tribunal appears to have treated the failure to consult *of itself* to be prejudice.
77. Another complication in applying the decision is evident from para 34. Where the landlord is at arm’s length to the tenants, the logic of the Lands Tribunal is evident: “It is in the very nature of the provisions that the landlord will suffer financially and the tenant will gain financially in the event that dispensation is not given.” One can

readily see why, where the landlord is a commercial organisation, the Tribunal should have little sympathy for cost to the landlord of refusing a section 20ZA application. Again, the position of a local authority is not quite analogous to that of a commercial landlord, because the housing revenue account is ring-fenced, so that every half a million pounds which the borough cannot recover from its long leaseholders (the amount at stake in *Grafton Way*) is half a million pounds which it cannot spend on improving other (possibly more deserving) tenants' flats.

78. However, the position is rather different in the current case where the management company is owned by the tenants. The only regular net income of the management company is the monies received by way of service charge. Mr Parissis and Mr Gerrard did suggest that the flat currently occupied by the porter could *in extremis* be let out, but this is not in the Tribunal's judgment realistic.
79. The consequences for the generality of leaseholders and the good conduct of the block of refusing the section 20ZA application may therefore need to be considered. The £96,444 for the major works have been paid out of the sinking fund and there is no possibility of recovering them back from the contractor. If no section 20ZA application is granted, there may be a possibility of recovering the money by a claim for professional negligence against Mr Ghose and his company. A claim may also lie against the directors personally either for paying monies out in breach of trust or for breach of the directors' duty of care (on the basis that the directors assumed a personal responsibility for carrying out the statutory consultations). A further possibility is that the management company manages to muddle through and eventually recovers enough voluntary donations from tenants to keep going. If none of these possibilities occur, then the management company will be insolvent, because it has an obligation to repay the monies paid out of the sinking fund in breach of trust, but has no source of income to generate that money.
80. Mr Denehan submitted that the Tribunal should ignore the possibilities of recovery against third parties, such as Regency or the directors. These possibilities were, he said, too remote, and the Tribunal should therefore consider the real possibility that the management company would be insolvent, if a dispensation were not granted.
81. At the same time, the Tribunal bears very much in mind the view of the Lands Tribunal that there "would in any event be real practical difficulties for an LVT in dealing with a contention relating to the

consequences for the landlord or other persons affected since the evidence relevant to these could be very far-reaching, time-consuming and costly to pursue and potentially inconclusive.” The wisdom of this observation is more than borne out in the current case.

Conclusions on the principles to be applied

82. Our conclusions on the approach we should adopt in deciding whether to waive the consultation requirements are as follows.
83. Firstly, the legislative scheme lays great weight on the tenants’ right to make comments at a time when the landlord can sensibly take them into account. A failure to consult is in our judgment of itself prejudice.
84. In particular it is not necessary in our judgment for the Tribunal to reach a view on whether any comments made by the tenants would in fact have made a difference. Take the facts of the current case. It is clear from the evidence of Mr Noubar himself (confirmed by the evidence of Mr Ghose, which on this point we accept) that Mr Noubar was a firm-minded man who considered (in Mr Ghose’s words) that “if you don’t like us [the directors], vote us out.” Yet it would be strange if a landlord was able to say to a tenant: “You have suffered no prejudice from being unable to make comments, because we always completely ignore comments from tenants.” The statutory scheme necessarily implies that a landlord will take a tenant’s comments into account, even if the landlord does not adopt the tenant’s proposals.
85. We do not say that every failure to consult will necessarily amount to serious prejudice. If there was no chance of a tenant responding, or if there was no reason to think that anything about the project could be materially different, then the Tribunal might well have little difficulty in granting a dispensation.
86. Further, in fairness to Mr Noubar, we should say, that although Mr Noubar had very firm views on how the block should be managed, having seen him give evidence twice, we do not consider that he was wholly deaf to other tenants’ views. He was prepared to make himself available to tenants to some extent and was willing to hear their observations. Thus we find as a matter of fact that tenants’ comments would have been read and considered and that there was some, albeit small, prospect that Mr Noubar and his fellow directors might alter their views in consequence.

87. On the facts of this case however, the failure to consult did in our judgment cause serious prejudice. There were serious criticisms to be made of a number of elements of the project. No proper specification was drawn up. There was no good reason to think that getting the building contractor also to quote for the carpet was the only possible approach. It was at least possible – and could certainly not be ruled out – that splitting the decorating and carpeting might be cheaper. In view of the inadequacies of the specification, it was not possible to be sure that all the contractors were all quoting for the same work. The tenants lost their opportunity to nominate a contractor, or to comment on the choice of contractor.
88. Secondly, it is not appropriate for the Tribunal to speculate as to what might have happened, if the tenants had been permitted to nominate a contractor, unless the evidence is very clear.
89. And this is not the position on the facts of the current case. It is clear that both Mr Parissis and Mr Gerrard (possibly some other tenants) had professional knowledge of contractors. It is just not possible to know absolutely whether contractors they might have nominated would have been cheaper. Mr Parissis did his best after the conclusion of the second hearing in obtaining a quote from James Kennedy, a building contractor, for doing the work (and we make no criticism of him for doing so), but the weight which can be put on such evidence is very little. A contractor being asked to quote for work which he will never do because the work has already been done has no incentive to give a realistic figure. In theory it might be open to a tenant to instruct a quantity surveyor to give an expert report on what other quotes might come in, but such evidence would in our judgment be, except in a very clear case, little more than speculation. In the current case, as in most cases, it is simply unknowable whether the tenants' nominated contractor would have been better or cheaper than the contractors who in fact quoted.
90. The disputed quote B from Build It All Ltd is slightly cheaper than the MHR Design quote which was ultimately accepted, but since the specification is slightly different it is not directly comparable. (The Tribunal in these circumstances did not consider it necessary to resolve the issue as to how quote B came into existence.)
91. The Tribunal concludes that a contractor nominated by the tenants might have been cheaper and better. No one can say whether that would or would not have been the case. On the view we have

expressed, this is, however, irrelevant. The point is that the possibility of a better or cheaper contractor cannot in this case be ruled out.

92. Thirdly, the Tribunal should not speculate as to what will happen if a dispensation is refused, unless the evidence as to what will happen is very clear.
93. Once more, this is not the position on the facts of the current case. There are three possible outcomes: (a) there is a successful claim against Regency and Mr Ghose or against the directors of the management company; (b) the management company muddles through somehow; or (c) the management company becomes insolvent.
94. So far as the claim against Regency and Mr Ghose is concerned, on the evidence before us, we do not accept Mr Ghose's evidence that he knew about the changes in the consultation requirements some four years ago. His initial answer, that he first learnt of the changes about a year before, is in our judgment much more plausible. We find it incredible that, if he knew of the change in the requirements, he did not mention that fact to Mr Noubar. Moreover, even if a letter like that of 20th March 2007 had to be approved by the board, it was a letter which he prepared for their approval. No experienced managing agent, knowing of the 2003 consultation requirements, would draft such a letter without express instructions from the board (probably in writing) that the stage one consultation should be dispensed with. It is common ground that no such express instructions were given. The error in giving 28 days for consultation instead of 30 is also much more consistent with Mr Ghose being in ignorance of the consultation requirements. It is much more likely in our judgment that Mr Ghose continued to act after 31st October 2003 as he had done before the change in the consultation requirements and that he was simply unaware of the change in the law. He was able to continue in such ignorance because, until this case, no one had raised an issue about the consultation requirements. Mr Ghose only managed two other large blocks and major works there only happened every seven years or so. It is quite possible that he had not had to carry out a consultation on those other blocks.
95. Although we have found against Mr Ghose on the facts, this does not mean that a claim against him or his company would be straightforward. In particular, the terms of Regency's letter of 3rd November 2004 could be taken to imply that Regency were only under a duty to serve consultation notices, if they were retained for the major works and paid the 10 per cent remuneration for their supervisory role.

If that were right, then Mr Ghose and his company would owe no duty of care to the management company.

96. A claim against the directors would not be straightforward either. We were not addressed with any arguments as to the way in which such a claim might be formulated. It might be a claim for breach of trust, or it might be a claim for knowingly assisting a breach of trust by the management company. (There may then be issues as to whether the directors should be relieved from liability under section 60 of the Trustee Act 1925.) It might be a claim for negligence. After all, if Mr Noubar and his fellow directors chose to take over the management of the major works and effectively dispense with Regency's professional services because they did not want to pay his 10 per cent fee, why should they not be held to the same standard of care? In the absence of submissions on this by Mr Parissis and Mr Gerrard the Tribunal is unable to express a view on whether a claim against the directors would succeed.
97. In the context of the sum involved, in relation to a large block of high-grade flats, it is at least possible that this management company may manage to muddle through somehow, but even if it became insolvent that would not necessarily be the end of the world (although it would no doubt be inconvenient). The tenants would still be entitled to set up their own RTM company under section 71 of the Commonhold and Leasehold Reform Act 2002. The liquidator of the existing management company would be able to pursue the claims against the managing agents and the directors.
98. The Tribunal's conclusion on the facts of this case is that whilst it is unclear what will happen if a dispensation is refused, neither has it been shown that the consequences for the block and the generality of leaseholders can only be dire. In our judgment the Tribunal would not be justified in allowing dispensation on that assumption.
99. Fourthly, it is relevant to consider whether, if an application for dispensation had been made before the works had been carried out, that application would have been granted.
100. The current case shows that there is potential conflict between the rights and obligations of the tenants as tenants and their rights and obligations as shareholders. A company can, within the very wide bounds set by the Companies Acts, manage its affairs as it sees fit. Often in small developments, it is much more sensible for tenants who manage their own affairs to adopt a simpler scheme for carrying out major works than is provided for in the current consultation

regulations. The Articles of Association of a management company in such a case could easily be adopted to ensure that tenant-shareholders waived their full consultation rights.

101. In a large development, such as the present, however, this would generally be inappropriate. The financial value of the tenant's share in the management company is negligible compared to the value of his flat. Most tenants are likely to prefer to have the protection of the consultation requirements than the cheapness of a scheme with a waiver in place. As a matter of principle, it would still be possible to do it, but the mechanics for putting a waiver in place would involve changing the Articles of Association and then applying to the Tribunal for a prospective dispensation under section 20ZA.
102. In the current case, it is reasonably clear from the "voting" exercise carried out by Mr Parissis on the one hand and the directors on the other, that is unlikely there would be sufficient votes among the tenants to pass a special resolution to change the Articles of Association of the management company. Without that, any prospective application to dispense with the consultation requirements would be most unlikely in our judgment to succeed.
103. Fifthly, we accept that the Tribunal must, when exercising its discretion, stand back and consider all the relevant factors in the case. The question of prejudice is a very important element to take into consideration, but it is not the sole element.

Mr Denehan's submissions

104. Under this fifth head, Mr Denehan submitted that we should take the following matters into account (para 6.3 of his skeleton argument, omitting footnotes):
 - "The Company is a corporate body put in place (*inter alia*) for the maintenance, repair and management of Blair Court.
 - It is a tenant controlled company; all tenants are members. The officers are tenants who act voluntarily.
 - None of the officers of the Company are lawyers or surveyors.
 - The Company employed apparently reputable managing agents, Regency, whose functions included complying with the relevant statutory provisions.
 - Regency purported to comply with the relevant statutory provisions, and the Company had no way of knowing, or any reason to think, it had failed.

The tenants had been consulted about the Works long before they commenced or were contracted for.

The tenants were anxious for the works to be brought forward.

No one, not even Mr. Parissis, is suggesting the Works were not reasonably required.

The tenants were given notice of the Works.

The tenants were given notice of the contractors and their estimates before the Works were contracted for.

The tenants were invited to make observations.

Some tenants did make observations.

The Company had regard to those observations.

The estimate accepted was the lowest tendered.

If dispensation is not granted, the tenants receive an uncovenanted for windfall of over £77,000.00.

Only a small number of tenants oppose the Section 20ZA Application.

The effect will be to render the Company insolvent to the detriment of the tenants as a whole and to the detriment of Blair Court. It would mean the end of a management scheme devised for the Estate and which has worked well since the 1970s.

There is no serious challenge to the reasonableness of the Works in terms of their standard.”

105. We deal with these submissions as follows:

The Company is a corporate body put in place (inter alia) for the maintenance, repair and management of Blair Court. It is a tenant controlled company; all tenants are members.

106. We agree that this is a relevant consideration, but the weight which can be attached to it is limited. As pointed out in *Grafton Way*, it is inherent in the statutory scheme that, if a dispensation is refused, the landlord will suffer. If this factor were given great weight, then it would inevitably follow that in most cases the Tribunal would have to grant a section 20ZA dispensation to tenant-controlled management companies. We do not accept that this was Parliament’s intention.

The officers are tenants who act voluntarily. None of the officers of the Company are lawyers or surveyors. The Company employed apparently reputable managing agents, Regency, whose functions included complying with the relevant statutory provisions.

107. The difficulty with this submission is that it cuts both ways. If the management company had employed Regency to comply with the statutory provisions, then the management company would have a claim against Regency for negligence. The effect of granting a dispensation would be to release Regency from its obligation to pay damages, because the management company in these circumstances would have suffered no loss. Put this way, it is an argument against granting a dispensation.
108. The Tribunal put to Mr Denehan that a more attractive way of putting this submission might be the other way around: The directors tried to reduce costs as much as possible by taking on tasks which proved beyond them; the tenants had the advantage of the reduction in costs; therefore they should also bear the consequences of the directors' ignorance of the legislation on consultation. However, Mr Denehan did not want to adopt this way of putting the case.
109. The submission would in any event face difficulties on the facts. There is no evidence that the tenants as a whole did consent to the directors taking over the management of the block in this way. Insofar as there was evidence on this point, it is Mr Noubar's evidence that the tenants did not want to dispense with Mr Ghose's services. Thus one cannot say that a majority of the tenants wanted the directors to assume the management of the major works.
110. The Tribunal notes that the effect of its decision may be to render the directors personally liable for monies improperly dispensed from the sinking fund, which may appear a poor reward for their onerous and unremunerated work. However, it comes from the directors' decision to step into the arena themselves and take on work which would normally be entrusted to qualified persons. We accordingly do not attach weight to this argument.

Regency purported to comply with the relevant statutory provisions, and the Company had no way of knowing, or any reason to think, it had failed.

111. The Tribunal's view is as under the previous items.

The tenants had been consulted about the Works long before they commenced or were contracted for. The tenants were anxious for the works to be brought forward.

The consultation referred to here is the discussion which took place at AGM's. These were never attended by more than a small minority of tenants. In practice attendance at AGM's was likely to be difficult for non-resident

118. The Tribunal disagrees. Mr Parissis objected strongly to the black varnish used and was supported in this by a number of other tenants. The Tribunal does not consider its function to be an arbitrator of aesthetics, so it does not resolve this issue, save to say the view of the objectors was one which they could perfectly sensibly have held.
119. Mr Parissis also objected to the standard of the work. As we noted in our first decision, there were some minor matters which the contractor should be asked to remedy. The overall standard of the work was adequate, but not in the Tribunal's judgment of the very high standard ordinarily to be expected of a prestigious development in St John's Wood. If we had needed to determine the service charge dispute, we should have needed to consider whether the tenants had value for money. A high specification naturally costs more than a less high specification, so it may be that the tenants did get full value. But these are not the matters at issue in this case.

Decision on dispensation

120. We now consider how we should decide whether it is reasonable to dispense with the consultation requirements. We have suggested that there are five elements to consider.
121. The first consideration is that the legislative scheme lays great weight on the tenant's right to make comments at a time when the landlord can sensibly take them into account. We consider that there were serious breaches in respect of this. The failure to consult at stage one, and the defects in the consultation at stage two, were of themselves prejudice.
122. Mr Parissis and Mr Gerrard identified specific and material matters on which they say they would have commented – and certainly might have done so - given the opportunity. The Tribunal cannot say on balance of probabilities that changes to the specification of the project would have been made, or that a different, cheaper or better job would have been achieved, but this possibility certainly cannot be ruled out. The Tribunal does however find on the balance of probabilities that Mr Parissis and Mr Gerrard would have nominated contractors to quote for the work.
123. The second consideration is that it is not appropriate for the Tribunal to speculate as to what might have happened, if the tenants had been permitted to nominate a contractor, unless the evidence is very clear. Here it is not clear whether or not a contractor nominated by the

tenants would have been cheaper or better, so the Tribunal refuses to speculate.

124. The third consideration is that the Tribunal should not speculate as to what will happen if a dispensation is refused, unless the evidence as to what will happen is very clear. The evidence is here is not clear, so again the Tribunal refuses to speculate.
125. The fourth consideration is whether a prospective application for dispensation would have succeeded. In our judgment, if such an application had been made before the works had commenced, it would have had no realistic prospect of success.
126. Lastly, we have to stand back and take into consideration all the relevant factors, including those which we have accepted as relevant in Mr Denehan's submissions.
127. In our judgment, the first and fourth considerations are strong grounds for refusing a dispensation. The matters raised by Mr Denehan in opposition which we have accepted are of little weight. In our judgment on the facts of this case it is not reasonable to dispense with the consultation requirements, so we refuse the application for a dispensation.
128. The amount of service charge payable by Mr Parissis in relation to the major works is accordingly limited to £250 per flat.

Costs

129. In relation to the section 27A application, Mr Parissis has won. We have a discretion as to who should pay the costs of the application to the Tribunal and the hearing fee. In our judgment the liability should follow the event, so that the landlord should reimburse Mr Parissis his application fee and the hearing fee.
130. In relation to the section 20ZA application, the management company has lost. It should therefore bear its own costs of its application.
131. Mr Parissis and Mr Gerrard both ask for the Tribunal to make orders under section 20C of the Landlord and Tenant Act 1985 preventing the management company recovering its costs of the current proceedings against Mr Parissis and Mrs Rubin. There were no applications for section 20C orders by any of the other tenants and neither Mr Parissis nor Mr Gerrard asked that orders be made in favour of other tenants. The Tribunal's starting point is that it should not interfere lightly with

the management company's rights under the lease. In this case, however, the management company has lost comprehensively. In the Tribunal's judgment it is wrong that Mr Parissis or Mrs Rubin should have to contribute to the costs of the current proceedings. Accordingly the Tribunal makes an order under section 20C preventing the management company recovering the costs of the current proceedings from Mr Parissis or Mrs Rubin.

Permission to appeal

132. All the parties asked us at the hearing to grant permission to appeal, regardless of which way we decided. The Tribunal would not grant permission to appeal solely on that basis, however, this case does in our judgment raise important issues of principle. For this reason, and not because the Tribunal considers that it may be wrong, the Tribunal grants permission to appeal.

DECISION

- (a) The management company's application for an order under section 20ZA of the Landlord and Tenant Act 1985 dispensing with the consultation requirements in respect of the major works of interior decoration and carpeting is refused.
- (b) The Tribunal declares that Mr Parissis' liability to contribute to the said major works is limited to £250 in respect of each of his two flats.
- (c) The landlord shall reimburse Mr Parissis the application fee paid to the Tribunal and the hearing fee.
- (d) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 preventing the landlord recovering the costs of the current applications from Mr Parissis or from Mrs Rubin.



Adrian Jack, Chairman

22nd October 2008

Leasehold Valuation Tribunal: decision to grant an adjournment and directions

Landlord and Tenant Act 1985 section 27A

Address of Premises

13 and 14 Blair Court,
Boundary Road,
London NW8 6NS

The Committee members were

Mr Adrian Jack
Mr Philip Tobin FRICS MCI Arb
Mr Leslie Packer

The Management Company: Blair Court (St Johns Wood) Management Ltd

The Tenant: Mr Andrew Parissis

1. On 17th March 2008 the tenant applied to the Tribunal for determination of his liability for service charges in the service charge year ending 30th September 2007. In particular he took issue with the cost of major works comprising interior decoration at a cost of £96,444.00.
2. In its respondent's statement dated 18th June 2008 the management company accepted that there were breaches of the consultation requirements in section 20 of the Landlord and Tenant Act 1985. Notwithstanding this admission, the landlord did not issue an application for a dispensation under section 20ZA of that Act.
3. The Tribunal inspected the property on 17th July 2008 and subsequently heard the matter on 17th and 18th July 2008. The tenant appeared in person. The landlord was represented by Ms Pathinrana, a solicitor of M M Patel & Co. Mr Ghose the managing agent came and gave evidence, as did Mr Noubar, a director of the management company (and also a tenant), and the tenant.

4. The block itself dates from the 1970's. It has eleven storeys with 77 flats.
5. The tenant accepted that he was liable for £250 in respect of each of his flats, but disputed his liability for more. The landlord conceded that, unless a section 20ZA application was made, the most for which the tenant was liable was the £250 per flat, which he accepted. Accordingly the landlord applied for an adjournment in order that it might make a section 20ZA application and serve it on all the tenants in the block.
6. The Tribunal considered that the application for an adjournment should only be refused if it considered that the proposed section 20ZA application had no reasonable prospect of success. It accordingly heard evidence on that issue.
7. There is no doubt (and indeed Ms Pathirana conceded) that there were serious defects in the consultation procedure. Under Part 2 of the Service Charges (Consultation Requirements) (England) Regulations 2003, a landlord has a number of steps to take when consulting tenants on major works. The first stage is to give notice of the intention to carry out works and give a description thereof: para 8. The tenant is entitled to nominate a contractor to quote for the works: paras 8(3) and 11(2). The tenant can also make observations and the landlord (for these purposes the management company) has a duty to have regard to those observations: para 10.
8. The second stage of consultation requires the landlord to serve a statement (the paragraph (b) statement), which gives details of at least two of the estimates and invites the tenants to give their observations: para 11(5). The landlord must then have regard to those observations: para 12. Once the landlord has entered the contract, there is a third stage where the landlord explains its decision to enter that contract: para 13.
9. In the current case the first stage was not carried out at all. The second stage was carried out in part, but the notice dated 20th March 2007 purportedly served in compliance with the second stage was defective. It said that the "Board of [the management company] have agreed to accept the tender from MHR Design in the total sum of £96,444 (inc). The cost of the work will be met from the Reserve Fund. If lessees wish to make any comments on the work, they should do so in writing addressed to [the managing agents at a specified address] within the statutory 28 days from the date of this Notice."

10. A fair reading of this notice in our judgment is that the contract had already been let, so that comments were likely to be otiose. The statutory period for making observations is in any event 30 days, not 28 days.
11. The tenant gave evidence that he had been in the building trade and was now the proprietor of a number of leasehold properties as well as at least one freehold which he was redeveloping. He said that he would have been able to nominate a contractor and that, if he had been given the opportunity, he would have made observations on both the specification and the proposed management of the works. In particular, he disliked the black varnish which had been used to cover the original mahogany veneered doors in the property. There was therefore evidence that the tenant had been prejudiced by the management company's failure to consult.
12. On these facts the Tribunal considered that the management company faces serious difficulties in establishing a claim for relief under section 20ZA. However, it did not consider that the application was completely hopeless.
13. In particular, the Tribunal had regard to the fact that refusal to allow a section 20ZA application potentially affected the other 76 tenants in the block. The management company suggested that an adverse determination would have the effect of making the company insolvent, which might well result in major disruption to the management of the building. In addition the directors (all of whom were unpaid volunteers) potentially faced a personal liability for breach of trust in paying monies out of the sinking fund when they were not entitled to do so.
14. All of these considerations lead the Tribunal to the view that the other tenants should have an opportunity to be heard, and that until then it would be premature to determine the present application.
15. Accordingly the Tribunal granted the adjournment.
16. The management company conceded that it had acted unreasonably in failing to issue a section 20ZA application earlier and accepted that it was liable to pay the tenant £500 for his wasted costs (including travel from his home in Cyprus). The Tribunal, even in the absence of such a concession, would have made such an order under para 10 of Schedule 12 to the Commonhold and Leasehold Reform Act 2002.

17. The Tribunal made the directions following.

DIRECTIONS

- (a) The management company's application for an adjournment is granted.
- (b) The management company is to pay the tenant £500 in respect of the costs thrown away by the adjournment.
- (c) The management company is on 18th July 2008 to issue and as soon as possible thereafter serve an application against the lessees of all 77 flats at Blair Court Boundary Road London NW8 under section 20ZA of the Landlord and Tenant Act 2002.
- (d) Every lessee who opposed the said section 20ZA application shall by 5th September 2008 serve on the management company c/o M M Patel & Co, solicitors, 26-28 Finchley Road, London NW8 6ES and on Mr Parissis at 35 Sutton Road, Muswell Hill, London N10 1HJ his or her statement of case including all documents on which he or she relies.
- (e) The management company and Mr Parissis shall (if so advised) serve on each tenant who has served a statement of case any statement in reply (with all further documents on which it or he relies) by 12th September 2008;
- (f) The management company shall by 18th September 2008 serve on Tribunal four copies of a properly paginated bundle comprising all further statements of case and documents with no repetition of material in the existing bundle - and shall serve on Mr Parissis and each tenant who has served a statement of case one bundle each; in addition the management company shall by then serve one copy of the bundle prepared by Mr Parissis for the current proceedings on each tenant who has served a statement of case;

(g) This matter and the section 20ZA application are to be listed for a further hearing on Tuesday 23rd and Wednesday 24th September.

Chairman: Adrian Jack

Dated: July 2008