7651

MAN/00CB/LSC/2010/0075

HM COURTS & TRIBUNALS SERVICE

LEASEHOLD VALUATION TRIBUNAL

DETERMINATION WITH REASONS

Landlord & Tenant Act 1985 Sections 19, 20, 20B , 20C & 27A(1)

Premises:	Flats 4 & 6, 5 Valentia Road. Hoylake. Wirral CH47 2AN
Applicants:	Cyberbird Ltd and Mrs June Furber.
Respondents:	5V Limited.
The Tribunal members:	Mr M J Simpson (Chairman)
	Mrs E. Thornton-Firkin
	Ms C. Roberts
Date of Determination:	20TH JANUARY 1012,

Decision:

1. **The service charge payable for 1st April 2007 to 31st March 2008 is nil because :-**

   1.1. Of the Respondents concession as to non payablity .

   1.2. The letter of 27th March 2007 is not a sufficient S20B (2) notification.

2. **The service charge payable for 1st April 2008 to 1st March 2009 is nil because:-**

   2.1. The Demand of 15th September 2009 is defective

   2.2. That Demand is insufficient to constitute a S20B (2) notification.

   2.3. The Demand of 20th October 2010 (served by letter of 21st October 2010) is defective and cannot operate as a S20B(2)

notification because it was given at a time when Tim Cowley was not the person entitled to collect the service charge

3. The service charge for 1st April 2009 to 30st September 2009 is limited to the cost of the boiler installation (Flat 4 £104.48, Flat 6 £92.87) because:-

   3.1. The demand certified by the accountants on 30th March 2010 is defective and

   3.2. Could not constitute a S20B (2) notification, because at the time it was given (letter of 24th June 2010) Tim Cowley was not the person entitled to collect the service charge

   3.3. The Demand of 8th March 2011 is only valid for costs incurred after 8th September 2009. The evidence is that the boiler costs alone are within this period.

4. The Accountancy charge claimed by 5V Ltd for 2010/11 is not payable.

5. For 2010/11 the cost of the Gas (£56), the Fire Risk Assessment (£352.50) and the fire alarm maintenance charge (£200) are payable without restriction.

6. The cost of the Fire Alarm is reasonably incurred, but limited to £250 per flat because of a failure to comply with S.20 and the Consultation Regulations

7. We determine that, pursuant to the S 20C application, the Respondent's costs shall not be relevant costs, it being agreed by the parties that such an order is just and equitable in the circumstances.

8. 5V Ltd shall refund the Applicants' LVT Fees in the sum of £175.

The Application and background

There are two applications, which have effectively been consolidated.

On 5th July 2010 Cyberbird lodged an application seeking a determination for the years 1/4/07 to 30/9/009. [585]

For the period 1/4/ 07 to 31/3/08 the service charges in question were:-

Window cleaning, Repairs, Insurance, Electricity, Management, Gas and Heating service/repair.

For 1/4/08 to 31/3/09 the service charges in question were:-

Repairs, Insurance, Electricity, Management, Gas and gas service.

For 1/4/09 to 30/9/09 the service charges in question were:-

Accountancy Fees, Management Charges and New Boiler.

On 16th May 2011 Cyberbird lodged an application [599]seeking a determination for the periods 1/10/09 to 30/9/10 and for the, then, future period 1/10/10 to 30/9/11.

For 1/10/09 to 30/9/10 the service charge in question was Accountancy.

For the period 1/10/10 to 30/9/11 the charges in question were Accountancy, Gas and Fire alarm. (In respect of which the question of consultation was also raised).

Both applications asked for a Section 20C Order.

There had been previous LVT proceedings, as to the reasonableness of Service Charges for the period 1st October 2005 to 31st March 2007, (the period immediately preceding the period covered by this application) culminating in a Tribunal decision of 26th February 2010. [165]

There had been previous LVT proceedings, centred mainly around the Application to Vary the leases so as to be much more specific about the operation of the communal central heating system, culminating in a Tribunal decision of 2nd July 2009, rejecting the Application. [114]

Although 5V Limited [197] is the Respondent and current freehold reversioner, it has been so only since 1st October 2009. [192]. Prior to that date the freehold reversioner and landlord was Timothy James Cowley, who, for the most part of the period in dispute, utilised the services of Willow Management Ltd. There

have been County Court Proceedings involving Willow Management and both Mr Lawson and Mrs Furber.

The Tribunal gave Directions on both applications on 12th August 2010 and 15th November 2010 [595/598]. These provided for disclosure, the preparation of a schedule of issues, and the preparation of a hearing bundle. The cooperation of the parties with each other which was anticipated and required by those Orders has, patently, not been achieved. The Tribunal has been provided with 3 Bundles. One of 967 pages from Mr Lawson, one of 194 pages from solicitors retained by Timothy Cowley and one of 79 pages (without index) from the respondents, 5V Limited.

It is apparent from a perusal of the paper work, and especially the correspondence, surrounding all of the above, that the relationship between the various parties has, from time to time, been far from harmonious.

The Leases.

The Leases of both flats 4 (extract only) [938] & 6 (in full) [616] are in similar form so far as the wording of the covenant to pay service charge (reserved as rent) is concerned. The Applicants produced the Lease of Flat 6. It is dated 20 December 1984 and made between Phyllis Annie Shepherd of the one part and Julia Mary Lewis of the other part. It grants a term of 999 years from 1st October 1983 and reserves a ground rent of £25.00 per year payable in advance on 1st October. It also includes a car parking space.

By Clause 1. (b) there is to be paid a defined (not in issue) proportion of 'the amount which the Lessor may from time to time expend and as may reasonably be required on account of anticipated expenditure' in performing its obligations under the Lease, providing gas fired central heating, employing a surveyor or agent, paying outgoings of the building and providing such services

or otherwise incurring expenditure as the Lessor deems necessary for the general benefit of the Building and its tenants.

Clause 4 of the Lease provides that the Landlord is to keep the parts of the building not included in the leases in good and substantial repair and in clean and proper order and condition. It also requires the Landlord to decorate the internal communal parts and exterior of the building and to keep the grounds of the building in good order. The Landlord is further required to keep the Property insured to its full reinstatement value, to produce a copy of the policy of insurance to the Tenant within fourteen days notice and to reinstate the Property on damage by an insured risk.

The proportion payable towards the expenses for each flat is one sixth of the total costs except for the provision of gas central heating. The proportion payable for the provision of central heating is 8% of the total cost for Flat 6 and 9% for flat 4.

The Applicants' written representations.

These are set out in the documents supplied by Mr Lawson. There are none specifically from Mrs. Furber. A skeleton argument is set out at pages 1-3 of his bundle and itemised in the schedule at pages 3 -23 (23 items in total). [1-23]

The identifiable issues that he asserts are as follows:-

As to all the items apart from the last 4 (Accounting X 2, Gas and Fire Alarm) the amounts claimed, whether reasonably incurred or not, are not payable because the demands for payment are invalid for technical reasons, that is:-

- They should be for a period 1st Oct – 30 Sept.
- Post 1/10/09 the claims were not from the actual landlord.
- The demands did not contain the Landlord's name and address.

- The demands did not contain a summary statement of the tenants' rights and obligations.

By the time these defects were rectified (if at all), the costs to which they referred were incurred more than 18 months before and it is too late to remedy this defect, which offends Section 20B.

The Schedule.

Items 1-4. Subject to the above there is no issue as to the reasonableness of the first 4 items on the schedule (gas to 14 /3/08, Electricity to 31/3/08 and Insurance X 2 to 12/4/07)

Item 5. Issue is taken as to the reasonableness of the cost of removing the fence at £930 (One half of £720 +£1140 shared with the adjoining owner).

Item 6. The Management Fee of £750 to 1/4/07 is challenged on the basis that the standard of management has extensively breached the RICS Code, including delayed boiler repairs, failure to deal with correspondence, poor grounds maintenance/gardening, inadequate central heating etc.

*Item 7.*The £185 plumbing account for replacement of a thermo coupling is challenged as excessive.

Items 8, 9 &10. Issue is not taken with the reasonableness of the cost of Abbey Roofing Services 29/3/07 (£485) Gas to 31/3/09 (£1036.90) or Electricity to 31/3/09 (£90.06)

Item 11. The £1000 management fee to 1/4/08 is challenged on the same basis as the fee to 1/4/07 i.e. serious breaches of the RICS code particularly with regard to the provision of communal central heating.

*Items 12, 13 & 14.*The reasonableness of the cost of Insurance to 8/4/08 (£722.09 & £58.57) and the roof repairs (£620) is not challenged.

Item 15. £65 for boiler servicing is challenged and a figure of £30 approx is suggested.

*Item 16.*The accounting costs are challenged as being unnecessary, not payable under the Lease, and not justifiable only on the basis of the tenant's request

for a summary of costs (which would normally require an accountants certificate) under Section 21 L&TA 1985, because that request was not properly complied with.

*Item 17.*The cost of the supply and installation of the new boiler (£1500) is challenged as excessive. The demand for payment is from the wrong Freeholder. The installer does not appear to have been 'Corgi registered'.

*Item 18.*There is no issue as to the reasonableness of the Insurance 20/4/09.

Item 19. The Management Fee (£1250) to 1/4/09 is challenged as both excessive in amount and on the same basis as before i.e. failure to conform to the RICS code.

Item 20.& 21 The Accountancy charges to 30.9.10 and 30.9.11 are not reasonable and not chargeable under the terms of the lease.

*Item 22.*The gas cost of £56 for flat 6 (Mr Lawson) is challenged on the basis that it should be a much larger figure and reflects the inadequacy of the times of day and night when the common central heating is, or ,in Mr Lawson view, is not, supplied.

Item 23. The Fire Alarm Works (£505.06for Flat 6) is not payable because of an absence of any Section 20 consultation, the inclusion of an unnecessary Fire Risk Assessment and the fact that, as an 'improvement' it is not chargeable under the terms of the Lease.

Respondent's written representations.

The representations on behalf of 5V ltd. are in the form of 2 submissions. One in a file submitted by Storrar Cowdry – solicitors instructed by or on behalf of Timothy Cowley and a file submitted by Hazel Winnard and Glenda Cowley, the Directors of 5V Ltd.

The Storrar Cowdry file, at section 9, responds to the technical points raised by Mr Lawson.

Breach of section 20B is denied. It is averred that notice that the monies had been incurred and would be claimed was in fact given by the letters of 27th

March 2007 [SC148] and 15th September 2009 [SC150]. Alternatively the demands were made within the 18 months period. All further demands will strictly comply with Section 47. Landlord & Tenant Act 1987, and Section 20B of Landlord & Tenant Act 1985.

Section 20 does not apply to the management agreement between Timothy Cowley and Willow management, because it was a rolling agreement, effectively not for more than a year at a time.

The RCIS code is not mandatory and any breach of it does not invalidate the reasonableness of the service charge costs.

Copies of the disputed invoices were enclosed with the file of submissions.

The claim by Mr Lawson for his costs is contested and a cost order is sought in favour of 5V Ltd. (Presumably on the basis that the application is said to be frivolous or vexatious – in view of the inclusion in the file of a copy of the decision in *Carroll v Kynaston*).

The Winnard/Cowley file highlights, in connection with the Fire Alarm Works, the provision in the lease re the landlord's duty to comply with Statutory Notices and to avoid anything that may increase the insurance premiums.

They set out (pages WC 22-26) a chronology of events showing that the work was urgent, necessary because of formal Local authority/ Fire authority notices and that the tenants were kept informed by letters. e.g the letters of 6th April 2010 [WC30], 30th June 2010 [WC31] and 13th August 2010 [WC39]. The Fire Risk assessment was commissioned from the Consultant, Total Fire Services nominated by Mr Lawson.

At page [WC58] 58 they précis their representations on the Central Heating issue, averring that it is in operation for 7.5 hours per day (7.30am -10am and 17.00 – 22.00) from 1 October to 30 April, which is as required by the Lease.

They rely upon Clauses 1(b)(iii) & (v) of Cyberbird's Lease, and the ARMA guidelines to seek to justify the charge for Accountancy fees.

The Inspection.

The Tribunal inspected the Property on the morning of the hearing in the presence of Mr Lawson, the Respondents and Mr Davies. Mrs Furber was made aware of our visit but did not wish to take part.

The Properties comprise part of a semi detached house ("the Building") built in the late nineteenth century which has been converted into six flats.

There is car parking to the front of the Building and a concrete yard to the rear. At the rear there is a single storey extension which houses a gas fired boiler which provides heating to the whole building. The Tribunal was unable to inspect this, because the access door was locked.

The property was pebble-dashed and both front and rear party fences had been replaced fairly recently'

Internally, a small entrance hall leads to a communal staircase which is carpeted, decorated to a reasonable standard and heated with a central heating radiator in the ground floor landing. There is a modern hard wired smoke detection and fire alarm system. On the ground floor there are two flats, the entrance to one of which is externally from the rear of the building. Flat 4 is located on the half landing and has a separate bathroom, access to which is gained from the half landing. Flat 6 is a similar layout on the floor above.

The Hearing.

This was held at Birkenhead County court at 11.30am, following the inspection.

Mr Lawson represented himself and Mrs Furber, who had written to say she would not be attending.

Mrs Winnard and Mrs Cowley represented 5V Ltd. Mr Davies, solicitor of Storrar Cowdry, appeared with Mr Tim Cowley.

Identity of person or company entitled to be paid (and hence ,demand) service charges

The agreed facts are that Tim Crowley was the landlord from before 1 April 2007. (the earliest date that we are being asked to consider). He transferred the freehold to 5V Ltd on 1 October 2009. On 7th December 2010 5V Ltd assigned to Tim Cowley [SC90] the service charges due from the tenants and set out in a schedule. Mr Lawson submits that the LVT should find that that Assignment is abortive, because at the time (7 December 2010) there were no arrears 'due' from the tenants because all the demand for service charges prior to that date were defective, and therefore nothing was due . It was a purported assignment of something which did not exist. The most that it can have been was a grant of the right to rectify such defects in the demands as were rectifiable.

The defects in the demands included the absence of the landlords name and address, which, by virtue of S. 47(2) of L&T Act 1987 means that the service charges (and hence the alleged arrears) 'shall be treated for all purposes as not being due ' The demands in question were those of 15 September 2009 [127-134], which demanded payment for 1 April 2007 – 31 march 2008 and 1 April 2008 – 31 March 2009.

In consequence of the abortive assignment, subsequent demands made by Tim Cowley have been made by the wrong person, and not the person to whom the service charges were due.

Mr Davies submitted that the Assignment was necessary because the original lease was pre 1995, therefore the debt payable would transfer to the new owner despite L&T Act 1995, which we took to be a reference to Landlord & Tenant (Covenants) Act 1995. (For leases executed prior to the implementation of that Act, the rights and obligations of a landlord passed automatically, by virtue of Section 142 of the Law of property Act 1925, to the new landlord). The monies had been expended and the liabilities incurred. The debt s assigned existed. If anything, it was only enforceability of the tenants' arrears that may have been an issue. Mr Lawson conceded that the right to rectify any procedural or formal defects lay with Tim Cowley as a result of the Assignment of 7th December 2010

Time limit on making demands. Section 20B L&T act 1985.

Applicants' submissions.

Mr Lawson submitted that at least until the demand of 8th March 2011 [573] all demands were defective because:-

- They were with reference to a period 1 April to 31 March. The lease requires a period from 1 October. That is the ground rent period. The service charges are reserved as rent, therefore by necessary implication, even though there is no specific provision in the lease, the service charges must be claimed with reference to the same period.
- After the assignment of 1 October 2009, the service charge demands were on behalf of the wrong landlord.
- The name and address of the landlord was not included as required by S.47 L&T Act 1987.
- There was no accompanying notice of tenants rights and obligations as required by S.21B L&T Act 1985 and *the Service Charges (summary of Rights and Obligations and Transitional Provision) (England) Regulations 2007.*
- Mrs Furber's lease required particular certification of service charges by the landlords managing agent or surveyor.

Therefore there have been no demands sufficient to satisfy S.20B (1) in respect of any service charges incurred before 8th September 2009 (18 months before demand of 8th March 2011).

Whilst there is a demand for YE 31 March 2009 enclosed with Willow Management's letter of 15th September 2009[129] (for years 1 April 2007 – 31 march 2008 and 1 April 2008 – 31 March 2009), it is defective, for the reasons stated above, and is not sufficient to be regarded as a notification under subsection (2) of S.20B. Case law requires a much more specific notification. *Borough of Brent v Shulam B Association Ltd.*

In any event a demand which turns out to be technically defective (under e.g. S.47 L&T Act 1987) should not be treated, in the alternative, as an adequate S.20B(2) notification.

Respondents' submissions.

With the exception of the claim for the cost of replacing the fence (and possibly roof and gable repairs), for which it was submitted by Mr Davies, sufficient notice to satisfy S 20B (2) had been given by virtue of the letter of 27 March 2007 [SC148], it was conceded that the applicants were not liable to pay the service charges for 1 April 2007 to 31 March 2008.

The letter of 27 March 2007 gave proper advance notice of the work to the fence and the claim for it. It specified what work had been done, identified the cost, indicated it would be shared with the adjoining owner and advised that a further service charge invoice in respect of the work would be coming 'in the course of the next few weeks'. (In fact, in the event, not until 15th September 2009).

That letter also made reference to roof and pebble dashing works, of which costed details were not supplied.

<u>1.04.2008 – 31.03.2009</u>

So far as 1 April 2008 to 31 March 2009 is concerned, the demand of 20th October 2009, [SC72] (served under cover of letter from Willow Management dated 21 October 2010 [145]),although now accepted by Mr Tim Cowley as defective for want of landlords name and address and absence of Summary of tenants Rights etc, it notifies the tenants that the 'costs relate to service charges which have yet to be collected, demands will be issued in respect of each apartment as follows', etc .The amount of each service charge item is set out. It is a S.20B (2) compliant notification. A compliant demand in proper form was issued in March 2011.

1.04.2009 – 30. 09. 09

So far as 1 April 2009 to 30th September 2009 is concerned advance notice was given by a similarly worded notification on 30th march 2010 [SC78] and is a valid s.20B (2) notification. (Served under cover of a letter from Willow management dated 24 June 2010 [701].

Mr Lawson's response.

1.04.07 – 31. 03.08

Even if otherwise sufficient as a S.20B(2) notification, the letter of 27th March 2007 was defective because such a notice has to be in respect of costs that have been incurred. The invoice for the fence works [SC68] is dated 17th April 2007. The invoice is the document which gives rise to the liability. That is the time at which the 'relevant costs in question were incurred'. It post dates the purported notification. Mr Lawson relies on the Dicta in *City of Westminster v Hammond* and *Hyams & Anderson v Wilfred East Housing Co-operative Limited.*

The notification is inadequate so far as the roof/gable/pebbledash costs are concerned as no details of costs are given, as required by *Brent v Shulam B etc.*

1.04.08 – 31.03.09

Even if the form of the 20th October 2009 Notice is regarded as S20B(2) complainant, it was given on behalf of the wrong landlord, being under cover of a letter of 21 October 2009 [145] from Tim Cowley's managing agent, Willow management Ltd. By then the reversion had been assigned to 5V Ltd.

Even if it is a good notification it can only relate to charges incurred after 21 April 2008 (i.e. 18 months before 20th October 2009)

Likewise the demand of 8th March 2011, with accompanying Summary of Tenants rights etc and landlord's name and address, was on behalf of the wrong landlord.[SC128-142], because the purported re assignment of pre 1st October 2009 service charge debts, on 7th December 2010, had not been effective.

Mr Davies' reply.

1.04.07.-31.03.08

The fence costs had been incurred before receipt of the invoice. The work had been the subject of estimates. It was costed before being carried out. It was carried out and completed by the time of the letter of 27th March 2007. The liability to the contractor arose on satisfactory completion of the fixed price contract. The detail in the letter establishes that the costs were known and incurred.

The Schedule.

This deals with the issue as to whether the various items of costs were reasonably incurred. To the extent that they vary from the original application forms, the schedule is regarded as the most recent statement of the Applicants' challenge.

1.04.07 – 31.03. 08

Items 1-4

These are not challenged as to reasonableness but are conceded by the Respondents as offending Sec.20Band not therefore payable

5.Replacement Fence.£930

Mr Lawson says £1140 is excessive when compared with an internet quotation n obtained by him [206] for £395 + vat and the £458 cost of previously removing the back fence. There was a lack of appropriate certification regarding the asbestos removal.

The Respondents point out that the front fence was more than twice the length of the back fence. Mr Lawson's estimate was not a quotation based on a site inspection. Asbestos removal and disposal costs depend on the amount and weight of the asbestos.

6. Management Fee £750 & 7. Plumbing £185

These were conceded by the Respondents as not payable because of S. 20B.

8.Roof repairs £485. 29 March 2007.

The reasonableness of this item was not challenged. Its payability, because of Sec. 20B was challenged. The Respondents relied on the final paragraph of the letter of 27th March 2007. [SC148]

1.04.08 – 31.03.09

9. Gas (April 2008 –March 2009) & 10. Electric (same period)

These are not challenged as unreasonable, but are subject to the Sec.20B issue.

11. Management Fee 1/4/08.

This is challenged as to reasonableness on the basis of alleged breaches of the RICS Service Charge Residential Management Code. Mr Lawson documented them, running into 8 pages of the schedule. Many related to the ongoing dispute as to how long each day the central heating timer should be operating. Many allegations obviously stemmed from the fractured relationship between the various parties. Many were actual breaches which he averred were evident from the paperwork.

Mr Davies pointed out that the Code was best practice, but not mandatory.

12. Insurance 8 April 2008 £722.09. & 13. £58.57.

The reasonableness is not challenged, but Mr Lawson avers that even if the notification of 20th October 2009 is Sec. 20B(2) compliant, this invoice predated the 18 months to 20th October 2008. The invoice is dated, and the payment is due on, and the costs in question were therefore incurred on, 8th April 2008.

Mr Davies contended that the premium was for the whole year, most of which was within the 18 months up to 20th October 2009, and could and should be apportioned.

14. Roof repairs £620. 11/6/08.

The reasonableness is not challenged, subject to the Sec. 20B issue.

The Respondents rely upon the notification of 20th October 2009. [SC148]

15. Plumbing £65. 29 October 2008.

Mr Lawson contends for £30 based on costs when he was the Freeholder (pre-2006).

The Respondents contend that at today's prices the charge is reasonably incurred.

1.04.09 – 30.09.09.

16. Accountancy £587.50. 16 February 2010.

Mr Lawson contends that there is no provision in the lease for this charge. It does not arise because of any Sec. 21 request, because that request was not complied with. His enquiries could have been met by the production of copy invoices which he has requested on several occasions.

The Respondents rely upon the general clause in the lease to "provide such services.....as the Lessor shall in the Lessors absolute discretion deem necessary for the general benefit of the Building and its tenants".

Additionally they aver that the nature and extent of the long running dispute about service charges made it prudent and reasonable to employ an accountant to audit the service charge accounts of the landlord.

17. Plumbing £1500. 1 October 2009.

Based on information from cheapboilers.com, Mr Lawson contends for a reasonable cost for supply of the boiler of £588. [201]. He reiterated his written representations re condition of the pipe work, hours of operation, and the registration of the Gas Fitter.

The Respondents point out that the claimed cost includes fitting, labour and several additional items, as set out in the invoice. [SC82]. The boiler was functioning properly with the existing pipe work. The hours of operation was a long running dispute that did not obviate the need to replace the boiler. The contractor was registered, but the most recent evidence of that indicated a

different registration number from that shown on the invoice. That did not make the cost unreasonably incurred.

18. Insurance £377.20 20 April 2009.

This was not challenged, subject to Sec. 20B issues.

19. Management Fee £1250. 1 April 2009.

This was conceded as excessive by the Respondent who now contend for £625.

Mr Lawson's contentions were as before, at 11 above, and that it was claimed in the wrong period.

20 Accountancy £240

As before at 16 above, and further Mr Lawson contended that there was no evidence that an invoice had been rendered and paid.

1.10.10 – 30.09.11

21 Accountancy £470

As before at 16 above, and further Mr Lawson contended that there was no evidence that an invoice had been rendered and paid.

22 Gas £56 (flat6).

Mr Lawson contends that this figure was too low because of a failure to honour the landlords Covenants in the lease regarding provision of central heating, and wished to rehearse and reopen that argument.

23. Fire Alarm works £505.06 (flat6)

The reasonableness of the fire alarm installation costs is not challenged. The need for a Fire Risk assessment is challenged. Mr Lawson avers that the cost of both should be limited to £250 per flat because of a failure to properly consult pursuant to Sec. 20.

The Respondents aver that the Fire Risk Assessment was reasonable so as to determine the extent to which the cost of Local Authority's demands could be

reduced, to the benefit of the tenants. It was carried out by an organisation identified by Mr Lawson, in response to the consultation letter of 6th April 2010 (W&C30).They submit that the steps they took, set out on a detailed chronology, were sufficient to satisfy the requirements of the Consultation Regulations. The cost of the works was reasonable and carried out by a contractor recommended by the consultants identified buy Mr Lawson.

Costs and Fees.

Mr Lawson wished to have an order to reimburse him his costs for the time spent in pursuing all these matters which he said amounts, in effect, to him managing the Building, because of the default of the landlords to do so.

Mr Davies pointed out that in the absence of frivolous or vexatious conduct the tribunal had no jurisdiction to award such costs.

Mr Lawson sought an order for reimbursement of the Fees he had paid to the Tribunal.

Neither party pursued the allegations suggesting that the other was a vexatious litigant.

The Law.

Schedule 1 to this Determination sets out, for the record, the basic statutory provisions in Primary Legislation . The Tribunal also had regard to the Regulations relevant to the issues in this case, which have been enacted as Subordinate Legislation.

Our Findings and Determination.

2007-2008.

Section 20b issues

The only issue was the £930 for the front fence repairs. The remainder of this year was conceded as having not been demanded or notified in time to comply with Sec. 20B.

The invoice for the fence work, including asbestos removal, is dated 17th April 2007.[SC68] The Respondents seek to rely on the letter of 27th March 2007 (SC148), as being sufficient to comply with Sec. 20B(2).

It is not.

The sub section requires the notification to be 'within the period of 18 months beginning with the date when the relevant costs in question were incurred' (our emphasis). The better view, having regard to all the previous case law, is that the costs are 'incurred' when the invoice is issued, on 17th April 2007. The letter of 27th March 2007 was before that date.

Further, the letter did not fully include the four basic criteria for such a notification as identified in *City of Westminster v Hammond,* [241]. It did not identify the proportion attributable to the tenant.

For the same reasons, but the more so because of the absence of any details of costs, the letter is not sufficient notification of the roof works referred to in the penultimate paragraph.

The situation cannot be saved by the more detailed notice (in fact a defective demand) of 20th October 2009 (SC65), because that is not within 18 months of 17th April 2007.

We considered whether the statements of service charge accounts enclosed with Willow Management's letter of 15th September 2009 [129-134] (i.e. before Tim Cowley's Assignment of 1 October 2009) could be regarded as Sec.20B (2) compliant for this period. We conclude that they cannot, because they do not comply with the criteria identified in *City of Westminster v Hammond.* In particular, unlike, say, the notification of 20th October 2009, they do not contain a notification that the costs 'relate to service charges which have yet to be collected, demands will be issued...etc.'

The letter and enclosures of 15th September 2009 are no more than a defective demand.

In any event the 18 months preceding the 15th September 2009, goes back only to 15th March 2008 and therefore, even if Sec.20B (2) compliant, that letter would only cover the period from that date. There is no evidence of any costs being incurred, in terms of invoices, from then to 31 March 2008.

The amount payable for this period is accordingly Nil.

1 April 2008 -31 March 2009.

Section 20B issues

The Demand dated 20th October 2009 [SC72] (served 21 October 2009 [145]) is defective as a Demand, because it fails to contain the landlord's name and address, it does not include a statement of the tenants' Rights and Responsibilities and , to the extent that, in the absence of a name and address it can be inferred that it was given on behalf of Tim Cowley by his managing agents, Willow management Ltd, it was given on behalf of a person who at that time was not entitled to collect the service charge and to whom the service charge was not then due.

Whatever the status of the Assignment of Arrears on 7th December 2010, it is an agreed fact that the freehold was assigned by Tim Cowley to 5V Ltd on 1st October 2009. Between then and 7th December there is no issue that any outstanding service charges were due only to 5v Ltd.

The defects in the demand of 20th October 2009 were purportedly rectified by service of re-issued demands under cover of the letter of 8th March 2011. (SC128-142). Even if those re-issued demands are valid, they are more than 18 months after the end of the April 08 – March 09 accounting period.

The first issue is, therefore, whether the 20th October 2009 defective demand can none the less constitute a notification under Sec. 20B(2).

In our view, so far as the format is concerned, it does. In most respects it complies with the four requirements identified in *Westminster v Hammond* . The nature of the work and reason for the expenditure, the amount of the costs, the proportion attributable to the individual tenant and an indication that such an amount will be demanded in the future.

Apart from the insurance, the costs have also already been incurred. The insurance invoices are dated 8th April 2008. That is when the 18 month Sec 20B(2) period begins to run. It expired on 8th October 2009. The notification dated 20th October 2009 cannot be compliant with Sec. 20B(2) so far as the insurance is concerned.

The invoice for the roof repairs is dated 11th June 2008 The 20th October 2009 notification is within 18 months of that date.

We do not accept Mr Lawson's contention that a document, intended as a demand, cannot constitute notification to the tenant under Sec.20B(2). Mr Lawson is taking technical points, as he is entitled to do. We hold that the determinative issue is whether a document technically complies with the Regulations, not the intention of the person providing the tenant with the notification.

However, there is an insurmountable difficulty from Mr Cowley's point of view.

The defective demand, which we would be minded to treat as a satisfactory notification under Sec. 20B (2) was given at a time (21 October 2009) which is after he has assigned the reversion, and, by virtue of Sec.141 Law of Property Act 1925, also assigned the right to have any involvement on enforcing the tenants service charge covenant. It is a notice given before he reacquired that right by virtue of the Assignment of 7th December 2010.

The notification is therefore of no effect either as a valid demand (even if not otherwise defective), or a Sec.20B (2) notification.

We considered whether the statements of service charge accounts enclosed with Willow Management's letter of 15th September 2009 [129-134] (i.e. before Tim Cowley's Assignment of 1 October 2009) could be regarded as Sec.20B (2) compliant for this period. We conclude that they cannot, because they do not comply with the criteria identified in *City of Westminster v Hammond.* In particular, unlike, say, the notification of 20th October 2009, they do not contain a notification that the costs 'relate to service charges which have yet to be collected, demands will be issued...etc.'

The letter and enclosures of 15th September 2009 are no more than a defective demand.

In those circumstances the amount payable for 1 April 2008 -31 March2009 is nil.

If we are wrong in our analysis of the notices, then our determination of the reasonableness of the charges is as follows.

Reasonableness of charges.

These are not otherwise challenged as claimed, subject to our ruling above re Insurance, except for the management Charge and Boiler Service.

We find considerable merit in Mr Lawson's criticism of Willow management Ltd. They breached the RICS code. The property has been mis-managed. Notices are defective. Demands are defective and the standard of record keeping and paperwork is appalling.

Some little work has however been undertaken. Bills have been paid, repairs arranged and some time spent on the dispute about the timing of central heating supply.

If the property had been managed to a high standard we would expect a charge in the region of £125 pa per flat.

Given the above however we cannot determine that anything more than £200 in total as a reasonable figure for management for this year in question.

We find the £65 for servicing the boiler to be not unreasonable. Mr Lawson's evidence is historical.

The amount that would be payable for this period is accordingly:-

Repairs	£ 620
Electricity	£ 90.06
Management	£200

£910.06. 1/6th = £151.68

Central Heating Costs. £1101.90. 8% (flat 6) £88.15. 9% (flat 4) £99.17

Total. Flat 6 £239.83. Flat 4 £250.85.

1 April 2009 – 30th September 2009.

We find that the format of the otherwise defective demand dated 30th March 2010 (SC78) is Sec.20B(2) compliant, for the same reasons as we found re the format of the demand of 20th October 2009 re 08/09 to be compliant.

The demand dated 30th March 2010 was however served under cover of a letter of 24th June 2010 [174- 179].

However, there is again an insurmountable difficulty from Mr Cowley's point of view.

The defective demand, which we would be minded to treat as a satisfactory notification under Sec. 20B (2) was given at a time (24 June 2010) which is after he has assigned the reversion, and, by virtue of Sec.141 Law of Property Act 1925, also assigned the right to have any involvement on enforcing the tenants service charge covenant. It is a notice given before he reacquired that right by virtue of the Assignment of 7th December 2010.

The notification is therefore of no effect either as a valid demand (even if not otherwise defective), or a Sec.20B (2) notification

Subject to Tim Cowley being entitled to the payment of the Service charges for this period, the Demands sent with the letter of 8th March 2011 appear to be without significant technical defect. [SC128- 142]

We are satisfied that Tim Cowley was so entitled. The Assignment of 7th December 2010 [SC90-91] is, in our view, effective. The status of the disputed service charge claims, the technical defects in the demands for payments and the general unsatisfactory nature of the service charge accounts do not prevent the contract from being effective to assign such rights as existed and the right to perfect those claims. Any receipt given thereafter by Tim Cowley to

a tenant would bind 5V Ltd. The statement that the sums are 'due' appears only in the recitals.

Any defence that a tenant had would run with the assignment, unless and until that defence, such as a defective Demand, was rectified.

That Demand was, however only sent on 8th March 2011. It can only be valid, under sec. 20B (1) for costs incurred after, at the earliest, 8th September 2009. This covers only the last 22 days of the period in question to 30th September 2009, and there is no evidence, in terms of invoices, of any costs being incurred in that short time, except for the installation of the boiler

In those circumstances the amount payable for 1 April 2009 -30 September 2009 is limited to the reasonable cost of the boiler installation.

In the light of our findings below regarding the boiler the amount of service charge payable for this period is £1500 -£339.13 (gas credit) = £1160.87.

Flat 4. 9% = £104.48.

Flat 6. 8% = £92.87

If we are wrong in our analysis of the notices, then our determination of the reasonableness of the charges is as follows

Reasonableness.

The claim for accountants' fees is unsustainable. There is no specific provision in the lease for employment of an accountant at the expense of the tenants, charged via the service charge. The general 'catch all' clause upon which the Respondent seeks to rely is insufficient to cover this claim. It gives a discretion '...for the benefit of the building and its tenants...'.

The utilisation of the accountant may be wise having regard to the nature of the disputes, but it is primarily for the landlord's benefit, and is in any event not authorised by the lease with sufficient particularity.

We determine that the £1500 charge for the replacement boiler is not unreasonable. The evidence produced by Mr Lawson was of an internet price list. It did not include the additional items or the labour costs. We prefer the evidence in the form of the contractors account. We do not regard the apparent change of 'Corgi' – now 'Gas Safe' - registration number as detrimental to the reasonableness of the costs incurred.

The new boiler is a replacement and does not constitute an element of improvement. It appears to be working satisfactorily and to be compatible with the existing pipe work.

The dispute as to the precise obligations of the landlord, under the covenants in the lease, with regard to actual operating times, is not of itself sufficient to enable us to say that the cost and installation of a new boiler was unreasonably incurred. Those are matters beyond our jurisdiction. These are matters which were fully explored by the decision of the LVT dated 2 July 2009.

The insurance premium is reasonable for a half year.

Notwithstanding the concession at the hearing on behalf of Tim Cowley ,that the charge was excessive and should be reduced to £625, we find, for the same reasons as before, that a management charge for a half year of more than £100 in total would be unreasonably incurred.

1 October 2009 – 30th September 2010.

The only challenge was to the accountancy charge. For the same reasons as above we determine that it is not chargeable under the terms of the lease.

1 October 2010 – 30th September 2011.

3 items were challenged.

Accountancy, which we disallow for the reasons previously stated.

Gas, which was challenged, by asserting that it unreasonably low, in an effort to reopen the dispute as to whether the landlords covenant in the lease requires the central heating timer to be set for a longer period than it is at

present being set. This is beyond our jurisdiction. We do not therefore find the Gas costs to have been unreasonably incurred.

The Fire alarm Works. These total £2974.80 [487] together with £352.50 for a fire risk assessment. [486].

We determine that the Risk Assessment is not part and parcel of the major works. It was a recommendation from the local authority. It is a requirement of the RICS code. It was reasonably undertaken to establish, from an independent source (identified by Mr Lawson), the extent that it was necessary to comply with the Local Authority notices (obligatory under statute and part of the service charges set out in the lease). To have slavishly followed the LA requirements would have involved considerably greater expense for the tenants via the service charge. The 3352/50 is reasonably incurred and not subject to Sec. 20 consultation.

Nor does Sec. 20 apply to the £200 pa maintenance charge.

The Fire Alarm/smoke detection works do require formal Sec. 20 consultation, because 1/6th of £2734.80 is more than £250.

Section 20 of the Landlord & tenant Act 1985 and the Service Charge (Consultation Requirements)(England)Regulations 2003 set out a stringent regime for consultation. The Courts and the Upper Chamber have required proper compliance. The landlord can apply for dispensation in appropriate cases. There is presently no such application before this Tribunal.

The chronology set out by the Directors of 5v Ltd, shows the extent of their efforts to comply. All the indications are that they will be a significantly more efficient landlord than previously.

They have not, however, succeeded in complying with the requirements.

The letter of 6th April 2010, upon which 5V Ltd relies as evidence of a Notice of Intention, does not comply with Schedule 4 Part 2 Paragraphs 8(2) & 9. There is no express statement as to the reasons for considering the work necessary, an address is not specified for responses, the obligation to respond within the

relevant period is not expressly stated nor are the consequences of failing to do so.

The specification, sufficient to enable a tenant to consider his view as to an appropriate contactor to be named, was not enclosed with the letter. It was not in any event intended to follow the council schedule. The prospective HMO status was later abandoned but the notice of intention was not re issued.

There is no evidence before us of a summary of observations having been supplied or a paragraph 11(5)(b) statement. We accept that copies of the estimates were sent to Mr Lawson and all other tenants.

The letter of 30th June 2010 does not strictly comply with paragraph 11(10)(c).

The amount of the relevant contribution claimable from each tenant in respect of those items, and in addition to any other properly claimed and unchallenged service charge, is accordingly limited to £250 + 1/6th of £352.50 + 1/6th of £200. = £342.08

Notwithstanding the determination that we have felt obliged to make, the landlord can still make an application to dispense with the consultation requirements if so advised. This observation should not be taken as any indication of the likely outcome of such an application.

Miscellaneous

We do not regard the choice of an accounting period other than October to September as fatal to the claim for service charges. The service charge is reserved as rent and the ground rent is payable with reference to that accounting period, but not, specifically or expressly, the service charge. The wording of the lease, including the right to require payments on account, is sufficiently flexible to allow for the use of any reasonable period.

Mr Lawson sought to raise at the hearing a question as to the proper interpretation of the leases with regard to the proviso following sub clause (vi) of clause 1. '.....provided that all such sums shall from time to time be assessed by the surveyor or agent for the time being of the lessor ... etc' .

This was an issue which had not been previously raised and of which the Respondents had no notice. It was unlikely to represent a successful challenge to the service charge demands, but was, in any event not a point that the Tribunal was prepared to entertain without notice.

There is no evidence that the management agreement between Tim Cowley and Willow Management Ltd is a long term agreement requiring consultation. In any event the cost to each tenant of the amount we would have otherwise allowed as reasonably incurred was so low as to be below the financial limits for such consultation.

Costs.

Both the actual Respondents, 5V ltd and Mr Tim Cowley indicated that it was not intended to regard any of their cost of these proceeding as relevant costs. We therefore determine that such costs shall not be relevant cost pursuant to the S 20C application, it being agreed that such an order is just and equitable in the circumstances.

Having regard to the outcome of this case we regard it as just and equitable that the landlord 5V Ltd reimburse Mr Lawson with the LVT fees paid, namely £175 within 28 days. Such contribution as should be made by Tim Cowley is a matter between 5V Ltd and him.

M J Simpson.

Chairman

SCHEDULE 1.

THE BASIC STATUTORY PROVISIONS.

Landlord & Tenant Act 1985

19 Limitation of service charges: reasonableness

(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.

20 Limitation of service charges: consultation requirements

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

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

(b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.

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

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

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

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

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

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

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

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

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

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

20B Limitation of service charges: time limit on making demands

(1) If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2) Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been

incurred and that he would subsequently be required under the terms of his lease to contribute to them by the payment of a service charge.

20C Limitation of service charges: costs of proceedings

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

27A Liability to pay service charges: jurisdiction

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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 would be 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 would be payable.

Section 47 of the Landlord and Tenant Act 1987 ("the 1987 Act")

(1) "Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely:-

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

(2) Where:-

(a) a tenant of any such premises is given a demand, but

(b) it does not contain any information required to be contained in it by virtue of subsection (1),

then (subject to subsection (3)) any part of the amount demanded which consists of a service charge or an administration charge ("the relevant amount") shall be treated for all purposes as not being due from the tenant to the landlord at any time before that information is furnished by the landlord by notice given to the tenant.

(3) [Not relevant to this decision]

(4) In this section "demand" means a demand for rent or other sums payable to the landlord under the terms of the tenancy". Section 48 of the 1987 Act states:-

(1) "A landlord of premises to which this Part applies shall by notice furnish the tenant with an address in England and Wales at which notices (including notices in proceedings) may be served on him by the tenant.

(2) Where a landlord of any such premises fails to comply with subsection

(1), any rent, service charge or administration charge otherwise due from the tenant to the landlord shall (subject to subsection (3)) be treated for all purposes as not being due from the tenant to the landlord at any time before the landlord does comply with that subsection.