IN THE COUNTY COURT
SITTING AT CENTRAL LONDON CLAIM NO D10CL409

Before:

MRS RECORDER McGRATH

BETWEEN:

PHILIP JOHN WHALE AND OTHERS

Claimants

-and-

(1) BRUCE MAUNDER TAYLOR
(2) NORTHWOOD HALL RTM COMPANY LIMITED

Defendants

AND BY ADDITIONAL CLAIM

BETWEEN:

BRUCE MAUNDER TAYLOR

Claimant

and

(1) MARTIN PIUS HOWARD

(2) LORRAINE ODIARI AND OTHERS

Defendants

AND BY COUNTERCLAIM IN THE ADDITIONAL CLAIM

BETWEEN:

LORRAINE ODIARI AND OTHERS

Claimant

-and-

(1) BRUCE MAUNDER TAYLOR
(2) NORTHWOOD HALL RTM COMPANY LIMITED

Defendants

Mr Edwin Johnson QC instructed by Payne Hicks Beach Solicitors appeared for the claimants in the first action and for the respondents in the second action.

Mr Edward Denehan and Mr Thomas Cockburn both of counsel, instructed by Gisby Harrison Solicitors appeared for the first defendant in the first action and for the claimant in the second action.

JUDGMENT

Introduction

1. This is a consolidated action concerning claims and counter-claims between several groups of leasehold owners of Flats at a property known as Northwood Hall and Mr Maunder Taylor, who was appointed to manage the property by the First-tier Tribunal (Property Chamber) in June 2016. The background to this litigation and the disputes between the parties starkly illustrate the very severe difficulties that can occur in the management of leasehold property. Over the course of the last five years, the execution of works to replace the communal hot water and heating system at the Building has overrun, has escalated in cost and has caused serious disharmony between leaseholder neighbours. These actions are only one aspect of the litigation that has ensued between leaseholders, their landlord, a Right to Manage Company and the Tribunal Manager.

2. The original parties involved in this case included thirty-seven lessees; the Northwood Hall RTM Company Ltd (RTM Company) and Mr Bruce Maunder Taylor who is a Manager appointed by the First-tier Tribunal (Property Chamber) pursuant to section 24 of the Landlord and Tenant Act 1987. The claims against the RTM Company were compromised in January 2019 and the cases continued only between the lessees and the Manager. However, I have no doubt that the implications of this case and its results will, for some time to come, impact not only on the remaining parties but also on all of those who hold interests at Northwood Hall.

3. It is unfortunate that the disputes in this case fell to be resolved by litigation. The hearing of this matter took place over eight days and even so it is very unlikely that this judgment will resolve all the ongoing differences between different groups of lessees and between a group of lessees and the Manager.

4. At the hearing evidence was given by 13 leaseholders and their lay advisor Mr David Wismayer (who is also the equitable tenant of a flat at Northwood Hall); by the Manager, and his accountant Mr Stephen Bird. Expert evidence was given in two

disciplines: firstly M&E by Dr Michael Humphries on behalf of the leasholders and by Mr Stephen Marshall on behalf of the Manager and secondly on costs by Mr Matthew Whitehead on behalf of the leaseholders and by Mr Eugene Lenehan on behalf of the Manager. Finally, a single joint expert report was provided by Mr Timothy Henson on valuation. The leaseholders were represented by Mr Edwin Johnson QC and the Manager by Mr Edward Denehan and Mr Tom Cockburn of counsel. I am very grateful to counsel who prepared comprehensive written skeleton arguments and closing submissions which have made the writing of this judgment a much more straightforward exercise than otherwise would have been the case.

5. The dispute in this action centres upon the systems in the building for the provision of hot water and central heating. In December 2013 the RTM Company entered into a JCT contract with a company called Parker Bromley Limited for the installation of a new central heating system within the building. The projected cost of the contract was £2.68 million, and the work was scheduled to be completed by November 2014.

6. In the event the Project ran over budget and over time and further associated works are still outstanding. The current cost of the work is around £5.25 million and the projected final cost is likely to be in the region of £1,000,000 more. On behalf of the leaseholders it is said that the new central heating system now being installed is materially different to that which was envisaged in 2013. They submit that the Manager and the RTM Company have no right to install the new central heating system or to recover the installation costs from the leaseholders.

7. As there are two main claims consolidated, it is convenient to refer to the leaseholders in the respective cases as the first action tenants and the second action tenants. The first action tenants make additional claims that the Manager has breached the Tribunal order under which he was appointed and has failed to comply with the lease obligations in that he has failed to provide central heating to the Flats held by the tenants in the first action since October 2016. They also say that the Manager has threatened to cut off the hot water supply to their Flats and would have done so if they had not sought an injunction in the High Court to prevent him from making the disconnection.

8. The first action tenants seek the recovery of service charges, damages for breach of the Manager's obligation to provide central heating, an injunction requiring the Manager to re-provide central heating and a permanent injunction to prevent the Manager cutting off the hot water supply.

9. As to the second action tenants, a claim is brought against them by the Manager seeking the recovery of arrears of service charges. The second action tenants deny that any such arrears are due and counterclaim for sums they say have been paid in error.

10. It is helpful to understand the litigation history leading to the consolidated action. The first action was commenced by a group of tenants on 10th February 2017. This group of tenants had initially sought an interim injunction to stop the Manager cutting off the supply of hot water to their Flats. Following the making of the application for the interim injunction the first action was commenced, in which the first action tenants sought various heads of relief.

11. The second action started as an application by the Manager to the First-tier Tribunal (Property Chamber) (the Tribunal) under section 27A of the Landlord and Tenant Act 1985, seeking a determination of liability to pay services charges, as against a separate group of leaseholders. The Tribunal subsequently ordered the transfer of the second action to the county court. On 1st December 2017, District Judge Johns QC ordered the consolidation of the two actions into this consolidated action, and gave directions.

12. One of the issues in the case is compliance with the consultation requirements imposed on landlords by section 20 of the 1985 Act. In this respect the Manager has made a protective application for dispensation of those requirements pursuant to section 20ZA of the 1985 Act. That is a matter exclusively within the jurisdiction of the Tribunal. In this case, when sitting, I exercised the jurisdiction both of a county court judge and a Tribunal judge in order to give a composite court judgment and Tribunal determination.

13. There is not a great deal of dispute about the factual background to this case but it is necessary to understand the history of the Project to replace the heating and hot water system. There follows a narrative description of events. I return to consider specific aspects in detail later in this judgment when considering the pertinent issues.

The Property

14. Northwood Hall (the Building) comprises a purpose-built residential block of 194 Flats, constructed around 1935 in the Art Deco style. It is constructed in a cruciform shape, with four wings and a central core. The Flats are arranged over 8 floors, including a lower ground floor. The Building stands in its own grounds, with parking areas. During the course of the hearing I visited the Building with the parties' representatives who were able to show me the elements of the heating and hot water systems.

15. Recently and until 2016, the freehold interest in the Building was vested in Northumberland and Durham Property Trust Limited. The Building is subject to a Headlease which was granted on 19th January 1977, for a term of 125 years. The Headlease was acquired by a company called Triplark Limited (Triplark) on 22nd May 1978. Broadly speaking, the Flats in the Building are held on long underleases save for 29 of the Flats which are held in hand by Triplark as tenant under the Headlease. A further Flat is held by Triplark on an underlease. On 20th July 2016 Triplark acquired the freehold interest in the Building by its wholly owned subsidiary, Crownhelm Limited. Crownhelm was registered as proprietor of the freehold interest on 30th September 2016. In March 2018 Crownhelm transferred the freehold interest to Triplark.

The Position Prior to January 2011

16. Until January 2011, the management of the Building was in the hands of Triplark through their managing agents OCK who had obtained a report on the options for the replacement of the existing heating and hot water system in 2009 from Hilson Moran, a firm of consulting heating engineers. In that report, two options for the replacement

of the original system for heating and hot water were proposed. In summary, option 1 involved the installation of individual 'combi' boilers in each Flat whereas option 2 involved a system of central boilers with individual heat exchangers, known as Heating Interface Units ("HIUs") in each Flat. At the end of the report Hilson Moran included a note that "Both options will require variation to the leases. Legal costs will be incurred."

17. It is worth pausing here to consider the original design of the heating system and hot water systems in 2009:

(a) Gas-fuelled boilers, housed in a sub-basement located under the Building, heated water which was first delivered through pipes running in trenches beneath each of the four wings, or spokes of the Building. This was then distributed through the Building by vertical risers comprising pipes of flow (delivering heated water) and return (returning water cooled through travel, to be reheated by the boilers). The risers were contained within discrete box sections effectively forming part of the walls in every corridor of the Building (save for the top floor).

(b) The Flats are arranged in corresponding stacks (of either 7 or 8 flats) so that each vertical riser passes each Flat in the stack in the same relative position. In the void between the respective floors of the Building, the heating flow and return pipes teed off to each Flat and connected into the pipes within each Flat that served the internal radiators. On the top floor, because the flow and return pipes teed off below the floor surface, no risers were visible in the corridors.

(c) Each two-bedroom Flat (being the majority of Flats in the Building) usually had two small pillar-type radiators. The first located in the smaller of the two bedrooms and the second in the hallway. The living room and the larger bedroom have fireplaces, originally intended to burn coal for heat. A similar arrangement applied in the minority of the Flats with three bedrooms, save that there was a further small radiator (making three in all).

18. The position for hot and cold water was as follows:

(a) Although there was a common heat source from the boilers in the basement, hot tap water was delivered to the Flats by a completely independent system of pipework from that which provided the heating to radiators. Hot and cold water

was pumped to a large chamber sited at roof level to storage tanks from which both hot and cold was supplied by a down-service (i.e., a system that flows downwards under gravity) using vertical risers located in or adjacent to the bathroom and kitchen of each Flat.

(b) Accordingly, because the heating distribution system to radiators in each Flat was independent of the system by which hot water reaches the taps of the same Flat, it was possible to interrupt the provision of heating in the existing central heating system without affecting the delivery of hot and cold water and vice versa.

19. In 2009, one of the leaseholders in the first action, Mr Simon Haggis, moved into Northwood Hall. In his statement he says that despite the Hilson Moran report, he was not aware that a heating system replacement would be required and he said that the first notice he had of this was a line in his service charge bill of approximately £20,000 in 2010. Also in 2010, Mr Haggis and several other leaseholders learned about right to manage companies (RTM companies) and decided to try that route to take over control of the management of Northwood Hall with a view, in particular, to organising the replacement heating and hot water system. More than 120 lessees out of an eligible group of 164 voted in support of the proposal. After some inquiries a firm known as Canonbury Management were engaged to undertake all of the administrative work of setting up the RTM Company for free in exchange for a one year appointment as the new RTM Company's managing agent. The Company was incorporated in June 2010 and the right to manage was acquired on 12th January 2011.

2011-2013

20. Having secured the right to manage, the priority for the RTM Company was the heating scheme. They agreed that Canonbury, by its director and owner Mr Roger McElroy, should be the Project Manager.

21. It seems that Canonbury decided that the Project would be funded through the service charges payable under the leases. The service charge records, appear to show that money was demanded and raised from the tenants in relation to the Project in 2011, and was then demanded in increased amounts for the succeeding years.

22. In June 2011, CBG Consulting was engaged to produce a design for the heating scheme based on the second option in the Hilson Moran report. There appear to have been no formal terms of appointment. The evidence of CBG's appointment is a fee letter from CBG dated 28th June 2011 providing for a fee of £70,300 plus VAT. Following their appointment, CBG designed some preliminary schemes and documents for a section 20 notification which was completed by 25th March 2013. I will return to the section 20 consultation later in this judgment but it is said on behalf of the leaseholders that the extent to which Canonbury followed the consultation process at all was very limited.

23. A key feature of the CBG design of the Project was that the new pipework would be distributed on the roof of the Building, and would connect to each Flat via new vertical risers in similar position to the existing vertical risers used by the existing systems. I will refer to this as the "the Vertical Design".

24. A tender package was approved by Canonbury and tenders were issued in July 2013 with a tender return date of 12th August 2013. On behalf of the leaseholders, expert evidence was given by Dr M Humphries who commented that:

"30. The CBG Tender Package was not a fully coordinated package of information. It was, in effect the performance specification, that gave selections for most of the main plant but left the production of detailed installation drawings to the Contractor….

31. CBG had retained the use of HIU as proposed by Hilson Moran but had changed the main LTHW pipework distribution and instead of routing the main flow and return across the roof with vertical connection to each flat, they instead proposed that the main horizontal distribution would be at high level in the corridors at ground and lower ground level. Vertical risers would then be routed on either side of the corridors with final connections into each flat. The boosted cold-water mains would run across the roof as the Hilson Moran scheme and drop within the Flats. Within each flat new LTHW and boosted cold water would be routed to a HIU located either in the kitchen or in the cupboard in the hallway."

25. Two out of four companies who were invited to tender did so: Borahurst Ltd who tendered for £3,708,315.60 and Parker Bromley Ltd who tendered for £2,335,301.41. Since they were significantly cheaper than their competitor Parker Bromley was selected. On 19th December 2013 the RTM Company entered into a contract for the construction of the Project. The Contract was in the form of a JCT Minor Works Contract. Both Dr Humphries and Mr Marshall the M&E experts agreed that given the complicated nature of the Project, the JCT Minor works contract was inappropriate.

2014-2016

26. The contractual commencement date was 13th January 2014. The contractual completion date was 14th November 2014. The contract price, inclusive of VAT, was £2,686,022. CBG was appointed by Canonbury to provide M&E consultancy services in respect of the Project, and to act as contract administrator. Evidence of the appointment is to be found in a fee letter from CBG dated 2nd October 2013, providing for a fee of £108,000, including VAT. One of the criticisms of the arrangement is that CBG appears to have been instructed to undertake a costs management role in relation to the Project, of the kind which, it is said on behalf of the leaseholders should have been dealt with by a costs consultant. In his expert evidence Mr Whitehead explains, that the costs management of the Project was inadequate and there appears to have been no regular reporting of costs of the Project to the RTM Company. Canonbury was itself appointed to act as project manager in respect of the Project, for a fee of £250,000. Again, there appear to have been no formal terms of appointment in this respect.

27. The evidence relating to this period in the Project and the sequence of events is very unclear. However, during the course of 2014 a fundamental change to the design of the system was adopted. It appears that Canonbury were closely involved in the decision making. In evidence, Mr Whitehead speculated that Parker Bromley are likely also to have influenced the consideration of how the project was to be taken forward.

28. In an email sent by Mr McElroy of Canonbury to Simon Haggis, on 6th June 2014 Mr McElroy asserted that the change in design had been necessitated by (i) the discovery

of asbestos in the vertical risers in the Flats, which had precluded their use in the Vertical Design, and (ii) the fact that the vertical risers in the corridors could not be used because they were not large enough, and additional drilling would need to go through a structural ring beam, thereby also precluding their use in the Vertical Design. On behalf of the leaseholders it is said that both of these reasons for the change in design were completely untrue. It is accepted on behalf of the Manager that there is no evidence to support Canonbury's position.

29. No one had investigated the vertical risers for the presence of asbestos and no Refurbishment and Demolition survey, to determine whether there was asbestos present in any of the locations where work would be done, was carried out either prior to the works commencing, or thereafter. Dr. Humphries made the point that the failure to carry out the R&D Survey was totally unacceptable, and rendered it impossible for the tenderers to price the asbestos risk, plan their works, or prepare an effective programme. In fact, and as a result of investigations which were carried out by Mr Whale, one of the first action tenants, it is known that there is no asbestos in the vertical risers in the Flats.

30. So far as structural issues were concerned, Canonbury had retained a firm of structural engineers, Jenkins & Potter, in relation to the Project. The advice of Jenkins & Potter, in a report to CBG on 23rd April 2014, was that the slab structure in the Building comprised hollow pot floors, through which it was perfectly possible to add new services. On behalf of the leaseholders, Dr. Humphries confirmed the correctness of this advice in his report.

31. On 30th July 2014 a communication was sent out to tenants, by Kyle David of Canonbury through which the tenants were notified that the design of the Project was to be changed, from vertical to horizontal pipework. The reasons given for the change were the same as those previously given by Mr McElroy; namely the alleged presence of asbestos in the risers, and alleged structural difficulties in positioning the vertical riser pipes.

32. I refer to the new design as the "Horizontal Design" which in outline can be described as follows:

(1) As with the Vertical Design. the old boilers were replaced with brand new boilers. Otherwise a different distribution system was to be installed both inside and outside of the Flats.

(2) The heating flow and return distribution through the Building was to be effected by being pumped through large diameter pipes via each floor's service area, running adjacent to the lift core and communal stairwell up to roof level. The heating flow and return and the cold-water supply pipes were to run to the furthest extremities of each of the four spokes of the Building, from where the supplies then were to descend through the Building via the secondary staircases, teeing off to the corridors at each floor level and then running back towards the central core.

(3) The Vertical Design intended hot and cold water to be delivered through the Building using vertical risers similar to those in the existing systems. That design was replaced by a system to distribute hot and cold water by extensive horizontal ceiling-mounted pipework in the corridors.

(4) The new system continued with the plan to rely upon the installation of an HIU in each flat. The HIU acts as an interface or bridge between the communal boiler system and the central heating and hot water output within each particular Flat.

(5) Radiators were intended for each room of every Flat, a typical two-bedroom Flat having at least five radiators, three in rooms where previously there were none, the two original radiators being removed and replaced by two much larger radiators.

(6) In order to produce hot water, the HIU device requires a supply of cold water which is heated across the interface by the communal heating supply. On behalf of the leaseholders it is said that this is not the supply of hot water to a Flat. It is the supply of cold-water to a Flat, which then requires to be heated by new apparatus within the Flat. The Installation required the replumbing of the hot and cold-water distribution within the Flats.

33. By the latter part of 2014 the then directors of the RTM Company were facing serious problems. The design of the Project had been changed and it appeared to be running

over time, and over budget. Canonbury was failing to provide information to the RTM directors, or answer their questions.

34. By this stage internal work had been carried out to one of the Flats (Flat 5-21), to install the HIU and required new internal pipework. The intention was that tenants would be able to inspect Flat 5-21, as a pilot Flat, in order to see how the internal work would appear in the other Flats. It proved however extremely difficult to arrange with Canonbury for the RTM directors to inspect the pilot flat in order to see what had actually been done.

35. In December 2014 the RTM directors approached David Wismayer for his assistance in addressing the problems with the management of the Building, and principally with the Project. David Wismayer has experience of managing building projects and managing flats. He is, and has for some years been responsible, as a director of Morshead Mansions Limited, for the management of Morshead Mansions, a block of flats in West London.

36. On 13th March 2015 Mr Wismayer was appointed as a director of the RTM Company and at his instigation a general meeting of the RTM Company was called for 29th April 2015. On 19th March 2015 the RTM directors, who now included Mr Wismayer, circulated a report to tenants on the situation in the Building, setting out Canonbury's management failures and the failures in respect of the Project. On 27th March 2015 Mr McElroy of Canonbury circulated an email to tenants, briefing against the directors of the RTM Company and calling for their removal. The RTM directors responded with a report to tenants and members of the RTM Company on 27th March 2015.

37. On 24th April 2015 the RTM directors produced a lengthy report to members of the RTM Company and tenants, which explained their recommendations for the way forward in relation to the Project. The recommendations included the reinstatement of the Vertical Design. The Report also made it clear that it was the directors view that the problems with the Building could only be solved if management of the Building was removed from Canonbury, and if the members of the RTM Company agreed on the way forward recommended in the Report. The recommendations of the

directors as to the way forward were embodied in four resolutions, which were to be voted on at the meeting of 29th April 2015. In particular the report recommended the appointment of Mr Wismayer to be the Manager of the building.

38. Shortly before the first meeting of the RTM Company in April 2015, Triplark lodged applications for membership of the RTM Company. It was entitled to 30 memberships by virtue of its interest in the 30 Flats. This gave Triplark 30 votes in meetings of the members of the RTM Company.

39. On behalf of the leaseholders it is said that the agenda of Triplark was to keep Mr Wismayer out of the management of the Building and therefore to this end Triplark deployed its block vote at the meeting of 29th April 2015 to procure the defeat of the resolutions proposed by the directors. It is said that Triplark was supported by a group of tenants who were pro-Canonbury and anti-Mr Wismayer. One of the tenants was Robert Saunders. Following the meeting of 29th April 2015, Simon Haggis resigned. This left two lessees, Anna Rose, Joanna Moody, and Mr Wismayer as the remaining directors.

40. In May and June 2015, Mr Wismayer was in negotiations to purchase a Flat at Northwood Hall. In June 2015 contracts were exchanged and in July the contract was completed and the vendor moved out. However, the requisite consent for the assignment was not obtained from Triplark as landlord and as a result (and despite litigation) Mr Wismayer's interest has not been registered and he holds the Flat as an equitable tenant. In evidence Mr Wismayer said that the Flat is empty.

41. On 5th June 2015, another lessee, Mr Saunders gave a notice to convene a general meeting of the RTM Company on 24th July 2015. In an email sent on 11th May 2015, Mr Saunders contacted members of the pro-Canonbury group confirming the agreement of Triplark, in principle, to fund the legal expenses of removing Mr Wismayer as director of the RTM Company.

42. On 24th July 2015 the second general meeting of the RTM Company took place. At that meeting resolutions were passed for the removal of Mr Wismayer as a director of

the RTM Company, and for the appointment of new directors: Robert Saunders, Andrew Fyvie, Julia East and Simon Kaufman as new directors of the RTM Company.

43. On 30th July 2015 one of the new RTM directors, Simon Kaufman (a qualified architect), circulated an email to tenants identifying the *"four critical documents"* relating to the Project which were required in order to enable the new directors of the RTM Company to assess whether they could move forward with the Project, and with Canonbury. The four critical documents, or sets of documents were as follows.

(1) The alleged original asbestos survey and report documenting why the original pipework specification could not be installed;
(2) Documents which were alleged to identify the alleged structural difficulties in cutting through the floors of the Building;
(3) Documents which were alleged to evidence the thermal modelling of the new corridor pipework (it was said that the new horizontal pipework was causing the corridors to become uncomfortably hot);
(4) Alleged letters of engagement between the RTM Company, on the one side, and Canonbury, CBG and Parker Bromley (respectively) on the other side.

44. On 20th August 2015 Simon Kaufman, produced a report to the Board of the RTM Company on the state of the Project, following a site inspection. This report included the professional conclusion of Mr Kaufman that there was no evidence to support the change from vertical to horizontal pipework, and that *"to date the installation of new heating pipes vertically through the building has not been adequately considered"*. The report also included the information that Eamon Kidd of Parker Bromley had informed Mr Kaufman that Parker Bromley did not proceed with vertical installation because they *"did not want to get a structural engineer involved."* The response to the Kaufman Report of the RTM directors, Mr Saunders, Mr Fyvie and Ms. East ("the Saunders directors"), was to take no action. Mr Kaufman resigned as an RTM director on 26th August 2015.

45. At a meeting of the Residents Association, held on 5th October 2015, two of the then RTM directors attended the meeting to brief residents on the state of the Project. Ms.

East and Mr Fyvie said they had seen all of the relevant documents in relation to the Project, including the four documents identified by Mr Kaufman. Ms. East and Mr Fyvie informed the meeting that the relevant documents did exist, but said that they could not be shown to tenants. No such documents have ever been produced. Mr Saunders confirmed in his evidence to the Tribunal, at the hearing of the application for the appointment of the Manager, that no relevant asbestos survey existed.

46. For the rest of 2015 and into 2016, the Project continued in the Horizontal Design. On 20th January 2016 the RTM Company took advice in conference from Simon Allison of counsel. A note of the advice given in the conference was disclosed by the Manager. The advice identified a number of failings in management and in the recovery of service charges by Canonbury. It noted that the RTM Company was considering appointing an alternative manager and advised on the option of seeking an appointment instead under section 24 of the Landlord and Tenant Act 1987.

Witness Evidence

47. Before moving on to the next stage of the history of this matter I pause to consider some of the witness evidence given at the hearing. I start with the evidence from the leaseholders. Although I heard from a number of both the first action tenants and the second action tenants, no evidence at all was given by other lessees. Significantly no evidence was given by any of those leaseholders who were directors of the RTM company immediately prior to the appointment of Mr Maunder Taylor as Manager. Nor did I hear from Mr Nicholson in respect of the comprehensive review, from Mr McElroy or anyone else from Canonbury on consultation or the payability of costs nor from Mr Payne or anyone else from CBG.

48. All the leaseholders who gave evidence were intelligent, credible witnesses whose evidence was measured and convincing. It is not necessary to deal with all of the evidence of each witness in detail. Factually, their accounts of events were largely unchallenged. However, their evidence was of great assistance in giving context to the issues in this matter.

49. It is helpful however to mention some of the evidence given by Mr Simon Haggis who I have already mentioned. He gave details of how the RTM Company was set up and the RTM directors' relationship with Canonbury. It was clear to me that Mr Haggis' experience as an RTM director was an unhappy one, almost from the outset. Understandably, he entrusted general management and the preparation of supervision of plans to replace the heating and hot water system to Mr McElroy and Canonbury. However, the RTM directors were very much out of their depth. As early as 2012 they had concerns about Canonbury's basic block management and transparency around costs. There were delays with the draft specification for the works and conflicting advice about the type of contract that should be entered into with contractors.

50. By 2013, it seems the directors were totally reliant on Canonbury for scrutiny of CBG's work. The first stage of the works under the Project was the replacement of the boilers which was to be followed by work in the common parts. In the early part of 2014, Mr McElroy and Mr Andy Payne of CBG informed the directors that the original tender design would not be possible to implement owing to the discovery of asbestos. Mr Haggis said that the directors took this advice at face value. In the early part of 2014, Canonbury emailed to say that the changes in pipe routing were finalized and agreed.

51. Although it is possible to be critical of the lack of control exercised by the RTM directors, they were not property management professionals and were clearly at a loss as to how to proceed. During cross-examination it was put to Mr Haggis that if the RTM directors had such serious concerns about Canonbury and the works, they should have taken more robust steps to address the situation. In my view, Mr Haggis and his co-directors were rather naïve in this respect but reflecting on such matters as a matter of hindsight is unhelpful. It was clear from Mr Haggis's demeanour that the whole process had been extremely stressful for him and his co-directors whom I believe were acting in good faith but were simply not able to cope. Difficulties continued and consideration was given to taking legal advice.

52. Mr Haggis described December 2014 as being a "crisis point". He said "it was clear Canonbury were not going to be able to deliver what we needed. It was impossible to

pin them down on anything and get straight answers, they were constantly evasive and obstructive. CBG were entirely absent and had failed to deliver anything we requested. We never met with Parker Bromley as they wouldn't come to meetings…"

53. It was at this time that the RTM Directors were introduced to Mr David Wismayer, to whose evidence I will return to in due course. From Mr Haggis' point of view, Mr Wismayer provided expertise and knowledge that the RTM directors had previously been lacking. By April 2015, Mr Wismayer had provided a report which was severely critical of the delayed Project and recommended litigation as they only way to achieve a remedy. On 1st May 2015, Mr Haggis resigned from the Board.

54. In respect of this period I also heard from Ms Anna Rose who is one of the first action tenants. Ms Rose is an architect. Ms Rose became a director of the RTM Company in December 2013. She said that by the time the RTM directors realised the implications of the design change, including the impact on the appearance and amenity of the building, they were told by Mr McElroy that there was no other choice than going along with the changes as a contract had been signed. Through her industry contacts Ms Rose was introduced to Mr Wismayer and she in turn introduced him to the RTM directors.

55. As to the position of other lessees in the Building, I heard from Mr Philip Whale who is a retired solicitor. Mr Whale explained that his involvement with the Building started in 2011 when he and his wife acquired a lease of Flat 6.23 and lived there until mid-2012 since when the Flat has been let on short term tenancies. He said that at the time the Flat was purchased he was aware that there was a proposal for a major renewal of the heating system. I do not intend to relate all of Mr Whale's evidence. He recalled a section 20 consultation but was clear that the documentation made no suggestion that the proposed Project might be contrary to or outside the terms of the leases nor that any of the leases might require variation. He does not know of any other lessee who appreciated that this might be the case. Furthermore, at the time of the consultation and up until the end of December 2016, he believed that access to the Flat to carry out installation works was mandatory and not a matter upon which his and his wife's consent was required.

56. I turn now to Mr Wismayer's evidence. Mr Wismayer's only statement related to the application by the first action tenants for an interim injunction preventing the Manager from disconnecting the supply of hot water to their Flats. Mr Wismayer is a powerful character. He is also very knowledgeable about leasehold matters generally. As indicated, his involvement with Northwood Hall was initiated in December 2014 and he was appointed as an RTM director in March 2015, in his words "to troubleshoot the situation."

57. It was clear from the evidence of the first RTM directors, that the advice given by Mr Wismayer about the Project and the action he advised as being necessary to remedy the situation was a shock. However, having previously been unable to conceive how to deal with the overrun of costs and lack of control of the Project, his intervention was gratefully received.

58. Mr Wismayer's position was clear in that he considered the Project to have been unlawfully conducted and he believed that the only way to resolve the position was by initiating litigation.

2016

59. I turn now to the involvement of Mr Maunder Taylor who is a very experienced manager. As he said in his evidence, he has been appointed to manage numerous Building by the Tribunal pursuant to section 24 of the 1987 Act. He has dealt with difficult management challenges effectively and well.

60. It seems that he first became involved with Northwood Hall in early 2016. In the Northwood Hall RTM Directors' Update, dated 12th February 2016, it was reported that the RTM directors had met with Maunder Taylor "who are a small family company with significant expertise in this area. They currently manage 65 blocks of which 12 are under Management Orders…. Also they have had experience in the Tribunal of Mr Wismayer.." In his evidence, Mr Maunder Taylor explained that at the initial meeting the background to the heating and hot water Project was explained to him. He told Mr Saunders and Ms East that if he were appointed managing agent he

would be willing to work with them on the basis of their proposals – that is, retaining the common pipework and completing the installation of the replacement system including carrying out the necessary works in all Flats.

61. In fact the RTM directors had notified the lessees of their intentions in the same update as mentioned above where they stated:

"Two leaseholders have written to the RTM refusing access to their Flats. They do not have this right. If we have to go to court to force this right it will add to the costs….The alternative will be to leave the Flats unconnected and wait for the leaseholder to take the RTM to court for failure to supply the required services. The old central heating system will be switched off for the last time on 1st May 2016. The old pipes supplying hot and cold water to all the Flats will also be decommissioned towards the end of the Project so those who refuse to cooperate will find their Flat without any hot or cold water as well as no heating in due course."

(I would comment here that this was a wholly inaccurate description of the rights and obligations under the leases.)

62. By that stage the RTM directors were considering making an application for the appointment of a manager under section 24 of the 1987 Act. In a letter to the RTM directors dated 17th February 2016, the Manager sent the RTM directors a proposal in relation to his appointment as a managing agent but also included advice about the formal appointment of a manager if the RTM directors were to proceed with an application for him (Mr Maunder-Taylor) to be appointed under an order made by the Tribunal.

63. On 14th April 2016, an application under section 24 was made to the Tribunal. Although Mr Maunder-Taylor drafted the documentation, the applicants were Mr Saunders and Ms East together with Triplark in its capacity as a tenant. The first respondents to the application were the RTM company and the second respondents were Triplark as headlessee, the freeholder and a number of the lessees. The

applicants sought to have Mr Maunder-Taylor appointed as manager and the respondent lessees proposed that Mr Wismayer be appointed.

64. The application came before the Tribunal on 18th June 2016. At the hearing the applicants were represented by leading and junior counsel and the respondent lessees were represented by Mr Wismayer. It is clear from the Tribunal's decision that one of the main issues in contention was how the heating and hot water Project should proceed. The applicants maintaining that it should be progressed to completion and the respondent lessees contending that it should be halted and that the litigation proposed by Mr Wismayer should be pursued.

65. The hearing was not completed on that first day and the Tribunal therefore made an interim order appointing Mr Maunder Taylor as a manager for a period of one month from 26th June 2016. By clause 3(b)(iv) of that order the manager was prevented from continuing the works affecting the central heating scheme. On receipt of the order Mr Maunder Taylor wrote to the Tribunal asking for the order to be amended on the basis that if work were to be halted entirely then penalty clauses under the JCT contract would be activated and the scale of penalties would be between £30,000 and £50,000. As a result the order was amended to permit the manager to continue with the Project works "insofar as they are limited to works in any individual flat in respect of which the Lessee of that flat consents".

66. It is worth noting that as at 12th June 2016, internal works had been carried out to 77 of the Flats in the Building, and by September 2016 (when as will be seen the final management order was made), internal works had been carried out to between 120 and 130 Flats. During the three-month period between the interim and final order therefore significant internal works were carried out.

67. A further Tribunal hearing was convened on 18th July 2016 and the Tribunal made its decision to finally appoint Mr Maunder Taylor as manager of Northwood Hall on 26th August 2016. In reaching its decision, the Tribunal demonstrated a good appreciation of the difficulties at Northwood Hall and with the Project. However, the Tribunal was not in a position to adjudicate on the best way forward for the Project and whilst they

were willing to appoint Mr Maunder-Taylor they expressed firm views on the immediate way forward. In paragraphs 68 to 70 they stated as follows:

"68. It is unfortunate that there were indications in Mr Maunder Taylor's management plan that he was already persuaded that litigation was not the best option, and that the current contract should be completed. At the hearing the Tribunal expressed to the parties the need for caution in determining to follow the majority view of the best way forward. A majority vote of leaseholders does not relieve a landlord or manager from its covenants owed to each one. The majority wish may be a very significant factor in reaching a decision between two reasonable options, where both would ensure compliance with the lease obligations and where all relevant information has been obtained and advised upon.

69. The better manager is not the one who acts as standard bearer for the preferred option of one group of leaseholders or another, but the person who is able objectively to gather sufficient relevant information, take appropriate legal and professional advice, and then reach and implement a reasonable decision as to the proper way forward in compliance with the covenants in the leases.

70. Notwithstanding the outcome of the general meetings, the manager to be appointed does not have a mandate to continue with the current contract to completion…."

68. On 24th September 2016, the Tribunal made its order appointing Mr Maunder Taylor as Manager for a period of three years until 13th September 2019. Under paragraph 1 of the order the manager was given:

"…….all such powers and rights as may be necessary and convenient and in accordance with the Leases to carry out the management functions of Triplark Limited and in particular:

(a) To receive all service charges, interest and any other monies payable under the Leases save for the rents reserved by the Leases and any arrears due thereunder

(b) The power and duty to carry out the management functions of Triplark Limited contained in the Leases (the same having been exercisable by the RTM Company upon its acquiring the right to manage the Premises and having ceased to be

exercisable by the RTM Company upon the interim management order dated 24 June 2016 taking effect) and in particular and without prejudice to the foregoing:

i. The obligations to provide services;

ii. The lessor's repairing and maintenance obligations; provided also that the standard of any such work shall have regard to the age, character and prospective life of the premises and the locality in which it is situated;

iii. A comprehensive review of the old heating and communal hot water system and equipment, the Project to renew the same and the incomplete new heating and communal hot water system and equipment and the determination, following such consultation as the Manager deems appropriate and constructive, of the best means of achieving a functioning, disrepair free, heating and communal hot water system taking account of all the circumstances, including the project and running costs, performance and the appearance of the Premises"

69. Paragraph 1(b)(iii) reflects the Tribunal's consideration set out in paragraphs 83 and 84 of its decision as follows:

"83. The Tribunal is emphatically of the view that it is not necessary for it to reach a view as to the better way forward in order to identify the appropriate manager. The appropriate investigations, taking necessary specialist and legal advice, and reaching a decision are the role of the manager once appointed. The manager will bear responsibility for performance of the covenants in the lease, and it is the covenantor who therefore has to choose between the available options and decide how a covenant is to be performed.

84. It seems abundantly clear to the Tribunal that the manager would wish reasonably to investigate all available options, including taking legal advice on the merits of litigation and, if so advised, expert opinion on the technical advice acted upon by the former directors of the RTM Company. All of that must be promptly and carefully considered."

70. As at September 2016 therefore, Mr Maunder Taylor had been in position as manager for about three months. He had a good understanding of the Project and a mandate from the Tribunal to review the most appropriate way forward. I am satisfied that well

before September 2016, Mr Maunder-Taylor also had a good understanding of the lease provisions. In respect of the provision of heating and hot water, the leases are in relatively unusual terms. I have been provided with a copy of the underlease for flat LG1 (the Lease) and it is agreed that the relevant terms are common throughout the Building. Clause five of the Lease contains the landlord's covenants. Clause 5(7) provides that the Lessors will:

"(7) Maintain at all reasonable hours a reasonable and adequate supply of hot water to the flat and during the period from the First day of October to the First day of May in every year provide sufficient and adequate heat to the radiators for the time being fixed in the flat (if any) unless the Lessors shall be unable to perform this covenant by reason of the act neglect or default of the Lessee or any mechanical breakdown or interruption of the supply of fuel or current or other cause whatsoever over which the Lessors have no control….
(8) Maintain and renew when required the central heating and hot water apparatus and all ancillary equipment thereto other than that contained in the flat."

71. Under clause 3(3)(a) of the Lease, the Lessees in turn agree to "Repair maintain renew uphold and keep the flat…water, gas, electrical and central heating apparatus… in good and substantial repair and condition."

72. In cross examination the Manager agreed that he had considerable familiarity with the leases of the flats and the statutory protections afforded by the 1985 and 1987 Acts. He also accepted that he was subject to the provisions of the RICS Residential Service Charge Code and the Technical Release. As to the legal position he accepted that even before the management order, he was aware:

(a) That the apparatus within the Flats was the property and responsibility of the lessee;
(b) That the landlord had no general right of entry to the Flats;
(c) That the landlord had no right to recover the cost of replacing the apparatus as part of the service charge;

(d) That the landlord had no right to compel the tenants to accept the replacement apparatus or to allow entry for it to be fitted.

73. On 16th September 2016, two days after the management order was made, the Manager circulated a note to the lessees entitled "Heating Renewal" which starts with reciting clause 5(7) of the Lease and goes on to say:
"I am seeking legal advice but my provisional view is that there has been compliance with the Lessors' covenants to provide heat to the flat and the only reason why the Lessors have not been able to provide it to the radiators in the flat is because of the default of the Lessees in either refusing access for internal works to be carried out or not cooperating"
The note then goes on to say:
"I have further enquiries to make, but my provisional view is that the old heating system should not be reactivated for the reason that those who have not had their flat pipework and radiators renewed have had several months opportunity to make arrangements for that work to be carried out and it is through their own failure that the situation for their own flat has arisen."

74. In the light of the Tribunal's decision and the terms of the order, the note is surprising as it indicates an intention to continue with the Project to completion and suggests that the "default" exception in clause 5(7) of the Lease has been engaged by the failure of some of the lessees to connect to the new system.

75. It is clear that one of the concerns at this time, not only of the Manager but also some of the leaseholders, was that turning on the central heating system in October may present a danger of uninsured leaks. This emerges from a note of a meeting with residents on 19th September 2016. At that meeting the Manager explained that "the Residents Association would like the existing horizontal pipes to be stripped out and replaced with vertical pipes and that is a matter that has got to be investigated, considered and looked into…" That is a reference to a report that the Manager intended to obtain with a view to reporting to the lessees by the end of November. On

1st October 2016, the heating was not turned on and those lessees who have not been connected to the new system have been without heat since that date.

76. It is worth observing here that the evidence of a number of the second action tenants is that they believed they had no choice under the lease but to agree to have the works carried out inside their Flats in order to be connected to the new system. For example, this is illustrated by the evidence of Mr Adam Waldman who is a Professor of Neuroradiology and who had purchased a flat in Northwood Hall for his elderly mother to occupy. He said that he had received communications from the firm of Maunder Taylor indicating that there was an obligation on leaseholders to allow access for works on the Flat, which might be enforced in law and that it had been made clear that the old heating system would not be reactivated with the consequence that heating and hot water would not be available. He said the communications were reinforced by the staff of Parker Bromley both to his mother and to himself. He therefore felt under great pressure and without any choice but to agree to, and provide access for the internal works to the flat.

77. It is also worth citing a lengthy letter from the Manager to Ms Freedman who also gave evidence at the hearing. This is dated 17th October 2016 and refers to an email of 13th October 2016. This states:

"As soon as I received the final Tribunal Order, I investigated the lease terms, the technical issues and circulated to all lessees a 3-page statement about the rights and obligations under the lease. At the meeting held on 19th September I advised that the old heating system would not be re-instated and gave my reasons why….

You then address the provision of heat to your flat. Whilst I appreciate that Mr Wismayer disagrees with the legal advice I have received, my position is that heat is available to you in the new common pipes laid to your flat, you have only to renew those pipes and apparatus in your flat, or allow the contractors on site to do so, and your heat will be restored. My solicitor has advised me that Mr Wismayer's opinions on the law are wrong. Mr Wimayer is not a solicitor and has not produced to me, or for general circulation, a competent legal opinion. Are you really willing to risk getting involved in what you refer to as "an offence under the Protection from Eviction Act 1977"? Mr Wismayer will merely be the person who promotes such

action. He takes no risk. The risk takers will be you and me. I have taken competent legal advice. Have you?"

That letter was circulated to all lessees in the Building.

78. In October 2016, the Manager instructed Mr Derek Nicholson, who is an architect to prepare a report on the heating and hot water system. In an email dated 4th October 2016, Mr Nicholson advised that he could carry out "a limited inspection and report on the communal heating system … to look at alternatives and advise on best way forward with existing heating as installed to date through to completion. All in the sum of £2,400.00 including travelling and normal office costs….I estimate that I will have the report ready…within two weeks of receiving your order to carry out the work" It seems that the Manager responded by telephone that day and then in an email dated 6th October 2016 where he accepted the proposal, provided further information and attached a copy of the Tribunal's management order. He said: "It is important that your report is your own independent opinion and results from an objective assessment of the situation you find."

79. Mr Nicholson provided his report ("the Nicholson Report") on 21st November 2016. Dr. Humphries and Mr Marshall are very much in agreement with Mr Nicholson in his criticisms of the deficiencies in the commencement of the Project. Both are agreed that the Project was poorly planned and executed. Mr Nicholson concluded that the replacement system "has a long and tortured history." He considered there were two main reasons for this: firstly inadequate preparation prior to tender and secondly poor selection of the replacement system and maintenance of the existing system. He concluded that the Project should continue in its existing form (the horizontal design) essentially because he considered that the works were so far advanced, it was not a practical possibility to do anything other than carry on.

80. On 22nd November 2016, the Manager notified Sharon Breen, one of the first action tenants, that he planned to dismantle the existing hot water system in mid-January 2017, so that "not only will there be no heating through the old heating pipes, there will not be hot water either." On 25th November he wrote to all lessees to notify them that Mr Nicholson's report was available on the Dwellant website stating "This report

looks into the original decision about what type of replacement was decided upon, criticises some aspects of the process but concludes that the only realistic decision is to complete the project as it has evolved."

81. On 19th December 2016 Payne Hicks Beach on behalf of Ms. Reiner, another of the first action tenants, wrote a letter before claim to the Manager enclosing draft Particulars of Claim and seeking confirmation that the hot water system would not be dismantled, as threatened by the Manager. They said:

"The withdrawal of essential supplies of heating and/or prospectively hot water contrary to the terms of the lease is nothing short of scandalous and the manner in which you appear to be failing to grasp the nettle of resolving the abortive and defective heating project, which has no proper basis in law, is unacceptable."

82. The Manager did not respond to that letter but on 11th January 2017, he wrote to Michele Freedman, stating that "the old hot water system will be drained down, starting on Monday 13th February, and will be dismantled…" On the same date similar communications were sent to the other first action tenants. On 12th January 2017 Gisby Harrison, acting as solicitors on behalf of the Manager, responded to the letter of 19th December 2016 from Payne Hicks Beach to say that "Your client has been warned by our client of the intention to disconnect the hot water supply from the old hot water system in mid-January. He has not changed his plan in that regard".

83. During the course of the hearing, I asked Mr Maunder Taylor whether he had considered applying to the Tribunal for directions so that he could be assured of the correct way forward in respect of the heating and the hot water. He said that he had not.

84. On the 2nd February 2017, Payne Hicks Beach sought confirmation that the Manager would give an undertaking not to disconnect the hot water supply to Flats still served by the original system. No undertaking was forthcoming and proceedings were commenced. At the first hearing of the application on 9th February 2017, Mr Maunder-Taylor provided an undertaking to the Court that "*he will not until trial or*

further order whether by himself or by instructing or encouraging any other person disconnect or cause to be disconnected or inhibited or otherwise interfere with the domestic hot water supplies to the flats belonging to the Claimants…" The first action was commenced on 10th February 2017 and on the return day for the injunction the undertaking given by the Manager was continued until trial or further order.

85. On 19th June 2017 the Manager commenced proceedings in the County Court Money Claims Centre for alleged arrears of service charge against Barbara Donninelli, one of the second action tenants. These proceedings were subsequently stayed, pending the resolution of the consolidated action. On 30th June 2017 Payne Hicks Beach wrote to Gisby Harrison to state that they (Payne Hicks Beach) had been instructed by a further 17 tenants (including Ms Donninelli) regarding claims to service charge threatened by the Manager.

86. On 5th July 2017 the Manager made two applications to the Tribunal, pursuant to Section 27A of the 1985 Act, for determinations as to service charges alleged to be due. These two applications were made, respectively, against Mr Howard (one of the second action tenants - who was then unrepresented) and the other 17 Tenants for whom Payne Hicks Beach were then acting. On 1st August 2017 a case management hearing was held in the Tribunal in the Manager's two Section 27A applications and on the lessees' request the Tribunal decided that the two applications should be transferred to the Central London County Court pursuant to regulation 6(n)(ii) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013.

The Claims

87. The primary claims made by the first action tenants in the first action, as against the Manager, are for injunctive relief against the Manager in order;

(1) to prevent the Manager, in breach of his obligations under clause 5(7) of the Lease (as applied to the Manager by the Management Order) and under the relevant provisions of the Management Order, from cutting off the supply of hot water to the Flats of the First Action Tenants, and

(2) to require the Manager, in compliance with his obligations under clause 5(7) of the Lease (as applied to the Manager by the Management Order) and under the Management Order, to restore the supply of central heating to the relevant Flats.

88. The first action tenants also seek damages in respect of the period, running from 1st October 2016 and continuing, during which they have been without central heating to their Flats. Finally, the first action tenants also seek the recovery of payments made by way of the service charge to the Manager (the Mistaken Payments) which should not have been made, because they were not due.

89. The Manager is the claimant in the second action, and sues the second action tenants for alleged arrears of the service charge. The second action tenants counterclaim for the recovery of payments made by way of the service charge to the Manager (the Mistaken Payments) which it is said should not have been made, because they were not due.

Heating and Hot water

90. In his closing submissions Mr Johnson said that an effort had been made to make the Manager appear as an independent professional brought in to deal with an extremely difficult situation and indeed Mr Denehan said that the Manager had been parachuted into a near war zone and was charged by the Tribunal with finding the best means of achieving a functioning disrepair free heating and communal hot water system. Mr Denehan submitted that the Manager had performed his management functions as a professional for the benefit of the tenants who required a remedy to the paralysis that had beset the project to renew the systems.

91. In my view the starting point must be the terms upon which Mr Maunder Taylor was appointed as manager. I consider that it is clear from the terms of the order and supported by its narrative decision that the Tribunal required Mr Maunder Taylor to stand back, to take appropriate advice and to come to a decision how best to proceed with the heating and hot water Project. I do not accept that the order gave the

Manager a mandate to proceed with the project without any regard to the terms of the leases themselves.

92. At the time of his appointment in June 2016, I believe that Mr Maunder Taylor had made a decision that the best way to deal with the replacement of the heating and hot water system was to push on and to complete the Horizontal Design. I do not consider that he has changed that view even now. In reaching that conclusion I bear in mind the following matters: firstly, as early as February 2016, Mr Maunder Taylor was prepared to accept instructions to act as managing agent for the RTM company on the basis set out in the update to tenants issued by the RTM directors at that time. This is surprising in itself as I believe that by the time of instruction he had already read the leases and was aware that the very nature of the project constituted a breach of their terms. Secondly, the speed with which he took the decision not to restart the heating suggests that by September 2016, he had made up his mind.

93. It may well be that Mr Maunder Taylor believed both in early 2016 and later on after his appointment that this was an impossible situation to resolve given the maturity of the contract and that therefore firm action was required to finalise the position. However, I am also satisfied that he was aware that there was a vocal lobby of leaseholders who were unhappy with the nature of the Horizontal Design and its execution and furthermore he was clear that the carrying out of internal works and their recovery under the service charge provisions was contrary to the terms of the leases.

94. Given Mr Maunder Taylor's extensive experience as a manager and that he is the head of a very well-respected family firm and that he has been made the appointed manager by the Tribunal pursuant to applications under section 24 of the 1987 Act on numerous occasions, this is very surprising. On behalf of the leaseholders Mr Johnson suggests that this can be accounted for by the animosity between Mr Maunder Taylor and Mr Wismayer. I have no doubt at all that such animosity exists. In evidence Mr Wismayer told the court that he had removed Mr Maunder Taylor from management positions before and the clear implication was that he could remove him again. In evidence Mr Maunder Taylor rejected the suggestion that he might be motivated by

his history with Mr Wismayer. I do not accept that Mr Maunder Taylor's judgment was not so influenced.

95. As a managing agent, Mr Maunder Taylor would be under some constraint to accept the instructions of his client. Even then I would have expected him to have explained to the RTM company the real difficulties caused by the manner in which the leases were drafted. As an appointee of the Tribunal, I consider that Mr Maunder Taylor ought to have stepped back from the RTM company and have exercised an independent judgment about the way forward. I do not consider he did so.

96. I am satisfied that by the time of Mr Maunder-Taylor's appointment, the situation at Northwood Hall was extremely grave. There was deep-rooted ill-feeling in the Building, for example evidence was given by Mr Haggis of the tyres of his car being slashed. The Project had overrun by nearly two years by September 2016 and costs were escalating on a weekly basis. However, I have seen no evidence that there was a general consensus that the Horizontal Design should continue to its completion. On the contrary, despite efforts by the Saunders Directors, by the summer of 2016 only 77 Flats were connected to the new system and I have no evidence that those who had accepted works to the interior of their Flats did so willingly or whether the works were satisfactory. There is certainly no evidence at all of any agreement or understanding that would give rise to any form of estoppel.

97. Against that background in June 2016, it seems that efforts were redoubled to achieve the works inside Flats. The evidence from the second action tenants was that they believed they had no choice either as a matter of law or because they wanted to avoid losing both their heating and hot water.

98. I do not consider that the situation was made easier by the actions of Mr Wismayer. It is generally accepted that the work carried out by Canonbury on instructions from the RTM company was in some important respects in breach of the leases and also that the manner in which the work was carried out was wholly unsatisfactory. However, Mr Wismayer's approach and in particular that the only solution was litigation was unhelpful and disruptive to say the least. That is not to say that Mr Wismayer was mistaken but his approach was not constructive.

99. I am satisfied that the Tribunal intended the Manager to stand back and to carry out a comprehensive review of the Project which would include taking advice from experts in a number of different disciplines. Firstly, legal advice on the lawfulness of the Project and whether any remedial steps could be taken. It was said, and it is generally accepted, that the work carried out inside the Flats could only be done with the informed consent of the tenants and could not be charged to the general service charges. The question needed to be asked whether that was fatal to the Project or whether retrospective consent could be obtained and whether there was still a possibility of securing lease variations. As an experienced manager, Mr Maunder Taylor may also have considered the position under section 20 of the 1985 Act and taken the prudent step of seeking advice on whether the requirements had been fulfilled and if not whether consultation could be carried out albeit at a late stage.

100. Insofar as it is suggested that the terms of the Tribunal's order served as a variation of the leases to such extent as required by the Manager to effect the completion of the Project along its Horizontal Design, I reject such a submission entirely. It would be a very rare case indeed where a Tribunal sought to interfere with the rights of the leaseholders in such a radical way and if they did so it would require robust justification and clear words. The order is clear and made no such provision.

101. Secondly advice was needed from one or more experts on the design and execution of the Project and specifically on the costs of reverting back to the Vertical Design in particular because of the obvious additional costs that were to be incurred in boxing-in the pipework in the corridors. I do not consider that Mr Nicholson's report was sufficient. Firstly, it is clear from Mr Nicholson's email that he considered his task to be to provide a limited report. This is reflected in the level of his fees, the time taken to provide the report and the length of the report. As Mr Marshall observed, Mr Nicholson is an architect and therefore possibly not an expert in the correct discipline for this particular task. As mentioned above, Mr Nicholson was not called to give evidence in this matter.

102. Instead of taking these steps and then reviewing the position in consultation with the lessees, Mr Maunder Taylor indicated his provisional view just two days

after the date of the final Management Order. That view was that there had been sufficient compliance with the leases and that the problem was the default of a number of leaseholders. That view cannot have been based on a comprehensive review. It is said on behalf of Mr Maunder Taylor that he took steps to consult with leaseholders. Whilst it is true that there were communications with leaseholders I do not consider that Mr Maunder Taylor approached these with an open mind. In his statement he says that some tenants he left to Parker Bromley to deal with as they "were not going to be a problem". I consider this indicates that he regarded other lessees and in particular those who are now claimants in this action, as a "problem". This is not objectivity but perhaps goes some way to explaining the intemperate tone and correspondence such as the letter to Ms Freedman mentioned at paragraph 77 above.

103. During the course of the hearing, Mr Denehan's questioning of the leaseholders sought to establish that they must have been aware that it was inevitable that at some time the old heating and hot water system would be decommissioned and that they would have to be connected to the new system. The evidence from the second action tenants, many of whom had withheld service charges, was that they had only connected to the new system because they believed they had no choice and that this had not been an informed decision. The evidence from the first action tenants was that they did not consider this to be inevitable and that having regard to the further costs to be incurred on the Project on the Horizontal Design they still do not regard it as inevitable.

104. In all of those circumstances I do not consider there was any justification for not continuing to provide the first action tenants with central heating from 1st October 2016. Mr Maunder Taylor made the decision not to turn the heating back on, although it was drained down and ready to be restarted, almost immediately following his appointment and I regard this as a clear breach of covenant 5(7) in the first action tenant's leases. I consider that the first action tenants are entitled to damages. I accept the report of Mr Henson in this respect and propose to make orders based on the sums set out in his schedule of conclusions.

105. Moving on to the hot water. For similar reasons I consider that the Manager was and is under an obligation to maintain a supply of hot water to the first action tenants. I find it very difficult to understand the Manager's reasoning at the end of 2016 and beginning of 2017. It was wholly unacceptable to threaten to withdraw hot water in this way. If, as appears to be the case, he considered that this was the only way in which the project could be closed and additional costs avoided, then it was open to him to return to the Tribunal for directions. Instead, he instructed solicitors to reject the invitation to give an undertaking in respect of the hot water. A request was made to the Tribunal by the Manager for a variation of the Management Order in respect of the quarterly interim service charge payments. In response to that request the Tribunal, of its own initiative, also provided clarification as to the recovery of his legal costs via the service charges. I accept, as Mr Denehan submitted, that the intention of the Tribunal from the outset had been to allow legal costs to be recovered in this way, but the timing of the request for clarification and, as far as the evidence goes, a failure to inform the Tribunal of the threat of legal proceedings because of the possibility that the manager would cut off a supply of hot water to a number of leaseholders, is most unhappy.

106. Accordingly, I also find that the first action tenants are entitled to a continuous supply of hot water pursuant to clause 5(7). I am satisfied that had proceedings not been commenced to prevent the hot water being disconnected then it would not have been maintained. I have received no indication that the hot water would now be maintained and unless a further undertaking is given in the light of this judgment, I propose to make a final injunction to that effect.

Service Charges

107. I turn now to the various service charge claims and counterclaims. In order to understand this aspect of the actions it is necessary first to consider the provisions of the lease relating to the payment and recovery of the service charge.

108. The starting point is clause 4(2)(a) of the Lease which contains the basic obligation of the tenant to pay the service charge under the Lease, as follows:

"(2)(a) Pay to the Lessors in addition to the rent hereby reserved such percentage as is specified in Part 5 of the Second Schedule hereto of the expenditure incurred by the Lessors in carrying out their obligations as set out in Clause 5 hereof and also of an annual sum equivalent to the fair rent of any accommodation owned by the Lessors and provided by them rent free to any of the persons referred to in Clause 5(10) of this Underlease such payment being hereinafter referred to as "the maintenance charges."

109. The landlord's obligations in clause 5(2)(i) and 5(8) are:

"(2) (Subject to contribution and payment as hereinbefore provided) maintain and keep:-

(i) the main structure of the Building including the principal internal timbers and the exterior walls and the foundations and the roof thereof with its main water tanks main drains gutters and rain water pipes (other than those included in this demise or in the demise of any other flat in the Building)."

"(8) Maintain and renew when required the central heating and hot water apparatus and all ancillary equipment thereto other than that contained in the flat."

110. As already noted, no service charge is recoverable by the landlord in respect of work done to the central heating and apparatus within the Flat. This is accepted on behalf of the Manager. Also the landlord's ability to recover the cost of work done in the Building in respect of central heating and hot water apparatus is confined to work of maintenance and renewal.

111. Clause 4(2)(b) provides for an interim payment to be made on account of the service charge, by equal quarterly payments on the usual quarter days. The amount of this interim payment is specified in Part 4 of the Second Schedule, and is £268 (67 per quarter) in the case of the lease of Flat 1. By paragraph (i) of clause 4(2), the landlord does have the ability to alter the amount of the interim charge, provided that the landlord's managing agent gives the required notice.

112. Paragraph (c) then provides that, as soon as practicable after the end of the landlord's financial year, the landlord will provide the tenant with "an account" of the service charge (referred to in the lease as "the maintenance charge") payable by the tenant for the relevant year. The landlord's financial year is expressed to run from 1st July to 30th June, but the landlord has a discretion to change the financial year. The amount payable by the tenant, as shown in the required account of the service charge is required to give credit for interim payments made on account of the service charge.

113. Paragraph (d) then provides, additionally, that the amount of the service charge payable by the tenant must be ascertained and certified as follows:

"(d) The amount of the said maintenance charge shall be ascertained and certified annually by certificates signed by the Lessors or their Agents as soon after the end of the Lessors' financial year as may be practicable and shall relate to such years in manner hereinafter mentioned."

114. Paragraph (e) provides that this service charge certificate must be available for inspection by the tenants. Paragraph (f) provides that the service charge certificate shall contain a fair summary of the landlord's "said expenditure and outgoings", that is to say expenditure and outgoings recoverable through the service charge.

115. Accordingly it is said by Mr Johnson that the service charge will not be recoverable unless :

(1) the service charge comprises expenditure which the landlord is entitled to recover through the service charge, which depends upon whether such expenditure falls within clause 4(2)(a), and

(2) the landlord furnishes the required service charge account at the end of the service charge year; and

(3) the landlord produces and makes available the required service charge certificate;

He says these contractual pre-conditions to the obligation of the tenant to pay the service charge have been comprehensively ignored in the present case, first by the RTM company and Canonbury, and latterly by the Manager. Finally, he says it is

important to note that the lease gives the landlord no power to raise a reserve fund for one off substantial Projects.

116. It is important to understand what is sought by Mr Maunder Taylor and by the leaseholders in these claims. So far as the claim for alleged arrears against the second action tenants is concerned, this relates not only to installation costs but also to general service charges where demands have been levied by the Manager since his appointment. In response the second action tenants say that they are entitled to repayment of service charges paid in respect of the installation costs. So far as recovery of the mistaken payments by the first action tenants is concerned, this relates only to sums paid directly to Mr Maunder Taylor save for a proportion of the sum of £1,251,227 handed over to the Manager by Canonbury on his appointment. Also, there is an individual claim by Sally Ann Vernon who had made a payment to the Manager.

117. At the hearing it was agreed that I would make determinations on the principles underlying the recovery of the service charges in this case but that the parties would seek to agree the actual amounts payable or re-payable and that this would take into consideration the settlement between the first and second action tenants and the RTM company.

Service Charges Relating to the Installation Costs

118. It is common ground that the part of the costs levied in respect of work to heating and hot water apparatus inside the Flats is irrecoverable as a service charge cost and must be repaid if received by the Manager either as a direct payment or as part of the £1,251,227. Whether those internal costs would be recoverable by the landlord or the Manger, under some other legal requirement is not a matter I am asked to decide.

119. As to the remainder of the installation costs and service charges generally a number of submissions are made but I start with the issue of consultation. It is the

case on behalf of the leaseholders that there was a failure to effectively consult under section 20 of the 1985 Act and the associated regulations. On behalf of the Manager it is said that consultation was effective and that he is not required to prove compliance with the requirements imposed by statute save to the extent that they relate to actions required after his appointment. However, he says that if there is an adverse finding on either basis, dispensation under section 20ZA of the 1985 Act should be given.

Consultation

120. The evidence about consultation process prior to the commencement of the works in 2013 must be gleaned from the documentation. In the bundle there is a copy of an email from Canonbury Management which states that it is a section 20 notice of intention to carry out qualifying works addressed to Mr Haggis. This is dated 25th March 2013. It also states that it had been sent to each lessee and any recognised tenants' association. Mr Denehan pointed out that Mr Whale confirmed that he had reviewed the document, that lessees were given an opportunity to respond to it and their observations were circulated with responses to those observations. In his statement the Manager considered that the consultation requirements on the original design had been substantially fulfilled. On the balance of probabilities I am satisfied that section 20 consultation was achieved.

121. On behalf of the leaseholders Mr Johnson contends that even if adequate consultation was carried out, it was in any event rendered a nullity by the inclusion of costs that were not recoverable as service charges, namely the internal works. One of the purposes of section 20 is to ensure that tenants are able to make informed observations in respect of works and costs to which they will ultimately be required to contribute by way of service charge. However, I am not convinced that this is necessarily correct in every instance. In a case where there is consultation which includes non-service charge costs and they are clearly identified as such, the consultation would be effective. In this case, the total costs were identified and arguably represent costs that may well be payable in some other manner. It is unfortunate that a clear distinction was not drawn but I do not consider that it is *per se* fatal to the recoverability of the costs other than the internal costs.

122. If I am wrong either about the consultation documentation or the impact of the inclusion of the internal works then I consider that the requirements of the 2003 regulation should be largely dispensed in relation to the initial Vertical Design under section 20ZA of the 1985 Act. In reaching that conclusion I am conscious of the guidance given by the Supreme Court in *Daejan Investments Ltd v Benson* [2013] UKSC 14. The guiding principle is to consider the prejudice caused to the paying lessees by a failure to consult. In this respect I accept Mr Denehan's submission that the Project was made up of three main elements: the replacement of the boilers, the replacement of the pipework in the common parts and the internal works. Only two of those elements might be payable under the service charge provisions: the boilers and the pipework. As the original design of the pipework did not proceed then the remaining element is the boilers. I have no hesitation is finding that there is no prejudice to the lessees in respect of the boilers and that those costs, so far as section 20 is concerned, are payable. However, given that the original design of the pipework came to nothing and in the light of the lack of preparation and investigation that preceded the works or the consultation, I consider that dispensation in respect of any pipework costs incurred prior to the change of the design is not to be given and those costs are limited to £250 for each lessee.

123. The next question is whether further consultation was required when there was a change to the pipework. On behalf of the Manager, Mr Denehan says that it was not. He refers to the evidence of Mr Marshall and his expert opinion that the change did not amount to a major design change (although Mr Lenehan considered that the change was fundamental). Mr Denehan says that the revision concerned only the route through the Building that the pipework would follow. Mr Marshall's evidence was that the revised design was the same scheme in principle. It had the same level of functionality, the same controllability, the same level of efficiency and the same level of maintainability. It achieved the original objectives of the replacement systems.

124. Furthermore, he said, the revision was made in response to what were understood to be insurmountable problems (at least from a cost perspective) affecting the original route. Parker Bromley's contract for the installation of the replacement

systems had already commenced and its costs were accruing. It was not necessary, nor would it have been reasonable, for the RTM company to have suspended the contract at cost to the leaseholders for a lengthy additional consultation process to be completed to sanction a revision that was, by that stage, unavoidable. He said that the change was understood to be cost neutral, that mitigating steps could be taken to mitigate the effects of the pipes on the aesthetics of the Building and that the RTM directors considered there was no real alternative option but to accept the revision rather than encounter a further delay.

125. I do not accept Mr Denehan's submissions in this respect. Firstly, I consider that the nature of the revision to the pipework was to provide a fundamentally different design with a wholly different impact on the whole of the Building in which the lessees held their interests. Although the change was said to be cost neutral, that is wholly inaccurate. It is clear that the pipes in the horizontal design will have to be boxed in and the likely cost is in the region of £1,000,000. The purpose of consultation is not only in relation to cost but also it is consultation on the nature of proposed works and in this case, the impact on the aesthetics to the Building is startling. Mr Denehan submitted that the Court of Appeal decision in *Francis v Phillips* [2014] EWCA Civ 1395 is not relevant. I do not agree and consider that he takes too narrow a view of that case. In giving his judgment the Master of the Rolls was clear that the question whether costs are generated in one set of works or two is a matter of fact and degree in each case. I have no hesitation in deciding that further consultation was required in respect of the new Horizontal Design. It is telling that Mr Maunder Taylor himself has thought it necessary to consult about the contract to box-in the pipework which is only one aspect of the original re-design.

126. Furthermore, I do not consider that it is appropriate to dispense with the consultation requirements in respect of the revision of the pipework in this case. In reaching this decision, I again bear in mind the judgment of Lord Neuberger in *Daejan* where it is made very clear that in general, dispensation ought to be given on an application under section 20ZA of the 1985 Act. Lord Neuberger decided that section 20 is another aspect of section 19 reasonableness and that the decision whether or not to dispense is not binary. Suitable conditions for dispensation can be

made and it will be for the landlord to decide whether or not to accept those conditions or whether to accept the statutory cap. However, at paragraph 46 at his judgment he also said as follows:

"I do not accept the view that a dispensation should be refused … solely because the landlord seriously breached, or departed from the requirements. That view could only be justified on the grounds that adherence to the requirements was an end in itself, or that the dispensing jurisdiction was a punitive or exemplary exercise. The requirements are a means to an end, not an end in themselves, and the end to which they are directed is the protection of tenants in relation to service charges, to the extent identified above. After all, the requirements leave untouched the fact that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by, and what amount is to be paid by them"

Of course, I take no issue with those observations. In particular I accept it is for a landlord to choose how to carry out works of repair. In this case, I am not satisfied that the RTM directors did in reality or substance exercise that choice and decide to proceed with the Horizontal Design. I do not accept Mr Denehan's submission that the RTM directors considered they had no real alternative. The evidence is clear that they were not properly made aware of the detail of the design change. Moreover, they were unhappy with the change and were encountering real difficulty in communicating with Canonbury. Finally, it is now clear that they were misled about the reasons for the design change happening at all.

127. In those circumstances I do not consider that the RTM company directed itself properly or at all to the merits of the new design. I therefore do not consider the RTM company would have been entitled to dispensation. The change in design was driven by Canonbury without regard to the lessees or to the RTM directors. Consistently with *Daejan*, this is an important aspect of whether those costs were reasonably incurred. In turn, I do not consider that Mr Maunder Taylor is entitled to the benefit of such a dispensation. The prejudice to the tenants is extremely difficult to measure in financial terms. Had they been consulted the pipework route might not have been changed at all.

128. As indicated, Mr Denehan submitted that the Manager's position should not be infected by the failures of Canonbury. He referred me to the case of *Maunder Taylor v Blaquiere* [2003] Q W.L.R. 379 to the effect that the appointment of a manager is said to provide a "fresh start" or "clean sheet" in relation to the premises. I cannot accept that submission in this case. In appointing Mr Maunder Taylor, the Tribunal charged him with carrying out a comprehensive review of the Project for heating and hot water. In my judgment the review was not comprehensive. Had there been a proper investigation of the circumstances leading up to the application for his appointment, the failure to consult might have become apparent and might have informed progress to a solution. I therefore do not consider that reliance can be placed on *Blaquiere* in this instance.

129. Before turning to the mechanism in the leases for the recovery of service charges I must also consider whether clause 5(8) is wide enough to encompass the renewal of the heating system. Clause 5(8) provides that the lessor must "Maintain and renew when required the central heating and hot water apparatus and all ancillary equipment thereto other than that contained in the flat." I have no doubt that the Lease does encompass the works (save for the internal apparatus).

The contractual provisions

130. I turn now to the other issues relating the contractual provisions in the Lease for the recovery of service charges together with other statutory requirements. This is necessary both in respect of the installation costs and other costs. Evidence in this respect was given by Mr Stephen Bird who is a service charge accountant in the employ of the Manager's firm. Mr Bird was a very straightforward witness. To some extent his evidence was hampered by lack of documentation from the time of Canonbury's management.

131. On behalf of the lessees Mr Johnson submitted that there are two distinct periods to consider: the first is up to 30th June 2016 where Mr Maunder Taylor's rights of recovery depend upon the RTM company having complied with the contractual and statutory requirements. The second period is from 1st July 2016 to the

quarter commencing on 1st September 2017, which is that date to which the claims for alleged arrears runs up to in the Particulars of Claim.

132. As to the first period there is no evidence that any valid demands were served on the leaseholders; there is no evidence of any valid service charge accounts and there are no service charge certificates. As Mr Bird said at paragraph 18 of his witness statement "Unfortunately, Canonbury Management has not provided Maunder Taylor with any spreadsheets or copy invoices for the service charge years prior to 2015/16." On the transfer of management to Maunder Taylor service charge accounts were compiled on a retrospective basis up to year end June 2016. These seem to demonstrate that Canonbury was putting money raised through the service charge into a reserve fund, or reserve funds when there was no power under the leases to do so. In the absence of evidence and despite Mr Bird's attempts to rebuild the accounts retrospectively I cannot be satisfied that the service charges for the first period are recoverable.

133. In respect of the first period, Mr Denehan again submitted that the Manager should not be visited with the failures of the predecessor whom he displaced. Even if that were so in the usual case, I consider that it would not apply here without a specific order or direction from the Tribunal which has neither been sought nor given. Although Mr Maunder Taylor has taken over the management from Canonbury, he has in fact displaced the RTM company and its directors. I have no real evidence of requests being made either to Canonbury or to the RTM company to provide the missing information.

134. As to the second period Mr Johnson's first submission was that it is not clear on what basis the Manager claims the right to recover interim payments in excess of the amount specified in clause 4(2)(b) of the lease. Mr Denehan explained that the second action is the Manager's claim to recover outstanding maintenance charge arrears, which relate both to routine maintenance costs and the costs of the Project. He said that the second action tenants had stopped paying the maintenance charge in its entirety, including the interim quarterly charges. He submitted that there is no justification for this and I have some sympathy with that position. It is Mr Denehan's

case that the invoices sent to the second action tenants fulfil the landlord's obligation under clause 4(2)(i). He submits that no particular format or particulars are prescribed by clause 4(2)(i) in relation to such a notice other than the sum to be paid. The invoices sent to the second action tenants are sufficiently clear to put a reasonable recipient, with knowledge of the terms of the lease, on notice that the sum payable in advance by quarterly instalments has increased.

135. Clause 4(i) of the Lease clearly anticipates that the amount of the interim charge specified in the second schedule will increase and will reflect the actual expenditure incurred by the lessors in the previous year. The clause requires the lessor to "serve upon the lessee a notice specifying that such revised and adjusted sum shall be deemed to be incorporated in part 4 of the second schedule hereto and such sum shall thenceforth be payable yearly by the Lessee" Although again, I have some sympathy with Mr Denehan's submission I cannot accept that an invoice for the interim service charges is sufficient for this purpose. Firstly, the notice is required, not to inform the tenant of the quarterly payment but to "deem" the new sum to be incorporated into the lease. Secondly, the amount to be specified is an annual and not a quarterly amount. Furthermore, and separately, the invoices include a demand for a contribution to a reserve fund. This cannot be correct where the lease makes no provision for the collection of such a fund. For those reasons and until proper notice is given I do not consider that the interim charges are recoverable.

136. So far as compliance with clauses 4(2)(c) and 4(2)(d) is concerned, it is Mr Denehan's case that the accounts prepared by Mr Bird are sufficient for the purpose. Mr Johnson disagrees. The requirement of clause 4(2)(c) is the provision to each lessee of an account of the maintenance charge payable by them showing credit for the advance payment and making a reconciliation. This then gives rise either to a duty to pay the balance or a credit towards the next advance payment. The requirement of clause 4(2)(d) is wholly different. It is a requirement to produce evidence of the maintenance charge of each year certified by the lessor or their agent. By clause 4(2)(f) a copy of the certificate is to be made available for inspection and by clause 4(2)(g) is to contain a fair summary of expenditure and outgoings. Having considered the accounts prepared by Mr Bird, I consider that as a matter of form they do provide

the requisite information to satisfy clauses (c) and (d) although the accuracy of the information contained may be undermined by my other findings.

Conclusion

137. In summary I find as follows:

1. Mr Maunder Taylor, as Manager, is in breach of his obligation under clause 5(7) of the leases, to provide central heating to the first action tenants' Flats and they are entitled to damages and other further relief to be determined;
2. That it is appropriate to make a final injunction requiring Mr Maunder Taylor, as Manager, to maintain a supply of hot water to the first action tenants' Flats;
3. That the cost of the internal works are not recoverable as service charge;
4. That the requirements of section 20 of the 1985 Act were fulfilled in respect of the original design for the heating and hot water system; alternatively that dispensation under section 20ZA of the 1985 Act is granted but only in respect of the boiler replacement works;
5. That a second consultation under section 20 of the 1985 Act was required in respect of the revised design for the common parts pipe work and that no dispensation of that requirement is granted; accordingly, those costs are limited to £250.00 from each leaseholder.
6. That the interim service charge costs from 1st July 2016 until 31st August 2017 are not payable until proper notice under clause 4(i) of the leases has been given;
7. For the avoidance of doubt, the leases make no provision for the accumulation of a reserve fund.
8. That it has not been proved that any service charges for the first period (up to an including the service charge year ending 30th June 2016) are recoverable.
9. That the first action tenants and second action tenants are entitled to recover the mistaken payments to the extent consistent with the above findings, to be agreed or in default of agreement for assessment by the court.

138. I will require the assistance of counsel on the form of orders required and on costs. In particular, I invite representations on whether it is appropriate for me to

prescribe how the Manager is to effect compliance with clause 5(7) of the lease and if so how.