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**FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)**

Case Reference : LON/00AH/LSC/2013/0268 & 0409

Property : 23B Oakfield Road, Croydon

Applicant : Abbeyladder Limited

Representative : Mr Timothy Deal- Counsel and Mr Christopher Case Managing agent

Respondent : David Champion

Representative : Mr Julian Spencer (retired solicitor) and Mr Dobson Surveyor

Type of Application : For the determination of the reasonableness of and the liability to pay a service charge

Tribunal Members : Ms M W Daley LLB (hons)
Mr I Thompson FRICS
Mr C Piarroux JP BSc

Date and venue of Paper Determination : 10 Alfred Place, London WC1E 7LR

Date of Decision : 02 December 2013

DECISION

Decisions of the tribunal

- (1) The Tribunal determines that the claim for insurance is reasonable and payable; save for a 10% reduction that the Tribunal have determined ought to apply to the element referable to the Applicant's claims handling.
- (2) The Tribunal determines that the management charges for the periods 2000-2012 in the range of £110.25- £155.19 were reasonable and payable, and that the management charges of £261.61 for the later years should be capped at £250.00 for each of the years in issue.
- (3) The tribunal determines that the cost of the minor repairs for each of the years in issue is reasonable and payable.
- (4) The Tribunal determines that the surveyor's fees of £1175.00 and £265.87 were not reasonable and payable. The Tribunal noted that the sum of £126.50 for 2009 was conceded on behalf of the Applicant as not payable as no invoice was produced. The Tribunal further determines that the cost of the fire safety inspection report was reasonable and payable.
- (5) The Tribunal considers that the cost of the major work ought to be reduced to reflect the standard of workmanship and the overall quality of the major works. The Tribunal have determined that an appropriate reduction to be applied for the major works is 30% and that the cost of the supervision of the major works should be reduced by 25%, to reflect the overall defects that were apparent at the property.
- (6) The tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The application

1. The Applicant sought a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Applicant in respect of the service charge years 2000-2011. The Applicant issued a Claim in the Croydon County Court. This matter was transferred to the Tribunal pursuant to an order of the Croydon County Court.
2. On 14 June 2013 the Applicant issued a separate Application pursuant to section 27A of The Landlord and Tenant Act 1985 for the year ending 29 September 2012 for the actual service charges, and for the estimated charges for the year ending 2013. At the Directions hearing on 20 June 2013, the Tribunal directions that the two matters be consolidated.

3. The relevant legal provisions are set out in the Appendix to this decision.

The background

4. The property which is the subject of this application is a one bedroom second floor flat situated in a converted building comprising three flats.
5. The Applicants hold long leases of the property which requires the landlord to provide services and the tenant to contribute towards their costs by way of a variable service charge. The specific provisions of the lease will be referred to below, where appropriate.
6. Directions were given on 14 May 2013 in respect of (LON/00AH/LSC/2013/0268) and in respect of the transferred application and on 14 June 2013 in respect of the Application number LON/00AH/LSC/2013/0409. The Directions provided that the matters should be consolidated and be listed for 19 and 20 August 2013.

The issues

7. The issues were identified as the reasonableness and the liability to pay the service charges for the years 2000-2011, and in respect of the year ending 2012 the buildings insurance, roof/external works, surveyors' fees (major works) and management fees.
8. The Respondent also raised as further issues, (i) whether part of the debt claimed by the Applicant was the responsibility of the previous leaseholder (ii) whether the claim was statute barred due to the provisions of the Limitation Act 1980.

The Hearing

9. At the hearing the Applicant was represented by Mr Timothy Deal, Counsel. Also in attendance on the Applicant's behalf was Mr Chris Case, managing agent. The Respondent Mr David Champion was assisted in his representation by Mr Julian

- Spencer a (retired) Solicitor, also in attendance on the Respondent's behalf was Mr Dobson a chartered surveyor.
10. At the start of the hearing, the Respondent requested an adjournment on the grounds that he had not been provided with a list of documents prior to the hearing bundle being prepared, accordingly the bundle could not be considered as an agreed bundle.
 11. Mr Spencer explained that there was reference in the bundle to an IVA agreement (in respect of the Respondent's bankruptcy) which had not been agreed. He also cited in his request for an adjournment the fact that one of the witness statements, the Respondent's witness Mr Dobson had pages missing, and given this, the Applicant had not had an opportunity to consider the full statement.
 12. The Respondent's request was opposed by Mr Deal, on the grounds that this matter ought to proceed to a full determination. He also had now received a complete copy of the witness statement of Mr Dobson; with the missing pages at the hearing (Mr Case did not take the point that the missing pages of the witness statement had caused him prejudice).
 13. In respect of the IVA, this had been included to demonstrate that notwithstanding Mr Champion's claim that part of the debt was the responsibility of the former tenant, he had acknowledged part of this debt by including this in his liabilities in the IVA; accordingly he could not now say that he was unaware that these sums were outstanding.
 - 14. The Tribunal refused the request for an adjournment, and stated that if issues relating to the documentation arose during the course of the hearing, then the Tribunal could grant a short adjournment to consider the issue, and that this rather than at the start of the hearing would be the appropriate moment to deal with the matter.**
 16. The Tribunal considered each of the disputed issues in turn.
 17. For the first year in issue 2000, the charges were:- the building insurance and the management fees. The Tribunal decided that where the dispute concerning the charge arose over more than one year, all of the sums due that related to this charge for the years in issue should be considered together.
 18. In the Applicant's statement of case, the maintenance charges was defined by the lease as being for the management of the Mansion and the maintaining and repairing and redecorating the premises, including repairs to the roof and the structure. Clauses 3 (b) (ii) and Clause 5 (d) and (e) dealt with the

repairing obligations and also the obligations upon the landlord to insure the premises.

19. The service charge year ended on 29 September and the Respondent's proportion of the lease was 29.55%.
20. The first issue was the building insurance, the Tribunal were informed that the building insurance for 2000 was £597.20 (the Applicant was unable to locate the certificates for this period) the Respondent's share of the insurance was £176.53. The Respondent's objection to this item was that the debt was the responsibility of his predecessor in title.
21. The Tribunal asked for details of how the insurance was arranged. Mr Case stated that the Applicant arranged the insurance through brokers, Princess Insurance Agencies. The property was grouped along with the landlord's other properties together as part of a property portfolio, for which the brokers obtained insurance. The brokers as part of their responsibility carried out research to ensure the premium was competitive based on the claims history of the property.
22. The Brokers were paid 10% for claims handling, Mr Case stated that the advantage of this was that claims could be dealt with quickly. The managing agents were also paid 10% this was for placing the insurance with the broker.
23. The insurance for the years was as follows:-
 - 2001 £623.06 (£184.18)
 - 2002 £770.10 (£227.64),
 - 2003 £937.09 (277.00),
 - 2004 £1140.81 (£337.22)
 - 2005 £1185.00 (£350.52)
 - 2006 £1297.42 (£383.52)
 - 2007 £1360.00 (£402.25)
 - 2008 £1519.02 (449.02)

24. For 2009 the insurance premium was in the sum of £1610.71. The respondent's share for 2009 was £476.13 and for 2010 sum insured was the same as the previous year, the Respondent's share was £449.02). For 2011 the figure was £1584.18. The Respondent's share was £468.26.
25. Mr Deal on behalf of the Landlord stated that it was not incumbent on the landlord to shop around for the cheapest policy; Mr Deal referred the Tribunal to the case of *Berrycroft-v- Sinclair Gardens Investment*. Mr Deal stated that the test was whether or not the cost for the insurance had been reasonably incurred. The Tribunal should focus on the reason why the landlord had chosen a particular policy, and consider whether the insurance was arranged in the normal course of business.
26. Counsel referred to *Havenrudge Limited -v- Boston Dyas Ltd 2 EJLR 73* in which Evan LJ considered that the requirement to obtain insurance did not mean that the fact that the landlord might have obtained cheaper insurance elsewhere meant that the cost of the insurance was unreasonable.
27. Mr Deal stated that the factors that needed to be considered were -(i) the insurance was placed by Princess who were independent broker (ii) that the broker obtained insurance by obtaining competitive quotes (iii) the landlord was not paid commission for placing the policy (iv) the fact that there was no link between Abbeyladder Limited and the brokers, meant that even though the insurance was not the cheapest, there was nothing to suggest that the arrangement was not "*a bargain at arm's length*" Accordingly the cost was still reasonably incurred.
28. Mr Case further stated that the Landlord had taken a reasonable approach by obtaining terrorism cover and further the Respondent had not produced any alternative quotations on a "like for like basis", given this, the Tribunal could determine that the cost of the insurance was reasonably incurred.
29. Mr Champion disputed receiving the demands for 2000 and 2001. He stated that the insurance was payable by the previous leaseholder, accordingly he was not liable for the cost of the insurance for that period.
30. Mr Champion stated that he was concerned about the manner in which insurance disputes were handled, for instance he had been forced to telephone the managing agents on many occasions to complain about a leaking roof. In 2009 when he had complained, he was informed by the managing agents that

he needed to pay his service charges, before he could claim insurance for the water damage. In respect of the insurance from 2002- onward to 2011 he was prepared to concede that the insurance was reasonable and payable.

31. Mr Spencer on behalf of the Respondent submitted that the debt was also subject to the Limitation Act 1980, and that in respect of the sums claimed in connection with the service charges any amount owed before 2004 was subject to the six year limitation period.

The Tribunal's decision

32. The Tribunal accordingly finds that the in respect of the insurance for 2000/01, the Landlord and Tenant (Covenants) Act 1995 applies, *section 3(1) of the act states (1) The benefit and burden of all landlord and tenant covenants of a tenancy- (a) shall be annexed and incident to the whole, and to each and every part of the premises demised by the tenancy and of the reversion in them, and (b) shall in accordance with this section, pass on an assignment of the whole or any part of those premises or of the reversion in them. (2) Where the assignment is by the tenant under the tenancy, then as from the assignment the assignee- (a) becomes bound by the tenant covenants of the tenancy except to the extent that (i) immediately before the assignment they did not bind the assignor or (ii) they fall to be complied with in relation to any demised premises not comprised in the assignment; and (b) becomes entitled to the benefit of the landlord covenants of the tenancy except to the extent that they fall to be complied with in relation to any such premises."*
33. The Tribunal determines that the provisions mean that the obligations to pay insurance have accordingly passed to Mr Champion.
34. The Tribunal noted that there was an issue as to whether the Limitation Act 1980 applied at all to this matter, however the Tribunal did not have to make a determination concerning this point as if the Respondent's representative was correct that the Limitation Act applied then the appropriate section was section 8, which applied to actions upon a speciality, for which the period was 12 years (unless a shorter period was specified).

35. In respect of the insurance for 2002-2011, the Tribunal determines that in accordance with the Respondent's concession, the cost of the insurance for the period 2002 to 2011 was reasonable and payable.
36. The Tribunal noted that although the Respondent had purchased the property in 2002, the provision was covered by the Covenant Act 2005, in that the assignee that is Mr Champion was deemed to assume liability for the outstanding sums owed by the predecessor in title. (The previous owner) accordingly Mr Champion had on purchase of the premises assumed responsibility for the debt.
37. In respect of the insurance for 2012- 2013 the Tribunal noted that the cost of the insurance included 10% commission or as described by the Applicant a claims handling fee. However the Applicant did not specifically set out the nature of the claims handling work which was carried out. There was also the issue that the Applicant actually refused to handle the Respondent's claim. For this reason the Tribunal find that this element of the charge should be discounted. **The Tribunal determine that the claim for insurance is reasonable and payable, save for 10% which is the element referable to the claim's handling.**

The management fees

38. The Tribunal were referred to clause 3 (b) (2) of the lease which provided that the landlord could under the provisions of the maintenance charge make a charge for "*the management of the mansion*"
39. The Tribunal asked for information concerning the management agreement between the Applicant and the managing agents.
40. Mr Case explained that the Landlord was a retired solicitor, and that he Mr Case had agreed to manage her property portfolio. The agreement as such was a verbal agreement which had been for an initial period of three months. This agreement was expressed as an agreement which could be terminated at any time.
41. Mr Case accepted that Abbeyladder and Hampton Wick shared business premises; however this was in keeping with the nature of the landlord, in that the Landlord, who was an individual did not have separate business premises. Mr Case stated that the management fee of Hampton Wick Estates Limited was a fixed

sum per unit per annum as Mr Case believed this to be the “fairest method”.

42. The duties carried out by the managing agent were as follows -:
Collection of ground rent and service charges, making payments to suppliers etc., preparing and submitting statements and accounts at agreed intervals, dealing with tenants’ queries, arranging and supervising maintenance contracts, making regular visits to the property, and dealing with day to day repairs. This was a summary rather than an exhaustive account of the managing agent’s duties.

43. The managing agents fees were as follows-:

Years in issue	Management fee
2000	£375.00 (Respondent’s share) £110.25
2001	£525.00 (Respondent’s share) £155.19
2002	£525.00 (Respondent’s share) £155.19
2003	£525.00 (Respondent’s share) £155.19
2004/2004/2005/2006/2007/2008/ 2009/2010/2011	£885.00 (Respondent’s share) ££261.61
2012	£885.00 (Respondent’s share) ££261.61
2012	£885.00 (Respondent’s share) ££261.61

44. Mr Case was asked about the schedule of visits to the premises. He stated that he visited the premises at least twice a year. His last visit having been on the Friday before the hearing.

45. Mr Spencer noted that this information was not set out in the bundle. Mr Case accepted that this was the case. He stated that he made diary notes of his visits to various premises, and that the entry for the visit was in his diary. He stated that prior to that visit he had visited the premises in February 2013. He was asked in cross-examination, whether he spoke to any of the leaseholders whilst he was there. Mr Case stated that he normally only inspected the common parts.
46. The Tribunal noted that there were considerable arrears on the Respondent's account. The Tribunal wanted to know what steps the Applicant had taken to manage the arrears at the property. Mr Case stated that the managing agents had not previously been instructed by the freeholder to take action to recover the arrears, and that it had taken a long time to persuade the freeholder that proactive management of the arrears was in the best interest of all the parties and the property, and also ensured that there were sufficient funds available to provide the necessary services.
47. Mr Champion in his response had four objections to the charges; firstly he was concerned that he did not know the basis upon which the management charges had been calculated. Secondly he did not know if the cost of management was reasonable. Mr Champion also disputed the quality of management. Mr Champion's final objection was the fact that the landlord and managing agents shared premises, and in his view this suggested that the relationship was not at arm's length.
48. Mr Spencer on the Respondent's behalf also considered that the issues in relation to limitations also applied in respect of the management charges. (However insofar as the Tribunal had made a determination on this issue in relation to the insurance, this decision equally applied to this issue.)
49. Mr Case was asked about how he arrived at the charges, he stated that Hampton Wick used cost per unit. His fee was arrived at by considering the range of fees quoted by other managing agents in the open market and arriving at a comparable but competitive fee. Mr Case explained that his fees did not include VAT as Hampton Wick was not registered for VAT. His fees had originally been £125.00 per unit x 3. The fee was then adjusted to reflect each leaseholder's individual percentage contribution.
50. In respect of major works, the managing agent's dealt with the works at a different rate (as was common practice for managing agents) Major works were dealt with on a percentage basis.

51. Mr Champion in response stated that management fees should not be charged as there was “precious little management” being undertaken, and the managing agents were already paid commission in relation to the insurance.

The tribunal’s decision

52. The Tribunal have considered the range of charges, and has noted that although Mr Champion raised a number of issues in relation to the charges, he failed to put forward any alternative figures, or any basis for considering the fee of itself to be unreasonable. Although Mr Champion disputed the reasonableness of the services carried out, he did not dispute that there was a need for such services to be provided.
53. The Tribunal having inspected the property noted that some of the Respondent’s concerns about the condition of the property were justified. Nevertheless the Tribunal noted that the respondent had not provided alternative quotes and that the charges were within the range of charges, that were considered reasonable, based on the Tribunal’s knowledge and experience. (The range being between £200.00 for smaller properties in the outer London area, which generated fewer invoices and £300.00 for properties which have a range of management issues).
54. The Tribunal considers that a reduction (albeit modest) to reflect the condition of the property, and the fact that the property generated few invoices should be applied. The Tribunal determine that the management fee should be capped at £250.00 per unit (a reduction of £11.61). **The Tribunal determines that the management charges of £110.25-£155.19 was reasonable and payable, and that the management charges of £261.61 (over the £250.00) should be reduced to £250.00 for each of the years in issue.**

The Minor periodic repairs

55. The Applicant had provided the Tribunal with copy invoices in relation to the repairs. The first invoice was for the period 2001, and related to minor works to the drains in the sum of £464.12. The work was undertaken by Drainco, and a further invoice in the sum of £266.00 in relation to undertaking work to the guttering.

56. The Tribunal asked the managing agents for details of how they came to the decision to instruct a particular contractor in relation to the work undertaken.
57. Mr Case stated that the managing agents used local companies, whom they had knowledge of based on the fact that they had used them over the years.
58. The Applicant had included in the bundle a number of invoices, for various repairs which had been carried out during the period in issue, which included work to the roof, drains and door locks, and for cable damage caused by squirrels.
59. Mr Case also made a concession in respect of an invoice in the sum of £126.50 which had been omitted from the schedule served in preparation of the tribunal hearing; as a result of this omission, Mr Case had decided that no charge would be made in relation to this item.
60. Mr Champion in his schedule in response to the claim, stated that he was unaware of the cost of both of these items, and that the demand had been served on the previous leaseholder Ms Galbraith. As the invoice had not been served on him in a timely manner it was now out of time.
61. In respect of drainage work which was carried out in 2004 in the sum of £252.57, Mr Champion had no knowledge of this work having been carried out. This was also the case in respect of other subsequent work.
62. Mr Champion also produced a witness Miss Anum Rauf who was a tenant/leaseholder of a flat at the property and had lived at the property since 2004, prior to this she had visited her aunt, who had lived at the property, and her evidence was that no work had been carried out at the property during this period.
63. Ms Rauf stated that since she had lived at the property there had always been a water and damp issue in addition she had stopped working since 2008, to care for her daughter, as such she would have noticed if repairs were carried out at the property. Mr Champion also stated that the managing agents had not notified them of work that was being undertaken at the property.
64. The Tribunal noted that amongst the invoices for repairs was an invoice from Collier Stevens dated 17.09.2004, in the sum of £1175.00. The Tribunal asked for details of why this sum had been incurred.

65. Mr Case informed the Tribunal that the sum had been incurred in respect of the service of an initial Section 20 notice. The Applicant had subsequently re-served due to the passage of time, as the major work project had stalled as the managing agents were unable to obtain instructions from the Applicant to carry out the work, or obtain funding from the leaseholders. The Tribunal noted that there were no statements of estimates or copies of the notice that had been served.
66. The Tribunal queried what value the tenants had derived from this work. Mr Case accepted that the tenants had derived very little value from this inspection.
67. There was a further invoice from the surveyors in respect of an inspection undertaken in preparation of schedule of work. The cost of this was £265.87.
68. The last item in relation to this work was for periodic inspections carried out by Carlton Fire and Safety Services Limited. These inspections were in relation to fire safety at the premises. Mr Case considered these charges to be reasonable based on his comparison with other consultants who carried out the same services. The Applicant relied upon an invoice dated 23 August 2010 in the sum of £340.75.
69. Mr Champion maintained the same objection in relation to this work, primarily that he was not made aware that the inspections were to be carried out, and as such queried whether in the event of an inspection having been carried out, there was no information about whether the report had made any recommendations and whether these had been carried out.

The tribunal's decision

70. The Tribunal noted that the small items of repair were largely related to the drains and minor works to the gutters and pipes. The Tribunal noted that the Respondent's objection to these items was on the basis that he had not been notified in advance that the work was to be carried out, and he had also not noticed when the work was being undertaken, as a result, Mr Champion was not satisfied that the work had been undertaken.
71. The Tribunal noted that the small items were mainly related to external repairs. Notwithstanding the Respondent's assertions that he would have been aware, if repairs had been carried out. The Tribunal do not accept this submission as there is no suggestion that there is any reason to believe that the invoices are not genuine. The Tribunal have considered the invoices, and

find that the items for the years 2000 to 2010(subject to the specific invoices set out below) were reasonable and payable.

72. The Tribunal at the hearing gave directions for copies of the specification of work (in respect of the major works) that was prepared to be served on the Respondent and the Tribunal. A copy of the specification together with other documents was served by the Applicant on 2 September 2013.
73. The Tribunal having considered the cost of the abortive specification, prepared for the service of a section 20 notice (which was served in 2005) in the sum of £1175.00, and the cost of the surveyors visit to the premises in 2008 in the sum of £265.87 determines that there is no evidence that the leaseholders derived any benefit from these costs accordingly the Tribunal find that these cost was not reasonable or payable.
74. In relation to the fire safety inspection the Tribunal asked for additional information such as details of the cost for the visit, and any information concerning the work that was carried out. By letter dated 2 September 2013, the Tribunal received a copy of the Fire Risk Assessment dated 25.05.2010 prepared by Carlton Fire & Safety Services Limited.
75. The Tribunal having seen sight of this report are satisfied that the cost of obtaining the report in the sum of £340.75 was reasonable and payable.

The Major works

76. The Respondent raised two objections to the major works these were that the Applicant had not complied with section 20 of the Landlord and Tenant Act 1985 and further that the sum demanded for the major work was not reasonable given the quality of the repairs.
77. The Tribunal were referred to the service charge statement for the year ending 29 September 2012, the account set out that the charges were in the sum of £9600.00 for the roof and external work and £945.00 for the associated surveyors fees.
78. Mr Case referred the Tribunal to a copy of the 23.11.2010 notice of intention served under Section 20 of the Landlord and Tenant Act 1985. The notice set out that the work to be undertaken was the replacement/strengthening of roof timbers and the replacement of roof covering, together with upgrading the insulation to comply with current building regulations together with replacement of rainwater goods, repair and

re-decoration of window and external doors, re-sealing perimeters of UPVC window frames, repair and redecorate window sills, repair all defective brickwork and repairing the cracks to the rendering.

79. Mr Champion did not accept that the Section 20 procedure had been complied with. The Tribunal asked for Mr Case to set out how the Section 20 procedure had been complied with. Mr Case stated that the notice had been served by hand undercover of a letter dated 31/10/2012. This had been hand delivered personally by Mr Case. Mr Case stated that there was no doubt in his mind that he had delivered the notice to Mr Champion as he had asked for him by name.
80. The Tribunal were informed that although considerable time had elapsed between the Applicant accepting the tender provided by Fahey Contracts, nevertheless Fahey Contracts had confirmed that they were prepared to carry out the work for the same price as their tender dated October 2011.
81. No observations were received from the tenants, and following this the tenants including Mr Champion were informed by letter dated 31 January 2012, that the Applicant intended to award the contract to Fahey Contracts. Mr Case stated that this was yet a further opportunity to make observations.
82. The work commenced in September 2012 and the work finished in February 2013, prior to payment being made, each item of work was signed off and certified by surveyors.
83. The Total cost for the roof/external decoration and repairs was £36360.00 Internal Common Parts £3500.00, the cost for the carpets in the sum of £2500.00 together with surveyors fees of £2500. The Respondent's share of the cost was 29.56%
84. Mr Case in answer to questions from the Tribunal confirmed that he had seen the premises when he had delivered the hearing bundle to the premises, prior to this hearing. He stated that he was happy with the work. Ms Rauf (who gave evidence on the Respondent's behalf), stated that she had received the estimates however she supported Mr Champion in his contention that the work was not carried out to a reasonable standard.
85. The Tribunal were referred to the evidence of Mr Dobson a chartered building surveyor who had inspected the premises and had prepared a report and witness statement on behalf of the respondent.

86. The witness statement dealt with the condition of the property on 28 May 2012. In his report he noted that the exterior and internal common parts were in very poor condition and that there was no evidence of any maintenance.
87. Mr Dobson was able to comment on the quality of the workmanship as he had seen the property on the Friday before the hearing. He stated that his main concern about the quality of the work was that the condition of the paint preparation was poor. In his opinion this was indicative of a lack of proper supervision.
88. Mr Dobson stated that he would have been ashamed to hand over this work had he supervised the job. Mr Dobson noted that although scaffolding was in place the chimney stack had not been repainted. This was a job which would not now be possible as the scaffolding was no longer in place, and as such it represented a loss of an opportunity.
89. The Tribunal inspected the property on 20 August 2013 and noted that the property was as described in the Respondent's report.

The Decision of the Tribunal

90. The Tribunal following the inspection accepted the criticisms made by Mr Dobson that the quality of the work was not uniformly satisfactory. The Tribunal noted that items 1-11 were carried out to a reasonable standard; however the Tribunal considered that item 17 on the specification which related to internal work had not been carried out.
91. The Tribunal noted that the Respondent had derived some benefit from the work however the overall standard of the work was such that it was reasonable for a deduction to be applied. The Tribunal have taken a broad brush approach and had made a deduction of 30% for the cost of the work (in the sum of £7260.00 and has made a further deduction to the surveyors fees for poorly prepared specification and lack of supervision.
92. The Tribunal noted that minor matters such as lack of mastic had not been attended to, and this had potential undermine the effectiveness of the work in the long run, and as such this means that in the absence of remedial action this repair will fail. The Tribunal considered that the inadequate workmanship required a deduction of 25% of the cost of the surveyor's fees; this produced a figure of approximately £3830.00.

Application under s.20C and refund of fees

93. In the Application, the Applicant made an application for a refund of the fees that he had paid in respect of the application/hearing¹. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicant

94. In the application form and in the statement of case, the Applicant applied for an order under section 20C of the 1985 Act. Having considered the submissions from the parties and taking into account the determinations above, the tribunal determines that the Respondent has succeeded in reducing service charges in part, as a substantial reduction was achieved in relation to the major works,. The Tribunal noted that but for the hearing at which these issues were considered, these charges would not have been re-credited under the terms of the lease, accordingly the Tribunal does not consider that it is just and equitable to make an order under section 20C of the 1985 Act, so that the Applicant.

Name: Ms M W Daley

Date: 02.12.2013

¹ The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 SI 2013 No 1169

Appendix of relevant legislation

Landlord and Tenant Act 1985

Section 18

- (1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent -
 - (a) Which is payable, directly or indirectly, for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and
 - (b) the whole or part of which varies or may vary according to the relevant costs.
- (2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.
- (3) For this purpose -
 - (a) "costs" includes overheads, and
 - (b) costs are relevant costs in relation to a service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or in an earlier or later period.

Section 19

- (1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period -
 - (a) only to the extent that they are reasonably incurred, and
 - (b) where they are incurred on the provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;and the amount payable shall be limited accordingly.
- (2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A

- (1) An application may be made to a leasehold valuation tribunal for a determination whether a service charge is payable and, if it is, as to -
 - (a) the person by whom it is payable,
 - (b) the person to whom it is payable,
 - (c) the amount which is payable,

- (d) the date at or by which it is payable, and
 - (e) the manner in which it is payable.
- (2) Subsection (1) applies whether or not any payment has been made.
- (3) An application may also be made to a leasehold valuation tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -
- (a) the person by whom it would be payable,
 - (b) the person to whom it would be payable,
 - (c) the amount which would be payable,
 - (d) the date at or by which it would be payable, and
 - (e) the manner in which it would be payable.
- (4) No application under subsection (1) or (3) may be made in respect of a matter which -
- (a) has been agreed or admitted by the tenant,
 - (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement, to which the tenant is a party,
 - (c) has been the subject of determination by a court, or
 - (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
- (5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

Section 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—
- (a) complied with in relation to the works or agreement, or
 - (b) dispensed with in relation to the works or agreement by (or on appeal from) a leasehold valuation tribunal.
- (2) In this section “relevant contribution”, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.
- (3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.
- (4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

- (a) if relevant costs incurred under the agreement exceed an appropriate amount, or
 - (b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.
- (5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—
- (a) an amount prescribed by, or determined in accordance with, the regulations, and
 - (b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.
- (6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.
- (7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.]

Section 20C

- (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.
- (2) The application shall be made—
- (a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
 - (aa) in the case of proceedings before a residential property tribunal, to that tribunal;
 - (b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;

- (c) in the case of proceedings before the Upper Tribunal, to the tribunal;
 - (d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.
- (3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

Leasehold Valuation Tribunals (Fees) (England) Regulations 2003

Regulation 9

- (1) Subject to paragraph (2), in relation to any proceedings in respect of which a fee is payable under these Regulations a tribunal may require any party to the proceedings to reimburse any other party to the proceedings for the whole or part of any fees paid by him in respect of the proceedings.
- (2) A tribunal shall not require a party to make such reimbursement if, at the time the tribunal is considering whether or not to do so, the tribunal is satisfied that the party is in receipt of any of the benefits, the allowance or a certificate mentioned in regulation 8(1).

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

- (1) In this Part of this Schedule “administration charge” means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
- (a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
 - (b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
 - (c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
 - (d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.
- (2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

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

- (4) An order amending sub-paragraph (1) may be made by the appropriate national authority.