



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

**Case Reference** : CHI/43UC/LSC/2017/0059  
CHI/43UC/LDC/2017/0042

**Property** : 39-41 Ridgeway, Epsom, Surrey KT19 8LD  
and 81-33 Manor Green Road, Epsom,  
Surrey KT19 8LW

**Applicant** : M&J Partners Ltd (landlord)

**Representative** : Mr Martin Horne, solicitor's agent

**Respondents** : (1) James Earlby and Rebecca Earlby (39  
Ridgeway)  
(2) Mr B Wells (41 Ridgeway)  
(3) Hamish Everett (81 Manor Green  
Road)  
(4) Matthew Saunders (83 Manor Green  
Road)

**Representative** : In person

**Type of Application** : Landlord and Tenant Act 1985 s.27A (ser-  
vice charges) and  
Landlord and Tenant Act 1985 s.20ZA  
(dispensation with consultation require-  
ments)

**Tribunal Members** : Judge Mark Loveday  
Mr K Ridgeway

**Date and venue of  
hearing** : 18 January 2018, The Law Courts, Staines

**Date of Decision** : 23 March 2018

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**DETERMINATION**

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We exercise our powers under Rule 50 to correct the clerical mistake, accidental slip or omission in our Decision dated 23 March 2018. We have corrected our original Decision to reflect the matters raised in the Respondent's letter of 5 April 2018, the Applicant's letter of 17 May 2018 and to correct errors in the paragraph numbering of the original decision. The corrections to the text are shown in bold. For the avoidance of doubt, the corrections made on 9 April 2018 are hereby revoked.

Signed:

5 June 2018

## Background

1. These are linked applications to determine liability to pay service charges under s.27A of the Landlord and Tenant Act 1985 (“LTA 1985”) and to dispense with statutory consultation requirements under s.20ZA LTA 1985. The matter relates to four flats in a block at Epsom in Surrey. By applications dated 27 June 2017, the Applicant landlord sought a determination in respect of liability to pay interim service charges for the 2016/17 and 2017/18 service charge years and dispensation in respect of major works which were proposed at that time. It is a feature of this case that the applications followed a previous decision of the Tribunal dated 8 March 2017 which determined *inter alia* the liability of three of the current Respondents to pay interim service charges for the 2016/17 service charge year.
2. Directions were given on 30 June and 17 August 2017. On the latter occasion, the application to determine liability for the 2016/17 interim charges was struck out, since the same issue had already been determined by the previous Tribunal.
3. The remaining issues were listed for hearing on 18 January 2018, when the Tribunal also inspected the premises. At the hearing, the Applicant was represented by Mr Martin Horne, a solicitor’s agent, and Mr Saunders presented the case for the Respondents. The Applicant relied on its Statement of Case<sup>1</sup> and a skeleton argument from Mr Horne which was provided at the hearing. Mr Michael Ellis, Director of the managing agents PIMS & Co Ltd gave evidence, relying (in part) on his witness statement dated 20 September 2017. Mr Ellis was cross examined in some detail by Mr Saunders. The Respondents relied on two Statements of Case<sup>2</sup> and a witness statement of Mrs Rebecca Earlbay dated 4 September 2017.
4. The essential facts and history are not in dispute and are set out below.

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<sup>1</sup> Described as “*Applicant’s Reply to the Lessee’s Case Opposing the Application*”, undated.

<sup>2</sup> Described as “*Statement of Case*” and “*Respondent’s reply to Applicant’s Response*”, undated.

## **Inspection**

5. The premises are located on a corner plot in a residential area of Epsom. They comprise a two-storey purpose-built block of four flats c.1930 in gardens which are shared with adjacent blocks. Two of the flats have the street addresses of 81 and 83 Manor Green Road and two have the street addresses of 39 and 41 Ridgeway. The grounds are largely laid to grass, although there are flowerbeds shrubs and trees, and parts to the rear and side are overgrown.
  
6. The building itself is of conventional rendered brick construction under a pantile roof with a mix of window styles. The common parts and stairs are basic and decorations internally were in fair condition. The external decorations and render ranged from fair to poor, with some extensive patches of failed render. Rainwater goods were in parts poor, leaking and evidently blocked. There was an area on the left hand side of the property with a large area of failed render (approx. 2x2m) and some missing brickwork, open jointed woodwork etc. A visual inspection from ground floor level suggested that ridge tiles to the roof had been repaired in recent times, and there were no obvious signs of loose or missing tiles. Access to the right hand elevation was limited by plant growth. However, part of the brickwork around the side addition was coming away from the wall and there was a large open crack.

## **The Lease**

7. Copies of the leases for 81 Manor Green Road (dated 24 October 2006) and 83 Manor Green Road (dated 16 June 2005) were included in the bundles. In summary, there is an obligation at Sch.3 para 2 to pay an Interim Charge by equal payments in advance on 24<sup>th</sup> June and 25<sup>th</sup> December in each year. By para 1(3), the Interim Charge is defined as "such sum to be paid on account of the service charge in respect of each accounting period as the auditors of the Lessor or the Managing Agents of the Lessor shall specify at their discretion to be a fair and reasonable interim payment". The Service Charges are in turn defined in paras 1(1) and

1(2) by reference to the landlord's relevant costs expended "in carrying out his obligations under clause 5" and certain other specific costs. The Tribunal will return in more detail to those provisions below.

8. The service charge apportionment under each lease was 25%.

**Service charges: generally**

9. In relation to the 2017/18 service charge year, the Application originally sought a determination that the lessees were each liable to pay £1,559 by equal half yearly instalments on 25 June 2017 and 25 December 2017. This was based on a detailed budget for relevant costs of £7,795 set out in the Application itself. However, the budget was amended on 4 September 2017 to seek payment of £1,724. The revised budget included the following relevant costs:

General repairs	£1,000
Cleaning	£1,200
Garden and edges cutting and cleaning	£1,100
Electricity	£200
Reserve	£500
Management commission / £599 x 4	£2,396
<b><u>Accountant fees</u></b>	<b><u>£500</u></b>
Total	£6,896.00

10. In the previous proceedings, the Tribunal considered a number of arguments that various heads of relevant cost (such as cleaning and gardening) were not recoverable under the terms of Sch.3 to the Lease. However, on this occasion the Respondents' Statement of Case does not raise any argument that the service charges are not contractually recoverable and no submissions were made by Mr Saunders to this effect at the hearing. The sole issue is therefore whether the interim service charges for 2017/18 based on the revised budget are reasonable in amount under s.19(2) Landlord and Tenant Act 1985.

11. In relation to s.19(2), the service charge arguments focussed on the estimated relevant costs under the above headings. When deciding whether the charges were reasonable, the Tribunal adopts the two-stage approach endorsed by the Upper Tribunal in the recent case of *Waalder v Hounslow LBC* [2017] EWCA Civ 45; [2017] H.L.R. 163, namely (i) whether the landlord's decision-making process was a reasonable one, and (ii) whether the outcome which the decision produced was a reasonable one. In *Waalder*, it was stressed that in considering whether the landlord's final decision is a reasonable one, the Tribunal must accord the landlord what, in other contexts, is described as a "margin of appreciation". The Tribunal considers this is particularly important consideration when dealing with budgets and interim charges under LTA 1985 s.19(2)<sup>4</sup>. As the previous Tribunal stated at para 75 of its decision, the test is what it was reasonable for the Applicant to budget for in this particular service charge year.

#### **Service charges: General repairs (£1,000)**

12. The first element of the estimated relevant cost relates to the provision for general repairs for 2017/18. The previous Tribunal found it was reasonable to budget for £1,000 for General Repairs in the 2016/17 service charge year: see determination at para 75.
13. In essence, the Applicant invited the Tribunal to find that a provision for General Repairs of £1,000 was again reasonable in the 2017/18 service charge year.
14. Mr Ellis gave evidence about the budgetary process involved in arriving at the figure of £1,000 for general repairs. The budget had been prepared by a member of staff at PIMS, but Mr Ellis had personally checked and approved it. The starting point was the budget for 2016/17 (as approved by the previous Tribunal). However, the agents then considered whether this should be adjusted to reflect the expected level of works in 2017/18. The General Repairs budget reflected the size of the property and PIMS's experience with repair costs for other similar properties under management (the firm managed 8 other properties). When asked by the Tribunal, Mr

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<sup>3</sup> Albeit that *Waalder* was a case under the differently worded provisions of LTA 1985 s.19(1).

<sup>4</sup> As opposed to final or balancing service charges under LTA 1985 s.19(1).

Ellis stated that he was familiar with Pt.8 of the RICS Service Charge Residential Management Code (3<sup>rd</sup> Ed, 2016) in respect of budgeting, and in particular the requirement at para 7.3 to base budgets “due diligence and professional expertise” to assess costs. He considered the agents had met that requirement. When cross-examined by Mr Saunders, Mr Ellis accepted that PIMS was not a member of any professional management body. His firm had looked at the minimum cost for repairs that might “pop up” during the 2017/18 service charge year and the previous budget, and it had also considered quotations for minor repairs to other properties. It used all this information to arrive at estimated general repairing costs for 2017/18. In fact, the budgeted figure seemed to have proved about right, since the Applicant had already incurred £600-£700 in carrying out general repairs during that part of the 2017/18 service charge year up to the date of the hearing. Mr Ellis did not yet know the total relevant cost of repairs incurred in the previous 2016/17 service charge, since the accounts had not been drawn up.

15. The Respondents argued that no general repairs had been carried out to the premises since 2014: Statement of Case p.4. In fact, in 2016 the lessees had themselves paid for repairs to a roof which had been damaged in a storm. Work had recently been carried out by the Applicant because of enforcement action by the local authority. However, the Respondents found it difficult to quantify what a reasonable provision would be for general repairs. In their Statement of Case they invited the Tribunal determined such sum as it thought fit, an approach endorsed by Mr Saunders at the hearing.
16. The Tribunal reaches the following conclusions in respect of the liability to contribute to the estimated relevant cost of general repairs in 2017/18:
  - (1) The Tribunal is satisfied the landlord’s decision-making process was a reasonable one, in the light of the relatively modest sums involved. The Applicant relied on a firm of experienced managing agents to prepare a budget, albeit agents who were not members of any recognised professional body. Those agents made an independent assess-

ment of costs to be incurred in 2017/18 (i.e. £1,000) by reference to previous budgets and costs incurred in relation to other similar properties. The agents were aware of and broadly complied with the RICS guidance on budgeting.

- (2) The Tribunal was not provided with any evidence about the cost of repairs for such a block. But having inspected the property, the Tribunal considers there is evidence of a need for minor works to rain-water goods, paths, hallways, doors, roof, elevations etc. which would not be covered by major works. In the Tribunal's own experience, a provision of £1,000 a year for such works does not seem excessive
- (3) The Tribunal does not consider the actual history of repairs carried out is relevant to the question of whether it was reasonable to make a provision for £1,000 in 2017/18. It is of course the case that the cost of any works undertaken might be challenged under LTA 1985 s.19(1)(a) or (b), but such arguments can only be challenged once the landlord has incurred the cost of those works and final 2017/18 service charge accounts are drawn up.

17. The Tribunal therefore concludes the Respondents are liable to contribute to the £1,000 estimated relevant costs of general repairs in 2017/18.

**Service charges: Cleaning (£1,200)**

18. The second element of the estimated relevant cost relates to the provision for cleaning for 2017/18. The previous Tribunal found it was reasonable to budget for £1,500 for cleaning and gardening in the 2016/17 service charge year: see determination at para 75.
19. The Applicant's case was that a provision of £1,200 was reasonable under LTA 1985 s.19(2). Mr Horne suggested that cleaning took place fortnightly and he referred to emails from the contractors Merrymaids which confirmed that they (i) charged £50 per visit (inclusive of VAT) including travel time and (ii) cleaned every fortnight on a Monday: Statement of Case p.2. The Applicant further referred to Merrymaids' published rates



of £13 per hour for a domestic clean but argued that the rates would be higher for a commercial clean such as this.

20. Mr Ellis stated that the agents had chosen Merrymaids as a result of a tendering exercise. Contractors had been invited to visit and give a quotation, which they had done, and the agents had tried to look for the cheapest quotation. The budget for 2017/18 was based on Merrymaids' fees charged at the time. When cross-examined, Mr Ellis agreed the figure of £1,200 represented two visits a month. He admitted there was no written contract with Merrymaids, but that they had been retained based on their quotation. Mr Horne contended that the sum of £1,200 was a reasonable provision for cleaning.

21. The Respondents argued that no cleaning of the communal areas had been carried out from October 2016 to 19 June 2017: Statement of Case p.5. Merrymaids came from Merstham in Surrey, and the charge of £50 per visit + VAT was excessive for cleaning 18.5m<sup>2</sup> of floors and skirting boards and one small window sill. The Respondents relied on two email estimates from local cleaning companies for cleaning the common parts (both dated August 2017), namely Jamie Hall Cleaning, which quoted a rate of £18 per hour and Marys Cleaning, which quoted a rate of £12 per hour. A reasonable annual charge for fortnightly cleaning would be £520, namely 26 visits @ £20/hr.

22. The Tribunal reaches the following conclusions in respect of the liability to contribute to the estimated relevant cost of cleaning in 2017/18:

- (1) The Tribunal accepts the evidence of Mr Ellis that there was originally a basic tendering exercise in respect of the cleaning contractors. It was not unreasonable to base the budget for 2017/18 on the actual cleaning charges made by the contractors at the date of the budget.
- (2) The outcome produced, namely a liability of £1,200 for cleaning, is not obviously excessive for a block of this kind. Having inspected the common parts, the Tribunal considers one could reasonably anticipate that the block would require at least an hour a week for cleaning. As to what a reasonable hourly rate would be, the Respondent

suggested £20 per hour for non-domestic cleaning work would be appropriate, which produces a figure of £1,040 a year. On this basis, there is very little difference between the parties about what a reasonable provision for cleaning costs would be. Applying the 'margin of appreciation' principle above, a figure of £1,200 a year is not obviously excessive for cleaning costs.

(3) For the same reason, Merrymaid's need to include travelling costs in its charges does not seem to make much (if any) difference.

23. The Tribunal is concerned about the lack of any formal written contract with the cleaning contractors in this case. At the stage of preparing a budget and assessing interim charges in advance, the lack of a contract is not relevant to questions under LTA 1985 s.19(2). However, it may become an issue in the event of any challenge on the basis that relevant costs have not been reasonably incurred under s.19(1)(a).

24. The Tribunal therefore concludes that the Respondents are liable to contribute to the £1,200 estimated relevant costs of cleaning in 2017/18.

#### **Garden and edges cutting and cleaning £1,100**

25. The third element of the estimated relevant cost relates to the provision for gardening for 2017/18. The previous Tribunal found it was reasonable to budget for £1,500 for both cleaning and gardening in the 2016/17 service charge year: see determination at para 75. The separate provision for gardening was therefore a considerable increase on these previously combined costs.

26. The Applicant's case was that a separate provision of £1,100 in the 2017/18 budget for gardening was reasonable under LTA 1985 s.19(2).

27. Mr Ellis stated that the agents had previously gone through a similar process of "market research" for gardening contractors to the one undertaken for cleaning. The gardener attended twice a month for much of the year, but once a month in the winter. The Applicant had in fact changed

gardeners during the 2017/18 service charge year after the previous gardener said it would not continue at the old rates of pay. The current contractor was ED Gardeners, which was based in Epsom. The 2017/18 budget was simply based on the amounts the previous gardener charged at the time.

28. The Respondents argued there was no maintenance of the garden until 20 July 2017, when the first grass cutting took place. The Applicant had told the previous Tribunal that they used a firm called "Green Thumb" on an *ad hoc* basis. It appeared the Applicant had fallen out with these contractors. By early 2017, the Respondents had become tired of the lack of gardening and paid their own contractor to cut the grass and clear overgrown hedges. This continued fortnightly. The Applicant's contractor had cut the grass three times, taking less than an hour to do so (the Respondents gave further details of their gardener in their Reply, stating that he was paid £40 per hour, attending on six occasions between 25 April and 14 July 2017). The Respondents also produced alternative email quotations for gardening costs dated August 2017 from Mr Ian Dean (£20 per hour) and The Greenkeeper Landscaping Ltd (£27.50 per hour + VAT = £33 per hour). The Respondents argued a reasonable charge for gardening should be £600pa, based on sixteen 1 hr visits per year between March and October (8 months) at £30 per hour and 4 hours a year for trimming and pruning hedges etc: Statement of Case p.5-6.

29. The Applicant was critical of the Respondents' evidence. No invoices had been produced to support the contention that the lessees had been forced to retain their own gardener. Moreover, the Respondents' alternative quotations for gardening services were inadequate. They did not identify the time that would be spent on site or the total cost involved.

30. The Tribunal reaches the following conclusions in respect of the liability to contribute to the estimated relevant cost of gardening in 2017/18:

- (1) In respect of reasonableness under LTA 1985 s.19(2), the Tribunal again accepts the evidence of Mr Ellis that there was a basic tendering exercise in respect of the gardening. The Tribunal also accepts

that estimating gardening costs for 2017/18 on the costs charged by the then contractors was also reasonable.

- (2) The outcome which this exercise produced, namely an estimated cost of £1,100 for gardening, is not obviously excessive for a block of this kind. Having inspected the grounds, it was not unreasonable to expect a gardener to attend on 16 occasions throughout the year (as appeared to be agreed). Having inspected the grounds, the Tribunal considers it would be realistic to expect a contractor to be there for an average of 2 hrs per visit to cut the grass and weed. There would be a need for perhaps two longer stints a year for pruning, tree care etc. for which a provision would also have to be made. As to what a reasonable hourly rate would be, the Respondents suggested that £30 per hour for a gardening contractor would be appropriate, although they admit paying their own gardener £40 per hour. On the Respondents own rates per hour, routine gardening costs could be as much as  $32 \times £40 = £1,280$ , not including pruning and tree care. On this basis and applying the landlord's 'margin of appreciation' principle above, a figure of **£1,100** a year is not obviously excessive for **gardening** costs.

31. Nevertheless, the Tribunal is again concerned about the lack of any formal written contract with the gardeners and the lack of any invoices for work carried out – and it may also be the case that it is accepted that the landlord did not provide any gardening services for much of the 2017/18 service charge year. These issues may of course become relevant in the event of a challenge under s.19(1)(a) once the annual service charge accounts are prepared. However, they are not relevant to limited question of whether the provision in the interim service charges for gardening in 2017/18 was reasonable under s.19(2) of the Act.

### **Electricity (£200)**

32. Although the estimated relevant cost of electricity was originally challenged by the Respondents, Mr Saunders indicated during the hearing that this was conceded.

### **Reserve (£500)**

33. Although the Respondents originally challenged the contributions to reserves in 2017/18, Mr Saunders indicated during the hearing that this was conceded.

### **Management commission (£2,396)**

34. The final element of the estimated relevant cost relates to the provision for management fees for 2017/18, which is described in the budget as “management commission”. The previous Tribunal found that it was reasonable to budget for £852 for management fees in the 2016/17 service charge year: see determination at para 75. The provision for 2017/18 is therefore a very significant increase over a period of a year.
35. The budget suggests the agents’ fees were based on a rate of £599 per flat. The Applicant argued that in return for the annual fees charged by PIMS, the agents provided the services in paragraph 3.4 of the RICS Service Charge Residential Management Code: Statement of Case p.4.
36. Mr Ellis gave specific oral evidence about the budgetary process in relation to the managing agents’ fees. He accepted there was no written contract between the Applicant and PIMS. Instead, he explained that when PIMS drew up the 2017/18 service charge budget and submitted it to the Applicant for approval, this included the provision of £2,396 for agents’ fees. The Applicant’s approval of the budget acted as a retainer, and the fees payable to the agents were those which appeared in the budget. In cross-examination, Mr Ellis accepted that the landlord had not ‘shopped around’ for managing agents, but he did not accept the fees charged by PIMS were excessive.
37. The Respondents argued the managing agents’ fees had been grossly over-estimated, considering that the previous Tribunal had only allowed £852 for the whole block. It was suggested the previous Tribunal’s limitation was “due to failures by PIMS & Co to carry out their responsibilities”: Statement of Case p.9. The Respondents listed several ways in which they

alleged PIMS had provided a poor service, including failure to provide proper annual accounts, failure to attend to gardening and repairs, lack of fire safety checks and problems with communications. In their Reply (p.4), the Respondents further argued the agents' fees were overinflated. The Previous Tribunal had determined that the fees should be £213 per flat for 2016/17 and PIMS's predecessors as managing agents had only charged £286 per flat. In his oral submissions, Mr Saunders repeated the argument that the fees were inflated.

38. The Tribunal reaches the following conclusions in respect of the liability to contribute to the estimated relevant cost of managing agents in 2017/18:

- (1) The process for engaging PIMS and arriving at the agents' fees were both not reasonable ones. There were no written terms of engagement and no written details of the agents' fees, contrary to paras 2.2(3), 3.1, 3.2 and 3.5 of the RICS Service Charge Residential Management Code. The Tribunal has regard to the frank admission by Mr Ellis that there was no testing of the market by the landlord for the provision of management services and that the fee structure was effectively subsumed within the much wider exercise of service charge budgeting.
- (2) The budgetary exercise itself was not reasonable or transparent, again contrary to para 7.3 of the RICS Code. The Applicant (and its agents) did not base their provision for management fees on the best information available. The budgeted figure of £2,396 was not based on the actual managing agents' costs (where a contract was already in place and/or the actual costs for the following period had already been agreed), it was not based on the likely out-turn of management fees for the 2016/17 service charge year and it was not based on comparable evidence from similar schemes. The Tribunal noted that Mr Ellis failed to have regard to the most recent evidence available for the costs of employing managing agents at the property itself. Although (on his own evidence) the relevant costs incurred in 2016/17 were not available when the budget was set, the actual costs

incurred in employing managing agents in 2014/15 and 2015/16 and the budgeted expenditure for 2016/17 certainly were. Details of these were set out in the previous Tribunal's decision at paras 73-75, where "the actual basic management fee" for 2014/15 and 2015/6 was given as £852, and the provision for 2016/17 was given at a similar level<sup>5</sup>. By his own admission, Mr Ellis stated that PIMS generally had regard to the previous Tribunal's decision when preparing the 2017/18 budget. But in the case of the managing agents' fees, it seems it ignored this very material.

- (3) Furthermore, the outcome which the exercise produced, namely estimated managing agents' fees of £2,396, produced an excessive cost for managing a block of this kind. The building had limited common parts and grounds, a conventional brick and pitched roof construction, and only four lessees. Total expenditure on the block was relatively modest. In the Tribunal's experience, a provision for managing agents fees of £2,396 for such a small block is excessive.
- (4) The real difficulty here is the limited evidence as to what a reasonable landlord would have provided for management fees in 2017/18. No evidence has been given about the fees charged by agents for other comparable properties or by PIMS for its other managed blocks. The only evidence available is the previous management fees (both incurred and estimated) for the subject property. Absent any other evidence, the Tribunal finds that a reasonable provision for management fees in the 2017/18 service charge year would be £896.

39. Finally, the Tribunal is aware of the detailed criticisms made about PIM's management during the service charge year. This is not (as already explained) relevant to assessments under LTA 1985 s.19(2). The Tribunal makes no findings in that regard.

## **Section 20ZA**

40. The facts relating to the dispensation application are not in dispute.

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<sup>5</sup> In fact, the previous Tribunal allowed 50% of the relevant costs of management fees incurred during the 2014/15 and 2015/16 service charge years as a result of findings of fact under LTA 1985 s.19(1). But that deduction is not relevant to this decision.

41. The application primarily relates to major works set out in a report by Hallas & Co Chartered Surveyors dated 26 January 2017. The report can be summarised as follows:

- (1) Defects with the chimney stack in the rear pitched roof. Rendering was cracked, and it required hacking off to prevent it falling. The brickwork beneath required inspection and (if necessary) repair.
- (2) Repairs were necessary to the ridges of the main pitched roof. The report suggested a further inspection of the roof.
- (3) Flat roofs required repairs to the flashings and further inspection.
- (4) Rainwater goods required flushing out and realignment and sundry repairs.
- (5) Fascia boards and soffits were deteriorating and would require replacement in large parts.
- (6) The left corner of the front right-hand courtyard wall had severely deteriorated. There was a large crack which appeared to be to the full depth of the front facing brickwork. It had to be taken down and rebuilt before it fell.
- (7) The rendering to the main walls also had cracks which required investigation and remedial work.
- (8) The building was also in need of emergency lighting.
- (9) Decoration.

41 Following the Hallas & Co report, the Applicant gave the lessees a Notice of Intention dated 6 February 2017 which summarised the remedial works in the report. Some lessees provided observations in response to the notice.

42 A contractor inspected the roof in June 2017 and a brief email report was included in the bundle dated 4 August 2017. The email suggested that "all the ridge [tiles] are loose and could fall and blow off at any time". The application for dispensation under s.20ZA was therefore made on 27 June 2017.

43 At about this time, Epsom Council became involved, and there is a letter from a Building Control Officer at Epsom Council dated 27 July 2017. This refers to



several hip and ridge tiles which were “unattached from their support and likely to fall”. However, it appears that some remedial works then took place. There is an email in the bundle dated 4 August 2017 from PIMS to the Applicant and the Council referring to “the hip and ridge tile work carried out by our contractors”. The Council acknowledges the work “to make the roof safe” on 7 August 2017.

44 Mr Horne sought dispensation from all parts of the consultation requirements other than the Notice of Intention. He submitted that completing the consultation process would cause delay. The works involved urgent safety matters. There was a risk to insurance and a risk that costs would increase. The Applicant had also completed some of the consultation.

45 In their Statement of Case, the Respondents stated that if dispensation was given, they would be denied the opportunity to raise objections or recommend their own contractors, as they had already done following service of the Initial Notice. The lessees wished to have greater control over the works than had been the case in the past.

46 The Tribunal finds that it is not reasonable to dispense with the requirements of s.20 and Pt.2 of Sch.4 to the Service Charges (Consultation Requirements) (England) Regulations 2013 for the following reasons:

- a. The works in the Hallas & Co report are not urgent on grounds of safety. The only defect which might be said to be a risk to safety is the crack to the courtyard wall. But on inspection it did not appear this crack presented any immediate risk to the safety of residents or visitors.
- b. The Hallas & Co works have not started, and (as far as the Tribunal is aware) no costs have yet been incurred. There is no evidence that complying with the consultation process would increase the eventual cost of the works.
- c. The first stage of the consultation has been completed, and indeed observations have been made by some of the Respondents in reply to the Notice of Intention. Actual prejudice would be caused to the Respond-

ents in that they would be denied the right for those observations to be considered.

- d. No explanation has been given as to why it has not been possible to complete the consultation requirements. Indeed, the entire timetable set out in Sch.4 Pt.2 could have been completed by the time the Tribunal hearing took place.
- e. The only possible issue is the ridge tiles. The evidence above, and the Tribunal's inspection, suggests that any immediate risk to safety was remedied in 2017. The roof works are therefore no longer urgent on safety grounds. Insofar as any further urgent works to the tiles are required, such interim safety works are unlikely to cost more than £250 per flat, and it is therefore unlikely that any consultation will be required under LTA 1985 s.20.

### **Section 20C**

47 The Respondents have applied for an order under LTA 1985 s.20C that all or part of the Applicant's costs before the Tribunal should not be added to the service charges.

48 Mr Saunders argued that the proceedings were unnecessary. The interim service charges had been paid as originally demanded, even though the charges were opposed. It was the Applicant who brought the claim and the Respondents had little choice but to meet the application.

49 Mr Horne argued that the Applicant had succeeded on at least part of its arguments. Moreover, the Applicant had stuck to the directions timetable while the Respondents had been late.

50 The Tribunal considers that the Applicant has succeeded on all but one of the service charge issues, and that on that single matter the Tribunal has allowed a significant element of the costs. By contrast, the Applicant has failed in relation to the s.20ZA application. Despite some criticism of the conduct of the Respondents, there is no evidence that any default by the Respondents led to any increased costs. The submissions and the documentation by all parties in

this case were relevant, were not excessive and they were proportionate to the issues involved.

- 51 The Tribunal considers it is just and equitable in all the circumstances to make an order for 50% costs under LTA 1985 s.20C. This effectively reflects the extent to which each party has succeeded on their arguments. Half of the costs of and occasioned by the Applicant in connection with proceedings before the Tribunal are therefore not to be regarded as relevant costs to be considered in determining the amount of service charge payable by the Respondents.

### **Conclusions £1,349**

- 52 The Tribunal determines under LTA 1985 s.27A that the Respondents are each liable to pay the Applicant an interim service charge of **£1,349**. This represents a 25% apportionment of the following estimated relevant costs:

General repairs	£1,000
Cleaning	£1,200
Garden and edges cutting and cleaning	£1,100
Electricity	£200
Reserve	£500
Management commission	£896
<b><u>Accountancy fees</u></b>	<b>£500</b>
Total	£5,396

- 53 The Tribunal does not dispense with the consultation requirements for major works under s.20ZA LTA 1985.

54 Pursuant to s.20C LTA 1985, half of the costs of and occasioned by the Applicant in connection with proceedings before the Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of service charge payable by any of the Respondents.

Judge Mark Loveday  
23 March 2018  
Corrected 24 May 2018

## **Appeals**

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.
3. If the person wishing to appeal does not comply with the 28-day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.