



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

**Case Reference** : **CAM/26UD/LIS/2020/0035**

**Property** : **2 Craigmount, Radlett, Hertfordshire WD7  
7LW**

**Applicant** : **Craigmount Management Company Limited**

**Representative** : **Mr Paul Lakin of Counsel, instructed by  
Allsquare Law**

**Respondent** : **Mr Andrew Richard Eaves**

**Representative** : **Mr Martin Young of Counsel, instructed by  
Duffield Harrison LLP**

**Type of Application** : **Application under section 27A of the Landlord  
and Tenant Act 1985**

**Tribunal Members** : **Tribunal Judge Dutton  
Mr G Smith MRICS FAAV**

**Date and venue of  
Hearing** : **Video conference hearing on 26<sup>th</sup> and 27<sup>th</sup>  
January 2021**

**Date of Decision** : **24 February 2021**

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**DECISION**

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## **COVID-19 PANDEMIC: DESCRIPTION OF HEARING**

This has been a remote video hearing which has been consented to by the parties. The form of remote hearing was CVP Video. A face to face hearing was not held because it was not practicable and no-one requested same and further that issues could be determined in a remote hearing.

The documents that we will refer to are in four bundles and additional papers which have been noted by us during the course of the hearing.

### **DECISION**

- 1. The Tribunal determines that the cost of the roof replacement work in the sum of £16,512.12 and the additional roofing works in the sum of £2,590 are reasonable and are payable by the Respondent within 28 days.**
- 2. The Tribunal determines that the administration charges in respect of a debt recovery fee of £240, TPP administration charges totalling £180 and Land Registry search fee of £30 are recoverable and payable under the terms of the lease and under the provisions of the schedule 11 of the Commonhold & Leasehold Reform Act 2002, again within 28 days.**
- 3. The Tribunal makes no determination at present in respect of interest payable.**
- 4. The Tribunal makes no present findings in respect of any costs that may have been incurred on the part of the Applicant in bringing these proceedings but has provided directions at the end of this decision to enable that matter to be determined in due course.**

### **BACKGROUND**

1. On 16<sup>th</sup> October 2020 Deputy District Judge Oliver sitting at the County Court in Watford made various orders including the transfer of the claim between the Applicant and Respondent under claim number G13YX234 to the First Tier Property Tribunal for “determination of the liability for and amount of the service charges claimed by the Claimant and the issues raised by the amended defence.” The order went on to provide that costs excluding those dealing with an amendment would be reserved until the concluding of the proceedings in the First Tier Tribunal.
2. On 3<sup>rd</sup> November 2020 this Tribunal through Judge Wayte issued directions which included provision that the case was suitable to be dealt with by this Tribunal and that in suitable instances the Tribunal Judge could sit separately as a County Court Judge and decide issues would otherwise have been separately decided in the County Court. In the directions the parties were asked to indicate their consent to the whole case being disposed of by the Tribunal.
3. We should record that at the hearing of this matter both Counsel for the Applicant and the Respondent confirmed that they were happy for this Tribunal to deal with all matters.

4. The findings made in this decision relate to those matters that are within the jurisdiction of the First Tier Tribunal and to be found at sections 19 and 27A of the Landlord and Tenant Act 1985.
5. The questions relating to interest and costs would not ordinarily be dealt with by the First Tier Tribunal. Those, however, will be considered separately when the First Tier Tribunal Judge will sit as a County Court Judge and make findings in respect both of the interest payments that may be due and also the costs that may follow from these proceedings. For the purposes of this decision, therefore, our findings relate to the service charge and administration charge costs alone.
6. In the proceedings in the County Court the sum originally claimed was £24,717.60. That, however, was subsequently amended to remove certain half yearly service charge payments and a total liability claimed by the Applicant is £22,043.22.

#### DOCUMENTATION

7. We were provided with two bundles of documents. The first from the Applicant running to some 610 pages. This contained earlier decisions by the Tribunal in respect of matters in 2017/18, which included a finding of dispensation entitlement under section 20ZA of the 1985 Act and also a finding in respect of service charges for an earlier period.
8. Copies of the County Court documentation including the orders for transfer and the amended pleadings were also included.
9. There were statements made by both sides which we will refer to as necessary as well as witness statements from Mr Westley Robinson, an independent expert retained by the Respondent and statements from Mr Eaves, Mr Barber, Mr Deem, Mr Sumaria and Mr Esterson to which we will return in due course.
10. The Respondent also produced a bundle of documentation which in some cases was a duplicate of that produced by the Applicant. We will not go into great detail as to the papers included in the Respondent's bundle, as by and large these were not referred to us during the course of the hearing.
11. Prior to the hearing we received skeleton arguments from Mr Lakin on behalf of the Applicants and from Mr Young on behalf of the Respondent. We noted all that was said. We are grateful to Counsel for their assistance in producing these skeleton arguments. In Mr Young's skeleton argument he helpfully directed us to some suggested pre-reading and we can confirm those documents have been reviewed by us.

#### HEARING

12. The issues that we are required to consider are succinctly put in Mr Young's skeleton argument and accepted as being the areas of dispute by Mr Lakin. The first issue was whether or not there had been compliance with section 21B of the

1985 Act. We do not need to spend time on that because in Mr Young's closing submission he confirmed that that aspect was not being pursued.

13. The second issue related to the requirement as to whether or not the roof of Block 8 in which Mr Eaves' flat is to be found, required replacement in 2017/18. It is said on behalf of the Respondent that on the basis on the report by a Mr Kirsop to which we will return, and the analysis of the works by Mr Robinson the independent expert, that these works were not required. It is said that some £68,866 appearing in the profit and loss accounts for the applicant company for the year ending 31<sup>st</sup> December 2009 on roofing repairs, were evidence that works had been done and it was submitted on behalf of the Respondent that this work was the replacement of the 'Stramit' decking, which would therefore have removed the need to replace in 2017/18. On the evidence on this point is something that we will return to.
14. The next issue was whether the additional roofing works were recoverable, which it is said stood or fell with the findings we made in respect of the main works to the block.
15. The fourth issue related to the question of costs.
16. The question of administration charges was not addressed by either Counsel and stood or fell on the basis of the findings that we were required to make. The rate of any interest charged was not agreed.
17. The evidence upon which the Applicants rely came in the form of witness evidence backed by statements. The first person that we heard from at the hearing was Mr William Deem who has owned properties at Craigmount since 1999 and with his family currently owns three flats numbered 5, 12 and 14 in Blocks 8, 7 and 6 respectively. These flats are rented out, although he says that he maintained a close interest in the management of the estate and regularly attended meetings.
18. His witness statement which was tendered in evidence confirms that the applicant company is owned by the 45 leaseholders at Craigmount and managed by volunteer directors who are also leaseholders. Apparently, Mr Deem had been a director for approximately 17 months between 2017 and 2018.
19. His witness statement went on to deal with the issues concerning the roofing at the blocks and that the Respondent, Mr Eaves had been a "driving force" in respect the roofing works. Indeed, it was Mr Eaves who had invited Mr Neil Kirsop BSc FRICS RMaPS a director of Kirsop & Company Limited, Chartered Building Surveyors to undertake a condition survey report which was dated 11<sup>th</sup> May 2015. We will return to this report in this decision.
20. Mr Deem's statement then went on to refer to Mr Eaves' involvement in the preparatory work in respect of re-roofing the eight blocks, including organising a meeting in September of 2015 for the leaseholders in Block 8 to discuss the options. Mr Deem records in his witness statement that of the six leaseholders, five wished to proceed with a new roof and one leaseholder was at the time undecided. Mr Eaves was in favour of the replacement.

21. In the amended defence, certain issues had been raised as to whether or not section 20 had been complied with. This was not, however, pursued at the hearing and was not an issue that we were required to determine.
22. Reference is made in Mr Deem's witness statement to the report prepared by Mr Robinson and certain parts are highlighted. He cites extracts from the AGM held in April of 2010 in respect of works undertaken in 2009, which we have noted. Mr Deem also listed the expenditure on the roofs over the period 2006 to 2012. This expenditure in his view illustrated the problems that the Applicants were facing with the roofs. Mr Deem also refers to a email sent by the Respondent in November of 2017 which finishes with the paragraph: *"Considering the above, once my roof has been replaced and I am in possession of the final invoice for any satisfactory works completed and I am satisfied with that invoice, I shall release to Craigmount Management & Company Limited my proportion thereof with immediate effect."* His witness statement concluded with the surprise that the Respondent proceeding with the case.
23. Mr Deem was then subject to cross-examination by Mr Young. Asked about the roofing works in 2009, he confirmed that the AGM in 2010 did not identify which blocks had been re-roofed, his attention was drawn to minutes of an EGM on 2<sup>nd</sup> June 2014 which said the following: *"Block 1 – 6 has a ten year warranty for the system used – there is no guarantee in place for the work that was carried out. NS (Nick Sheridan of Sheridans, the then managing agents) confirmed that all blocks require new roofs because of the lack of evidence to what standard the works was carried out. There were comments from those present that this work was not carried out to current planning/building regulation requirements."*
24. He was then asked about a report prepared by Bauder following an inspection of the roof in February of 2014 which he said had been undertaken for the manager. Again, we will refer to the findings in that report in due course.
25. Mr Deem went on to say that he had been impressed by the Respondent's effort in dealing with the proposed roofing works and the experience that Mr Eaves said he had, and which had led to the retention of Mr Kirsop. On the Kirsop report, Mr Deem did not consider that a brand new roof had been installed to Block 8. Indeed, it is only Block 7 that is referred to in Mr Kirsop's report. Mr Deem was the asked about a letter sent to leaseholders on 11<sup>th</sup> June 2015 at page 409 of the bundle. It was put to him that Mr Eaves said that this not sent to all but Mr Deem said that it was. He also confirmed that he was never aware that Mr Eaves had said he would go ahead with the works if everybody else did. Equally, he did not consider that Mr Eaves had ever said the works were not required. He was, however, satisfied that Mr Eaves was being fair to all and left the tenants to decide whether or not work should be undertaken. This was following the meeting that they had with the various leaseholders of Block 8.
26. At this point he was referred to a tender document, which was included in Mr Eaves' papers prepared by Kirsop showing intended workings in April 2016 including the recovery of roofs to Blocks 1, 3, 4 and 5. It appears clear that Block 1 had been added following Mr Kirsop's original report in which he considered

only Blocks 3, 4 and 5 required re-roofing. This Mr Deem said showed that the failure of Roof 1 indicated that other roofs could go at any time.

27. In re-examination Mr Lakin took Mr Deem back to the meeting in September 2015 between the six leaseholders of Block 8 with Mr Eaves recording that five of the six leaseholders were wishing to have a roof replacement, rather than just a repair. It seemed to imply that as one leaseholder was undecided there was a “problem.” Mr Deem confirmed that Mr Eaves had merely explained the position and invited a show of hands recording that he was in favour but put no pressure on any leaseholder to support that view. Indeed, Mr Deem expressed puzzlement that Mr Eaves should now be departing from the root that he was arguing for in 2015.
28. Asked by the Tribunal what he considered a new roof meant, he was of the view that that could mean just laying another coating of felt on top. He told us that there had been a leak in the roof of the Block 7 where he owned a flat, which had been replaced in 2011/12.
29. The next witness we heard from was Mr Binit Sumaria, a director of the applicant company living at 29 Craigmount, which he acquired in August 2010 and where he has lived to date. He became director of the applicants in September of 2011 but his role now is to provide current directors with historic information and provide residents with a voice on the board. He told us in his witness statement that he and Sylvia Cohen had been directors at the timing of the roofing works and that in 2014 they felt they were being inundated with issues regarding the development especially the roofs. It was felt that they needed assistance and Craigmount Residents Association was formed with Mr Eaves, the Respondent, being one of the members. Mr Eaves’ involvement is set out in Mr Sumaria’s witness statement, including the arrangements for Mr Eaves to commission a surveyor’s report and further, it appears, in October of 2014 he was on a panel to choose the new management company to take over from Sheridans. Mr Sumaria says that Mr Eaves was highly regarded within the group and his opinions were sought. In late 2014, it appears that Mr Eaves indicated he knew of somebody who would be able to carry out a survey and his expressed his own knowledge of the “property game”. It was accepted that Mr Eaves would find an RICS surveyor, which he did in selecting Mr Kirsop. Mr Sumaria’s witness statement refers to information passed to Mr Eaves which concluded a report from Bauder concerning the stramit decking and that it is said Mr Eaves knew of this decking and that error made in Mr Kirsop’s report indicating the roof was of concrete construction was clearly incorrect.
30. Mr Sumaria’s statement then went on to deal with letters drawn up by Mr Eaves concerning the roofing works. It appears there were a number of drafts, but eventually one was finalised and we had sight of what is referred to as a final draft prepared by Mr Eaves sent under cover of an email of 28<sup>th</sup> May 2015 appearing in the bundle at page 513.
31. Mr Sumaria then went on to explain the involvement of Mr Barber, a new surveyor initially brought in to check scaffolding, which apparently was not up to standard, which resulted in the loss of confidence in Mr Kirsop.

32. Under cross examination Mr Sumaria was asked about the minutes of the meeting held in June of 2014 concerning the warranty for Blocks 1 – 6. His explanation is that the wording Block 1 – 6 has a ten year warranty for the system – was a question raised at the meeting. The response given by Sheridans was that there was not guarantee in place. He was then referred to the Bauder report which appeared to be concentrating on problems with Block 3. Mr Sumaria confirmed that he had not at that time formed an opinion that all roofs needed replacing. A survey was to be carried out and Mr Eaves was at the forefront of that. He was satisfied, however, that at all times Mr Eaves wanted a new roof for his block. He was referred to a document at page 517, which was a letter by the Craigmount Residents Association sent by Mrs Cohen and Mr Sumaria in which the need for re-roofing is raised. He confirmed that he was only aware of the re-roofing works to Block 7.
33. Thereafter we heard from Mr Barber, who was not able to attend the hearing by way of video and instead we heard him by telephone. His statement was to be found at page 317 of the bundle. Although he is a chartered building surveyor and a Fellow of the Royal Institute of Chartered Surveyors, his statement was not provided to us as an expert. He told us that the properties and the estate had been constructed in 1958 before the first national building regulations in 1965. His involvement with the programme of works was from September 2017 to the expiry of the defects liability period in July of 2019. He told us that he had seen the Bauder report and Mr Kirsop's statement, and that Stamford contractors had inspected in January 2017. He felt that Mr Kirsop's report did not produce an accurate assessment of the true situation in respect of the replacement of roofs. His statement went on to deal with some of the history concerning Stramit decking. His statement produced photographs taken by Stamford showing gaps and holes in the Stramit panelling.
34. His report went on to address the report prepared by Mr Kirsop and further details of the Stamford Contract's inspection. His summary was that Mr Kirsop had not undertaken a proper inspection and taken no core samples and that patch repairs in the overlying felt was a waste of money. There were a number of photographs annexed.
35. In cross-examination he confirmed that he had been asked to attend the site to look at scaffolding at Block 4, which was in poor condition. He confirmed that during the course of works undertaken by Stamford he had checked those and certified that monies were payable. His view was that if there was evidence of the breakdown of the Stramit layer that a sample in one block, as the others were constructed in the same basis, would indicate a need to replace. In his view Stramit was a poor quality product and it was better to replace all the roofs as a continuous contract.
36. Asked about the photographs he produced he told us that these came through Stamford Contracts, which he received electronically. The photographs had been taken the roofing works. He had asked for photographs to be sent and had specifically requested these relating to Block 8. He did, however, make the point that the photographs taken and exhibited to his statement were there to assist in respect of the roofing works and not for the Tribunal. He confirmed that he considered the roof replacement had finished in about May of 2018. Asked by the

Tribunal whether there was a possibility that in 2009 a new layer of felt was put over the existing Stramit, he said he was not able to say what had been done in 2009 but that photographs taken during the construction show Stramit and bitumen layers.

37. He confirmed with us that he had monthly meetings with Stamford and that in fact he did go up onto the roof of Block 8 when works were being undertaken and saw Stramit. He was asked why this was not in his witness statement and why he had not produced his own photographs. He responded that he considered it was more important to deal with the Stramit layer and that he believed the photographic evidence provided by the contractors was sufficient.
38. Re-examination resulted in him confirming that he had visited Block 8 on one or two occasions and that the areas of Stramit were in his opinion faulty.
39. The first witness we heard for the respondent was Mr Robinson who was the expert retained by Mr Eaves. His report was to be found at page 193 of the bundle and is dated 18<sup>th</sup> December 2020. The report gives details of Mr Robinson's qualifications. He confirms that the Company, Westside Services Limited, of which he is the founding director, is a chartered building consultants and surveyors specialising in construction and property. He confirms that he has a BSc (Hons) in quantity surveying and has worked in the industry for over 20 years. He is a Member of the Chartered Institute of Building and is an Associate Member and Registered Valuer of the Royal Institute of Chartered Surveyors. He has been a surveyor since 1999 and has produced a number of expert reports relating to building works and valuation disputes.
40. The summary of his conclusions is that a key issue of the case is whether the Stramit decking was replaced in 2009. His report says this. *"This report will show that in my professional opinion I consider the key issue with the case to be whether the Stramit decking was replaced in 2009 or not as it is likely that even if the roof covering appeared to be in reasonable condition, if the roof deck had deteriorated it would have been inevitable that the roof would need to have been replaced for health and safety reasons even if it wasn't leaking"*. His summary went on to say *"As yet I have not been provided with evidence which could confirm what the roof decking was when the roof covering was replaced in February 2018 and therefore there are a number of facts obtained by others contradicting each other it is impossible to come to a conclusion without drawing on assumptions and probabilities."* He goes on to say that as there is an entry in the company accounts for December 2019 with a figure of £68,866 for roof repairs, this equates a cost of £475 per square metre in line with those set out in Mr Kirsop's tender which as we have indicated was included in Mr Eaves' bundle. His statement goes on to say *"...it is reasonable to assume that the roof and Stramit decking was replaced and therefore unlikely that the roof would have needed to be replaced in February 2018."*
41. His report goes on to confirm that he has seen the Court papers, the IKO roof survey report, Mr Kirsop's condition reports and survey reports prepared by Bauder plus other emails. The facts obtained from others include Mr Eaves' comment that he had been told by the vendor of Block 8 when he bought in 2012 that a new roof had been fitted in 2009 and relied on the figure shown in the



company accounts for 2009 to evidence roof repairs. Mr Eaves he recounts also indicated that the Bauder report related to roof 3 only and that at no time had he suffered reports of water ingress in Block 8. Mr Reynolds refers to the IKO report by Mr Moore, which refers to the roof being soft under foot.

42. Following his inspection in December of 2020 he came to the conclusion that the roofs were generally in good condition, although there was some bubbling which could be dealt with under the guarantee. He was of the view that the repairs recommended by Mr Kirsop would have been sufficient to maintain the roof and that replacement would not have been required if the original Stramit decking had been replaced in 2009. His opinion does go on to say *“if however the Stramit roof decking had not been replaced, then it is likely that it would have been in a similar condition to the sample taken by Bauder from roof 3 and therefore highly likely that the roof would have required complete replacement within three to five years due to the failure of the roof deck from the date of Mr Kirsop’s report.”* The report goes on to say that if the Stramit decking had been replaced in 2009, then he would have expected repairs recommended by Mr Kirsop to ensure the roof achieved a lifespan of 20 to 25 years.
43. In cross examination it was put to him that the photographs taken on behalf of Mr Barber showed Stramit decking in poor condition and if that were the case he conceded it would be reasonable to replace. He accepted that the comments made by Mr Moore in the IKO report that the roof was soft under foot suggested the decking was failing. He also confirmed that if the sub-strata had been replaced in 2009 but the photograph to which he referred shows it was soft then he accepted it would have been reasonable to replace the roof.
44. Asked about the costs spent in 2009 his assumption was that the £68,000 plus had been spent solely on Block 8. His attention was drawn to the Kirsops report and he confirmed that the only roof referred to as being covered was Block 7. Asked further about the works in 2009 he felt that the sum showed in the accounts of £68,000 plus would cover replacement of the roof in full, although equally it could cover the cost of only recovering. He did accept it was possible that the roofs may have only been overlaid in 2009 and accepted it is a fair suggestion that if in 2015 all roofs were found to have Stramit then there must have been an overlaying exercise in 2009 and not a replacement. He confirmed that he could not say what was in situ in 2009 and certainly not what was in situ in Block 8. He also confirmed apart from some bubbling which should be covered by guarantee he had no concern about the standard of work. In re-examination he was returned to the 2009 works. He considered that £30,000 would not cover full replacement costs, just overlaying or extensive repairs, but that in 2009 if a competent contractor had discovered Stramit they would not overlay. He confirmed that he was a quantity surveyor and that overlaying the Stramit would not be best practice.
45. He was asked some questions by the Tribunal. He confirmed he was not a Chartered Surveyor but an associate member of the RICS. He was he said a chartered consultant. He was referred to a page showing estimates for works and felt that £47,507 was about right for replacing the roof, although there was no mention of decking. Asked how much weight he put to the Kirsop report he was not aware of Mr Kirsop’s brief and that there had been limited visual inspection.

The suggestion that there was a concrete roof base was because there had been no access to the roof, although he thought it unlikely that in 1958 it would have had a concrete roof. He conceded that there were a number of question marks in respect of all the reports and he had drawn a conclusion based on the information before him.

46. We had included Mr Robinson at this stage to avoid him attending the Tribunal hearing the following day and on the second day we started with the evidence of Mr Esterson of Trent Park Properties now the managing agents who took over from JEM Estates Management in 2019. He confirmed that he had perused papers and seen electronic communications concerning the issues with regard to the roofing and had reviewed the procedures of the previous managing agent. He was satisfied that the requirements of section 21B of the Act had been complied with, the sum spent of £68,866 in 2009 was the subject of investigation by him. He produced a copy of a letter from a Mr David Eldridge of BVE Roofing Services which indicated his recollection was that they had undertaken roofing works in 2009 which were patched repairs having advised that without replacing the Stramit decking the repairs would only last a few years. However, he said the customer did not have sufficient funds to replace the Stramit decking and needed the blocks to be watertight. This letter signed by Mr Eldridge is dated 12<sup>th</sup> January 2021.
47. In cross-examination Mr Esterson confirmed that he had been the manager since April of 2019 but that he had not re-issued demands. However, he referred to demands that they had issued, which included arrears and also the statutory tenants' rights and obligations. Apparently the first demand that they had issued was on 10<sup>th</sup> June 2019 which included the balance brought forward of £21,776.50. He confirmed that he had a management agreement which set out the scale of charges and the annual fee was £10,800 inclusive.
48. Asked about the letter from BVE Roofing Services he confirmed that he had tried to find the accounts but had been able to speak to Mr Eldridge whom he said recalled working at the estate and that they had used a liquid-based overlaying level and had not replaced the decking. Although Mr Esterson had made enquiries, he could find no guarantee.
49. We then heard from Mr Eaves, the respondent, who made a witness statement appearing at page 215 of the bundle. A number of exhibits were attached.
50. He made a brief addition to his witness statement confirming that the demands in the bundle from Trent Park Properties had been served upon him, although he denied that any similar demands were provided by GEM.
51. His witness statement confirms that he is a serving police officer and that he has been the leasehold owner of the Property at 2 Craigmount since March of 2012. He says that he was advised by the vendor that the block had a new roof installed and that the accounts for 2009 showed some £68,866 spent on roof repairs, which he believed related solely to the roof replacement. He also recounted discussions he had with other owners at the development, for example Mr Lowther who had owned Flat 1 in Block 8 between 2007 and 2017 who said a new roof had been installed in 2009 and Mr Harris of Flat 5 in Block 8 who owned

between 2011 to 2015 who told him that when he purchased his lease he understood that the roof of Block 8 had been replaced or refurbished during 2009. They did not provide witness statements.

52. A Miss Pattni who had owned Flat 3 in the block, provided Mr Eaves with a copy of a Home Information Pack when she purchased in 2009 which indicated that the then vendor was not aware of proposed or ongoing works. Further the document refers to a roof guarantee being in place. He did not produce a copy of the Home Information Pack when he purchased.
53. There then followed a history of the managing agents at the Property and the problems that he had encountered. He recounts that he was requested by Mr Sumaria and Miss Cohen to help in sourcing a building surveyor to report on the condition of the roof and it was on his recommendation that Mr Kirsop was instructed. He says that following Mr Kirsop's report, which indicated that works were not required to Block 8 other than to a limited amount of £5,000 plus VAT and professional fees, he found that Mr Sumaria disagreed with this and he was asked to draft a document to outline the pros and cons, as he says Mr Sumaria saw it, of having the roofs on all eight blocks replaced. He says that he drafted a document as requested by Mr Sumaria for approval by the Residents Association before being circulated. He says his own position was that if all other leaseholders agreed to pay for a roof replacement then he would not stand in their way. He then refers to the involvement of a Mr Simon Fox who he says was the driving force behind the roof replacements after his daughter purchased a property, Flat 17 in Block 6 in September of 2016. It appears that IKO Roofing and Stamford Contracts were asked to undertake a roofing survey and further that Mr Barber was appointed as a structural engineer to determine whether roof replacement was necessary to the eight blocks. Mr Eaves says that it was on the representations of Mr Fox and an assumption that the surveyor was of the same standing as Mr Kirsop that he made no representation following notice of the application under section 20 of the 1985 Act. He accepted that he agreed, based on the representations put to him, that he would pay his share of the roofing works once they were completed to his satisfaction.
54. He then says that when the works were completed it was the first time that he noticed that they had not be replaced on a like for like basis and that they were not pleasing on the eye. He requested a copy of Mr Barber's report but it was not disclosed to him. Subsequently in February of 2018 when he saw the IKO report prepared by Mr Moore, he was of the view they were not relying on like for like expertise. He said that his flat in Block 8 had not at any time had problems with water ingress and in his view the Applicant's accounts do not bear evidence of such difficulties.
55. He was then the subject of cross-examination by Mr Lakin. He was asked what wealth of experience he had in property managers. In this regard he was referred to the draft letter, a copy of which appears initially at page 402 but subsequently emanated by reference to the email of 28<sup>th</sup> May 2015 at page 406. He confirmed that his family have a property portfolio consisting of residential, commercial and farming properties and that his knowledge comes from such ownership. Asked about his knowledge of flat roof structures he said that had come from reading various surveys and written reports. He was asked about Mr Kirsop's report

which makes no mention of Stramit but says the roof coverings were concrete, which he accepted. However, by the time that Mr Kirsop prepared the tender he was aware that Stramit existed. In his opinion it was irrelevant that there was Stramit instead of concrete. He was of the view that the block should have been approached on an individual basis but there was no unanimous decision to proceed. He asks us to accept that the Kirsop report was the report that should be relied upon in the absence of any other report by a Chartered Surveyor. He did accept that his defence made no mention to a new roof being installed in 2009 and he confirmed that it would be our task to decide what works were carried out in 2009. Asked what caused him to conclude that the roof had been replaced in 2009 including the decking, he said there had been no water ingress and therefore it must have been replaced. He did not consider that it was possible for the roof to be overlaid and be watertight. He was taken to his email of 2<sup>nd</sup> November 2007 referred to above in which he confirmed he would make payment if he was satisfied the works had been undertaken satisfactorily. He said, however, that he was not aware of how the roof had been replaced and only came to the conclusion that it had been rebuilt after he was able to see that the roof was not on a like for like basis. He accepted that no point prior to completion of the works had he raised the idea that the roof had been completely rebuilt previously. His response, however, was that he had been told at the 2017 AGM that the roof had been written off by a Chartered Building Surveyor and it was only after demand for payment came through that he concluded the roof had been completely rebuilt in 2017/18. He did accept that he had received the section 20 notices and therefore had no issue with that procedure. He also confirmed he accepted the Tribunal's decision on dispensation in respect of the additional works and that the current management company demands were correct. Asked about why his defence persisted with the allegation that section 21B of the Act had not been complied with, he indicated that it was a misunderstanding on his part.

56. He was asked to confirm that the owner of Flat 1 had agreed to the re-roofing work. He said that this had been based on what Mr Sumaria and other members of the CRA had wanted. The owner of Flat 1, a Mr Lowther, only agreed because everybody else wanted to. He denied that he was the one putting forward the proposals for the new roof. He drafted the documents for Mr Sumaria and did not encourage the others but left them to make up their own minds.
57. Asked about the Home Information Pack he confirmed he received just before Christmas of 2020 from Ms Pattni. The form he said showed that roof had been replaced, in his view in 2009, and that there should have been a guarantee. He relied on the minutes of the meeting in which a guarantee is referred to. Asked further about the letters that he wrote concerning the roofing works, he said these were at the behest of Mr Sumaria and that he had told him what to include in the draft. *"I simply put into words what he wanted"* he said. Asked about Mr Deem's views he said Mr Deem was mistaken and only changed his mind about matters when his son bought Flat 5. Insofar as the Kirsop report is concerned, he thinks that that stands, as it was the only professional involved. He confirmed that he met Mr Kirsop on site who had used a cherry picker but that the inspection was limited. He accepted that work had been done to Block 7 but he thought in 2012. He accepted that Mr Kirsop had not set foot on the roof.

58. Asked about the Bauder report, which was in existence at the time of the Kirsop report, he said this formed the genesis of instructing Mr Kirsop. He did not think that the presence of concrete made a difference to Mr Kirsop's report. As far as IKO and Mr Moore's findings, he was of the view that they had a vested interest. On Mr Barber's involvement he said he found it odd that he had only conducted two visits to each block and therefore had not done a full survey. There was he said no evidence as to the provenance of the photographs nor the timing of the works. Also it was not possible to ascertain whether the photographs were of the correct roof.
59. He confirmed that his involvement ended when Mr Kirsop was not retained and that his role as requested by Miss Cohen and Mr Sumaria was to find a surveyor and get a good price.
60. It was put to him that he had only concocted the 2009 works when experts came along. There was nothing in his defence referring to this matter. Mr Eaves' response, however, was that it was clear to him that the roof had been replaced in 2009 as evidenced by the monies recorded as being spent in the accounts and compare this with the quotes in the tender by Mr Kirsop.
61. Asked what he thought replacement meant, he said it did not mean anything other than a complete renewal including removal of the decking. An assumption of full replacement. He said that he had assumed when he purchased in 2012 that a new roof had been installed, although accepted there was no evidence of same and nor was a guarantee provided which it appears he did not request from his solicitors.
62. Asked about his lack of response once the section 20 documentation was produced he said he was relying on what Mr Barber was saying and therefore did not at that time raise any challenge on the section 20 responses. His view was that the re-roofing was based on the accounts in 2009, the evidence that was now put forward and the representations by previous owners together with the 2014 AGM which referred to a guarantee. It was put to him by Mr Lakin that his case was nothing more than a stitching together of elements for which there were no evidence. It was put to him that he had deliberately sought to mislead the Tribunal and the statement he produced for these proceedings was the only time mention is made of work done in 2009. It was suggested to him that he had fabricated evidence and it was inconceivable that he would not have mentioned the points that he now raises in his statement from 2012 onwards. This he denied.
63. In re-examination he was asked about works to the garage where apparently timber boarding had been replaced but he did not know when that was the case.
64. We then had submissions from Counsel with Mr Young proceeding first. After confirming that section 21B issues were not being proceeded he submitted that Mr Eaves had been helpful in assisting the applicant company to come to an assessment of what was needed to being done to the roofs and that he had remained of assistance throughout.

65. The starting point for the works was the Kirsop report, which indicated that only localised repairs were needed. There was a dispute as to how matters had moved on the AGM in 2017 and the roof was written off. It is accepted that Mr Eaves was willing to accept that position and did not seek to challenge the matter further. The issues in respect of the repairs to Block 8 did not come to fore until Mr Robinson's report when it became necessary to look in detail at what may have been in 2009. That there were roofing works in 2009 is beyond doubt. The question is what did it involve? Reference is made to two blocks having received a new roof, which it is submitted by Counsel means the removal of all elements. It was his view this could have been done for £30,000 per roof and it was realistic of Mr Eaves to advance that case. A reference was made to Mr Eaves' documents in particular page 40, the Tender by Mr Kirsop, where it was suggested that perhaps the works being shown as chargeable were to be undertaken more cheaply in the hope that more work would follow. It was put to us that we had to come to the conclusion from the evidence built up from the key events.
66. These key elements were that in 2009 the works did not arise as an issue until Mr Robinson's report. Only Mr Eldridge in his letter indicates what may have been done. The author of the IKO report has not given evidence expanding upon the photographs taken and we were not able investigate further the mention of the roofing being soft under foot. The 2014 AGM refers to a guarantee and there is no evidence of any cutting into the roof of Block 8 to establish the state of the roof surface. It was suggested by Mr Young that Mr Barber's evidence was unreliable and mistaken. There was no evidence that the photographs were of Block 8, although he had indicated he might be able to get emails to confirm. It was not therefore reliable to assume that the Stramit shown related to the subject block. There was a failure by him to provide site meeting notes and an assertion that he had been onto the roof and seen the Stramit was not included in his statement. In his submission Mr Robinson was correct to come to the conclusion that Stramit was removed in 2009 and it would therefore have been unnecessary to replace it in 2017/18. Accordingly the service charges were unreasonably incurred and were not recoverable by reasons on section 19 of the 2018 Act.
67. In response Mr Lakin indicated in his view Mr Eaves was content to say whatever suited him. The IKO report concluded on their inspection that the roof was springy and failing and when works were done Stramit was found. Works done in 2009 were not only to Block 8 but to another block as well.
68. The question was, is it reasonable to rely on the IKO report. It was submitted the rooves needed replacing and a better price would be obtained if it were undertaken in one. This is exactly what Mr Eaves was advancing at the time. He called no witnesses to give evidence to support his position. He is an experienced property developer buying with the supposed knowledge of a guarantee for a new roof but no guarantee was requested. He was involved in instructing Kirsops knowing of the Bauder report, which referred to Stramit. He received the Kirsop report which referred to concrete decking but he did not appear to raise that. As was said by Mr Deem and Mr Sumaria, he argued against limited repairs and instead for the whole new roof to be installed. He had not pursued the question of a guarantee which was surprising if a new roof was to be required.

69. It was put to us that Mr Eaves now advances the case based on the Kirsop report event though he went against that in the letter to the residents. Those letters were of his own making and as was said by Mr Sumaria and Mr Deem, Mr Eaves was the driving force. The fact that £68,000 was spent on roof repairs does not help to any great degree. The more so as Mr Kirsop only refers to roof 7 having been replaced. If works were incurred in 2009 then it appears to be two roofs and it seems that there may have been garage work. It is accepted Mr Lakin said that Block 8 may well have been overlaid at some stage, possibly in 2009, consistent with the letter from Mr Eldridge. Mr Eaves' case now rests on the 2009 works. He started as a supporter and then turned against the whole roof replacement. We were invited to find on the evidence and the concessions made that the Respondent simply stitched the case together. There was no corroborative evidence and that in his submission Mr Lakin found that Mr Eaves had given evidence which he knew not to be true.
70. As a final comment, Mr Eaves did indicate that he would pay the sum of £5,000 plus VAT and the expert's fees as that was the sum Mr Kirsop has thought would be appropriate.

## **THE REPORTS**

71. There are a number of documents which purport to be reports in the bundle before us. Although the bundle has not been put together in in chronological order, it would seem the first in time was a survey report from Bauder who we understand are acknowledged experts in roofing commissioned by Walker Management. This report refers to the eight blocks at Craigmount where core samples were taken but it appears only from one roof. Their finding was that the existing deck was Stramit board "which is classified as a fragile deck which will need replacing before new membrane system can be applied." In their recommendations they found that the Stramit deck was not suitable for overlaying with a new waterproofing membrane and provided details of the works that would be undertaken which would include a 20-year guarantee.
72. The next in time appears to be the report by Mr Kirsop in April 2015. The report confirms that he has undertaken a non-intrusive visual inspection of accessible parts of the roof both from ground level and from a mobile elevating working platform (MEWP). He notes that MEWP could only be positioned in certain locations with regard to certain buildings and that he had not set foot on any roof. He indicates that the buildings were a traditional form of construction built around 1960/1970. Further he describes the main flat roofs as having been original covered with asphalt, which has been overlaid, and the roof appears to be formed with a concrete deck. He then goes on to consider each block separately finding that in relation to Block 1 the roof covering was generally serviceable and the same finding was made in respect of Block 2, 6 and 8. For Block 7 he indicated that the roof had been recently repaired and that in respect of Blocks 3, 4 and 5 that they were beginning or had reached the end of their useful economic lifespan and required recovering.
73. In his summary and recommendations he was of the opinion that the roof coverings needed replacement either now or soon to Blocks 3, 4 and 5 and that Blocks 1, 2, 6 and 8 would require some localised repair to extend their lifespan

for an unspecified period. He estimated the costs of recovering the flat roof to be £30,000 plus VAT and professional services and the costs of repairs to Block 8 at £5,000 plus VAT and fees. He went on to give a larger figure if the mansard roof tiles were to also be replaced.

74. We were then provided with a survey by IKO which was both a roofing surveyor report and specification. This was dated 30<sup>th</sup> January 2017 and had been undertaken by Mr Moore who would appear to be a Fellow of the Institute of Roofing. His report found that the roof coverings were in a poor condition with numerous repairs have been carried out. In addition, in respect of the enquiries they made, the Stramit sub-strate had badly degraded and was collapsing in places making it unsuitable for continuing roofing support. The report also goes on to suggest that the poor condition of the Stramit sub-strate is likely to have affected the supporting timber structures. Photographs are annexed to this report, one section showing the main roofs to Blocks 1 to 6. In photograph 7 on page 171 it says that the roof has been overlaid with a liquid coating but that the Stramit deck below is still soft under foot in places and failing. An extract of Stramit taken from the main roofs of Blocks 35A to 38 shows that it has lost its structural strength and has collapsed in places and there then follows a detailed specification summary sheet. Appended to the report are a number of documents in support of Stamford Contracts Limited showing their insurance, HMRC sub-contractor verification and other technical certificates.
75. The next and final report that we were provided with was that of Mr Robinson of Westside Services who are construction and property consultants and which we have already referred to. As we indicated above, the view of Mr Robinson is that the key issue with this case is to whether or not Stramit decking was replaced in 2009. The basis upon which he concludes it has been appears to be on the entry in the Craigmount Management Company's accounts for December 2019 showing a figure of £68,866 for roof repairs in line with Mr Kirsop's tender report.

## **FINDINGS**

76. This case hinges on whether or not there were complete roof replacement works to the block housing Mr Eaves' flat in 2009. There is no one piece of compelling evidence that points in any particular direction as to whether this re-roofing work was carried out to this degree. Mr Robinson in his report accepts that when he inspected the roofs in December 2020 they were in generally a good condition, although there was some bubbling. He states in his report that the repairs recommended by Mr Kirsop would have been sufficient to maintain the roof as long as the original Stramit roof deck had been replaced in 2009. He goes on and says this *"If, however, the Stramit deck had not been replaced, then it is likely that it would have been in a similar condition to the sample taken by Bauder from roof 3 and therefore highly likely the roof would have required complete replacement within three to five years due to the failure of the roof deck from the date of Mr Kirsop's report."*
77. What evidence is there that in 2009 this block had a complete re-roofing? Mr Eaves relies on a number of elements, which he says means that the roof was fully replaced in 2009 and did not require this work in 2017/18. This evidence is to be found in the Statement of Account from the Applicant in 2009 when the figure of



£68,866 is recorded as being in respect of roof repairs, not replacement. There are minutes of meetings, which indicate that in 2009 two roofs were repaired. There is no indication as to what those block numbers may have been. It does appear clear that in around 2012 Block 7 had a complete re-roofing exercise but there is no evidence that this extent of work was carried out to the other two blocks other than supposition gleaned from documentation.

78. Also in support of Mr Eaves' assertion is the property questionnaire form, provided by Ms Pattni. She did not supply a witness statement. We are not wholly clear as to provenance of the document in the bundle as part is in manuscript form and part has been printed. On the printed form the answer to an awareness of major ongoing works is answered in the negative. On the manuscript form reference is made to there being a guarantee in respect of roofing works but surprisingly Mr Eaves, who asserts that he is an experienced property person did not pursue that point.
79. Mr Eaves instructed Mr Kirsop to prepare a survey in respect of the roofs at the development. That survey, which was undertaken in April 2015, has we consider a number of problems. The first is that there was no intrusive inspection of the accessible parts of the roof. Indeed, it appears clear from the report that Mr Kirsop did not even go onto any roof but instead used a MEWP to view the roofs. However, even that was not wholly successful in that he could not view a number of parts of the blocks from the MEWP as he sets out in his report. In addition, and a matter that we think undermines his report, is his conclusion that the roof appeared to be formed with a concrete deck. His report lists each block and concludes that in respect of Blocks 3, 4 and 5 the roof covering had either reached the end of its economic lifespan or was close to it and that it needed to be replaced. In respect of Block 7 he found that to be in good condition having been recently repaired. In respect of Block 8 he found the felt to be in serviceable repair and condition, although the solar-reflective coating had deteriorated and would need replacing in the short term. In his summary and recommendations he confirmed that the Blocks at 3, 4 and 5 should be given a replacement roof but that Blocks 1, 2, 6 and 8 only required some localised repairs. He then listed what he considered the costs would be. However, it appears that when he produced a tender he was aware that the roofs were lined with Stramit and indeed another block, Block 1, required roof replacement works. We cannot accept that Mr Kirsop's report is of any great assistance to us. With the errors that were made and the fact that in the short period of time from producing the report in May of 2015 to his fourth tender version in April of 2016 another roof, that to Block 1, also required replacement works.
80. This unconvincing report has to a large extent been relied on by Mr Robinson. Interestingly Mr Eaves who commissioned Mr Kirsop's report did not seem to find the contents wholly satisfactory and set about composing letters to residents urging that there should be replacement of all roofs including the decking. Although Mr Eaves indicated in his evidence that the letters were written at the behest of Mr Sumaria we find that an unconvincing response. Mr Eaves portrays himself as an experienced property man and we find it surprising, to say the least, that he would issue letters the contents of which he did not agree. Accordingly, whilst Mr Sumaria may well have been supportive of the replacement of the roofs

including the decking, we have no doubt that Mr Eaves was also of that view at the time that these letters were composed.

81. Mr Robinson in his expert witness report confirms that he has seen the Court papers, the IKO survey report, Mr Kirsop's report and reports prepared by Bauder with various emails. His opinion is that if the roof deck had been replaced in 2009 then works would not have been required in 2017/18. However, if it had not been replaced then he was of the view that replacement works would have been required between three to five years of Mr Kirsop's report. The basis upon which he makes this finding is to say the least somewhat tenuous. He has relied on matters put to him by Mr Eaves and in particular the £68,866 spent in 2009 for roof repairs. He makes no comment as to what is meant by repairs in the 2009 accounts and whether that meant replacement. There is no compelling evidence to indicate that these works involved Mr Eaves' block. The nearest we get is the report by Mr Moore who refers to overlaying works but that the roof is soft under foot. There is evidence in minutes of meetings that there was roofing repairs to two blocks but no number for the block is given. It is somewhat disappointing that Mr Deem and Mr Sumaria who have both been either living at or involved with the development in 2009 were unable, it would seem, to recall which block may have had works undertaken.
82. The only direct piece of evidence, if one can call it that, is the letter from Mr Eldridge of BVE Roofing Services who indicated that roofing works had been undertaken in 2009 at Craigmount estate but that they were only patching works and that the Stramit decking would not have been replaced as there were no funds available to do so. It is a pity that Mr Eldridge did not provide a witness statement but there we are.
83. What we do have available to us is the report from IKO and the earlier report from Bauder. Bauder appear only to have taken a sample from one block but have found that there was degrading of the Stramit decking and that it would not be suitable for overlaying. The IKO report, which is in 2017 prepared by Mr Moore who appears to be a Fellow of the Institute of Roofers, confirmed that access was made to Block 8 containing flats 1 to 6 and 35A to 38. He records that walking on the roofs indicated that the Stramit deck was soft under foot, even though for example on the roof to Block 8 there appeared to have been some overlaying at some stage. His view was that the Stramit was in poor condition and that re-roofing was required. This led to those works being undertaken by Stamford Contracts. They in turn took photographs, which Mr Barber said were supplied to him and which showed the condition of the roof and the Stramit decking. These photographs were exhibited to his witness statement and he told us that those shown at CHB4 were in Block 8, Flats 1 to 6 at the estate. These show the poor state of the Stramit decking.
84. Again, as with a number of instances in this case the evidence was not as compelling as it might have been. Mr Barber told us at the hearing that in fact he had gone onto the roof on a couple of occasions and that the photographs produced, which were challenged by Mr Young, were in respect of Mr Eaves' block and were provided to him by the contractors. He indicated he could provide some evidence to support this ,but that evidence never appeared, we think because it was in storage. His answer as to why he had not included in his

witness statement that fact that he had gone onto the roof was not wholly compelling. We do, however, accept that the photographs that he produced and which he confirmed were of the roof of Mr Eaves' block, were accurate and a truthful reflection of what was found when the roofing works were undertaken.

85. It may well be that in 2009 some roofing works undertaken to the block. The contractor involved in 2009 confirms that was the case and the inspection by Mr Moore appears to indicate that recent roofing works had been completed but that the Stramit decking was nonetheless soft to walk on.
86. The evidence such that it is, points to the fact that the Stramit decking to Mr Eaves' block and indeed others on the estate was not replaced in 2009. The subsequent reports both by Bauder and IKO indicate that the Stramit decking is failing on those blocks that they were able to access. It is our finding that these properties were built at the same time and it is highly unlikely that there would have been different building techniques used between one block and another. We know that the concrete slab envisaged by Mr Kirsop is wrong. We find, therefore, that these blocks had roofs that were coming to the end of their useful life. Works that may have been carried out to Mr Eaves' block did not, in our finding, include the complete removal of the Stramit decking. There is no evidence that that was done and the costs of £68,866 refers to roof repairs, not replacement. However, we do not know with certainty what two blocks were recovered in 2009. We will assume for the purposes of this matter that one of them was in all probability Mr Eaves' block, the more so as this appears to be suggested by Mr Moore in his report.
87. We are also troubled by Mr Eaves' about turn. In 2015 he was charged with the task of obtaining a surveyor's report and reviewing the roofing position. That he did but notwithstanding the findings of Mr Kirsop we find he did engage in urging residents to proceed to a complete replacement of all roofs. The suggestion that he was somehow misled we find difficult to accept. He had Mr Kirsop's report before he wrote the letters that he says were at the behest of Mr Sumaria but which we do not accept as being the case. We are satisfied that he wrote those letters because that is what he believed the position to be. Subsequently he appears to have pursued a different course seeking to argue that the works were not necessary and relies on what can only be classified as supposition backed up by unconvincing pieces of evidence such as the home owner's report and by reference to the 2009 accounts.
88. Based on the documentation provided and the witness statements and reports that were put before us, we conclude that the works to re-roof the blocks in 2017/18 were required and that the costs, which are not challenged, were reasonable and are payable by Mr Eaves. No challenge is made to the standard of works and although Mr Robinson found some bubbling we assume that the contractors will be called back under the guarantee to put that right. Insofar as the additional roof works are concerned, there is really no great challenge to those and as Mr Young said in his skeleton argument that the works would stand or fall with the main works to the roof. As we have found that the main roofing works were required it follows that the mansard element of the roof was also reasonably required to be replaced and that the costs associated with therewith are reasonable and are payable by Mr Eaves. This means that he is now liable to

pay the costs of the roofing works, which are £16,512.12 for the rate replacement of the main roof and £2,590 for the additional roofing works.

89. There is then the question of the administration charges which do not appear to be challenged. The lease in the third schedule at sub-paragraph (j) has the following wording under the heading Staff and Professional Services: *“Employ and or retain managing agents, surveyors, solicitors and accountants and such staff as may be necessary for the reasonable supervision and performance of the company’s covenants hereunder and for the collection and recovery of the service charge in respect of the block.”* Accordingly, the lease would provide the machinery for which the administration charges could be levied and there is no challenge to the quantum of same other than in the amended defence where it is said no debt arises because there is no liability in respect of the roofing works. In those circumstances, therefore, we conclude that in respect of the administration charges which total £450 those are also payable to Mr Eaves.
90. The £420 solicitors costs is a matter that we consider could be reviewed when the question of costs are considered. We will set out below directions in relation thereto and also directions in respect of the calculation of interest.

## **DIRECTIONS**

### **APPLICANT’S CASE**

- a. By **31<sup>st</sup> March 2021** the Applicant shall send to the Respondent:
- b. a statement of case citing the relevant terms of the lease that allows costs to be recovered and if it is alleged that these costs are recoverable as a result of the unreasonable conduct of the Respondent, why that behaviour is sufficient to invoke Rule 13 of the Tribunal Procedure (First Tier Tribunal) (Property Chamber) Rules 2013 (the Rules.). The Applicant should identify in the Upper Tribunal Decision of Willow Court Management Company (1985) Limited v Mrs Ratna Alexander [2016]UKUT(LC) the three stages that the Tribunal will need to go through if an order is made under Rule 13.
- c. A full breakdown of the costs sought including:
- a schedule of the work undertaken
  - the time spent
  - the grade of fee earner and hourly rate
  - copies of terms of engagement with the Applicant unless the schedule or works is signed by a Partner
  - supporting invoices for any fees and disbursements
  - copy of Counsel’s fee note with Counsel’s year of call and details of the work undertaken and time spent by Counsel with his hourly rate
  - any other expenses that the Applicant considers should be recoverable.
- d. A calculation of the interest payable either at the County Court rate or at the rate provided for in the lease with argument as to which rate should be preferred.

## **RESPONDENT'S CASE**

By **30<sup>th</sup> April 2021** the Respondent shall send to the Applicant a statement in response setting out:

- a. the reasons for opposing the application both in respect of costs that may be payable under the terms of a lease or in respect of Rule 13
- b. any challenge to the amount of the costs being claimed with full reasons for such challenge and any alternative costs
- c. a submission as to the claim for interest, including the liability of the respondent to same and whether the interest should be at the lease rate or the court rate, with calculations
- d. details of any relevant documents relied upon with copies attached.

## **APPLICANT'S REPLY**

By **21<sup>st</sup> May 2021** the Applicant may send to the Respondent a statement in reply to the points raised by the Respondent.

## **DOCUMENTS FOR THE HEARING/ DETERMINATION**

- a. The Applicant will be responsible for preparing the bundle of documents (in a file within index and page numbers) and shall send one copy to the other party and three copies to the Tribunal **no later than 14 days before the date fixed for the date of the determination.**
- b. Only those documents send in bundles are likely to be before the Tribunal at the determination and parties should not send documents piecemeal to the case officer.
- c. The bundle shall contain:
  - copies of the Tribunal's determination on the substantive case to which the application relates
  - these directions and any subsequent directions
  - the Applicant's statement with all supporting documents
  - the Respondent's statement with all supporting documents.
- c. It is essential that the parties include any relevant correspondent to the Tribunal within the bundle. The Tribunal will determine the matter on the basis of written representations received in accordance with these directions in a period of 28 days commencing **on 14<sup>th</sup> June 2021.**
- d. Either party can seek that the matter be determined at a hearing, likely to be by Video. Any party wishing for the matter to be determined at a hearing must notify the tribunal and the other side of **this by 31<sup>st</sup> March 2021.** If a hearing is requested the Tribunal will notify the parties of the details of the hearing.

Judge: Andrew Dutton  
A A Dutton

Date: 24 February 2021

### **ANNEX – RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.