



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

**Case Reference** : CHI/00HN/LSC/2015/0025

**Property** : Forest House, 1 Russell Cotes Road, Bournemouth,  
Dorset, BH1 3UA

**Applicants** : Forest House (Bournemouth) Management  
Company Ltd

**Representative** : Napier Management Services Limited  
(Ms Head)

**Respondent** : The Lessees

**Type of Application** : Section 27A Landlord and Tenant Act 1985

**Tribunal Members** : Judge J Brownhill (Chair)  
Mr D Lintott FRICS

**Date of inspection** : 22/07/2015

**Date of Decision** : 24/07/2015

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**DECISION**

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- 1 Where numbers appear in square brackets [] in the body of this decision, they refer to pages of the bundle before the Tribunal.
- 2 The Applicants apply to the Tribunal for a determination of the reasonableness of various specified works to the balconies at the property and proposed budgeted costs of such works pursuant to section 27A of the Landlord and Tenant Act 1985 (hereinafter referred to as 'the 1985 Act') [73].
- 3 The proposed works involved (by way of brief summary) removal of existing asphalt and tiles covering to expose the concrete balcony slab. The slab is then to be re-levelled where required, and a new waterproof membrane laid (poured). The proposed works also involve the removal of glazing panels, metal frames, and balustrades and replacing these with stainless steel and new glazing. Details of the works are more particularly set out in the specification attached to the application.
- 4 The Tribunal was specifically not considering whether the requirements of section 20 (the consultation requirements) had been met with regard to any necessary consultation [63-6].

#### The Parties

- 5 The Tribunal notes that while all of the lessees of the property were named as Respondents to the application, 40 replies were received by the Tribunal to its enquiries, of which 8 indicated that they objected in whole or in part to the application [63-3].
- 6 The Tribunal had the benefit of a bundle of documents prepared by the Applicants, and which included letters/statements from the following (both in support and objecting to the Application and the works):
- a. A unsigned note from Mrs Fortin of the Applicants [1]
  - b. Two witness statements from Thomas Green, instructed by the Applicants [2][79]
  - c. Letters from Mr Bill Preston of flat 13 [14][17]
  - d. Witness statements and letters/statements of case from Mr Shaya representative for the owners of flat 19 [22][42];
  - e. A letter from Mr Graham Dickie of flat 15 [55];
  - f. A letter from Mr S Hartill and Ms S Hartill of flats 16 and 18 [58]; and
  - g. A letter from Mr and Mrs Lovering of flats 30 [60].
- 7 The Tribunal also had the benefit of reading, as part of the initial application, a schedule of works [84][127], a report from January 2014 relating to water ingress at the property [140], a report from March 2014 on the condition of the balconies at the property [145], and amongst other items, a revised tender report [291].

### The Law.

- 8 The statutory provisions primarily relevant to applications of this nature are contained in sections 18, 19 and 27A of the 1985 Act. A copy of those provisions is attached as an appendix to this judgment.
- 9 All the parties agreed (and this was confirmed at the outset of the hearing) that the obligation to repair the balconies fell on the Applicants under the terms of the leases and that the cost of the same was, per se, recoverable through the service charge. As this was not an issue between the parties the Tribunal did not consider this matter.
- 10 The issue between the parties was whether in fact the balconies were in a state of disrepair and if so what was a reasonable means of remedying that disrepair. Disrepair means only that there has been some deterioration from a prior better state or condition.
- 11 The Tribunal pointed out during the course of the hearing that, as a matter of law, where works of repair are required and there was a reciprocal duty on leaseholders to contribute to the cost of repair then the lessees means are usually irrelevant to the issues of whether costs are reasonably incurred.
- 12 The Tribunal also pointed out during the hearing that when a landlord (here, the Applicant management company) was considering whether to carry out patch repairs or carry out a renewal to remedy disrepair, the test of whether a patch repair will suffice is whether tackling the 'root cause' would be a 'mode of repair which a sensible person would have adopted'. Further, where there is more than one way of executing repairs, the choice of method of repair rests with the party under the obligation to repair. Provided the works of repair are reasonable, a lessee under an obligation to reimburse the cost to the landlord cannot insist upon cheaper or more limited remedial works or a minimum standard of repair. One test as to whether works carried out by a landlord and to be reimbursed by a tenant are reasonable is whether the landlord would have chosen that method of repair if he had to bear the cost himself.

### Summary

- 13 The Tribunal have no hesitation in concluding that both the scope of works proposed to the balconies (as set out in the schedule of works) and the costs as recommended and detailed in the revised tender report [291] are reasonable.

### The Inspection

- 14 The Tribunal had the benefit of a lengthy inspection of the outside of the property as well as inspecting a number of flats within the property internally, namely flats 16; 19; 62; and 37.
- 15 The property consists of a 12 storey building containing 72 flats plus 2 additional penthouses on the roof, making 13 floors in all. Construction is concrete frame, with brick and aggregate infill panels and insitu concrete floors and balconies. The property dates from the mid 1970s. Each flat has at least one balcony (some flats have two balconies), which consists of a concrete slab over which is an asphalt surface and on top of that are tiles to the base of

the balcony. The walls of the balcony are of concrete (with expansion joints) into which is fixed a metal frame containing Georgian wired glass. There were metal balustrades (covered with upvc) to the top of the concrete balcony walls.

- 16 The Tribunal inspected the property with particular reference to the balconies. Both Mr Green (the Applicant's engineer) and Mr Shaya (also an engineer representing some of the Respondents) were present at the inspection, amongst others.
- 17 It was evident from the internal inspection that there was fairly wide spread staining to the underside of the balconies at most, if not all, levels of the property. This took the form of rust staining consistent, the Tribunal found, with corroding mild steel in a seaside location. Also present were calcium carbonate deposits in the form of stalactites on the underside of a number of balcony slabs indicating the flushing out of essential salts from the concrete caused by water ingress. The Tribunal also noted that in many places the paint to the underside of the balcony slabs was peeling off.
- 18 The Tribunal noted rusting to both the outside and inside of the metal frames holding the Georgian glass wired panels, and that there was wide spread cracking of the glass panels evident, at all levels both to the front and rear of the property.
- 19 The internal inspection highlighted corroding balustrades beneath their PVC covers as well as to the metal fixing points to the concrete. The metal frames holding the Georgian wired glass showed wide spread corrosion not only to the fixing points but also to the glazing bars holding the panels.
- 20 The asphalt upstands showed areas of cracking due to age, and the Tribunal also noted expansion joints within the concrete walls to the balconies were cracked in a number of the balconies seen.
- 21 The inspection of flat 62 was of particular note as in the soffit (or underside of the balcony slab above) prominent metal reinforcement to the slab was visible. It had clearly corroded and been left exposed by spalling concrete. A further exposed reinforcing bar was evident and this had been painted recently; presumably any rust marks had therefore been painted over. The Tribunal found that the fact that the reinforcement metal work was exposed showed that it had corroded and spalled the concrete covering it.

### The Hearing

- 22 At the hearing, the Applicants were represented by Ms Head of Napier Management Limited. The Tribunal heard from Mr Thomas Green on behalf of the Applicants. Mr Shaya represented a number of the Respondents, specifically: the owners of flat 19 (Mr Shaya's children); Mr Rivilin (of flat 11); Mrs Lurie (of flat 6) and Mr and Ms Harthill (of flats 16 and 18).
- 23 The Tribunal heard at length from Mr Thomas Green the Applicants' engineer. He was intelligently questioned by Mr Shaya on behalf of a number of the Respondents, as well as by Mr Lovering. Mr Shaya came forward to give evidence, but then did not in fact give any evidence in chief, stating that he felt that he had said all he wanted to say when putting his points during his cross

examination of Mr Green. The Tribunal also heard briefly from Ms Harthill and Mr Rivilin. No-one else present at the hearing expressed a desire to give any oral evidence or make additional comment.

- 24 While not attempting to set out in detail all of the oral evidence heard by the Tribunal, the following is intended as a summary only, interspersed with the Tribunal's conclusions in relation to the same.

*The balcony slabs*

- 25 Mr Shaya spent a considerable amount of time during the hearing asking Mr Green about the condition of the concrete slabs which formed the balconies. In particular questions centred around what had been found when work had been done to the balcony of flat 40. Mr Green explained that he had been asked to address extensive water ingress to flat 40 and the flat below it. He concluded that water was penetrating the asphalt covering to the balcony of flat 40 and working its way through the slab into the inside of the flat below.
- 26 In order to address this water ingress, Mr Green (and his contractors) stripped off the tiles and asphalt to the balcony to flat 40. On doing so they discovered that the surface of the concrete slab was friable and there was 'dishing present' (of between 5-10m) where the water had mobilised the soluble salts through the slab, in effect the salts (lime) had been washed out of the concrete by the penetrating water. Mr Green explained that he had not undertaken any testing to the concrete slab, nor had he instigated any exploratory works to ascertain the condition of the internal metal supports. The dishing had not revealed any re-enforcement supports within the concrete. Mr Green explained that the reason that he had not undertaken probing works to ascertain whether the reinforcements within the slab were rusting were twofold:
- a. Firstly that to engage in such testing was destructive, involving digging not only to the top of such metal reinforcements but also underneath them, as that is where most of the corrosion/ rusting would be;
  - b. Secondly that Mr Green stated that he already knew that the metal reinforcements would be rusty.
- 27 Mr Shaya challenged Mr Green's conclusions on this issue stating that he could not know that the reinforcements were rusty without having seen the reinforcements themselves. Mr Green responded by stating that he was, on the balance of probabilities able to conclude that the reinforcements were rusty, as a result of the rust staining on the underside of many of the slabs. In Mr Green's view this was the only logical explanation for the rust staining to the underside of a considerable number of the balconies. He explained that given the position of the staining, (often in the centre of the undersides of the slabs) such staining could not have been caused by rusting balustrades or the rust from the metal frames or fixings tracking down/across the slab— that would have been visible and the stains were not in the correct area to have been caused in that way. Mr Green was clear in his conclusion that the staining to the centre of the underside of the balcony slabs had been caused by rusting to the reinforcements inside the slab.

- 28 The Tribunal noted that it had seen spalled concrete to the balcony slabs, on occasion revealing some of the reinforcements to the underside of the slab as well as stalactites, and staining. This in its view was consistent with corrosion and soluble salts being washed out of the balcony slab: the Tribunal found that this was evidence of water ingress into the balcony slabs. The Tribunal accepted Mr Green's explanation and evidence in this regard.
- 29 Going back briefly to deal with the works to the balcony slab of flat 40: having discovered the friable concrete and dishing to the top surface of the balcony slab, Mr Green had to carry out works to ensure that the top surface of the balcony was both free from friable material and level, so that he could pour on a new waterproof membrane. He described works to flatten the top surface of the slab for this purpose. He explained that these works were necessary to provide a completely flat, level surface in order to receive the waterproof covering. This would ensure that the balcony slab had, in effect, a waterproof hat, which would prevent further water ingress into the concrete slab itself.
- 30 It is important to note that this is the extent of the works to the balcony slabs envisaged by the proposed works. It is not said by Mr Green that the balcony slabs are, at present, in a dangerous or structurally unsound position, or that there is any deflection. However he was clear that the slabs did need to have this effective 'waterproof hat' in place, as the current asphalt had, as a result of age, cracked and was allowing water to penetrate into the slab (hence the rust staining and the stalactites of calcium carbonate visible to a significant number of balconies).
- 31 If this work to ensure that the slab had a waterproof hat was not undertaken, then, in due course, the slabs would become unsafe. The corrosion would continue (indeed accelerate) and there would be even more visible signs of this, including eventually, movement of the slab (deflection etc). By the time that point was reached, the existing balconies would not be capable of being salvaged and would need to be cut off and the balcony part of the slab replaced in its entirety. Mr Green described this to the Tribunal as the being a catastrophic outcome. The Tribunal reiterates again that this stage had not yet been reached and Mr Green was clear in his evidence that the balconies were structurally sound at the moment.
- 32 In terms of works to the slab, Mr Green explained that the envisaged works which were the subject of this application, included any levelling off of the top surface of the balcony slabs once the old and cracked asphalt had been removed, so that a new waterproof membrane could be poured on. The works proposed were not "...structural repairs..[to the slab] I'm suggesting maintenance only to prevent structural problems." No other works to the slabs were envisaged as being likely to be required: primarily, it appeared to the Tribunal, that if the work was done now, the slabs would have been caught in time, and thus the works could be limited to the level described in the application. If nothing was done to properly ensure that there was an effective waterproof membrane to the balcony slab, the condition of the slab was likely to significantly deteriorate and ultimately cause the balconies to fail.
- 33 The works to flat 40 were not the catalyst of the balcony project: those works were undertaken because of localised water ingress to flat 40 and the flat

below it. Mr Green described having done an inspection of every balcony at the property (indeed a copy of this report appears at [145]) and that report noted significant numbers of balconies with dried and cracked asphalt and salts migrating through balcony slabs.

#### *The asphalt*

- 34 The disrepair which required effective remedy was in effect to the asphalt. The asphalt was now some 40 odd years old, and had reached the end of its life. Mr Green described having seen during his inspection of all the balconies (back in March 2014) numerous examples of cracked and dried asphalt, which was allowing water penetration to the concrete slab below (this was having the effects described above).
- 35 Mr Shaya did not challenge Mr Green's evidence in this regard. He appeared to accept that the asphalt on many balconies was in a state of disrepair. This was itself evident to the Tribunal from its inspection of a limited number of balconies at the property. That inspection included flat 16 where Ms Harthill told the Tribunal that in her view there were no works needed bar some redecoration, yet cracked asphalt was clearly visible.
- 36 The Tribunal found that as a result of age, the asphalt on many of the balconies at the property was in a state of disrepair. The Tribunal found that the proposals for repairing the waterproof covering, namely applying a new waterproof membrane to the concrete balcony slabs, as detailed in the application were entirely appropriate and reasonable.

#### *Balustrades*

- 37 The Tribunal could see from its own inspection, that the balustrades (metal coated with black pvc) and the metal spindles fixing the same into the metal frames, were in a state of disrepair. There was bubbling to the pvc covering, where, due to age, this had failed and water had been able to get to the metal underneath. There was also evidence of calcium carbonate deposits from above falling onto the balustrades, and there was evidence of inevitable rusting to the spindle fixings.
- 38 The Tribunal noted that the proposed works involved replacing this balustrade with stainless steel of a suitable grade. This had the advantage that there would only, thereafter be cleaning requirements as opposed to painting /decoration as there was at present. This would of course present a future saving in terms of ongoing costs (this is discussed in more detail below). The Tribunal were satisfied that the proposed works were entirely reasonable.

#### *The Georgian wired glass*

- 39 The Tribunal noted that numerous balconies had cracked Georgian wired glass panels: this was the case to balconies both at the front and rear of the property (it is worthy of note that the front of the property sustains the full brunt of the wind coming off the sea, where-as those balconies at the rear appeared to be relatively sheltered.) It was also the case that there was cracked glass to balconies on the lower and upper floors – clearly wind was more likely to have affected those flats higher up in the building.

- 40 Mr Green explained that the cracking to the glass was caused by expansion to the metal frames holding the Georgian wired glass panels. Originally such glass panels had been fitted into the metal frames with putty. The putty had dried out allowing water to get inside. The inside of the frames were not painted and so they began to corrode, and expand; causing the cracking to the glass.
- 41 Mr Shaya suggested that this was not the case: he suggested that the external surfaces of the metal frames (i.e. not facing into the balcony and the property, but rather the surface facing away from the building) were not rusting. However, as the Tribunal pointed out to Mr Shaya during the inspection, we had noted such rusting to the external surfaces of the metal frames ourselves.
- 42 Mr Shaya also suggested that the cracking to the Georgian wired glass panels was the result of very high winds, and/or vibration of the glass panels within the frames in very high winds. Mr Green convincingly explained why, in his view, neither of these alternative explanations was possible:
- a. Mr Green referred to the fact that during the inspection he had illustrated to the Tribunal that where glass panels had cracked, the glass was not itself moving within the frame – it was tightly gripped: the glass was not rattling or vibrating in the frames. Indeed it was the fact that the glass was being gripped so tightly which was causing the cracking;
  - b. the nature of the cracking was not consistent with vibration cracking, or the sheer force of wind causing the glass to excessively deflect (wind loading);
  - c. that none of the residents had reported that glass in their windows (as opposed to their balconies) had cracked in the same high winds which Mr Shaya was blaming for the cracked glass in the balconies.
  - d. That winds had not been recorded in Bournemouth at a sufficiently high level to cause any cracking to the glass.
- 43 The Tribunal preferred Mr Green's explanation for the cause of the Georgian wired glass having cracked: namely as a result of disrepair (corrosion and expansion) to the metal frames. Indeed the Tribunal noted that a number of the balconies showed cracking to the expansion joints in the concrete walls to the balcony, and in one particularly balcony, the tribunal could see at the site of a crack to the Georgian wired glass, a corroded and rusty fixing which corresponded with a blown area of concrete to the balcony wall.
- 44 Mr Shaya also raised with Mr Green his concerned about the proposals for the fitting of the new glazing into the concrete. Mr Shaya was concerned that the drilling involved in such would cause damage through vibration including causing the concrete to spall.
- 45 Mr Green was clear that while there would be some vibration this would not be at such a level as to cause any damage. He described the works as involving core drilling out the existing fittings and then removing them. The new fixing would then be placed in the existing holes and bonded in. The Tribunal were



satisfied that what was proposed was an entirely reasonable and appropriate method of repair.

#### *The metal frames*

- 46 The Tribunal could see very clearly from its own inspection, that virtually every metal frame on every balcony inspected had some form of corrosion/ disrepair to varying degrees. Mr Shaya suggested that there was no rust to the outside of the metal frames and that that was where the majority of the weather exposure occurred. However, contrary to such an assertion the Tribunal itself noted metal corrosion and rust to the outside of the metal frames. Mr Shaya went onto allege that lack of maintenance was the cause of this problem, and he went onto describe having seen some work carried out within the previous round of re-decoration and how he felt it fell below a reasonable standard.
- 47 The Tribunal noted that whatever criticism there may be of past standards of redecoration – that was not, in fact, an issue before the Tribunal. The position the Tribunal were being asked to consider was that, given that the metal frames were in a state of disrepair, how should they be repaired.
- 48 The Tribunal considered that the proposed works of repair, replacing the metal frames with glazed units and stainless steel fixings was entirely reasonable and indeed a very sensible way forward. As mentioned above there would be no ongoing redecoration costs to stainless steel fixings, only cleaning required.

#### *Patch repairs*

- 49 Mr Shaya argued that what was required was merely a patch repair to the metal frames: namely that corroded parts were cut out and new bits of painted metal were inserted.
- 50 Mr Green had addressed this issue in his report. Mr Green in his March 2014 report looked at three methods of repair [172]: one of which was the patch repair option. Having costed these options over a ten year period it was clear that the replacement option (the option covered by the works envisaged under the current application) was by far the cheaper option. The figures were startling: over a ten year period the total costs of the patch repair/ partial replacement option was £904,704/ £965,760. This was to be compared with the proposed replacement option, which had a ten year cost of £451,399. Less than half the cost of the other options. Further if the patch repair option suggested by Mr Shaya was adopted:
- a. it was merely prolonging the inevitable – the replacement would need to occur at some point;
  - b. there would be ongoing decoration costs;
  - c. Mr Green had had considerable difficulty in finding any contractors who would, realistically, be willing to carry out such patch repairs; and

- d. there would be no guarantee/ warranty in relation to any such works, compared to significant warranty/guarantee available with the replacement works proposed.

51 The Tribunal were satisfied that the option recommended by Mr Green and which was envisaged within the proposed works was clearly the most sensible and reasonable option. Indeed the Tribunal concluded that the other options were entirely unreasonable in all the circumstances.

*Discussion of staging of repairs.*

52 Given the lessees concerns (as expressed in the bundle) about the costs of the proposed works, the Tribunal asked Mr Green about whether consideration had been given to staging the works in various ways, so as to reduce the cost burden on lessees. Options discussed with Mr Green included:

- a. Carrying out works to all the balconies at the front and to one side, then waiting for a period until balconies to the rear and other side were completed;
- b. Carrying out works to the 'worst' or most badly affected balconies first;
- c. Carrying out works to the balcony slab first on all the balconies, followed later by works to the metal frames, glass and balustrades (or vice versa).

53 Mr Green explained very clearly that there were a number of reasons for the active decision which had been taken to programme the works altogether, these were:

- a. Economics. When he had carried out his inspection in March 2014 Mr Green found that 65 balconies had been in need of immediate attention. All of the balconies needed the pvc balustrade taking out, and all of the balconies needed decoration. Mr Green explained that the most economic route was to replace the balustrades and metal frames etc entirely. He explained to the Tribunal that he had been able to obtain a very competitive price for the work simply because of the number of balconies involved.
- b. It was a condition of the planning consent that the entire building was done together. Mr Green explained that while he could in theory apply to the planning department for permission to split the works, he stated that in his experience it was unlikely that the planners would permit the works to be split up to cover different parts of the property at different times: this was in his view especially so as the current planning permission had only been obtained on appeal;
- c. By undertaking works to the property at different times a situation would be created where there would be warranties starting at different times. This could be very difficult to manage in terms of staggering maintenance obligations, and the consequent validity of the warranties;
- d. The work could not be done to say, the balustrade first and only later to the slab as that would involve leaving soluble salts dripping from balcony slabs above onto the new balustrades;

- e. Nor could one carry out works to waterproof the slab first and then at a later stage replace the metal frames, glass and balustrades, as that would involve cutting into the new waterproof membrane, thus invalidating its warranty.

54 The Tribunal was satisfied that the proposed scheduling of the works was the only reasonable way forward: all of the works (to waterproof the slab, replace the metal frames and glazing and the balustrades) realistically had to be done together.

#### *Other matters*

55 In addition to the above, the Tribunal also heard from Mr Green (in response to questions raised by Mr Lovering) concerning why cradles could not be used when carrying out the works, and also what would happen if the inside of lessee's homes was damaged by the workmen when they were carrying out repairs.

56 Mr Green explained very clearly, that the Health and Safety Executive (HSE) Regulations meant that cradles could only be used to carry out redecoration works and/or window cleaning. As these were not the type of works being envisaged at the property, cradles could not be used. Mr Green stated that it would not be permitted for workmen to attempt to transfer from cradles onto balconies. Mr Green also explained that an ingenious and 'clever' system devised/ suggested by another lessee (Mr Preston) to try to get around this problem would also fall foul of the HSE Regulations. The only options therefore remaining were:

- a. to use scaffolding, which Mr Green explained would potentially double the cost of the project. He referred to initial design costs of the scaffolding as being in the region of £10,000 plus £50,000 per tower to scaffold; or
- b. to allow workmen to access the balconies through lessees' flats. Mr Green explained that prior to the commencement of the contract he would undertake a schedule of condition to each flat, taking photographs etc. If contractors caused damage to any flat they would have to repair it. Mr Green stated that the contractors would be insured to cover such eventualities.

57 There was no application pursuant to section 20C of the Landlord and Tenant Act 1985 made by any of the parties at the oral hearing. The written application to the Tribunal having been brought by the management company, there was no application for an order under section 20C in the application itself. The Tribunal therefore did not go on to consider whether to make an order under section 20C.

#### Conclusions

58 The Tribunal considered Mr Green to have conducted a very thorough survey of the balconies at the property. Mr Shaya candidly admitted that prior to the

inspection he had only seen 'a few' balconies, other than that to flat 19. Where there was a disagreement between Mr Green and Mr Shaya the Tribunal preferred the evidence of Mr Green: his evidence was clear, backed up by his thorough inspection of the property, logically consistent and supported by the Tribunal's own findings during the inspection of the property. The Tribunal considered that the recommendations of Mr Green and the proposed works were entirely reasonable and appropriate.

- 59 Without this proposed work being undertaken to the property, it is very clear that the building will deteriorate. Indeed the Tribunal considered the proposed works not only to be reasonable but, frankly, essential.
- 60 The Tribunal therefore conclude that the Applicants' proposed works are entirely reasonable and appropriate, and that the proposed, recommended tender and costs, as detailed in the revised tender report, are also reasonable.
- 61 The Tribunal asks the Applicants to ensure that a hard copy of this judgment is served on each lessee of the property – not merely those who had objected to the application and/or proposed works. The Applicant is then asked, within days of being provided with a copy of this judgment, to confirm (in writing) to the Tribunal that it has complied with this request.

### Appeals

- 62 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.
- 63 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.
- 64 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.
- 65 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.

Judge J Brownhill (Chair)

Dated; 24<sup>th</sup> July 2015

Appendix

Landlord and Tenant Act 1985

**Section 18 Meaning of “service charge” and “relevant costs”.**

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

**Section 19 Limitation of service charges: reasonableness.**

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

.....

- (5) If a person takes any proceedings in the High Court in pursuance of any of the provisions of this Act relating to service charges and he could have taken those proceedings in the county court, he shall not be entitled to recover any costs.]

**Section 27A Liability to pay service charges: jurisdiction**

(1) An application may be made to an appropriate tribunal for a determination whether a service charge is payable and, if it is, as to—

- (a) the person by whom it is payable,
- (b) the person to whom it is payable,
- (c) the amount which is payable,
- (d) the date at or by which it is payable, and
- (e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.

(3) An application may also be made to the appropriate tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to—

- (a) the person by whom it would be payable,
- (b) the person to whom it would be payable,
- (c) the amount which would be payable,
- (d) the date at or by which it would be payable, and
- (e) the manner in which it would be payable.

(4) No application under subsection (1) or (3) may be made in respect of a matter which—

- (a) has been agreed or admitted by the tenant,
- (b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
- (c) has been the subject of determination by a court, or
- (d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

- (a) in a particular manner, or

(b) on particular evidence,

of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.]