10139

FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	LON/00AZ/LSC/2014/0162
Property	:	Flats 98 and 106 Evans Road, London, SE6 1QQ
Applicants	:	(1) Mr Francis Ntukogu (Tenant of Flat 98) (2) Ms Sheila Adu-Wiredu (Tenant of Flat 106)
Representative	:	In Person
Appearances for Applicants:	:	(1) Mr David Giles, counsel (2) Mr Ntukogu (3) Ms Adu-Wiredu (4) Mr J Macharia, Tenant of Flat 90
Respondent	:	Phoenix Community Housing Association
Representative	:	In Person
Appearances for Respondent	:	(1) Mr Richard Parker, leasehold consultation advisor (2) Mr A Bysouth, Project Manager
Type of Application	:	Liability to pay and reasonableness of service charges

Tribunal Members	:	(1) Mr A Vance, Tribunal Judge (2) Mr P S Roberts, DipArch RIBA (3) Mrs J A Hawkins, Hawkins. BSc MSc
Date and venue of Hearings	:	07.07.14 and 08.07.14 at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	04.08.14

DECISION

Decision of the Tribunal

1. The tribunal determines that the sum of £19,000 is payable by each of the Applicants for the estimated costs of major works demanded in respect of the 2012/13 service charge year.
2. The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

Introduction

3. The Applicants seek a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charge payable by them towards the costs of major works carried out by the Respondent. The application relates to estimated costs in the sum of £24,259.17 demanded by invoice dated 12.07.13 and which related to the 2012/13 service charge year.
4. The First Applicant, Mr Ntukogu is the tenant of Flat 98 Evans Road, London SE6 1QQ having acquired the leasehold interest in that flat in about October 2004. The Second Applicant, Ms Adu-Wiredu is the tenant of Flat 106 Evans Road. She formerly occupied her flat under a secure tenancy with London Borough of Lewisham and exercised her Right to Buy the flat in 2005.
5. Both flats are two-bedroom properties situated in a block of six purpose-built flats at 96-106 Evans Road built in the 1930's ("the Building"). Flat 106 is located on the ground floor of the Building and Flat 98 is located on the second floor. The Applicants are the only long lessees in the Building. The Building is located in the North Downham Estate ("the Estate").
6. The freehold interest in the Building is vested in the Respondent following a stock transfer from London Borough of Lewisham in December 2007.
7. An oral case management hearing took place on 15.04.14 and was attended by all parties. Directions were issued to the parties on the same day.
8. The relevant legal provisions are set out in the Appendix to this decision.
9. Numbers appearing in square brackets in this decision refer to pages in the hearing bundle.

Inspection

10. The tribunal considered it necessary to inspect the Building and this inspection took place on the morning of 07.07.14.
11. It is a 1930s block of six flats on two floors plus upper mansard level. It is of brick construction under a tiled roof and appears in good overall condition.

12. The main roof slopes have been renewed with new tiling and it appears that works may also have been done to the mansard and dormers with sound existing tiles being re-used.

13. It appears that in recent years windows have been replaced with uPVC; gutters and rainwater pipes have been renewed with some old cast-iron rainwater goods being retained and others replaced by PVC goods. Bird deterrent spikes have been fitted to the gutters.

14. A bin store area has been fitted with a new secure steel enclosure with gates.

15. Balconies at first and second floors have been renewed with a lightweight steel structure and cladding. Some cracking is evident to brickwork externally and to stair walls adjacent which the Respondent agreed was to be investigated by its structural engineer.

16. The common parts have been redecorated and new sheet flooring has been laid to landings and stairs. Some defects were apparent to the ground floor flooring and to the decoration as referred to below.

17. A new entry system with new entrance doors has been installed and external and internal lighting has been upgraded.

The Leases

18. The material terms of both leases are identical. Both were entered into following the exercise of the Right to Buy by former council tenants of each flat under the provisions of Housing Act 1985.

19. Mr Ntukogu's lease is dated 13.12.99 and was entered into between London Borough of Lewisham and Selina Pierre for a term of 125 years. The First Applicant has the benefit of the unexpired residue of that term.

20. Ms Adu-Wiredu's lease is dated 18.04.05 and was entered into between her and London Borough of Lewisham for a term of 125 years.

21. Both leases provide for the tenant to pay service charge contributions (as set out in the Tenth Schedule to the lease) towards the costs and expenses incurred by the Respondent in complying with its obligations under the lease.

Background

22. This Application concerns costs incurred in respect of major works carried out to the Building under a long term agreement between the Respondent and its contractors, Lakehouse. According to the Respondent, the agreement was entered into in about February/March 2012 and was for Lakehouse to carry out major works across the Respondent's property estate, affecting approximately 600 properties, at a contract sum of £15.5 million.

23. The works included external and internal decorations; replacement of balconies; repairs/renewals of the pitched roof; external plumbing works; refurbishment of bin stores; communal lighting and electrical upgrade works and replacement of the communal doors and door-entry system.

24. Works commenced in the 2013/14 financial year and as at the date of the tribunal hearing the works were almost complete with mostly snagging works remaining outstanding; the final account has yet to be settled.

The Hearing, Decision and Reasons

25. The tribunal heard evidence from the Applicants; Mr Macharia; Mr Parker and Mr Bysouth. Although no witness statements from any of these witnesses had been provided all parties agreed with the tribunal that it was appropriate for the tribunal to hear oral evidence from these witnesses. The tribunal considered it in the interests of justice and the effective management of the hearing do so.

26. The following additional document was provided by the Applicants shortly before the hearing date and was added to the tribunal bundle as follows:

(i) Copy letter from the Applicants to the tribunal dated 03.07.14 **[267-8]** enclosing a report from Anderson Consulting Engineers ("the Anderson report") dated 01.07.14 **[269-282]**.

27. The following additional documents were provided by the Respondent during the course of the hearing and were added to the tribunal bundle:

(i) Report from Lyons O'Neil, structural engineers, dated 03.07.14 responding to the Anderson report **[283-286]**.

(ii) A breakdown of costs of the estimated major works service charge **[287-288]**

28. Neither party objected to the tribunal having regard to these documents. The tribunal allowed them to be submitted as evidence despite their late admission. It considered it appropriate to do so having regard to the relevance of the documents to the issues in dispute.

29. The Applicant's case consisted of four points:

(i) That the Respondent had not complied with the consultation requirements of s.20 of the 1985 Act.

(ii) That the cost of some of the works carried out were not recoverable from the Applicants under the service charge provisions of their leases.

(iii) That some of the costs of the works were unreasonably incurred.

(iv) That some of the works were not carried out to a reasonable standard.

Point (i) - The s.20 Consultation Procedure

The Applicants' Case

30. The Applicants disputed receiving any of the following consultation documents that the Respondent maintained were sent to both of them:

(i) Notice of intention to enter into a qualifying long term agreement dated 02.06.11 **[83; 87]**;

(ii) Notice of proposal to enter into a qualifying long term agreement dated 07.12.11 **[95; 107]**; and

(iii) Notice of intention to carry out works under a long term agreement dated 03.08.12 **[115; 123]**.

31. They also disputed receiving a letter from the Respondent dated 30.09.11 enclosing minutes of a major works update meeting the Respondent held with residents on 24.08.11 **[133; 139]**.

32. In oral evidence both Applicants stated that the first time they were informed that they would be liable to contribute towards the costs of these major works was when they received a letter from the Respondent dated 12.07.13 **[151; 155]**. That letter enclosed an invoice demanding payment of the sum of £24,259.19 towards the estimated costs of the major works

33. Both stated that on receipt of that letter they telephoned the Respondent and queried the demand. Mr Ntukogu's evidence was that he asked why he had not been consulted about the work previously and that if he had been consulted he would have suggested alternative contractors to carry out this work. Ms Adu-Wiredu's evidence was that she too would have engaged in the consultation process.

34. The evidence from Mr Macharia, the tenant of flat number 90 (which is located in a different building on the estate), was that he did not receive the consultation notices that the Respondent stated were sent to lessees.

35. In his written submissions to the tribunal Mr Giles submitted that the evidence from the Applicants and Mr Macharia was consistent and credible and indicated that the Respondent had failed to consult the Applicants as required. As such the costs incurred should be limited to the statutory maximum and/or allowance should be made for costs savings that would have resulted if consultation had taken place.

The Respondent's Case

36. The Respondent maintains that all of the statutory consultation letters and documents in dispute were sent to the Applicants and that the consultation requirements were met. Mr Parker's oral evidence was that:

(i) The letters to lessees enclosing the consultation information and documents were sent to all lessees affected by the long term agreement and major works programme across the Estate.

(ii) He was personally responsible for the creation of the letters and their preparation for postage.

(iii) The letters were electronically produced and electronically signed in PDF file format. Using a computer, he arranged for the relevant address fields to be populated and then printed out two copies of each letter.

(iv) He placed one copy of each letter in an envelope to be sent to the addressee and one copy in the physical file for the relevant property.

(v) He put each envelope through a franking machine and then placed each envelope in a bag to be collected by the postal service.

(vi) He checked that the number of envelopes franked matched the number of letters to be sent

(vii) The letters were sent out by standard first class post.

37. At the tribunal's request Mr Parker brought the physical property files for each flat with him to the second day of the tribunal hearing. He produced copies of the letters dated 02.06.11; 07.12.11 and 03.08.12 addressed to each Applicant. Each copy was stamped 'File Copy'.

38. He also brought a spreadsheet that he stated was created in about June 2012 prior to the Respondent sending out the Notice of intention to carry out works under a long term agreement to lessees. Mr Parker's evidence was that he populated the date fields on the spreadsheet when the Notice was placed in the post indicating the date the Notice was issued and the cut-off date for receipt of observations. He also recorded the date on which any observations were made. This spreadsheet recorded that the letter of 03.08.12 was sent to each Applicant on that date and that no observations were received.

Decision and Reasons

39. Weighing up the evidence before it, the tribunal is satisfied that the relevant notices were sent to the Applicants and that the statutory requirements were met both in respect of the entry into the qualifying long term agreement and the Notice of intention to carry out works under that agreement.

40. It found Mr Parker's evidence to be credible and persuasive. He provided a detailed account of how each letter was created and how it entered the postal system. He was the only person involved from the creation of the document to it being collected by the postal service and as such it is highly unlikely that a letter would have gone astray in between creation and collection.

41. The tribunal found this evidence sufficient to satisfy it that the Respondent gave notice to the Applicants in writing of its intention to enter into the long term agreement and to carry out qualifying works.

42. The fact that the Notice of intention to carry out works was sent to the Applicants is also evidenced by the record on the spreadsheet produced on the second day of the hearing as well as the stamped copies retained on the physical files. It is noteworthy that Mr Parker's spreadsheet records that the lessee of 92 Evans Road made written observations in respect of the s.20 consultation procedure (as did many other lessees) and that these were responded to on 12.11.12.

43. It is possible that the documents in question were sent by the Respondent but not received by the Applicants. However, there was no suggestion by Mr Giles that the Respondent had to prove actual receipt and in the tribunal's view this is correct. What is required is the giving of notice in writing. It is not necessary for the Respondent to prove receipt. However, in the tribunal's view, it is highly unlikely that all six of these documents would have gone astray in the postal system. What is more likely is that the notices were received but that the Applicants did not fully appreciate the extent of their likely financial contribution until receipt of the major works invoice under cover of the letter dated 12.07.13.

Point (ii) - Are the costs recoverable from the Applicants under the service charge provisions of their leases?

44. This point is relevant to the Respondent's replacement of the balconies on the Building. There are four balconies in total located at the rear elevation of the Building. Mr Ntukogu's flat has a balcony but Ms Adu-Wiredu's does not as neither of the two ground floor flats have balconies. However, the two ground floor flats have the benefit of a paved undercroft which is located directly below the upper balconies.

45. Prior to the major works the balconies were formed around concrete and steel beam slabs which cantilevered out from the floor of each flat forming the base of the balconies. They had a solid brick surround. Surface water drained through a rainwater outlet leading to a down pipe in the corner of the Building.

46. In about January 2012 the Respondent obtained a feasibility report from structural engineers as to the condition of the balconies on the properties on the North Downham Estate (the Arcadis report') **[237]**. In that report Arcadis referred to an earlier report obtained by the Respondent several years previously from Frankham Consultancy ('the Frankham report'). The Arcadis report records that the Frankham report concluded that balconies on the Estate were affected by corrosion to the steel beams in the bases and that this would continue so that in time all of the balconies would become unsafe.

47. Arcadis confirmed Frankham's findings and set out three alternative options available to the Respondent:

(i) Demolishing the balconies with no reinstatement;

(ii) Removal and reconstructing the balconies close to the original design; or

(iii) Reconstructing the balconies with a new design.

48. Arcadis considered the second option to be the most expensive and that whilst the first was the most economical solution it was likely to result in considerable dissatisfaction amongst residents. It also considered that repairing and continuing to maintain the balconies was the wrong long term solution "*as although individual localised repairs could be undertaken to the worst properties in order to make them safe this would be a never-ending problem with works and costs ever-increasing as contractors disrupt and attempt to repair the existing fabric*".

49. By June 2012 the Respondent had opted to demolish the existing balconies and to construct new balconies with a new design. Planning permission to do so was requested and obtained.

50. As indicated in the Anderson report, the new design consisted of a steel floor support with a composite board base and steel handrail. The steel frame is bolted to the wall at floor level and at the level of the handrail. The Anderson report obtained

by the Applicants states at paragraph 3.1 that *"There is no diagonal bracing to the steelwork and there is no clear structural system in place to prevent the balcony from deflecting on the outer edge."* It also records that cracking has occurred to the brickwork over and to the side of the opening onto the balcony from flat 98 as a result of the removal of the original balcony.

51. The author of the report concludes, at paragraph 4.1, that the balconies were an inferior replacement for the originals as *"the support system relies upon the stiffness of the connection into the original structure. This will relax over time and the balcony will deflect"*. Also criticised is the arrangement for the disposal of rainwater whereby water spills over the edge of the base and falls onto the area below.

52. The issue of the stiffness of the connection to the structure of the Building is addressed in the Lyons O'Neill report where it is pointed out that the author of the Anderson report may not have been aware that the steel beam is also packed onto the main stair wall forming a shear couple which resists bending. The author points out that the deflection on the outer edge of the balconies had been calculated under the relevant British Standard for the design, fabrication and erection of structural steelwork and that the calculations had passed through the building control process.

The Applicant's Case

53. Mr Giles' first submission was that by removing the old balconies and replacing them with a completely different new design the Respondent had altered the form or structure of the Building. Whilst the Respondent was entitled to carry out such alterations the costs incurred were not, he submitted, recoverable from the Applicants through the service charge provisions of the lease. Such works did not, in his submission, relate to the repair or maintenance of structural defects nor did they amount to works of renewal or replacement.

54. He submitted that the new balconies were materially different in substance to what was there before in that they are constructed of different material with a different method of securing them to the structure. He accepted that the Lyons O'Neill report appeared to have satisfactorily addressed the concern raised in the Anderson report concerning the stiffness of the connection to the Building. However, he argued that the need for planning consent supported his contention that the work carried out went beyond rebuilding, repair or maintenance.

55. Mr Giles' second submission was that the costs of the balcony replacement works were not, in any event, recoverable from Ms Adu-Wiredu. This is because paragraph 1 to Part I of the Tenth Schedule to her lease provides that:

> *"The Lessee shall not be responsible for expenditure in respect of structural defects of which the Lessor becomes aware during the "initial period of the lease" (as defined in paragraph 16B SS4 of Schedule 6 of the Housing Act 1985) except in respect of the notified defects (if any) specified in Paragraph 9 of the Particulars."*

56. The notified defects as set out in the Particulars refer only to "cracks to underside of balcony above back door" and not to the fundamental problems identified in the Frankham report. Both parties agreed that the Frankham report was obtained in around 2008. As such, Mt Giles argued, the Respondent was aware of the structural defect to the Building within the initial period of her lease (which is defined in paragraph 16B of Schedule 6 of the Housing Act 1985 as five years from the grant of the lease). As this was not a defect notified to her in the Particulars to her lease she was not responsible for the expenditure incurred.

The Respondent's Case

57. Mr Parker contended that replacement of the balconies amounted to renewal of an existing part of the structure which was also an improvement. He maintained that the costs were recoverable from both Applicants under the service charge.

Decision and Reasons

58. The tribunal determines that the costs of these major works are recoverable from both Applicants under the service charge provisions of their leases in their apportioned shares.

59. The only costs where liability was in issue related to the works to the balconies.

60. Paragraph 5.11 of Part I to the Tenth Schedule of both leases allows the Respondent to recover a contribution from the lessees towards the following:

> *"All or any part of repair maintenance or making good of structural defects including rebuilding or reinstatement carried out or to be carried out by the Council to the Demised Premises or to the common parts of the Building or Estate of which the property forms part subject to Paragraph 18 of Schedule 6 of the Housing Act 1985."*

61. In addition, Part II of the Tenth Schedule of both leases allows the Respondent to recover a contribution towards costs incurred by the Respondent

> *"in respect of any works of improvement as properly may be attributable to the Lessee in accordance with this part of the Schedule".*

62. In the tribunal's view, the works to the balconies amount to a repair of a structural defect together with an improvement in design. As such, the costs are recoverable under paragraph 5.11 to Part I to the Tenth Schedule of both leases and in so far as they amount to works of improvement are recoverable under Part II of the Tenth Schedule.

63. The tribunal does not agree with Mr Giles' view that the works altered the whole or substantially the whole of the Building resulting in a building of a wholly different character. In the tribunal's view the works were more limited in scope and impact with the existing balconies simply being replaced with new ones in the same locations but with a different design.

64. As to Mr Giles' second submission, the tribunal was persuaded that this point may have considerable merit. However, it considered that there was insufficient evidence before it to conclude that within the first five years of her lease the Respondent was aware that the conditions of the balconies to the Building amounted to a structural defect.

65. The only evidence relied upon by Mr Giles to establish such knowledge was the reference to the conclusions of the Frankham report contained within paragraph 1.0 of the Arcadis report **[239]** which reads as follows:

> *"Frankham concluded that the process of carbonisation (the corroding of steel due to absorption of carbon dioxide through concrete) has lasted at best around 70 years in the Evans Road area, but that the process of continuing carbonisation should be expected to continue even in balconies not currently displaying problems. Frankham concluded that given time all the balconies will become unsafe."*

66. It is unfortunate that the Frankham report is not before the tribunal and, as such, its contents are uncertain. However, from reading paragraph 1.0 of the Arcadis report **[239]** it appears that both reports concerned the general condition of the balconies across the Estate as a whole. There is no evidence to indicate that the Frankham report addressed the condition of the specific balconies in the Building (as opposed to the general condition of balconies across the Estate) and identified that they were in a condition that amounted to a structural defect.

67. Furthermore, the above extract from paragraph 1.0 of the Arcadis report indicates that the Frankham report identified that some balconies were not displaying any problems. It is possible that this was the case for the balconies at the Building and that problems only emerged after the first five years of Ms Adu-Wiredu's lease.

68. In order for the tribunal to accept Mr Giles' submission it would need to be satisfied that the Frankham report either specifically identified that the balconies in the Building were structurally defective or that all the balconies of the same design across the Estate were inherently structurally defective. It may be that this is what the report says but it would not be safe for the tribunal to conclude that it does without sight of the report. The brief reference at paragraph 1.0 of the Arcadis report is not sufficient to allow the tribunal to conclude that the Respondent had the requisite knowledge at the relevant time.

69. The tribunal wishes to make it clear that its' decision only concerns Ms Adu-Wiredu's liability to pay the interim charge demanded of her. She has the right, if she so wishes, to challenge the amount of the final costs demanded from her for this work. If she does then a different tribunal will consider her liability for those costs afresh based on the all the evidence before it and will not be bound by this tribunal's decision.

Points (iii) and (iv) - Were some of the costs unreasonably incurred and/or were some of the works not carried out to a reasonable standard?

70. The Applicant challenged the following items of work:

(a) Balcony Works

The Applicant's Case

71. Mr Giles submitted that the estimated costs of the balcony works were excessive. He pointed out that at paragraph 6.2 of the Arcadis report **[247]** the costs of replacing balconies with ones of modern design and construction were estimated at about £5,500 per balcony. They had now increased to about £8,000 which, he contended was an excessive increase.

72. He also argued that the design was poor and highlighted the comment made at paragraph 4.1 of the Anderson report that no arrangement had been made for the disposal of rainwater. He also referred to paragraph 3.1 of that report where it is stated that cracking had occurred to the brickwork over and to the side of Mr Ntukogu's balcony due to disturbance caused during removal of the original balcony.

The Respondent's Case

73. Mr Parker's response was that the figure stated on the Arcadis report for the costs of the balcony works was an estimate based on assumed costs. It was only after the designs were drawn up that the contractor was able to give a more reliable estimate. The current estimated cost amounts to £32,860 (£8,215 per balcony) **[287]**. This was also the figure stated in the schedule attached to the letters to the Applicants dated 08.01.14 **[159; 163]**.

74. Mr Bysouth's evidence was that the former balconies suffered from drainage problems in that the drainage outlets sometimes became blocked with detritus. He disputed that drainage was not considered in the design. On the contrary, they were designed so that no drainage system was needed, with rainwater escaping through the gaps on the side of the base of the balcony.

Decision and Reasons

75. The tribunal determines that the estimated costs are reasonable in amount and that the works have been carried out to a reasonable standard.

76. It seems to the tribunal that the choice of design was not an inappropriate one. On inspection the balconies appeared to be lightweight but sturdy and are likely to be easier to maintain than the previous balconies. The tribunal has some sympathy with the Applicants over the arrangements for discharge of rainwater but do not consider this to be a design defect or omission. The design is functional and the inconvenience to tenants is likely to be minimal given that the balconies are unlikely to be used during periods of rainfall.

77. As to the cracking to the brickwork by Mr Ntukogu's balcony, Mr Bysouth agreed at the hearing that a structural engineer would inspect the cracking and report back any concerns. The crack is quite small and the tribunal is not satisfied that its presence is evidence that the works were carried to a poor standard. Nor is the possibility that it may resulted from the balcony works sufficient reason to justify limiting the amount sought by the Respondent towards the interim costs of these works. The Applicants have the right to challenge the final costs if the Respondent's

structural engineer's report evidences poor workmanship or unnecessary costs being incurred.

78. As to the costs of the balcony works the tribunal does not have evidence before it that would justify it determining that the costs were excessive. If the Applicants do wish to challenge the final costs before a future tribunal it would assist if they obtained alternative comparable quotes for the works carried out as none were before this tribunal. Whilst, in the tribunal's view, the costs seem on the high side of what could be considered reasonable, without such evidence it does not consider the evidence warrants a limitation of costs.

(b) Roofing Works (£25,196.99)

The Applicant's Case

79. The Applicants questioned the necessity for the Respondent to replace the roof to the Building and the quality of the work carried out. They asserted that after the roof was replaced a leak occurred into the second floor area.

The Respondent's Case

80. Mr Bysouth's evidence was that the roof that was replaced was the original roof to the Building and that it had leaked on a number of occasions and needed replacement. He considered the costs to be reasonable

Decision and Reasons

81. The tribunal determines that the estimated costs are reasonable in amount and that the works have been carried out to a reasonable standard.

82. The evidence from Mr Bysouth was that the whole of the crown of the roof was replaced and the roof re-tiled. It was not clear to the tribunal if the costs also included works to the mansard roof and dormers, it would have been of assistance if the specification of works was available. Despite that, there is no substantive evidence from the Applicants, whether by way of alternative quotes or an experts report to challenge these estimated costs. There is, therefore insufficient evidence to justify limiting these costs.

(c) Internal redecorations (£5604.10)

The Applicant's Case

83. On inspection the tribunal noted that, as stated in paragraph 3.3 of the Anderson Report, the replacement floor covering in the entrance hall of the Building was uneven with several tears in the fabric. A joint in the fabric was also located close to the front entrance which the Applicants contended was unsuitable as it is a heavily trafficked area.

84. The Anderson report also states at paragraph 3.4 that the painting to the common stairwell was flaking in places and that some cracking had appeared close to the steel beam that supports the balcony. Mr Ntukogu's evidence was that this cracking had occurred after the balconies were erected. Further, painting of the handrails had

been poorly carried out. The Applicants also said that some re-painting of the stairwell walls had occurred only a few days prior to the hearing.

The Respondent's Case

85. Mr Bysouth agreed that the floor in the entrance hall was uneven and confirmed that the Respondent would relay the floor in the entrance hall at no cost to the tenants and that the base would be inspected prior to doing so.

86. He disputed that the paintwork to the communal areas was poor overall but conceded that some problems had occurred by virtue of the painting being done before the installation of the balconies (this had occurred because there had been a delay in approval of the design of the balconies) and before the old roof (which had leaked) was replaced. These areas had been re-decorated in the week prior to the hearing at no cost to lessees. However, he agreed that the paintwork to the wall in the communal entrance hall was not entirely satisfactory and that this would be repainted at no cost to the lessees.

87. As to the cracking on the stairwell walls, Mr Bysouth stated that he would arrange for these to be inspected by a structural engineer and would want the clerk of works to consider capturing any remedial works within the defects liability period.

Decision and Reasons

88. The tribunal determines that the estimated costs are reasonable in amount and that the works have been carried out to a reasonable standard.

89. On inspection, the tribunal considered that there were some minor defects to the painting but that given the age of the Building the works were carried out to a reasonable standard using what appeared to be good quality materials and at what appeared to be a very reasonable cost. The Respondent indicated that the internal painting and flooring would be included in snagging works at no additional cost to the lessees. Given this the tribunal does not consider any limitation in the costs recoverable is appropriate.

90. As to the cracking the tribunal notes Mr Bysouth's agreement to obtain a report from a structural engineer with any necessary remedial works to be dealt with within the defects liability period. It considers this to be an appropriate response to the Applicants' concerns.

(d) Communal lighting and electrical upgrade (£5912.50)

The Applicant's Case

91. The Applicant's case was that there was no need for this work to be carried out and that a redundant cable had been left in place on the second floor.

The Respondent's Case

92. Mr Bysouth's evidence was that these installations were upgraded in order to comply with Building Regulations requirements regarding emergency lighting in the event of a power supply failure. The new installation allows lighting to remain

powered by a battery in such a situation. He confirmed that the internal mains system was replaced as part of these works. As for the old cable, this was a Virgin Media cable and not part of the electrical upgrade works.

Decision and Reasons

93. The tribunal determines that the estimated costs are reasonable in amount and that the works have been carried out to a reasonable standard.

94. It considers that carrying out these works was reasonable for the reasons advanced by Mr Bysouth and that there is no evidence that the costs were unreasonable in amount. It notes that the estimated costs had decreased from an earlier estimate of £6,500 **[165]**.

(e) Bin stores £2,000

The Applicant's Case

95. The Applicant's case was that the bin store was locked and not accessible and that these works were unnecessary. The area had previously been boarded up.

The Respondent's Case

96. Mr Bysouth's evidence was that the previous method of disposing of refuse was for tenants to use a rubbish chute that emptied into the bin store. However, the chutes were proving to be too small for the larger rubbish bags used by tenants and the use of chutes was discontinued some time ago. Residents then placed their rubbish bags in bins located at the front of the Building.

97. As that system was considered unsatisfactory, with the bags being a potential source of fire, a decision was taken that across the whole of the Estate bin stores would be put back into use but with a locked door being erected on the front of the Building. Residents would have access to the rear of the bin store and rubbish bags would be collected by contractors who had access to the front door of the store.

Decision and Reasons

98. The tribunal determines that the estimated costs are reasonable in amount and that the works have been carried out to a reasonable standard.

99. It considers that it was reasonable for the Respondent to decide to use these areas in the way described by Mr Bysouth as opposed to having a boarded up entrance and rubbish bags or bins being left outside the Building. There was no evidence provided by the Applicants that these costs were unreasonable in amount.

(f) Communal doors and entry phone system (£7,770)

The Applicant's Case

100. The Applicant's position was that replacement of these items was unnecessary as the old door and entry phone system was adequate.

The Respondent's Case

101. Mr Bysouth's explanation was that the main reason for the replacement was that different styles of doors and systems were in use across the estate. The Respondent

decided to move over to a common type of door entry system because replacement parts for the old system were becoming expensive. The new system is a fob-based system that has the benefit of being centrally-controlled from their main office. This means that the Respondent receives notification if there is a failure in the system or if somebody tries to interfere with it. The new system has, he believed, helped to reduce burglaries and anti-social behaviour.

102. The communal entrance doors had to be replaced in order to incorporate the new entry phone system but he considered that both the front and rear entrance doors were more secure than the previous doors.

Decision and Reasons

103. The tribunal determines that the estimated costs are reasonable in amount and that the works have been carried out to a reasonable standard

104. It considers that it was reasonable for the Respondent to move over to the new entry phone system described by Mr Bysouth for the reasons he described. It is likely to be a more secure system with added security benefits and lower maintenance costs.

105. It was therefore reasonable to replace the doors which, in any event, the tribunal considered to be much more attractive than the previous doors shown in the photograph at page **[203]**. The new doors look to be of good quality and give a good impression to a quite utilitarian block. There was no evidence provided by the Applicants that these costs were unreasonable in amount.

(g) External plumbing – Rainwater Goods (£1,587.68)

The Applicant's Case

106. The Applicants argued that they had to pay an invoice of £664.01 for major works to the rainwater downpipes in May 2012 and that these works were therefore unnecessary or a duplication of what had already taken place.

The Respondent's Case

107. Mr Bysouth confirmed that works were carried out but that could not clarify the nature of those works.

108. In response to a complaint by Ms Adu-Wiredu concerning water pooling to the drain located in her garden area, he confirmed that this would be investigated and remedied.

Decision and Reasons

109. The tribunal determines that the estimated costs are reasonable in amount and that the works have been carried out to a reasonable standard.

110. Whilst the Respondent could not specify what works were carried out the sum involved is relatively modest and would have been inadequate to replace the guttering and downpipes. It is likely therefore that such works had been carried out previously and billed for in 2012 and that this sum of £1,589.68 related to different works.

111. The Respondent's inability to specify the works carried out is unfortunate but given that the costs being challenged are interim costs the tribunal does not consider it appropriate to limit the amount being sought. The Applicants can challenge the final costs if they remain dissatisfied with the Respondent's response.

The Reduced estimated cost of the works

64. As the total estimated costs of the major works had decreased since the invoice was sent to the Applicants Mr Parker conceded that it was appropriate to reduce the amount payable by them.

Decision and Reasons

65. The tribunal determines that the sum that it is reasonable for the Applicants to pay by way of an interim charge is £19,000 each.

66. The sum of £19,000 is reached by taking the apportioned total of the costs incurred to date and the anticipated additional expenditure shown in the schedule attached to the letters of 08.01.14 (£18,322.88) **[166]** and adding to that figure the management fee capped at £560. The resulting figure is £18,882.88 that the tribunal considers should be rounded up to £19,000 to allow for possible variations in cost.

67. Mr Parker agreed that this was a reasonable sum for the Applicants to pay although he pointed out that the final sum payable would, of course, be determined once the works were complete and the final account prepared and settled.

Application under Section 20C

68. The Applicants sought an order that the costs incurred by the Respondent in connection with these proceedings should not be regarded as relevant costs when determining the amount of service charge payable by them.

69. When exercising its' discretion as to whether or not to make a s.20C order the tribunal has to have regard to what is just and equitable in all the circumstances. The circumstances include the conduct and circumstances of all parties as well as the degree to which the Applicants have succeeded in this application.

70. The Respondent did not oppose the making of a s.20C order and the tribunal considers it is just and equitable to make the order sought.

Reimbursment of Fees

71. At the end of the hearing, the Applicants made an application for a refund of the fees that they had paid in respect of the application and hearing. Having heard the submissions from the parties and taking into account the determinations above, the tribunal does not order the Respondent to refund any fees paid by the Applicants.

Name: Amran Vance **Date:** 04.08.14

Annex

Appendix of relevant legislation

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 provisions of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

Section 27A – Liability to pay service charges: jurisdiction

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

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

(d) the date at or by which it would be payable, and

(e) the manner in which it would be payable.

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

(a) has been agreed or admitted by the Tenant,

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the Tenant is a party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.

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

[.....]

Section 20C

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge

payable by the tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;
(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances

Service Charges (Consultation Requirements) (England) Regulations 2003

SCHEDULE 1

CONSULTATION REQUIREMENTS FOR QUALIFYING LONG TERM AGREEMENTS OTHER THAN THOSE FOR WHICH PUBLIC NOTICE IS REQUIRED

Regulation 5(1)

Notice of intention

1

(1) The landlord shall give notice in writing of his intention to enter into the agreement--

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall--

(a) describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;

(b) state the landlord's reasons for considering it necessary to enter into the agreement;

(c) where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works;

(d) invite the making, in writing, of observations in relation to the proposed agreement; and

(e) specify--

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate in respect of the relevant matters.

Inspection of description of relevant matters

2

(1) Where a notice under paragraph 1 specifies a place and hours for inspection--

(a) the place and hours so specified must be reasonable; and

(b) a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed agreement

3

Where, within the relevant period, observations are made in relation to the proposed agreement by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Estimates

4

(1) Where, within the relevant period, a single nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a single nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate--

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate--

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

Preparation of landlord's proposals

5

(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, at least two proposals in respect of the relevant matters.

(2) At least one of the proposals must propose that goods or services are provided, or works are carried out (as the case may be), by a person wholly unconnected with the landlord.

(3) Where an estimate has been obtained from a nominated person, the landlord must prepare a proposal based on that estimate.

(4) Each proposal shall contain a statement of the relevant matters.

(5) Each proposal shall contain a statement, as regards each party to the proposed agreement other than the landlord--

(a) of the party's name and address; and

(b) of any connection (apart from the proposed agreement) between the party and the landlord.

(6) For the purposes of sub-paragraphs (2) and (5)(b), it shall be assumed that there is a connection between a party (as the case may be) and the landlord--

(a) where the landlord is a company, if the party is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the party is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the party is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the party is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(7) Where, as regards each tenant's unit of occupation and the relevant matters, it is reasonably practicable for the landlord to estimate the relevant contribution attributable to the relevant matters to which the proposed agreement relates, each proposal shall contain a statement of that estimated contribution.

(8) Where--

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7); and

(b) it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreement,

each proposal shall contain a statement of that estimated expenditure.

(9) Where--

(a) it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (7) or (8)(b); and

(b) it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters,

each proposal shall contain a statement of that cost or rate.

(10) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by him of premises to which the agreement relates, each proposal shall contain a statement--

(a) that the person whose appointment is proposed--

(i) is or, as the case may be, is not, a member of a professional body or trade association; and

(ii) subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and

(b) if the person is a member of a professional body trade association, of the name of the body or association.

(11) Each proposal shall contain a statement as to the provisions (if any) for variation of any amount specified in, or to be determined under, the proposed agreement.

(12) Each proposal shall contain a statement of the intended duration of the proposed agreement.

(13) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, each proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

Notification of landlord's proposals

6

(1) The landlord shall give notice in writing of proposals prepared under paragraph 5--

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall--

(a) be accompanied by a copy of each proposal or specify the place and hours at which the proposals may be inspected;

(b) invite the making, in writing, of observations in relation to the proposals; and

(c) specify--

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) Paragraph 2 shall apply to proposals made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

Duty to have regard to observations in relation to proposals

7

Where, within the relevant period, observations are made in relation to the landlord's proposals by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Duty on entering into agreement

8

(1) Subject to sub-paragraph (2), where the landlord enters into an agreement relating to relevant matters, he shall, within 21 days of entering into the agreement, by notice in writing to each tenant and the recognised tenants' association (if any)--

(a) state his reasons for making that agreement or specify the place and hours at which a statement of those reasons may be inspected; and

(b) where he has received observations to which (in accordance with paragraph 7) he is required to have regard, summarise the observations and respond to them or specify the place and hours at which that summary and response may be inspected.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the agreement is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement, summary and response made available for inspection under this paragraph as it applies to a description of the relevant matters made available for inspection under that paragraph.

SCHEDULE 3

CONSULTATION REQUIREMENTS FOR QUALIFYING WORKS UNDER QUALIFYING LONG TERM AGREEMENTS AND AGREEMENTS TO WHICH REGULATION 7(3) APPLIES

Regulation 7(1) and (2)

Notice of intention

1

(1) The landlord shall give notice in writing of his intention to carry out qualifying works--

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall--

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;

(d) invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;

(e) specify--

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

Inspection of description of proposed works

2

(1) Where a notice under paragraph 1 specifies a place and hours for inspection--

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works and estimated expenditure

3

Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

Landlord's response to observations

4

Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.