



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

<b>Case Reference</b>	:	<b>LON/00AZ/LSC/2014/0580</b>
<b>Properties</b>	:	<b>7,8,10,19,20,21 &amp; 23 Ivy Road, London SE4 1YS</b>
<b>Applicants</b>	:	<b>The long lessees of the Properties as named in paragraph 1 of this Decision</b>
<b>Representative</b>	:	<b>Mr Kevin Daniels</b>
<b>Respondent</b>	:	<b>London Borough of Lewisham</b>
<b>Representative</b>	:	<b>Mr Christopher Heather Counsel</b>
<b>Type of Applications</b>	:	<b>Section 27A Landlord and Tenant Act 1985 – determination of service charges payable Section 20C Landlord and Tenant Act 1985 – landlord’s costs of proceedings</b>
<b>Tribunal Members</b>	:	<b>Judge John Hewitt Mr John Barlow FRICS Mr Paul Clabburn</b>
<b>Date and venue of Hearing</b>	:	<b>31 March 2015 10 Alfred Place, London WC1E 7LR</b>
<b>Date of Decision</b>	:	<b>16 June 2015</b>

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**DECISION**

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## Decisions of the tribunal

1. The tribunal determines that:

1.1 The contributions of the respective applicants to the cost of major works carried out by the respondent in or about 2009/10 is as follows:

7 Ivy Road	Dr A Ekonomou	£5,931.44
10 Ivy Road	Miss Leola Chirnside	
	Miss Funmi Chirnside	£6,011.91
19 Ivy Road	Mr & Mrs U Hamit	£6,259.06
20 Ivy Road	Mr & Mrs Sullivan	£6,259.06
21 Ivy Road	Mrs & Mrs R Quispe	£6,259.06
23 Ivy Road	Miss M Baily	£9,080.08

1.2 It does not have jurisdiction to determine the amount payable in respect of 8 Ivy Road because the amount payable in respect of that property was determined by a Leasehold Valuation Tribunal in Case Reference: LON/00AZ/LSC/2012/0826 dated 15 May 2013;

1.3 If it be held that we were wrong to conclude that we do not have jurisdiction in respect of 8 Ivy Road we determine that the amount of the contribution payable by the lessee of that property who is named at Land Registry as Esther Dantzie (but now known as Mrs Esther Dyce) is the sum of £6,011.91;

1.4 The estimate of service charges payable on account in respect of the block containing 1-12 Ivy Road for the year 2015/16 is adjusted to reduce the amount for General Building and Estate Repairs from £2,759.74 down to £2,200.00; and

1.5 An order shall be made, and is hereby made, pursuant to section 20C Landlord and Tenant Act 1985 (the Act), to the effect that none of the costs incurred or to be incurred by the respondent in connection with these proceedings shall be regarded as relevant costs to be taken into account in determining the amount of any service charges payable by the applicants to the respondent.

2. The reasons for our decisions are set out below.

**NB** Later reference in this Decision to a number in square brackets ([ ]) is a reference to the page number of the hearing file provided to us for use at the hearing. We were provided two volumes on behalf of the applicants and two volumes on behalf of the respondent. There is a good deal of duplication. The prefix 'A' refers to the applicants' bundles and the prefix 'R' refers to the respondent's bundles. The page numbering in the respondent's volumes is clearer and easier to follow and where there is duplication has been used in preference but the applicants' case is not in any way prejudiced thereby.

### **Procedural background**

3. At all material times the applicants have been represented by Mr Kevin Daniels who is the partner of Dr Ekonomou, the lessee of 7 Ivy Road.
4. The application form dated 12 November 2014 [R1] was made pursuant to section 27A of the Act) and included a related application pursuant to section 20 of the Act in relation to any costs which the respondent may incur in connection with these proceedings.
5. Directions were given on 9 December 2014 [R41]. The issues to be determined were identified to be:

The section 20 consultation process;

Scaffolding costs;

Electrical works costs;

Professional fees;

Management fees; and

The section 20C application

6. Later it became apparent that also in issue were the costs of communal windows, insulation, fascias and soffits and rainwater goods, and separately the budget for 2015/16.
7. Numerous interlocutory applications were made and determined during the course of the proceedings.
8. The application came on for hearing before us on Tuesday 31 March 2015. The applicants were represented by Mr K Daniels, supported and assisted by Mr McKibbin and a number of the applicants. The respondent was represented by Mr Heather of counsel who was accompanied by several representatives of the respondent and its advisers, Pinnacle, and also Mr A Kelly of Higgins Construction who gave oral evidence, which we shall deal with shortly.
9. Before the hearing got underway some procedural issues were raised.

### **8 Ivy Road**

10. The first concerned the question whether the tribunal had jurisdiction to determine the amount payable by the lessee of 8 Ivy Road. The point was taken in the respondents' statement of case that The Leasehold Valuation Tribunal (LVT) had made a determination on the amount payable in respect of that property in a decision dated 15 May 2013 and that the tribunal did not therefore have jurisdiction. However, Mr Heather said he had not been given express instructions on this point

- and that the property should be included in the hearing. The lessee of that property was not present.
11. Following the conclusion of the hearing Mr Heather checked with the respondent and found that 8 Ivy Road had been included in the decision dated 15 May 2013, which was an application in which Mr Heather had also represented the respondent council.
  12. The parties were given the opportunity to make written representations on the jurisdiction point and they have both done so.
  13. The gist of the representations on behalf of the lessee of 8 Ivy Road was that, through her husband, she had originally been a part of the earlier application and the person coordinating that application on behalf of several tenants had been notified that she did not wish to continue as part of it but this withdrawal did not appear to have been notified to the LVT. In consequence the LVT issued a decision which included 8 Ivy Road.
  14. As a matter of formal record the LVT has issued and published a formal determination which includes 8 Ivy Road. That is a public document. We find that unless and until it is set aside or amended or corrected it must stand and we are obliged to recognise it.
  15. It is clear that the lessee of 8 Ivy Road initially joined in the earlier application. It is not clear exactly what the lessee did when she decided she did not wish to pursue it. We find that it would not be enough to simply inform the person representing the lessee at that time. There is no evidence before us that the lessee contacted the LVT direct to inform it of her position. If Mrs Dyce has issues concerning the earlier decision we can but advise her to take her own legal advice as to the steps (if any) that may now be available to her.
  16. In case it be held that we are in error with regard to our jurisdiction on 8 Ivy Road we have indicated the sum that we would have determined that the lessee of 8 Ivy Road should contribute to the major works if we had jurisdiction to make a formal determination.

#### **Additional documents**

17. Mr Heather sought permission to adduce some additional accounting documents. These were to supplement and clarify and correct accounting documents which were already in the bundle. Evidently in preparing for the hearing some figures were cross-checked and some errors became apparent.
18. Mr Daniels did not oppose the application. The documents were inserted as new pages [R162 – 178] and [R858A-V]. Indeed the effect of some of the documents was to reduce slightly the amounts of the contributions sought by the respondent. As it happened, as the case went on further errors were noted and the respondent produced fresh final Actual Costs for each of the properties in issue. These have been

marked as 'Amended 31/03/15' to identify them as the final versions now relied upon by the respondent. Copies are attached to this decision for avoidance of doubt, but we have made adjustments to those for 7, 8 and 10 Ivy Road to reflect what we have determined below.

### **The PFI contract**

19. Mr Daniels renewed his application that the master PFI contract be disclosed. The application had been made previously, opposed by the respondent and refused by the tribunal.
20. The background is that the respondent proposed to undertake a major refurbishment of a large part of its housing stock in Brockley in order to meet the Decent Homes Programme. It proposed to do so under the umbrella of substantial project agreement in the style of a Private Finance Initiative contract (PFI).
21. A proposed PFI contract was advertised in the Official Journal of the European Journal on 16 March 2002 [R196]. The PFI contract was entered into with Regenter in 2007 following a competitive tender and approval given by the Secretary of State pursuant to section 27 Housing Act 1985.
22. There have been several applications to the LVT concerning works carried out to blocks and street properties under this scheme across Brockley, including Case References:

LON/00AZ/LSC/2009/0527 [R292]  
LON/00AZ/LSC/2010/0129 [R319] the Rey-Ordieres application  
LON/00AZ/LSC/2012/0826

The Rey-Ordieres application went to appeal to the Upper Tribunal (Lands Chamber) [2013] UKUT 014 (LC); [2013] LRX/32/2011 [R359] and was determined by the then President Mr George Bartlett QC and Mr A J Trott FRICS

Various aspects of the procurement process have been considered in these applications.

23. In particular the scaffolding, professional fees and management fees featured in the Rey-Ordieres application which concerned some 24 properties widely distributed across the respondent's estate. In this application there was a request for disclosure of the PFI contract. The application was opposed by the respondent on grounds of alleged commercial confidentiality. The Upper Tribunal ordered that for the purposes of the appeal only material parts of the PFI should be disclosed, including in particular the sub-contract with Higgins Construction which carried out refurbishment works. These were considered in some detail by the Upper Tribunal. A helpful summary of the PFI contract and set up is set out paragraphs 15-25 of the judgment [R484]. It may also be noted at this point that following careful analysis and, in particular, whether there was any duplication in

assessment of professional fees and management fees the Upper Tribunal determined that professional fees at 24% and management fees at 10% were reasonable in amount and fair reflections of the costs reasonably incurred by the respondent.

24. Turning to the subject application for disclosure of the PFI agreement, the applicants appear to have done so as part of their case concerning professional fees. The applicants' cited a number of legal maxims such as '*a contract founded on a base and unlawful consideration, or against good morals, is null*' and "*and no action arises on an immoral contract*". The applicants' also cited in aid a number of statutes, including Bills of Exchange Act 1882, Larceny Act 1916, Contracts (Rights of Third Parties) Act 1999, and Fraud Act 2006.
25. In support of the application the applicants wished to rely on an email dated 30 March 2015, sent to Mr Daniels by Mr Richard Carey, Chairman of the Brockley Leaseholders Association, one of the respondents in the Rey-Ordieres appeal, in which he said that at that appeal he had seen those parts of the PFI contract which had been disclosed but that the documents were handed back at the conclusion of the hearing. Mr Carey said he was not at liberty to discuss openly what he had seen but: "*... I am sure I can say in truth that the contents of the document would be of great relevance to your forthcoming case, as far as I understand it, and I would urge you to press for its release.*"

Mr Daniels also wished to put in at the hearing a series of further documents said to support the application, such as extracts from Civil Procedure Rules 1999 Part 31 concerning disclosure and inspection of documents. Those rules apply to civil litigation in the courts and do not have application to this tribunal which is subject to The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
26. The application for disclosure was opposed by Mr Heather. He submitted that the Upper Tribunal had already decided in principle that professional fees at 24% and management fees of 10% were reasonable under the model contract. Most of the subject case concerned the reasonableness of the amount of certain component parts of the works, all of which had been separately and competitively tendered for, and to investigate the reasonableness of those costs it is not necessary or proportionate to study the master PFI contract. Mr Heather drew attention to the witness statement of a Mr Kelly which described the process which had been carried out.
27. Having adjourned to consider the application we decided to refuse it. We preferred the submissions of Mr Heather on this point. We concluded that seeing the PFI contract would not assist us on the matters we had to determine and that it would be inappropriate and disproportionate to order disclosure of the PFI contract and to adjourn the hearing to another date.

### **The issues and evidence**

28. Mr Heather called Mr Adrian Kelly MCIQB, MRICS of Higgins Construction Plc (Higgins) to give oral evidence. His witness statement is at [R582]. Mr Kelly said his witness statement was true, but he wished to make a correction to paragraph 7 as regards the numbering of the subject two blocks of flats, which should be 1-12 and 17 -28.
29. Mr Kelly explained that in 2007 Higgins was contracted to carry out various works to properties within the respondent's Brockley estate. As regards the two subject blocks of flats prior to work being undertaken, the cost of the works for each block was estimated at £125,942. As there were 12 flats in each block, the unit cost was estimated at £10,495 but under the scheme operated by the respondent the unit cost payable by long lessees was to be capped at £10,000.
30. Mr Kelly took us carefully through the arrangements for drawing up the schedule of works to be carried out, the procurement and competitive tendering process and the documentation involved.
31. It is helpful to take each of the items of expenditure in issue:

### **Scaffolding**

32. The applicants made three challenges: the costs were excessive for the works carried out from the scaffolding, the scaffolding contract was not procured fairly or correctly, and an additional cost of £900 was not reasonably incurred.
33. Mr Kelly took us through the market testing and procurement process starting with Globe and then quotations obtained from rival suppliers as explained in his witness statement. Contracts were to be placed to cover the entire project of over 2,000 properties but with each block or street property individually priced. Given the scale of the project the decision was taken to engage two contractors, Globe and Rampart. Fixed prices were obtained for erection of scaffold for 20 weeks for blocks of flats and 12 weeks for street properties. Thus Mr Kelly explained that if scaffold was erected but not being used it did not incur a daily or weekly rental cost and was thus a cost effective way to procure scaffolding.
34. Mr Kelly satisfied us that scaffolding was required to comply with safety regulations and it was required to provide safe access to work on fascias, soffits, chimneys and brickwork. In cross-examination alternative means of access were put to Mr Kelly, for example mobile towers or cherry-pickers and he said, and we accept, that there was no credible, safe or cost effective alternative. Mr Kelly explained that means of access and scaffolding have to be inspected and certified as safe for use and he drew to our attention sample certificates at [R737 and 738].

35. Mr Kelly came across to us an experienced and careful manager in the construction industry whose evidence we could rely upon with confidence.
36. The applicants did not call any evidence to challenge that of Mr Kelly.
37. We were satisfied that the principle cost of scaffolding to each block, £18,627.96 was properly procured, was reasonably incurred and was reasonable in amount. We were reinforced in this view by the decisions made in some of the earlier LVT decisions which also considered the reasonableness of the cost of scaffolding and by the report of Mr Sweeting FRICS, FBEng MCIQB MIMgt dated December 2008 and obtained by and on behalf of the applicants, or some of them.
38. In connection with the block 1-12 Ivy Road an additional £900 was incurred on scaffolding. Mr Kelly explained that the records available to him show that access was required to lay insulation in the roof void and in the absence of internal access was achieved externally via the roof. Mr Kelly did not know why that was. Mr Daniels said that access could have been achieved internally via his partner's flat and that if such access had been requested it would have been granted. Mr Kelly said that he did not know why permission was not sought from Mr Daniels or the tenant occupying the flat but he said his team would not have erected a scaffold unless it was necessary.
39. Mr Daniels also said that no loft insulation had been laid over that part of the roof space above 7 Ivy Road. We accept Mr Daniels evidence on this point because he appeared to us to be an honest witness and there was no convincing evidence from Mr Kelly to the contrary. We have therefore disallowed the extra scaffolding cost of £900 for the block 1-12 Ivy Road and we have adjusted the sum payable by the lessee of 7 Ivy Road by £59.00 to reflect the absence of insulation above that property.

#### **Electrical works**

40. Mr Kelly drew attention to the reports prepared by Pinnacle ESP, consulting engineers, specialising in mechanical and electrical projects, which was required to investigate, inspect and make recommendations on the electrical installations in the two subject blocks. The reports dated June 2008 are at [R750] for the block 1-12 Ivy Road and at [R801] for the block 17-28 Ivy Road. The precise works specified for each block are at [R770] and [R821] respectively.
41. Mr Kelly explained that the specifications prepared were put out to competitive tender, tenders were received from about four or five contractors and the contract was placed with HKH Electrical. Mr Kelly also explained that Mott MacDonald had been appointed as an independent certifier in respect of the Brockley PFI project. As part of its instruction it was required to inspect refurbishment works and to



- certify that they met the Availability Standard, a standard which the respondent had set for the project.
42. In cross-examination Mr Kelly was asked about the ugly thick black cable which was installed in the flats and ran to the internal board. He explained that it was possible the cable could have been chased into the wall or boxed-in but that was not part of the specification and was not charged for. He said that generally on local authority contracts they do not chase in but have done so where the lessee has paid the extra cost.
  43. Mr Kelly was also asked about NICEIC certificates and said that these were only issued to the respondent in respect of the landlord's supply.
  44. Mr Kelly denied that EDF had made any contributions to the costs of the works and said EDF undertook connections to its own equipment.
  45. Mr Kelly also stated that the door-entry systems were outside the scope of the contract.
  46. The applicants did not call any evidence to challenge that of Mr Kelly.
  47. We found the report of the consulting engineers to be compelling. The scope of works fell within a reasonable range. We find that the costs were reasonably incurred. We accept Mr Kelly's evidence. We are satisfied that the works were subject to a competitive tender process. We cannot say that the cost of the works was unreasonable in amount, although we do accept that some of the works within the flats connecting to the internal board were not pretty. We have little doubt that most lessees would have preferred the mains cable to have been chased into the wall or boxed-in but they were not charged for that level of finish. It is, of course, open to each lessee to undertake decorative works to try and improve the visual impact as they see fit.

**Rainwater water goods, fascias and soffits**

48. Mr Kelly explained that gutters and downpipes were replaced in plastic. The work was completed in August 2009. Mr Kelly was not sure what was there previously. He did not consider that metalwork would have had any salvage value exceeding the cost of removal and sale.
49. Mr Kelly also explained that fascias and soffits were rubbed down and redecorated and that they did not need to be replaced in plastic.
50. Mr Kelly said that he was aware that a repair was carried out to the gutter between 12 and 24 months after the major works had been carried out, and that scaffold access was required to effect the repair but he did not know what the nature of the repair was.
51. The applicants did not produce any evidence to challenge what Mr Kelly had to say.

52. The cost of these items together amounts to £1,962 per block. There was no evidence before us from which we could properly conclude that those costs were unreasonably incurred or unreasonable in amount.

### **Communal windows**

53. In each block there are a small number of communal windows lighting the stairwells. These were refurbished at a cost of £1,714.44 per block.
54. Mr Kelly was cross-examined closely on what work was undertaken. Mr Kelly admitted frankly that he did not have the detail to hand and that it was not now available.
55. Mr Kelly said that in general terms any broken panes of glass would be replaced, defective putty would be made good, opening windows which can often become distorted and sticky would be overhauled and made good and any painting required undertaken. Generally whatever is needed to be done to bring the windows up to standard is undertaken.
56. Mr Kelly explained that when pricing for a relatively small job as here a generic price is given to cover whatever may be necessary. He accepted that sometimes more or less work is actually undertaken and that there is an element of swings and roundabouts. He did not consider that it would be cost effective to draw up a precise specification for each block and tender it.
57. Although sceptical about the amount of work undertaken and critical of the cost of it, the applicants did not produce any evidence as to what work they say was done and what a reasonable cost of it would have been.
58. We are conscious that the proceedings were issued quite a good while after the works were carried out. We are also conscious that the respondent and its agents have not shone in the preparation and issue of final accounts nor in explaining issues. The communal windows issue was not raised in the original application or indeed in Mr Daniels witness statement dated 6 March 2015, but it was raised for the first time in the applicant's amended statement of case dated 2 March 2015 [A section B]. Given the passage of time it is understandable that records maintained by or on behalf of the respondent and potential witnesses are no longer available.
59. On the imperfect materials before us we can but take a broad view and we find that in each block the communal windows were overhauled and refurbished, that the cost of doing so was reasonably incurred and that there is no evidence before us from which we can properly conclude that the cost of £1,714.44 for each block was unreasonable in amount.

### **The case for the applicants**

60. During the course of Mr Kelly giving his oral evidence Mr Daniels also gave oral evidence on some aspects of the case. During the course of that Mr Daniels was highly critical of the inept manner in which the

major works exercise had been undertaken complaining about misinformation, lack of information, lack of consideration and incorrect billing amongst others. Much of what he had to say had a ring of reality about it. In consequence of the experience the applicants are now very sceptical and mistrustful about the accuracy of anything they receive by or on behalf of the respondent in connection with their service charges. They complain about lack of transparency and the lack of response to their efforts to get clarity.

61. Once the respondent had presented its case Mr Daniels gave evidence. Mr Daniels formally produced his witness statement at [A section A47] and the applicants' amended statement of case [A section B] which he confirmed were true and that he did not wish to make any alterations to either of them.
62. The only matters on which Mr Daniels was cross-examined were:
  - 62.1 That he and his partner moved out of 7 Ivy Road on 9 September 2009 - to live nearby – and whilst at 7 Ivy Road he worked from home; and
  - 62.2 That he assumed their tenant let in the electrical contractors; he did not think the contractors would have broken in and their tenant could now not remember whether he did or not.

### **Final submissions**

63. Following the conclusion of evidence both parties made final submissions to us.

### **Findings**

64. In the course of the discussion above we have made a number of findings about specific items of expenditure. There are some additional matters we must address and these are dealt with below.

### **S20 consultation**

65. One of the strong complaints made by the applicants was the alleged failure of the respondent to comply with the consultation requirements imposed by section 20 of the Act.
66. The current regulations made under section 20 are The Service Charges (Consultation Requirements) (England) Regulations 2003 SI 2003/1987 (as amended) (the regulations). The regulations came into force on 31 October 2003.
67. Regulation 7(3) provides that the consultation requirements for the purposes of section 20 of the Act shall be those specified in Schedule 3 to the regulations where, under a qualifying long term agreement (QLTA) qualifying works for which public notice has been given before 31 October 2003 are carried out at any time on or after that date.

68. As noted and found by the Upper Tribunal in the *Key-Ordieres* case at paragraph 26, public notice of the proposed PFI contract was given in OJEC on 16 March 2002 and the qualifying works under that agreement were carried out after 31 October 2003.
69. Thus the relevant consultation requirements are those specified in Schedule 3 to the regulations. Those requirements are fairly basic, as compared with Schedule 4 requirements. Two sample notices given to the lessees at Ivy Road (Nos 7 and 23) are at [R234 and 252] respectively. In his skeleton argument Mr Heather observed, in passing, that, by giving an indication of the amount of spending per lessee, they provide more information than required by Schedule 3.
70. We are satisfied that the section 20 notices given by the respondent to the applicants are compliant with Schedule 3 of the regulations.

**Service charges payable by long lessees and service charges payable by secure tenants**

71. In their written submissions the applicants have sought to demonstrate an unfairness in the amounts of service charges sought from lessees as compared with the amounts of service charges payable by secure tenants. Reference was made to decisions about increases in sums payable to the Housing Revenue Account by secure tenants by way of service charges.
72. The services to be provided to long lessees and the contributions payable by long lessees are governed by the terms of the leases, most of which are broadly in common form and compliant with Housing Act 1985 requirements.
73. Secure tenants occupy their flats pursuant to the terms of their tenancy agreement(s) which will be quite different in form to long leases. Secure tenants will be required to pay a basic rent and sometimes that is topped up with a service charge which may be fixed or it may be variable, and it may only apply to a limited number of services. There is a whole range of services to which long lessees have to contribute but which it would be quite inappropriate for secure tenants to contribute to because the cost is already covered by the basic rent payable by them. A clear example is structural or roof repairs.
74. It is quite wrong and unhelpful to try to compare service charges payable under two quite different regimes to seek to demonstrate that a landlord is being less than fair and even-handed.

**The 2015/16 service charge estimate – block 1-12 Ivy Road**

75. At a late stage the applicants raised a point about the 2015/16 service charge estimate prepared by or for the respondent. The challenge was to the estimated spend of £2,759.74 on General Building and Estate Repairs. The actual cost of this item of expenditure in the prior year of 2013/14 was £2,183.34.

76. There was insufficient time to deal with this issue at the hearing and directions were given for it to be the subject of written representations. The respondent was requested to explain how it had arrived at the estimate of £2,759.74; that is to say to set out the methodology adopted when preparing the budget. It was anticipated that such methodology might have been based partly on historic experience adjusted to allow for any known or reasonably anticipated increase in basic costs plus perhaps an adjustment to reflect any small projects that were planned for the ensuing year.
77. The respondent's response is a letter dated 8 April 2015 from its solicitors, Greenwoods. The response is unsatisfactory. It does not address the question. It simply states that in percentage terms the whole budget is 8.7% higher than the actual cost for 2013/14 and observes that it is only a budget, and any excess will be credited at the conclusion of the service charge year. What the respondent was asked to do was to explain the reasoning behind the estimated figure of £2,759.74 for one item in the budget. It failed to do so.
78. By letter dated 10 April 2015 the tribunal requested the respondent's solicitors to provide the requested information. The reply is dated 13 April 2015. It is equally unsatisfactory. It is fair to observe that these responses may be viewed as examples of the difficulty and frustration experienced by the applicants in their dealings with the respondent and its agents concerning service charge matters.
79. Under section 27A(3) of the Act the tribunal may determine, if costs were incurred, the amount which would be payable. Where a lessee is obliged to pay a sum in advance of costs being incurred the sum so payable is limited to that which is reasonable for him to pay. Thus where budgets are prepared they are to be reasonable budgets.
80. On the face of it the amount allocated in the budget by the respondent for General Building & Estate Repairs is unreasonable in that it is substantially higher than the previous year's actual expenditure. The respondent has been given two opportunities to explain the increase and how it has been arrived at but it has been unwilling or unable to do so.
81. In these circumstances we have made an adjustment to the budget to reduce the estimated expenditure on General Building & Estate Repairs down from £2,759.74 to £2,200.00.

#### **The section 20C application**

82. Mr Heather said that the terms of the leases did not enable the respondent to pass on through the service charge its costs incurred in these proceedings and thus the respondent had no intention of doing so.

83. Nevertheless Mr Heather opposed the making of an order under sections 20C. His principal reason was that the tribunal had no jurisdiction to do so and he sought to avoid the tribunal making an order it did not have jurisdiction to make.
84. Mr Heather drew attention to the definitions of 'service charge' and 'relevant costs' as set out in section 18 of the Act. Mr Heather said that for the purposes of section 20C the costs therein referred to have to be either a service charge or a relevant cost. If costs which a landlord may incur in proceedings are not recoverable through the service charge then they are neither a service charge nor a relevant cost, as defined by the Act to be payable by a lessee.
85. Whilst admiring the ingenuity of Mr Heather's submission we reject it. We find that section 20C enables the tribunal to make an order that costs incurred by a landlord are not be taken into account in determining the amount of any service charge payable. The Act does not deploy the expression 'the amount of **the** service charge payable'.
86. It is something of an arid argument. The respondent has stated that it will not seek to recover costs of the proceedings through the service charge account. It is to be expected that a respectable landlord which makes such a concession will stand by it and honour it. But not all landlords fall into that category. The members of the tribunal have experience of landlords making such a concession at a hearing, thus avoiding the making of a section 20C order, only to change their minds later on. Whilst we consider it unlikely that the respondent would take that course, it has been known that some landlords have done so.
87. Thus for the sake of good order and clarity we find it is appropriate, just and equitable to make an order under section 20C of the Act and we have done so.

Judge John Hewitt  
16 June 2015

## ACTUAL COSTS

23 Ivy Road

Below is an Actual breakdown of the costs attributable to your property based on the total expenditure incurred. You are not liable for the cost of works to the non-structural internal parts of other flats.

<u>Breakdown of Actual Costs</u>	Block Level	Lessee Level	Number of Units in Block
Cost of Works Specific to Your Block			
Windows renewal	£26,532.60	£2,211.05	12
Scaffolding cost	£18,627.96	£1,552.33	12
Roof repair	£1,040.04	£86.67	12
Brickwork repair	£6,145.92	£512.16	12
Concrete slab repair	£78.48	£6.54	12
Electrical	£22,821.00	£1,901.75	12
Fascia & soffits, barges PVC etc.	£975.00	£81.25	12
Rainwater goods	£987.96	£82.33	12
Insulation- potential roof cavity fill	£429.60	£35.80	12
Chimney stacks	£678.00	£56.50	12
External Decs.	£1,062.12	£88.51	12
<b>Total</b>	<b>£79,378.68</b>	<b>£6,614.89</b>	<b>12</b>
Other Cost			
Variations, increase scope of works and miscellaneous costs	£504.72	£42.06	12
<b>Sub Total</b>		<b>£6,656.95</b>	
Professional fees at 24%		£1,597.67	
<b>Total</b>		<b>£8,254.62</b>	
Management fees at 10%		£825.46	
<b>Total Costs Payable by Lessee</b>		<b>£9,080.08</b>	

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Amended by LBL 31/03/15

Adjusted by FTT to reflect its decision 16 June 2015

## ACTUAL COSTS

7 Ivy Road

Below is an Actual breakdown of the costs attributable to your property based on the total expenditure incurred. You are not liable for the cost of works to the non-structural internal parts of other flats.

<u>Breakdown of Actual Costs</u>	Block Level	Lessee Level	Number of Units in Block
Cost of Works Specific to Your Block			
Communal Window refurbishment	£1,714.44	£142.87	12
Scaffolding cost	£18,627.96	£1,552.33	12
Roof repair	£300.00	£25.00	12
Brickwork repair	£2,191.44	£182.62	12
Metal railings repair	£125.04	£10.42	12
Concrete slab repair	£3,378.48	£281.54	12
Electrical	£22,863.00	£1,905.25	12
Fascia & soffits, barges PVC etc.	£975.00	£81.25	12
Rainwater goods	£987.96	£82.33	12
Insulation roof space	£530.46	£44.21	12
Chimney stacks	£678.00	£56.50	12
Walkway asphalt	£113.04	£9.42	12
External Decs.	£246.36	£20.53	12
<b>Total</b>	<b>£52,731.18</b>	<b>£4,394.27</b>	<b>12</b>
Other Costs			
Variations, increase scope of works and miscellaneous costs	£159.60	£13.30	
Insulation adjustment		-£59.00	
<b>Sub Total</b>		<b>£4,348.57</b>	
Professional fees 24%		£1,043.66	
<b>Total</b>		<b>£5,392.22</b>	
Management fees 10%		£539.22	
<b>Total Costs Payable by Lessee</b>		<b>£5,931.44</b>	

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Amended by LBL 31/03/15

Adjusted by FTT to reflect its decision 16 June 2015



## ACTUAL COSTS

8 and 10 Ivy Road

Below is an Actual breakdown of the costs attributable to your property based on the total expenditure incurred. You are not liable for the cost of works to the non-structural internal parts of other flats.

<b>Breakdown of Actual Costs</b>	Block Level	Lessee Level	Number of Units in Block
Cost of Works Specific to Your Block			
Communal Window refurbishment	£1,714.44	£142.87	12
Scaffolding cost	£18,627.96	£1,552.33	12
Roof repair	£300.00	£25.00	12
Brickwork repair	£2,191.44	£182.62	12
Metal railings repair	£125.04	£10.42	12
Concrete slab repair	£3,378.48	£281.54	12
Electrical	£22,863.00	£1,905.25	12
Fascia & soffits, barges PVC etc.	£975.00	£81.25	12
Rainwater goods	£987.96	£82.33	12
Insulation roof space	£530.46	£44.21	12
Chimney stacks	£678.00	£56.50	12
Walkway asphalt	£113.04	£9.42	12
External Decs.	£246.36	£20.53	12
<b>Total</b>	<b>£52,731.18</b>	<b>£4,394.27</b>	<b>12</b>
Other Cost			
Variations, increase scope of works and miscellaneous costs	£159.60	£13.30	12
<b>Sub Total</b>		<b>£4,407.57</b>	
Professional fees 24%		£1,057.81	
<b>Total</b>		<b>£5,465.38</b>	
Management fees 10%		£545.53	
<b>Total Costs Payable by Lessees</b>		<b>£6,011.91</b>	

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Amended by LBL 31/03/15

Adjusted by FTT to reflect its decision 16 June 2015

## ACTUAL COSTS

19, 20 and 21 Ivy Road

Below is an Actual breakdown of the costs attributable to your property based on the total expenditure incurred. You are not liable for the cost of works to the non-structural internal parts of other flats.

<u>Breakdown of Actual Costs</u>	Block Level	Lessee Level	Number of Units in Block
Cost of Works Specific to Your Block			
Communal windows	£1,714.44	£142.87	12
Scaffolding cost	£18,627.96	£1,552.33	12
Brickwork repair	£6,145.92	£512.16	12
Roof repair	£1,040.04	£86.67	12
Chimney stacks	678.00	£56.50	12
Insulation roof space	£429.60	£35.80	12
Fascia & Soffits	£974.76	£81.23	12
Rainwater goods	987.96	£82.33	12
Electrical	£22,821.00	£1,901.75	12
External decorations	£1,062.12	£88.51	12
Concrete stone work	£78.48	£6.54	12
<b>Total</b>	<b>£54,560.28</b>	<b>£4,546.69</b>	<b>12</b>
Other Cost			
Variations, increase scope of works, misc. etc	£504.72	£42.06	12
<b>Sub Total</b>	<b>£55,065.00</b>	<b>£4,588.75</b>	<b>12</b>
Professional fees at 24%		£1,101.30	
<b>Total</b>		<b>£5,690.05</b>	
Management fees at 10%		£569.01	
<b>Total Costs Payable by Lessees</b>		<b>£6,259.06</b>	

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Amended by LBL 31.03.15

Adjusted by FTT to reflect its decision 16 June 2015