

13086



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

Case Reference : **LON/00AG/LSC/2018/0043**

Properties : **79, 80, 86, 90, 92, 94, 107 and 112
College Place, London NW1 0DJ**

Applicants : **See Appendix 1**

Representative : **Mr James Browne, Counsel**

Respondent : **London Borough of Camden**

Representative : **Mr Tim Hammond, Counsel**

Type of Application : **For the determination of the
liability to pay a service charge**

Judicial Members : **Judge P Korn
Ms S Coughlin**

**Date and venue of
Hearing** : **17th September 2018 at 10 Alfred
Place, London WC1E 7LR**

Date of Decision : **23rd November 2018**

DECISION

Decisions of the Tribunal

(1) The roof replacement costs in respect of the following properties are reduced as stated:-

- 79 College Place – reduced by £8,852.85
- 86 College Place – reduced by £3,000.00
- 90 College Place – reduced by £10,061.57
- 94 College Place – reduced by £10,061.57
- 107 College Place – reduced by £10,028.87
- 112 College Place – reduced by £9,890.87.

(2) The contractors' running costs in respect of the following properties are reduced as stated:-

- 79 College Place – reduced from 8.9% to 6.47%
- 86 College Place - reduced from 11.31% to 6.47%
- 90 College Place – reduced from 11.44% to 6.47%
- 92 College Place – reduced from 11.3% to 6.47%
- 94 College Place – reduced from 11.4% to 6.47%
- 107 College Place – reduced from 10.44% to 6.47%
- 112 College Place – reduced from 11.05% to 6.47%.

(3) In relation to 79, 86, 90, 94, 107 and 112 College Place, the fixed fee, the performance fee and the contractors running costs are all reduced to reflect the fact that they are based on a fixed percentage of the total cost of the works and that the amount actually payable by the relevant leaseholders has been reduced as set out in (1) above. Accordingly, after adjusting the percentage for the contractors' running costs as set out in (2) above it is necessary to apply the percentage charged in respect of the fixed fee, the performance fee and the contractors running costs to the lower total cost of the works having made the deductions set out in (1) above.

- (4) The other disputed charges are payable in full.
- (5) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that none of the costs incurred by the Respondent in connection with the proceedings before this Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants.
- (6) The Tribunal also makes an order under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing the Applicants' liability (if any) to pay any of the litigation costs incurred by the Respondent in connection with the proceedings before this Tribunal by way of administration charges.

Background

1. The Applicants seek a determination pursuant to section 27A of the Landlord and Tenant Act 1985 ("**the 1985 Act**") as to the reasonableness and payability of certain service charges charged by the Respondent to the Applicants.
2. The hearing bundle contains a copy of the lease of 94c College Place, which is dated 30th July 2001 and was originally made between the Respondent (1) and Mohammed Dahyek (2). It is common ground between the parties that the other leases are all in the same form for all purposes relevant to these proceedings.
3. The challenge is to the cost of major works carried out in 2010 and 2011 and invoiced in 2013. The specific issues raised by the Applicants can briefly be described as follows:-
 - whether the Respondent complied with the statutory consultation requirements;
 - whether certain repairs were improvements and therefore not recoverable under the Applicants' respective leases;
 - the quality of the exterior paint work;
 - the cost of scaffolding;
 - the cost of roof replacement and/or the necessity of replacing the roof;
 - the quality of the draught-proofing and of the painting of the windows;

- damage to walls and flower beds;
 - less brickwork carried out than was billed for;
 - resin works incorrectly included and window repairs more extensive than reasonable;
 - fluctuating contractors' running costs; and
 - repeated failure by the Respondent to provide relevant documentation.
4. The works comprised roof works /roof insulation, works to windows, external decoration and external fabric repairs.
 5. The relevant statutory provisions are set out in Appendix 2 to this decision.
 6. It is not considered necessary or appropriate to quote every written and oral submission made by the parties, and this determination will only refer to those submissions considered to be the most pertinent.

Preliminary points

7. In written submissions, the Applicants narrowed their challenge to compliance with the statutory consultation requirements to the question of whether the Respondent had had due regard to the leaseholders' responses to consultations.
8. The issue regarding alleged damage to walls and flower beds was not pursued by the Applicants.

Witness evidence

Mr Watson

9. Mr Watson is the leaseholder of 94b College Place. In his witness statement he sets out a chronology of correspondence between himself and the Respondent. His main complaint about the major works is that in his view the charges were out of all proportion to the work done, with huge increases from initial estimates to final bills without any explanation, and he states that the charges were based on unfair and inappropriate accounting criteria. He also does not believe that the works were appropriately supervised, and he considers that some unnecessary works were carried out, that some work was charged for but not carried out and that materials were billed at a premium rate.

Furthermore, he argues that the Respondent's complaints process for individual leaseholders failed completely.

10. In cross-examination, Mr Hammond put it to him that much of the contents of his witness statement (including in relation to brick facing) relied on what he had been told by Mr Broder, the Applicants' expert. Mr Watson did not disagree with this and also conceded that his reference to whether certain works constituted 'improvements' from a legal perspective was probably based on what he had been told by the Applicants' solicitor. Regarding the draught excluders, he was 95% sure that previously there were no draught excluders in place but he accepted that he might have removed them himself prior to carrying out his own works to the flat.
11. Regarding the window restrictors, he said that he had put some in himself and that the Respondent had then added new ones and that the ones put in by the Respondent had made it hard to use the windows. As regards cost, his view was that window restrictors could be obtained for as little as £6.50 each although he accepted that this view was based on Mr McKinlay's opinion, and Mr Hammond put it to him that this point was not covered by Mr McKinlay's witness statement.
12. In relation to his concerns about the roof works, Mr Watson accepted that he was influenced by Mr Broder's opinion but added that he was also partly relying on the earlier Warman's Survey Report dated 1st June 2009 and based on an inspection by Mr Ian Pearce. Mr Hammond put it to him that Mr Pearce would not have been able to inspect the roof coverings, and Mr Watson was unable to comment on this point. He did, though, accept that Mr Broder would partially have relied on the Warman's Survey Report when reaching his own conclusion but added that Camden's Stock Condition Report was also relied on in part.
13. Regarding the reference in his witness statement concerning certain photographs which showed poor quality of work to the windows, he was unable to say where these photographs were. Mr Hammond also noted in cross-examination that the photographs were stated to have been taken in November 2013 and yet the works were completed in 2011.
14. As regards Mr Watson's written complaints to the Respondent regarding quality of work, Mr Hammond put it to Mr Watson that he did not raise any issues until April 2013, even though he had stated that he had noticed a problem in 2012, and that he did not complain about the paintwork until raising it in his witness statement. Mr Watson said that he did not make his first complaint until he received an invoice and that he did make a general complaint about paintwork prior to compiling his witness statement.

Mr Talevi

15. Mr Talevi is the leaseholder of 90b College Place. In his witness statement he sets out a chronology of events. He believes that the figures supplied by the Respondent were inconsistent and lack transparency. The original estimate more than doubled within a few months without explanation, and the quality of the works was extremely poor, for example the draught-proofing.
16. In cross-examination, Mr Hammond put it to him that paragraph 14 of his witness statement only highlighted one specific concern, namely the quality of the draught proofing. He also said that Mr Talevi's figures were wrong as the true figure was £907.20 for the block, of which his flat had to bear one-third, and that therefore the amount being complained about only amounted to about £300.00. Mr Talevi accepted this.

Mr McKinlay

17. Mr McKinlay is the leaseholder of 80a College Place. In his witness statement he complains of low value for money, on the basis that he considers the work to have been sub-standard, and he also complains of damage to raised flower beds and to an exterior light.
18. In cross-examination, Mr Hammond put it to him that it was inaccurate for him to have stated that the charge for draught-proofing had been £4,861.00 as the draught-proofing was only a small part of the cost. Mr McKinlay conceded this point and accepted that the cost to him of the draught-proofing was roughly £400.00.
19. Regarding his claim that the window frames needed repainting after less than 3 years, Mr McKinlay accepted that he did not have any photographs to substantiate this statement, but he had carried out some research at Wickes. This research, though, was not covered in his witness statement. He was also unable to comment on whether the window frames of other flats needed repainting.

Mr Gavin

20. Mr Gavin is the leaseholder of 107a College Place. In his witness statement he notes the increase in cost from the original estimate. He also questions the quality of the outside paintwork, complains about the cost of scaffolding and of slate tiles and about the length of time for which scaffolding was up before the work commenced, states that the scaffolding blocked drains which led to flooding and states that the Respondent failed to provide a proper breakdown of cost per flat.

21. In cross-examination, Mr Gavin accepted that he did not have any photographs to support his evidence and that there were no letters or emails of complaint attached to his witness statement. In relation to the cost of scaffolding Mr Hammond put it to him that he had no evidence on this point, but he said that he prices scaffolding all the time and therefore has some knowledge on the subject. In relation to the cost of the slate tiles, Mr Hammond put it to him that the Respondent had replaced like with like and that again he had no evidence on which to base his objections as to cost.

Mr Broder

22. Mr Broder, a building surveyor, had prepared an expert report for the purposes of this case dated 4th September 2017. In that report he stated that he had inspected the premises on 17th September 2015, 6th September 2016 and 25th May 2017. He also referred to the Warman's Survey Report dated 1st June 2009 commissioned by a member of the Residents Association which he stated had provided useful information as to the condition of 86 College Place prior to the works being carried out.
23. In the conclusion of his report he stated that serious questions might be raised regarding the validity and effectiveness of the consultation process entered into by the Respondent. Specifically in relation to 86 College Place, he stated that the Respondent had undertaken works which could not be justified, a glaring example being the replacement of the roof with a new natural slate covering despite that roof having been described as being in sound condition.
24. There was also in his view a glaring lack of accurate specification of scope of works, with an inspection of 86 and 94 College Place revealing serious discrepancies between the quantity of certain items charged for and the quantity of work actually carried out, for example the quantity of brickwork repointed. This in turn, in his view, threw into doubt the reliability and accuracy of the final accounts in relation to all of the other blocks. In addition, some windows had not been decorated and yet the cost of carrying out that decoration work had been included in the final accounts. Painting had failed prematurely in some places.
25. In cross-examination, Mr Broder accepted that he had inspected some but not all of the properties. Mr Hammond, when questioning him, also noted that the only photographs were from 2017 despite reference being made to inspections in 2015 and 2016 as well. Mr Broder also accepted that the inspection was limited to a ground level inspection of 86 and 94 College Place only at the front and at the rear and that the report was based on notes made 6 years after completion of the works.
26. As regards Mr Broder's contention in his report that "when the works were actually carried out these varied considerably from the initial

notices”, Mr Hammond put it to Mr Broder that the works themselves had not changed and that only the cost had changed. In response, Mr Broder said that he felt that the scale of the works had changed but he conceded that the works (presumably meaning the nature of the works) referred to in the initial notice and the revised notice were essentially the same.

27. In relation to resin repairs, Mr Hammond invited Mr Broder to agree that there were 41 such repairs in respect of 86 College Place but Mr Broder maintained that the position was unclear from the final account. In relation to repointing, Mr Hammond put it to Mr Broder that the external validation showed that an area of 22 square metres had been repointed and that the final measure sheet referred initially to 22 square metres and that this was increased to 25 square metres but leaseholders were only charged for 22 square metres. Mr Broder did not though accept that as much as 22 square metres had been repointed. Mr Hammond also put it to Mr Broder that it was difficult to work out how much repointing was needed after 6 years, particularly in respect of the upper floors on the strength of a ground level survey. Mr Broder said that it was difficult but not impossible.
28. In response to a question about the work on the window sills, Mr Broder said that it was suspicious that the work on each sill should have cost exactly the same.
29. As regards Mr Broder’s partial reliance on the Warman’s Survey Report, Mr Hammond put it to him that Mr Pearce (the surveyor involved) could not have considered the roof coverings. Mr Broder said in response that Mr Pearce inspected the front of the roof from ground level and saw part of the rear of the roof through a window and also carried out an internal inspection of the roof. In relation to the point that Mr Broder had only inspected the roof of 86 College Place, Mr Broder said that if the Respondent had replaced a good roof on number 86 this was indicative of a certain attitude.
30. In relation to the cost of the window works, Mr Hammond put it to Mr Broder that the photographs showed the windows to be in poor condition, but Mr Broder said that some of the photographs appeared to be of the same windows and that most of the damage was of a low level and did not constitute extensive rot.
31. Regarding scaffolding costs, Mr Broder said in response to a question from Mr Hammond that the cost of the scaffolding itself (i.e. the daily/weekly cost) was excessive but Mr Hammond put it to him that the cost was based on agreed rates under the relevant qualifying long term agreement entered into by the Respondent. As regards the length of time for which the scaffolding remained in place, the Scott Schedule contained a comment from the Applicants suggesting that 6 weeks was

excessive, but in cross-examination Mr Broder said that this comment was probably intended to be about the hoist rather than the scaffolding.

32. As a general point, Mr Hammond put it to Mr Broder that his comments in relation to those buildings which he had not inspected were purely speculative, but Mr Broder said that he felt that it was reasonable to have made certain assumptions.

Mr Alam

33. Mr Alam is a Contracts Manager employed by the Respondent, and he had prepared an unsigned and undated report in response to Mr Broder's report. In that report he referred to the fact that a joint validation survey was carried out with the contractor. The Respondent's Clerk of Works carried out regular inspections, and a dedicated Resident Liaison Officer kept residents updated on the progress of the works and addressed residents' issues.
34. He stated that all provisional costs for window repair works were omitted from the final account costs. Specifically in relation to 86 College Place, he stated by reference to photographs appended to his report that the condition of the windows was far worse than as described in Warman's Survey Report. As regard brickwork repointing works, he stated that a considerable time had passed between the carrying out of the works in 2010/2011 and Mr Broder's inspection in 2017. In his view it would have been difficult to identify the extent of the repointing works after such a time lag, particularly on the basis of what was only a ground level survey. Mr Alam also cross-referred to the Respondent's validation notes and final measure sheets in support of the costs claimed by the Respondent.
35. In relation to sill repairs, he said that the sum of £1,349.00 for repairs to sills at 94 College Place was for concrete sill repairs, not timber sills. At validation stage 19 repairs were identified and the repairs were carried out at the agreed rate of £71 per repair. As regards brick re-facing, at validation stage the need for 48 brick re-facing works was identified and the final measure sheets confirmed that 48 had been carried out.
36. As regards the roof works, in Mr Alam's view the surveyor who carried out the Warman's survey did not have access to scaffolding or to the rear of the building and therefore the inspection was limited. By contrast, Mr Alam carried out a joint validation survey with the Clerk of Works following the erection of scaffolding to 86 College Place. The decision to renew the roof coverings to number 86 was based on a number of factors, including the fact that the roof was covered with Redland 49 tiles estimated to be at least 40 years old, there were signs of historic repairs, the small Asphalt roof to the rear addition pediment required renewal, the lead valley gutters were in poor condition and

there was insufficient cover over the tiles on the cover flashings. As for the decision to use the more expensive slates, Mr Alam said that it was a like for like replacement and that those slates were considered to be longer lasting.

37. As regards the positive description of the window joinery in the Warman's survey, the inspection of the windows by Mr Pearce would have been limited to internal inspection of the windows in the top floor flat as again Mr Pearce did not have access to scaffolding or to the rear of the building. The photographs attached to his report show, in his view, that the condition of the windows at 86 College Place was substantially worse than as described in the Warman's report.
38. The installation of draught excluders did not constitute an improvement as they replaced draught excluders already installed on the windows. As regards alleged charging for non-decoration of windows, Mr Alam said that all timber windows and all metal crittall windows were painted with the exception of the ground floor flat to 85 College Place where the windows had recently been replaced.
39. As regards the accuracy of costings and whether this prejudiced the leaseholders in connection with the consultation process, all leaseholders were issued with estimated costs based on ground level surveys in 2010. Following the erection of scaffolding a full detailed validation survey was carried out and leaseholders were issued with a revised estimate.
40. In cross-examination, Mr Browne asked Mr Alam about the basis for the initial cost estimate for the works of £20,352.93. Mr Alam said that he was not involved in calculating this first figure. Mr Browne put it to him that the Applicants had at no stage seen any survey in support of this figure, and Mr Alam was unable to say whether the figure was in fact based on a written survey or on any other document.
41. In response to further questioning, Mr Alam accepted that the Respondent had not in fact produced any written survey report at all and that its only written evidence as to what needed to be done to the roofs was its validation sheets. Looking at one of these validation sheets, Mr Browne put it to Mr Alam that the decision to replace the roof at 86 College Place seemed to be based merely on the absence of pins. Mr Alam could provide no explanation as to why the absence of pins for fixing concrete interlocking tiles was considered to be significant but said that there were other factors as well, although Mr Browne objected that the validation sheet contained no analysis. Mr Alam in turn answered by referring Mr Browne to the relevant section of Mr Alam's own report, but Mr Browne said that this was written many years later in March 2018 and could have been no more than Mr Alam's own retrospective justification for the Respondent's decision.

42. In relation to the roof of 94 College Place, Mr Browne put it to Mr Alam that he did not have a shred of evidence as to why it needed replacing – no survey and no notes. Mr Browne also referred Mr Alam to the Respondent's own Stock Condition Report prepared in 2001 and relating to cyclical planned repair works, noting that the replacement of the main roof was not due to take place until 2020 and yet the Respondent had replaced it in 2010/11. Mr Alam said that the report was produced on the basis of a ground level inspection and therefore was based on limited information. He then added, when re-examined, that the Stock Condition Report in the hearing bundle only related to 94 College Place.
43. Regarding the Respondent's management fee, Mr Alam was unable to clarify for certain what it covered, as it was set by the leasehold management department, but his understanding was that it covered tasks such as dealing with queries in the office. It did not cover management or supervision of the works themselves.
44. Regarding the contractors' running costs, Mr Alam said that these were calculated through a formula contained in the relevant qualifying long term agreement. If so, asked Mr Browne, why did the percentage vary across the different properties from 6.47% to 11.4%? Mr Alam was unable to explain the reason for these variations.
45. As for which areas of brickwork had been repointed, Mr Alam said that the new work had been matched very well with the old and so it was difficult for someone to identify which areas had been repointed afresh just by looking at them.
46. In relation to the quality of paintwork, Mr Alam did not accept that the standard of work had been poor and he said that many other leaseholders had confirmed that they were content with the standard. He also referred to a snag sheet in the bundle as evidence that when problems were picked up they were then addressed.

Summary of Applicants' submissions

47. In relation to the consultation issue, in written submissions the Applicants state that the large discrepancy between the estimates before and after the validation inspection cannot be justified merely on the basis that an inspection with scaffolding revealed matters not visible at ground floor level. In the Applicants' view the Respondent was simply going to charge whatever the final figure turned out to be and the consultation process amounted to little more than going through the motions. The Respondent failed the test set out in *Woodfall, Landlord & Tenant* conscientiously to consider any observations made by the leaseholders and to give them due weight.

48. At the hearing Mr Browne accepted that leaseholders had been consulted and focused instead on the fact that the cost referred to in the initial notice was seemingly not based on any survey and that the cost referred to in the second notice was just based on an inspection. He also said that there had been no explanation as to why all of the roofs (apart from at 92 College Place) needed replacing and that this was not within the spirit of the consultation process. There was a fundamental issue as to whether the decision to replace these roofs was reasonable and there was no evidence to show that it was.
49. Mr Browne referred the Tribunal to the witness evidence and said that all of the Applicants' witnesses came across very reasonably in cross-examination, particularly Mr Watson. It was accepted that their surveyor only inspected two properties, but the Applicants had limited resources.
50. In relation to the draught excluders, there was no evidence that they replaced existing ones. In relation to the contractors' running costs, the Respondent was really unclear in its evidence as to the basis for the different percentages as between the different properties.

Summary of Respondent's submissions

51. Mr Broder has only inspected 2 out of 8 properties and has also in part relied on someone else's report (the Warman report) which was itself limited by what the surveyor (Mr Pearce) inspected. Mr Broder's position is therefore largely based on speculation. In relation to 79 College Place, for example, there is no evidence from anyone in support of the Applicants' stated position.
52. In relation to the consultation issue, the steps taken by the Respondent are summarised in the Appendix to the Respondent's statement of case dated 6th July 2018.
53. As for the costings, there are validation reports and a sign-off by the Clerk of Works.
54. As to the necessity for the roof works, Mr Alam has given evidence on this and Mr Broder's own evidence is very limited except in relation to 86 College Place.
55. Regarding the draught excluders and window restrictors, the Respondent's position is that these were replacements not improvements.
56. The Applicants' witness statements contain very little by way of evidence and their case is little more than a series of general assertions.

Tribunal's analysis

Compliance with statutory consultation requirements

57. The Applicants initially argued that there had been a failure to consult but then confined their argument to the question of whether the Respondent had failed to have regard to any observations received from leaseholders as it was required to do under the Service Charge (Consultation Requirements) (England) Regulations 2003.
58. At the hearing Mr Browne appeared to limit the Applicants' position further by accepting that proper consultation had technically taken place but that the consultation was not within the spirit of the legislation.
59. We do not accept the Applicants' challenge on this point. The Respondent's statement of case sets out details of observations received and of responses to those observations. The responses indicate in our view that regard was indeed had to those observations, subject to any evidence to the contrary. The Applicants have not been able to provide any real evidence on this point and have merely asserted that they felt that the Respondent was ignoring those observations. In particular they have been unable to identify any specific observation to which the Respondent failed to have regard. As to whether the consultation was not within the spirit of the legislation, the Applicants have not properly articulated what they mean by this nor have they brought any legal authority, and we do not consider that poor quality information as to why it was reasonable to replace the roofs (even if it was indeed poor) or any subsequent failure to engage with the Applicants (as to which more later) demonstrates that the Respondent failed to go through the statutory consultation process.
60. Therefore we do not accept that there was a failure to comply with the statutory consultation requirements.

Whether certain repairs were improvements

61. It was common ground between the parties that if any of the repairs did constitute improvements then the Respondent would not be entitled to recover the cost of any such improvements from leaseholders through the service charge.
62. In relation to the draught excluders, we prefer the Respondent's evidence on the question of whether they were improvements. Mr Alam gave credible evidence, on which Counsel for the Applicants was able to cross-examine him, that the Respondent simply replaced draught excluders which had already been installed on the windows. Mr Watson conceded under cross-examination that even if there were

no draught excluders in place prior to the Respondent installing new ones this could well have been because he had removed the old ones himself. Our factual finding on the balance of probabilities is that the installation of the draught excluders constituted a replacement of the existing ones and therefore that it did not amount to the carrying out of an improvement.

63. In relation to the window restrictors, the Respondent's position (albeit slightly less clearly expressed) is that these were also replacements. For the Applicants, Mr Watson has given a witness statement in relation to the window restrictors, but whilst we accept the sincerity of his evidence we do not find it sufficiently detailed or persuasive to rebut the Respondent's evidence on this point. Therefore, our factual finding is that on the balance of probabilities the installation of the window restrictors constituted a replacement of the existing ones and therefore that it did not amount to the carrying out of an improvement.

The quality of the exterior paint work

64. Mr Gavin states that there have been problems with the outside paintwork and Mr Watson states that certain photographs show that the paint application was sloppy and lumpy. Mr Broder has referred to painting failing prematurely in places. The Respondent disputes the Applicants' analysis.
65. On the basis of the evidence before us we are not persuaded that the Applicants have shown that the quality of the exterior paint work was sub-standard such that there should be a reduction in the charges, and Mr Broder only seems to have been able to point to very isolated problems and even then is expecting the Tribunal to base its decision on a survey carried out and photographs taken several years after the work was completed. Whilst we accept that the Applicants feel aggrieved, we are not in a position to determine that the charges should be reduced in the absence of proper and sufficient evidence of work being sub-standard and/or of any initial problems not having been remedied as snagging items.

The cost of scaffolding

66. There seems to have been some confusion on the Applicants' part on this point, particularly as between the scaffolding and the hoist. In addition, the concerns expressed regarding daily or weekly charges are not persuasive as the charges appear to reflect rates which were agreed under the relevant qualifying long term agreement. In the absence of a credible, evidence-based challenge these charges are payable in full.

The cost of roof replacement and/or the necessity of replacing the roof

67. One of the weaknesses in the Applicants' case is the fact that their surveyor's inspection was very limited in scope. However, the Respondent's position is itself problematic based on the evidence before us.
68. The Respondent knew very well that its decision to replace the roofs on 79, 86, 90, 94, 107 and 112 College Place was a key component of the Applicants' case and it was therefore aware of the need to be able to explain that decision. However, the evidence appears to indicate that the Respondent did not put together any written survey report in relation to the roofs and that its only written evidence as to what needed to be done to the roofs was in its validation sheets. The level of detail in those validation sheets is extremely limited, and it is hard to accept that this information could form a rational basis for deciding to replace the relevant roofs. The validation sheets contain no analysis, and save in relation to 86 College Place (as to which see below) the Respondent is effectively asking the Tribunal just to rely on the retrospective justification contained in Mr Alam's own report written many years later in March 2018.
69. In relation to 86 College Place, notwithstanding the Respondent's failure at the time properly to justify replacing the roof, the photographs that we have seen indicate that the roof was in a sufficiently poor condition such that we accept on the balance of probabilities that it was reasonable to replace the roof. However, the evidence indicates that the roof replacement on 86 College Place was not a like for like replacement, as the existing interlocking tiles were replaced with natural slates. It was therefore an improvement, and it is common ground between the parties that the cost of carrying out improvements is not recoverable by the landlord from the tenant under the lease. Furthermore, the Respondent has not persuaded us that it was necessary to use the more expensive natural slates.
70. In relation to the roof replacements other than for 86 College Place, the Respondent has been unable properly to justify the decision to replace these roofs and it did not go through a proper analysis so as to reach a sufficiently informed opinion. Therefore we do not accept that the decision to replace them was a reasonable one.
71. Taking each property in turn:-

79 College Place

The Respondent's decision to replace the roof was not a reasonable one and therefore the costs associated with roof replacement are unreasonable and are disallowed. The disallowed items are numbers

28-30 and 35-37 and the aggregate cost of the disallowed items is £8,852.85.

80 College Place

No roof charges were levied and therefore there is no amount to disallow.

86 College Place

As noted above, it was reasonable to replace this roof but the problem here is that the existing interlocking tiles were replaced with natural slates and this was an improvement, the cost of which is not recoverable. It is therefore appropriate to reduce the cost by an amount which reflects the difference between the cost incurred and the cost that would have been incurred if it had been a like for like replacement. We were not provided with any evidence as to what a like for like replacement would have cost and are therefore forced to take a broad-brush approach using our experience as an expert tribunal. On that basis we consider that the cost should be reduced by £3,000.00.

90 College Place

The Respondent's decision to replace the roof was not a reasonable one and therefore the costs associated with roof replacement are unreasonable and are disallowed. The disallowed items are numbers 18-20, 25-27, 31 and 37-38 and the aggregate cost of the disallowed items is £10,061.57.

92 College Place

Here the roof overhaul works were carried out at a modest cost and there is no evidence before us that this expenditure was unjustified and therefore there is no amount to disallow.

94 College Place

The Respondent's decision to replace the roof was not a reasonable one and therefore the costs associated with roof replacement are unreasonable and are disallowed. The disallowed items are numbers 25-27, 31-33 and 44-46 and the aggregate cost of the disallowed items is £10,061.57.

107 College Place

The Respondent's decision to replace the roof was not a reasonable one and therefore the costs associated with roof replacement are

unreasonable and are disallowed. The disallowed items are numbers 26-28, 32-35 and 44-45 and the aggregate cost of the disallowed items is £10,028.87.

112 College Place

The Respondent's decision to replace the roof was not a reasonable one and therefore the costs associated with roof replacement are unreasonable and are disallowed. The disallowed items are numbers 25-27, 32-34, 38 and 41 and the aggregate cost of the disallowed items is £9,890.87.

The quality of the draught-proofing and of the painting of the windows

72. The Respondent's position is that the quality of this work was of a reasonable standard. It was for the Applicants to provide some objective evidence that the work was sub-standard, but in our view they have failed to discharge this burden. Mr McKinlay, for example, has made assertions in his witness statement that the work was done extremely badly, but in the absence of any evidence we are unable to find in the Applicants' favour on this point in relation either to the draught-proofing or to the painting of the windows.

Less brickwork carried out than billed for

73. Mr Broder's evidence on this issue is noted. However, whilst his report refers to his having inspected "the premises" it is apparent from the body of his report and his oral evidence that he only inspected 86 and 94 College Place. In addition, he only inspected at ground level, and the inspections took place several years after completion of the works.
74. Mr Alam's evidence on this issue is consistent with the calculations contained in the documentation provided. In order to find in favour of the Applicants in relation to 86 and 94 College Place we would need to be satisfied that the results of Mr Broder's ground level inspections which took place several years after completion of the works are more persuasive than Mr Alam's evidence and supporting documentary evidence including sign-off by the Clerk of Works, and we are not so persuaded. In relation to the other buildings the Applicants are in even more difficulty as we would need to extrapolate from the position in relation to 86 and 94 College Place. As we are not persuaded by the Applicants' evidence in relation to 86 and 94 College Place it follows that we are not persuaded in relation to the other buildings.

Resin works incorrectly included and window repairs more extensive than reasonable

75. In relation to resin repairs, the Applicants are reliant on Mr Broder's evidence and we do not find his evidence persuasive on this issue. In cross-examination he conceded that it was difficult to work out how much repair work was required, particularly in respect of the upper floors, merely on the strength of a ground level survey which took place so long after the works were completed. In addition, there is again the significant problem that the survey was only of 86 and 94 College Place and the Applicants are trying to extrapolate from the results of a limited survey on two of the properties and to extend those results to the other properties.
76. In relation to windows repairs, Mr Broder has provided some limited evidence which might indicate that the extent of the damage to one or two windows was not that extensive. However, as the evidence is so limited in scope and the survey was carried out many years after the works were carried out it is simply too much of a stretch to extrapolate from that evidence to conclude that the overall amount spent on window repairs was unreasonable.
77. As a general point on the limited nature of Mr Broder's survey, we appreciate that the Applicants were faced with a difficult financial question as to how much to spend on carrying out surveys to support their case. However, to extrapolate from a very limited survey in this way is very unsatisfactory. That does not mean that it is never possible to extrapolate; if for example a detailed survey on all but one or two of the properties had taken place at ground and upper levels and the results of all of those surveys had been very similar then it might have been reasonable to extrapolate in relation to the remaining building or buildings, but that is not the case here. In conclusion we are not satisfied that resin works were incorrectly included or that the window repairs more extensive than reasonable.

Fluctuating contractors' running costs

78. The evidence before us is that the contractors' running costs ranged between 6.47% and 11.4%. Mr Alam was simply unable to explain the reason for this, despite it clearly being one of the issues in dispute, and the Respondent has failed to justify the fluctuating costs.
79. There was no specific challenge to the reasonableness or otherwise of the figure of 6.47%, and therefore in relation to those properties where the percentage charged was higher than 6.47% the figure is reduced to 6.47%.

Fixed costs generally

80. The items described in the ADR Block Breakdown as fixed fee, performance fee and contractors running costs are all expressed as fixed percentages of the total cost of the works. As we have reduced the total cost of the works on all properties other than 80 and 92 College Place it follows that the fixed fee, performance fee and contractors running costs will be reduced accordingly on all of those properties to reflect the fact that the fixed percentage is a percentage of a smaller total.

Failure by the Respondent to provide relevant documentation

81. The Applicants have been successful on certain issues but unsuccessful on others. In our view, though, the evidence indicates that the Respondent has made it very difficult for the Applicants to obtain information and that this has had a material effect on the Applicants' approach to this case.
82. It is important to distinguish here between provision of information in the context of the dispute itself and compliance with the consultation requirements. Having initially complained of a failure on the Respondent's part to comply with the consultation requirements the Applicants then changed their position, and as noted above the Respondent did in our view comply with the formal consultation requirements and had regard to leaseholders' observations.
83. However, the level of engagement on the Respondent's part with the Applicants' concerns in the context of this dispute has been poor. Mr Watson and Mr Talevi have given evidence of multiple attempts to obtain information from the Respondent. Their evidence on this point has not been effectively challenged, and the Respondent has not offered much by way of a credible explanation for its failure to engage more constructively. Whilst aspects of the individual Applicants' witness statements have not been persuasive as they are not experts and did not provide sufficient objective supporting evidence, on the factual point regarding their attempts to obtain information from the Respondent they come across very credibly. This issue is relevant to costs, as set out below.

Cost Applications

84. The Applicants have made an application under section 20C of the 1985 Act, namely an application for an order that the Respondent should not be allowed to put through the service charge any costs incurred in the course of these proceedings. They have also made an application under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order extinguishing any liability that they

might otherwise have to pay or contribute towards the Respondent's costs incurred in the course of these proceedings as an administration charge under their respective leases.

85. The Applicants have been successful on two significant issues but unsuccessful on the other issues that they have raised. Whilst that level of partial success would not necessarily entitle an applicant to orders under section 20C and paragraph 5A in all cases, the Tribunal has discretion and the degree to which an applicant has been successful is not the only factor to be taken into account.
86. As noted above, the Applicants have given very credible accounts of their difficulty in obtaining information from the Respondent at various stages of the process, and we consider that a more constructive and helpful approach on the Respondent's part could have made a very big difference. In addition, the information and evidence on which the Respondent appears to have relied when deciding to replacement most of the roof coverings looks very weak, and the Respondent's approach adds up to a pattern of not taking seriously the genuine concerns of leaseholders faced with a large bill for works, some of which appeared to them to be unnecessary and some of which appeared to them to have been carried out in a sub-standard manner.
87. Therefore, in the slightly unusual circumstances of this case, we consider that it would be just and equitable in the circumstances to order that none of the costs incurred by the Respondent in connection with the proceedings before this Tribunal are to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants. We also consider that it would be just and equitable in the circumstances to order the extinguishment of any liability on the part of the Applicants by way of an administration charge to pay towards the costs incurred by the Respondent in connection with the proceedings before this Tribunal.

Name: Judge P Korn

Date: 23rd November 2018

RIGHTS OF APPEAL

- A. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) a written application for permission must be made to the First-tier Tribunal at the regional office dealing with the case.
- B. The application for permission to appeal must arrive at the regional office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
- C. If the application is not made within the 28 day time limit, such application must include a request for extension of time and the reason for not complying with the 28 day time limit; the Tribunal will then look at such reason and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
- D. The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal, and state the result the party making the application is seeking.

APPENDIX 1

List of Applicants

Ali & Mehe Ahmed	(79b College Place)
Ruth Shwer	(79c College Place)
Mike McKinlay & Richard Woolf	(80a College Place)
Tom Savage	(86c College Place)
Mauro Talevi	(90b College Place)
Connie Vella	(92a College Place)
Peter & Trisangma Watson	(94b College Place)
Tom Salinsky & Deborah Frances-White	(94c College Place)
Anita & Shane Gavin	(107a College Place)
Sunil & Roshan Israni	(112c College Place)

APPENDIX 2

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 18

- (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

- (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 20

- (1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either -

- (a) complied with in relation to the works or agreement, or
- (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal.

...

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 ... the First-tier Tribunal ... 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) ...
- (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.

Section 27A

- (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 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.

Commonhold and Leasehold Reform Act 2002

Paragraph 5A

- (1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or distinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
- (2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.
- (3) In this paragraph ... "litigation costs" means costs incurred, or to be incurred, by the landlord in connection with ... First-tier Tribunal proceedings ...