



**FIRST-TIER TRIBUNAL  
PROPERTY CHAMBER  
(RESIDENTIAL PROPERTY) &  
IN THE COUNTY COURT AT  
CENTRAL LONDON, sitting at 10  
Alfred Place, London WC1E 7LR**

**Tribunal reference** : **LON/00BB/LSC/2019/0007**

**Court claim number** : **E23yx007**

**Property** : **Flat 11, White Cross Apartments,  
269-271 High Street,  
London, E15 2TF**

**Applicant/Claimant** : **Whitecross JS Limited**

**Representative** : **No appearance**

**Respondent/Defendant** : **Raymond Shaw**

**Additional Respondents** : **Falih Abdul Wahid Radhi Al-Sudani  
and Shatha Ahmed Muhammed  
(Flat 1)  
Jason Wong (Flat 2)  
Stephen Charles McDowell and  
Joseph Grant Corr (Flat 4)  
CALA Management Limited (Flat 6)  
Jonathan Owen Dawson (Flat 10)**

**Representative** : **Ms Andy Creer (Counsel)**

**Tribunal members** : **Judge Robert Latham  
Duncan Jagger MRICS**

**In the county court** : **Judge Robert Latham (sitting as a  
District Judge of the County Court)**

**Date of hearing** : **16 December 2019**

**Date of handed down decision** : **10 January 2020**

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**DECISION**

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Those parts of this decision that relate to County Court matters will take effect from the 'Hand Down Date' which will be: (a) If an application is made for permission to appeal within the 28-day time limit set out below – 2 days after the decision on that application is sent to the parties, or (b) If no application is made for permission to appeal, 30 days from the date that this decision was sent to the parties.

### **Summary of the decisions made by the First-tier Tribunal**

1. The service charges claimed by the Applicant/Claimant are neither payable nor reasonable. The claim is dismissed.
2. The sums claimed in respect of insurance are capped at £410 for each tenant for the years 2016/7; 2017/8; 2018/9 and 2019/20.
3. The management fees are capped at £200 per annum for each tenant for the service charge years 2013/4; 2014/5; 2016/7; 2017/8; 2018/9 and 2019/20.
4. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985.

### **Summary of the decisions made by the County Court**

5. The Case is allocated to the fast track.
6. Damages are awarded in the sum of £5,000 in respect of the disrepair to the lift.
7. The Court makes the following declarations in respect of the lift:
  - (i) The lift was not fit for purpose.
  - (ii) The lift was not suitably designed as, amongst other things:
    - (a) the control equipment was not housed in a suitable enclosure for the environment; and
    - (b) the doors and lift were not fabricated for use in an external environment.
  - (iii) In breach of the landlord's covenants in clause 4.1 and paragraph 1.5 of the Fifth Schedule of the Lease, the Claimant has failed to properly maintain the lift since installation and has not ensure that the lift complies with the statutory regulations, including Lifting Operations & Lifting Equipment Regulations 1998.
  - (iv) The unsuitable design of, and the failure to maintain, the Lift have contributed to the Lift not being operational since 20 December 2016.
8. The Court makes the following declarations in respect of the Defendant's parking space: In breach of the lease dated 5 August 2013

and made between Whitecross JS Ltd and Raymond Shaw in respect of Flat 11 and a parking space at the Building, the Claimant has failed to demise a car parking space in the basement.

9. The Claimant shall pay to the Defendant costs of £20,000 for legal costs and £81.81 for disbursements.

### **Introduction**

1. White Cross Apartments, 269-271 High Street, London, E15 2TF (“The block”) consists of a development of eleven flats situated over seven floors. There are commercial premises on the ground floor, part of which are occupied by Rockledge Estates Limited, the managing agents. There is also a lower ground floor. The block was constructed in 2012. It was badly designed, poorly constructed and has not been well managed. Major works have been executed through the National House Building Council (“NHBC”) to remedy a range of defects. Mr Shaw occupies Flat 11 which is on the fifth floor (the top floor). For the past three years, the lift has been inoperable. On 5 August 2013, he acquired a 125 term of his flat which included the use of a carpark space which he is unable to use.
2. These proceedings started in the County Court as a modest claim by Whitecross JS Limited (“Whitecross”), the landlord, for £3,306.26 in respect of arrears of service charges and ground rent. Mr Shaw withheld service charges because of the condition of the block. He has counterclaimed raising a range of issues relating to the defective state of the block.
3. The County Court transferred the proceedings to this Tribunal under the Deployment Scheme. The effect of this is:
  - (i) The Tribunal now administers the whole case on behalf of the County Court, and Judge Latham, sitting as a District Judge of the County Court (“DJ Latham”), is entitled to make directions having regard to the provisions of the Civil Procedure Rules 1998 (the “CPR”).
  - (ii) Judge Latham and Mr Duncan Jagger, sitting as a First-tier Tribunal (“FTT”), determine any issue relating to service charges and administration charges pursuant to section 27A of the Landlord and Tenant Act 1985 (“the 1985 Act”) and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 (“the 2002 Act”). This jurisdiction is governed by the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (“the Tribunal Rules”).
  - (iii) DJ Latham determines the issues which fall outside the traditional jurisdiction of the FTT. This includes the counterclaim for disrepair, claims in respect of the lift and the carparking space and costs.

DJ Latham and the FTT have had regard to the decision of the Upper Tribunal (“UT”) in *Avon Ground Rents Limited v Childs* (“*Avon Ground Rents*”) [2018] UKUT 204 (LC); [2018] HLR 44, and identify the decisions taken respectively by DJ Latham and the FTT.

### **The Application**

4. On 14 March 2018, Whitecross issued proceedings against Mr Shaw in the Money Claims Centre claiming: (i) arrears of ground rent of £500; (ii) arrears of service charges of £2,806.26; (iii) an administration fee of £500; and (iv) costs. Their Solicitors were PDC Law.
5. On 16 April 2018, Mr Shaw filed a defence and counterclaim. He was unrepresented at the time. He raised a range of issues relating to the repair and maintenance of the block; the management of the block, the insurance of the block, the state of the lift and his car parking space.
6. On 15 June 2018, Whitecross filed a reply and defence to counterclaim. On 2 July, the case was transferred to the County Court at Central London. On 12 December, Deputy District Judge Burn transferred the proceedings to this tribunal.
7. On 5 February 2019, a Procedural Judge gave Directions, pursuant to which:
  - (i) On 14 February, Whitecross confirmed that there were no outstanding arrears of ground rent. Particulars were provided of the arrears of service charges which totalled £2,356.94 and related to the service charge years 2014/5, 2015/6 and 2016/7.
  - (ii) On 19 March, Mr Shaw filed an amended and slimmed down version of his defence and counterclaim (at 1.128).
8. On 3 June, there was an unsuccessful attempt to mediate. After the mediation, a Procedural Judge gave Further Directions. A particular issue was disclosure of documents relating to the condition of the lift, including correspondence with the original lift contractor, that company’s liquidator and any insurance company involved in any claim made in respect of the lift. A hearing date was fixed for 9 September.
9. On 12 August, Mr Shaw complained that he was unable to prepare his case as Whitecross had failed to complete the required disclosure. The problem was aggravated by the fact that PDC Law withdrew their representation. A Procedural Judge directed that the hearing fixed for 9 September be turned into a further Case Management Hearing.

10. On 9 September, a Procedural Judge gave further Directions. A new hearing date was fixed for 16 December with a time estimate of two days. It was noted that further leaseholders might wish to apply to be joined as parties. They were urged to apply as a matter of urgency.
11. On 21 October, a Procedural Judge joined the following as respondents: (i) Falih Abdul Wahid Rasdhi Al-Sudani and Shatha Ahmed Muhammed (Flat 1); (ii) Stephen Charles McDowell and Joseph Grant Corr (Flat 4); (iii) CALA Management Limited (Flat 6) and (iv) Jonathan Owen Dawson (Flat 10). On 24 October, Jason Wong (Flat 2) was joined as a respondent. These respondents were added pursuant to Rule 10(3) of the Tribunal Rules. As a consequence, they are not parties to the County Court proceedings and can only benefit from the findings which fall within the traditional jurisdiction of the FTT.
12. On 6 December, Whitecross filed a Bundle of Documents in three volumes. Each is separately paginated. In this decision, “1.2” refers to page 2 of volume 1.
13. On 13 December, the Tribunal received the following e-mail from Whitecross’ new solicitor, Thompson & Co:

“In view of the directors’ current assessment of the companies’ finances, it is considered that the liabilities exceed the assets. In such circumstances, it is not in the Claimant’s interests that it incurs costs by being represented at the hearing listed for 16-17 December 2019. Please note that the Claimant will also not be appearing before the Tribunal at the hearing.”

### **The Hearing**

14. Ms Andy Creer, Counsel, instructed by Laytons LLP (“Laytons”) appeared on behalf of Mr Shaw and the other tenants. The following also attended: Ms Katherine Martin (a trainee solicitor), Mr Shaw, Ms Cheyenne Shaw (his wife), Mr Joseph Corr (Flat 4), Mr Jonathan Dawson (Flat 10), and Ms Melanie Wong (the sister of the tenant of Flat 2). Ms Creer provided a Skeleton Argument and a draft Order. The Tribunal heard evidence from Mr Shaw. We found him to be a convincing witness and accept his evidence without hesitation. After the hearing, Laytons provided a Schedule of Costs.
15. There was no appearance on behalf of Whitecross, the Claimant/Applicant.
16. On reviewing the file, it is apparent that the County Court did not allocate the action to a track. DJ Latham therefore allocates the County Court proceedings to the fast track.

## **The Leases**

17. On 15 August 2013, Mr Shaw was granted a lease of Flat 11 for a term of 125 years from 11 September 2012 (at 1.12). His lease includes a car parking space on the lower ground floor of the Building. The flat is on the fifth (top) floor. There is a large roof terrace. The premium was £394k. His service charge contribution is 8.73%.
18. There are three parties to his lease: (i) Whitecross as “Lessor”; (ii) Mr Shaw as “Lessee” and (iii) Tenby Road Limited as the “Company”. By Clause 4.1, the Company covenants to carry out the repairs and provide the services specified in the Fifth Schedule. Paragraph 1.5 of the Fifth Schedule requires the Company to keep the block in good repair and condition (and to enter into Maintenance Agreements in respect thereof) and to replace the lifts, plant and machinery serving the Building. Paragraph 7.1 requires the Company to insure the Building.
19. By Clause 5.3, the Lessor covenants that “if the Company is at any time in default of the covenants on its part contained herein the Lessor shall perform and observe the covenants on the part of the Company herein contained...”
20. The leases of the other respondents are in similar form, save for one notable difference: Whitecross is both the “Lessor” and the “Company”. All the lessees pay a service charge contribution of 8.73%. The Tribunal has been provided with copies of the following leases:
  - (i) The Lease for Flat 1 is dated 11 January 2013 and was granted to Falih Abdul Wahid Radhi Al-Sudani and Shatha Ahmed Muhammed (at 3.6). Their premium was £280k. The flat is on the ground floor.
  - (ii) The Lease for Flat 4 is dated 11 January 2013 and was granted to Stephen Charles McDowell and Joseph Grant Corr (at 3.43). The premium was £287.5k. The flat is on the first floor.
  - (iii) The Lease for Flat 6 is dated 7 February 2013 and was granted to Robin Adam Keeler (at 3.19). The premium was £279k. The flat is on the second floor.
  - (iv) The Lease for Flat 10 is dated 7 December 2012 and was granted to Jonathan Owen Dawson (at 3.115). The flat is on the fourth floor. The premium was £285k.
21. The Tribunal has not been provided with a copy of the lease for Flat 2. This flat is the first floor and has the benefit of a car parking space.

## **The Background**

22. On 25 November 2010, Whitecross acquired the freehold of the land at 269/271 High Street, Stratford for £825k (3.1). The Company had been incorporated on 19 October 2009. It is jointly owned by Javid Iqbal Qamar and Abdul Smith Khan. They are the two directors.
23. The building was designed and constructed by Sampson Construction Services Limited (“Sampson Construction”). Mr Qamar and Mr Khan were the two directors. They each had a 25% shareholding. The company had been incorporated on 18 April 2003. On 8 November 2016, it was dissolved through a voluntary write-off. At the Case Management Hearing on 9 September 2019, the Procedural Judge was incorrectly told that the company had gone into liquidation. This was given as the reason for Whitecross being unable to retrieve relevant documents.
24. Mr Shaw stated that he had never had any contact with Tenby Road Limited, the “Company” specified in his lease. His research has shown that Mr Qamar and Mr Khan were the two directors. They each had a 25% shareholding. On 23 June 2015, the company was dissolved. In practice, it is Whitecross that has performed the duties of “the Company”, the default position when the Company fails to perform its obligations.
25. The fourth company which features in this case is Sampson Estates Ltd (“Sampson Estates”). This was formerly called Rockledge Estates Ltd until it changed its name on 21 January 2015. Mr Khan is a former director of this company (between 1 August 2012 and 21 January 2015). The current directors are Mohamed Bilal Khan (the active director) and Shazia Parveed Khan. Sampson Estates have an office on the ground floor of the Building. It has been managing the building. It is also an estate agency and was responsible for marketing the flat to Mr Shaw.
26. Mr Shaw understands that all these companies form part of the Sampson Group of Companies. He believes that Flats 3, 5, 7, 8 and 9 are owned by tenants linked to the Whitecross as they acquired the flats at premiums significantly below the market value. The lessee of Flats 3, 5 and 9 are held by Art Properties Limited, a company incorporated and registered in the British Virgin Islands. Flats 7 and 8 are held by Salma Khan. These flats were also initially acquired by Art Properties Limited.
27. Whitecross Apartments are built over seven floors. There is a lower ground floor with parking spaces. There are commercial units on the ground and lower ground floors. It would seem there the block was not built as designed and approved by the planning authority. There should have been three carparking spaces in the basement. Only two have been created. Although the leases for Flats 2 and 11 include individual

parking spaces, they are required to share a single space. A twelfth flat was originally built on the ground floor, despite the absence of any planning consent. The flat was tiny and had no windows. It was let to two young Poles. After complaints from Mr Shaw, this unit has now been incorporated into a commercial unit let to a dry-cleaning firm. Mr Shaw understands that the building has never been signed off by Building Control.

28. Mr Shaw has occupied his flat with his wife. He complains that the building has been in serious disrepair as a result of its defective construction. This has been aggravated by a lack of basic maintenance. There has been extensive dampness. The roof has leaked. The drains on the roof have not been cleared and have flooded. The push-fit pipe work in the flats was poorly installed there have been extensive leaks. There has been mould growth and mushrooms. The windows have been ill fitting and have permitted water to penetrate. The air conditioning has been wrongly connected to a macerator. There have been continual problems with the lift which has been inoperable since 20 December 2016.
29. Mr Shaw complains that neither Whitecross nor the managing agents have sought any redress against Sampson Construction because all the companies are linked. Mr Shaw therefore involved the NHBC. The NHBC initially required Sampson Construction to remedy the defects. It failed to do so. The normal NHBC procedures were inappropriate because of the link between the builder (Sampson Construction), the freeholder (Whitecross) and the managing agent (Sampson Estates). These difficulties are discussed in a letter dated 24 December 2014 (at 1.338). The NHBC have therefore arranged for builders to remedy the defects, save for the lift for which there is no NHBC cover. Over the past 6 years, some 7,000 emails have passed between Mr Shaw and the NHBC. The managing agent should have been responsible for ensuring that the block was put in a proper state of repair.
30. Mr Shaw complains of Sampson Estate's failure to carry out any basic maintenance. In June 2016, there was extensive water penetration into Mr Shaw's flat. The failure to clear the gutters had led to the build up of several tonnes of water on the flat roof of the Building. When the water was discharged, the sheer volume of water overwhelmed the drainage system causing flooding in the basement. The NHBC has confirmed that this problem would have been avoided by routine gutter maintenance.
31. For two periods, Mr Shaw has been unable to occupy his flat. The first period was August to December 2013. Works were required to deal with the leaking pipes, the main windows and the air conditioner. The second period was between August 2016 and August 2017. The main roof was replaced. Works were required to the lift shaft. Tiling works were required to the landing. The doors on the landing had warped.



32. Mr Shaw states that the common parts have been habitually untidy, unclean and in general disrepair. The Block has not had any internal decorations since the commencement of his tenancy. The common parts are in need of redecoration. The carpeting is worn and in need of replacement. The carpets have been dirty.
33. Mr Shaw stated that the remedial works are now nearing completion. The exception is the lift. This has not worked since 20 December 2016. Prior to this, there were occasions when tenants were stuck in the lift. Mr Shaw now has to climb 90 steps to reach his flat. He has to carry shopping up to his flat and rubbish down to the basement level. He has had to carry large items of furniture up to his flat. He required treatment from a chiropractor after carrying up a sofa. His mother is in her 80s and is unable to visit him at his home. His sister who suffers from multiple sclerosis, is unable to manage the stairs and is also unable to visit.

### **Issue 1: The Claim - Decision of the FTT**

34. Whitecross claim (i) arrears of ground rent of £500; (ii) arrears of service charges of £2,806.26; (iii) an administration fee of £500; and (iv) costs. A Statement of Account is annexed to the claim form at 1.146. The services charges of £2,806.26 relate to the period 11 September 2015 to 29 August 2018. It has been agreed that there are no arrears of ground rent.
35. There is a Statement of Account, dated 14 February 2019, at 2.310. At this date, the arrears of service charges were £2,356.94. Mr Shaw raises a number of objections to the sums demanded. He contends that they are not payable for two reasons: (i) There has been no lawful demand specifying the landlord's name and address as required by section 47 of the Landlord and Tenant Act 1987; and (ii) The demands have not been accompanied by the requisite summary of rights and obligations. Prior to its dissolution on 23 June 2015, Mr Shaw received no communication whatsoever from Tenby Road Limited, "the Company" which covenanted to carry out the services.
36. Mr Shaw also complains that the services have not be provided to a reasonable standard. He complains of the abject failure of management over the past six years and the deplorable conditions in which the tenants have been compelled to live.
37. Whitecross has not appeared to prove its claim. We accept Ms Creer's submission that Whitecross has failed to satisfy the FTT that the sums demanded are either payable or reasonable.

## **Issue 2: The Lift – Decision of DJ Latham**

38. Mr Shaw seeks the following relief in his counterclaim in respect of the lift:
- (1) General damages for disrepair which he quantifies at £5,000.
  - (2) The following Declarations:
    - (i) The lift was not fit for purpose.
    - (ii) The lift was not suitably designed as, amongst other things:
      - (a) the control equipment was not housed in a suitable enclosure for the environment; and
      - (b) the doors and lift were not fabricated for use in an external environment.
    - (iii) In breach of the landlord's covenants in clause 4.1 and paragraph 1.5 of the Fifth Schedule of the Lease, Whitecross has failed to properly maintain the Lift since installation and has not ensure that the Lift complies with the statutory regulations, including Lifting Operations & Lifting Equipment Regulations 1998.
    - (iv) The unsuitable design of, and the failure to maintain, the lift has contributed to the lift not being operational since 20 December 2016.
    - (v) The cost of a replacement lift at the Building shall be borne by Whitecross.
39. The seven floors of the Building (lower basement to the fifth floor) are served by a Doppler Traction Geared 8-person passenger lift. This was installed by 27 September 2012 by Independent Lift Services Ltd ("ILS") at a cost of £34,425. It had the benefit of a 12-month warranty. It appears that the lift was not approved by Building Control. It was serviced twice by ILS on 8 January and 11 April 2013. On 10 September 2013, the Registrar of Companies gave notice that the company was to be dissolved (2.141). On 5 February 2014, administrators were appointed (2.142). On 4 March 2014, Whitecross entered into a maintenance contract with Titan Elevators Limited ("Titan") (2.145).
40. Mr Shaw describes how the lift worked intermittently between August 2013, when he purchased his flat, and 2016 when access was denied whilst the NHBC conducted repair works to the lift shaft and the surrounding areas. It has been inoperative since 20 December 2016. There were a number of breakdowns when either Mr Shaw or his wife were in the lift.
41. Mr Shaw describes how he and his fellow tenants complained about the lifts to Whitecross, Samson Construction and Sampson Estates. None have

shown the slightest concern. They have not carried out remedial works. They have rather allowed it to deteriorate to an extent that it is now beyond economic repair.

42. Mr Shaw has obtained two expert reports from Michael Berry, of Elevate Consulting Ltd dated March 2016 (at 1.151) and January 2018 (at 1.168). Mr Berry first inspected the lift on 1 February 2016. At the time of the survey, the lift was operational. He made the following findings:

(i) The lift did not have a signed CE Declaration of conformity;

(ii) The lift was not suitably designed for an exposed environment. It has been installed in an unusual situation where the lift landings were open to the elements. This would reduce the economic life of the lift below 15 years and cause higher incidence of faults due to a number of factors. The lift control panel at the top floor is not weather protected, as a result of which moisture would cause faults and reduce the life of p.c.b. boards due to corrosion. It was probable that the lift was made of a grade of stainless steel only suitable for internal use. The exposure to cold would affect the operation of the lift gearing; There were signs of excessive corrosion throughout the internal lift;

(iii) The lift had a long list of significant defects.

(iv) The lift was unreliable.

(v) There was no evidence that any statutory inspections had been carried out in compliance with the Lifting Operations & Lifting Equipment Regulations 1998;

(vi) The only way that all of the defects and design issues could be permanently resolved is the replacement of the lift with a suitably designed unit.

43. Mr Berry noted a serious safety defect with loose or missing toe guards. He considered that immediate action was required. He sent an e-mail to Titan on the same day. There is no evidence that any remedial action was taken.

44. Mr Shaw forwarded a copy of the report to Whitecross. None of the problems were addressed by either Whitecross, Samson Construction or Samson Estates. He notes that Whitecross pursued no claim against Samson Construction. On 8 November 2016, Samson Construction was dissolved as a result of a voluntary strike-off.

45. On 10 January 2018, Mr Berry carried out his second inspection. The lift was not operational and there had been no maintenance since 20 December 2016. Mr Berry made the following findings:

(i) Its last year of use had been 2016. During that year, there had been “appalling levels of reliability”.

(ii) The lift was not fit for purpose for an environment where the lift landings are open to the elements and had excessive levels of corrosion. This was caused by water ingress. The control system is microprocessor based and is not housed in a suitable container. The door system was also unsuitable for the environment.

(iii) The corrosion had caused very serious Health and Safety issues which required immediate action. Between February 2015 and January 2018, there had been a rapid increase in the level of corrosion, which now rendered the lift unsafe.

(iv) There was an excessive amount of builder’s rubble in the lift.

(v) The lift would require major expenditure if it is to return to service.

46. On 15 September 2019, Whitecross obtained a report from ILECS (at 1.199). ILECS conclude that the lift has been installed to a poor standard. Due to the manufacture, design and quality of the existing lift components, a modernisation scheme is not recommended. Neither is this considered to be financially viable. ILECS recommend that the lift is fully replaced with a new robust MLR lift of reputable manufacture. The cost of a replacement lift is estimated at £90,000, excluding builders work, VAT, statutory and professional fees. Ms Creer notes that it is unclear whether this estimate includes provision to ensure that the lift pit depth is sufficient.

47. In the light of this uncontradicted evidence, DJ Latham is satisfied that:

(i) The lift which was installed by was not fit for purpose. The lift was installed by ILS and commissioned by Sampson Construction.

(ii) The lift was not suitably designed as, amongst other things: (a) the control equipment was not housed in a suitable enclosure for the environment; and (b) the doors and Lift were not fabricated for use in an external environment.

(iii) It has not been approved by Building Control.

(iv) In breach of the landlord’s covenants in clause 4.1 and paragraph 1.5 of the Fifth Schedule of the Lease, Whitecross has failed to properly maintain the Lift since installation and has not ensure that the lift complies with the statutory regulations, including the Lifting Operations & Lifting Equipment Regulations 1998.

(v) The unsuitable design of and the failure to maintain the lift have contributed to the lift not being operational since 20 December 2016.

48. In the light of these findings, DJ Latham awards damages of £5,000 against Whitecross in respect of their failure to repair and maintain the lift. The inconvenience suffered by Mr Shaw as a result of the disrepair to the lift over the past six years has been substantial. The damages sought by Mr Shaw are at the lower end of the appropriate scale.
49. DJ Latham further makes the declarations sought in subparagraphs (i) to (iv) of paragraph 38(2) above. He is not willing to make the declaration sought in sub-paragraph (e), namely that “the cost of a replacement lift at the Building shall be borne by Whitecross”. Ms Creer has confirmed that the declaration would relate to Whitecross in its personal capacity and not against any subsequent landlord. She argues for such a declaration on the grounds that it could not be said that such costs would be reasonably incurred where they arise from (i) the inappropriate design and installation of the current lift in an exposed environment and (ii) the failure to properly maintain it thereafter.
50. The lift was not designed and installed by Whitecross. Whitecross and Sampson Construction are different legal entities. Ms Creer has not established any grounds for lifting the corporate veil. Ms Creer accepted that the lift is now beyond economic repair and needs to be replaced. Should Whitecross seek to recover the cost of the replacement lift against Mr Shaw, he may have an equitable set-off in respect of Whitecross’s failure either (i) to maintain the lift pursuant to their obligations under the Lease or (ii) to pursue its legal remedies against ILS and/or Sampson Construction. However, it would be premature to make any determination of this. There is no evidence which would entitle the Court to find that this defective lift would not need to be replaced had it been properly maintained over the past six years. The factual findings in this decision speak for themselves.

### **Issue 3: Insurance – Decision of the FTT**

51. Mr Shaw counterclaims in respect of the sums which have been demanded by Whitecross and paid by him in respect of insurance. He complains about the substantial increases in premium which have increased from some £400 per flat to more than £1,100. He argues that Whitecross has put nothing forward to show that the sums demanded since 2017 have been reasonable. He is joined on this issue by the other tenants who have been made parties to this application.
52. Whitecross has kept the Block insured and has charged the tenants separately from the other service charge items. Whitecross has tested the market. Insurance was initially provided by Zurich Insurance for 2014/5, 2015/6 and 2016/7; and by Cobra London markets for 2017/8, 2018/9 and 2019/20. The premiums charged are summarised in the following table.

Year	Documents	Insurance Premium	Sum Allowed	Price per flat
2013/4		£2,930.60	£2,930.60	£266.42
2014/5	2.180	£4,501.35	£4,501.35	£409.22
2015/6	2.184	£4,432.65	£4,432.65	£402.97
2016/7	2.186	£5,915.10	£4,500.00	£409.10
2017/8	2.190	£15,394.60	£4,500.00	£409.10
2018/9	2.198	£12,850.30	£4,500.00	£409.10
2019/20	2.203	£12,639.65	£4,500.00	£409.10

53. Mr Shaw discusses the insurance premiums at [72] to [82] of his witness statement at 1.229. It is apparent that the premiums have increased because of the bad claims' history. This reflects the deplorable condition in which the Block has been maintained. In 2017, Raza Khan wrote to the tenants explaining that he was having difficulty in securing a reduction in the premium and proposed that a report be obtained from Aspen Insurance. The tenants agreed to bear the cost of the report. Aspen Insurance declined to offer block insurance covering water perils in view of the past claims' history (see 2.475).
54. Whitecross has covenanted to insure the Block. It is in the interests of all the parties that the Block should be fully insured. The FTT is satisfied that the current premium is not unreasonable given the past claims history at the Block. However, the FTT is further satisfied that the bad claims' history is due to Whitecross' failure to repair and maintain the block. The premiums would have remained at no more than £4,500 per annum, had the block been properly repaired and maintained. The tenants therefore have an equitable set-off in respect of any premium charged in respect of this (see *Continental Property Ventures Inc v White* [2017] L & TR 4). The FTT therefore finds that the insurance premiums payable for the years 2016/7, 2017/8, 2018/9 and 2019.20 should be capped at £4,500 for the Block, and £409.10 for each flat.

#### **Issue 4: Management Fees – Decision of the FTT**

55. Mr Shaw counterclaims in respect of the service charges which have been demanded in respect of management fees. He argues that the sums charged by Sampson Estates are unreasonable given the deplorable manner in which the Block has been managed. He is joined on this issue by the other tenants who have been made parties to this application.
56. The Tribunal have been provided with service charge accounts for the years 2015/6 (at 2.237); 2016/7 (2.241) and 2017/8 (2.245). The sums charged have been £4,400 (£400 per flat); £3,600 (£327.27 per flat) and £5,552 (£504.73 per flat).

57. The FTT accepts the undisputed evidence that the Block has not been properly managed and that the conditions have been deplorable. We are therefore satisfied that the maximum amount that it would be reasonable for Sampson Estates to charge is £200 per flat for each relevant year since 2013/4. Applying our expert knowledge, the upper range of management fees for a block of this nature is £400 per flat. A high standard of management would be expected for this fee. The service provided has been far below this standard, so we make a 50% reduction. In so far as Mr Shaw is concerned. The FTT has already found that no service charges are payable for the years 2014/5 to 2018/9 (see Issue 1).

**Issue 5: Mr Shaw's Car Parking Space – Decision of DJ Latham**

58. Mr Shaw counterclaims for a declaration that “in breach of the lease dated 5 August 2013 and made between Whitecross JS Ltd and Raymond Shaw in respect of Flat 11 and a parking space at the Building, the Applicant has failed to demise a car parking space in the basement”.
59. The definition of the “Apartment” in the Lease (at 1.15) includes the “Parking Space shown edged green on Plan B annexed hereto”. The plan at 1.42 shows the lower ground floor with three car parking spaces, the space edged green being in the middle.
60. Mr Shaw describes how only two full-sized spaces were constructed ([21] of his statement at 1.213). He has been told by Whitecross and Sampson Estates that he only has a portion of one of the available spaces which he is required to share with the leaseholder of Flat 2. The second space has been demised with the commercial units to Abdul Samih Khan and Shahnaz Khan under a 99-year lease, dated 23 May 2012.
61. On 21 April 2015, the London Legacy Development Corporation confirmed that officer would not approve any amendment to the original planning consent (at 1.297). The two car parking spaces which have been constructed should be for residents use only.
62. DJ Latham finds that Whitecross have not constructed the parking space which it has demised to Mr Shaw in his Lease. The Court makes the Declaration sought. It is for Whitecross to determine what action to take in response to this Declaration. If it is not to rebuild the lower ground floor to reflect the lease plan, the solution would seem to grant one of each of the two car parking spaces to Mr Shaw and to Mr Wong, the leaseholder of Flat 2.

### **Issue 6: An Order under Section 20C – Decision of the FTT**

63. Ms Creer applied for an order under section 20C of the Landlord and Tenant Act 1985 Act. The FTT is satisfied that, in the light of our findings, it is just and equitable in the circumstances for an order to be made under section 20C so that the Claimant/Applicant may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge to any of the tenants who are parties to this application.

### **Issue 7: Costs – Decision of DJ Latham**

64. Ms Creer also made an application for costs on behalf of Mr Shaw and the other tenants. On 16 December, Laytons provided a Schedule of Costs in the sum of £33,657.82. This is the total of all the costs incurred since they were instructed by the tenants on 19 October 2019. Work was carried out by a Grade A fee earner at £285 per hour (+ VAT); a Grade B fee-earner at £200; and a Grade D fee-earner at £115. The total costs claimed are:

Solicitors' Costs:	£20,564.85
Counsel's Fees:	7,500.00
VAT:	5,592.97
Total:	<u>£33,657.82</u>

65. In considering the assessment of costs, DJ Latham has had regard to the decision of Martin Rodger, Deputy Chamber President, when he was sitting as a judge of the County Court, in *John Romans Park Homes Limited v Hancock* (17 October 2019). Laytons accept that they are only entitled to the costs relating to the County Court matters which are governed by the CPR. The costs regime for the FTT matters under the Tribunal Rules is quite different and makes no provision for cost shifting. It is normally (subject to Rule 13) a “no costs jurisdiction”. Laytons suggest that a fair percentage of the costs attributable to the County Court matters are not less than 50% of the costs incurred.
66. Laytons highlight that the most significant issue in dispute has been Issue 2 – The Lift. This has been the real concern of the tenants, who have sought a practical resolution to an issue which has effectively rendered their flats unsellable and has blighted their lives. DJ Latham agrees with this assessment. However, he notes that it is only Mr Shaw who has brought the counterclaim in respect of the lift. The other tenants have only been made parties to the FTT matters.
67. Mr Shaw initially acted in person. Whitecross started this action as a modest claim for arrears of ground rent and service charges. Had Mr Shaw made it apparent to the County Court that the substantial issue was the replacement of the lift at a cost in excess of £100,000, it is



probable that the case would have been allocated to the multi-track and this aspect of the case would not have been transferred to the FTT.

68. On 29 December 2018, DDJ Burn, sitting at the County Court in Central London, transferred this case to the FTT under the Deployment Scheme. DJ Latham only has jurisdiction to allocate the County Court claim to the fast track. Laytons claim £7,500 in respect of Counsel's fees. CPR 45.38 restricts the fast track trial costs to £1,650.
69. Given the background to this case, DJ Latham is satisfied that the costs claimed have been reasonably incurred and are reasonable in amount. He is further satisfied that they are proportionate. However, the costs which he is able to award are restricted by two factors: (i) the costs must relate to Issues 2 and 5 (the County Court Matters). He cannot award costs incurred during the tribunal stage of the proceedings; and (ii) such costs are restricted by the provisions of CPR 45. Doing the best that he can on a summary assessment, he assesses the costs payable in respect of the County Court matters in the sum of £20,000.
70. Mr Shaw further claims the sum of £81.81 which he has contributed to the costs of Mr Berry's second report. He is entitled to recover this.

### **Conclusions**

71. Given that the FTT has made a decision regarding the Service Charges, the applicant is entitled to a judgment in that sum. A separate County Court order, reflecting this decision will be sent out on the Hand Down Date.

**Judge Robert Latham**  
**10 January 2020**

## ANNEX - RIGHTS OF APPEAL

### *Appealing against the tribunal's decisions*

1. A written application for permission must be made to the First-tier Tribunal at the Regional office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional office within 28 days after the date this decision is sent to the parties.
3. If the application is not made within the 28-day time limit, such application must include a request for an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.

### *Appealing against the decisions made by the Judge in his/her capacity as a Judge of the County Court*

5. Any application for permission to appeal must arrive at the tribunal offices in writing within 28 days after the date this decision is sent to the parties.
6. The application for permission to appeal must state the grounds of appeal, and state the result the party making the application is seeking.
7. If an application is made for permission to appeal and that application is refused, or if no application for permission to appeal is made but, in either case, a party wants to pursue an appeal, that party must file an Appellant's Notice at the County Court office (not the tribunal office) within 28 days of the Hand Down date.

### *Appealing against the decisions of the tribunal and the decisions of the Judge in his/her capacity as a Judge of the County Court*

8. In this case, both the above routes should be followed.