FIRST-TIER TRIBUNAL
PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AC/LSC/2019/0245**
Property	**:**	**Flat 24 Cardrew Court, Friern Park, London N12 9LB**
Applicant	**:**	**Cardrew Court Ltd**
Represented by	**:**	**Mr Elliot Taylor**
Respondent	**:**	**Mr Shahrokh Aryan**
Represented by	**:**	**Ms. Rubina Omar (Counsel)**
Type of application	**:**	**Application under S27A and S.20C Landlord & Tenant Act 1985 and Schedule 11 to the Commonhold and Leasehold Reform Act 2002.**
Tribunal	**:**	**Mr. A. Sheftel** **Mr. J. Barlow FRICS**
Date and venue of hearing	**:**	**21 October 2019 and 17 December 2019**
Date of decision	**:**	**20 January 2020**

DECISION

The Tribunal determines that the following sums are payable by the Respondent:

- **£6,828.14 in respect of the major works**;

- **The Tribunal makes an Order under S.20c of the Landlord & Tenant Act 1985 that the landlord shall not recover the costs of proceedings in relation to this application from the service charge**.
- **Since the tribunal has no jurisdiction over county court costs and fees, these matters should be referred back to the County Court.**

The application

1. The Applicant is the freehold owner of Cardrew Court, Friern Park, London N12 9LB. The Respondent is the lessee of Flat 24.

2. By a claim in the County Court issued on 17 September 2018, the Applicant brought a claim against the Respondent for £6,828.14 (including interest) in respect of major works carried out during 2017. The Claim Form also sought 'Administrative Fees' of £780. Following the Respondent filing a Defence which denied liability for the sums claimed, the matter was transferred from the County Court to the First Tier Tribunal.

3. A Directions hearing was held on 20 August 2019, which was not attended by the Applicant, and the matter was set down for hearing on 21 October 2019. As the hearing was not completed on that date, a reconvened hearing was held on 17 December 2019.

The hearing

4. At the hearing, the Respondent was represented by Ms Omar (counsel). The Applicant was represented by Mr Elliot Taylor of Taylor Surveyors Limited, trading as Taylor Chartered Surveyors, the managing agents of the building. According to Mr Taylor, they are also the company secretary of the Applicant.

5. There was no dispute between the parties that the sums in respect of the major works are in principle recoverable as service charges under the terms of the lease. Rather, the Respondent challenges (i) whether consultation requirements were complied with; and (ii) in any event the reasonableness of the sums claimed.

6. As regards the alleged administration charge, the Respondent's position was that he did not know what this related to.

7. However, before hearing the substantive issues in the application, several preliminary matters were raised before the Tribunal.

Preliminary issues

8. First, the Respondent submitted that the application should be struck out on the basis of non-compliance with the Directions Order of 20 August 2019 on the part of the Applicant. Paragraph 1 of the Order provided as follows:

> "*By **3 September 2019**, the landlord shall send to the tenant copies of all relevant service charge accounts, specifications of work, tender invoices, consultation notices and proof of payment and all other relevant documents in respect of the major roof together with all demands for payment and details of any payments made. These documents are to be sent to the tenant together with all witness statements of fact upon which the Applicant seeks to rely at the hearing*" (emphasis in original).

9. Further, paragraph 2 of the Order stipulated that:

> "*In the event that the Applicant does not comply with direction 1 above, the Respondent may apply to the tribunal for a direction that the Applicant's case is struck out'.*

The notes to the Order in bold also warned of the risk of strike out in the event of non-compliance.

10. Pursuant to rule 9(3)(a) of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules "*may strike out the whole or a part of the proceedings or case if the applicant has failed to comply with a direction which stated that failure by the applicant to comply with the direction could lead to the striking out of the proceedings or case or that part of it*".

11. Although the Applicant provided disclosure as required by the Directions Order, which he sent to the Respondent's solicitors, no witness statement was provided until the morning of the hearing. In the circumstances, the respondent submitted that the application should be struck out.

12. In response, Mr Taylor stated that he thought he had provided the witness statement at the same time as he had given disclosure (which had been on time). However, there was no evidence to support such contention. He also sought to rely on the fact that the Respondent's own disclosure was a day late. However,

in the Tribunal's view, this provided little assistance to mitigating the Applicant's breach. Ultimately, in the Tribunal's view, although there had been a breach of the Directions Order by the Applicant, on balance, it was not sufficient to justify strike out, in circumstances where disclosure had at least been provided and on time. Further, the Tribunal noted that both parties were in breach of the Directions Order insofar as neither party had provided a copy of the lease to the Tribunal in advance of the hearing and indeed no copy of the Lease was provided until almost 2 hours after the hearing had been due to start. In the circumstances, the Tribunal determined that the application should not be struck out.

13. Secondly, and following the Tribunal's decision in relation to strike out, the issue arose as to whether the Applicant should be permitted to adduce and rely on the witness statement of Mr Elliot Taylor. Separately, the Respondent sought permission to adduce two new documents, namely two alternative quotes by the Respondent, said to be in respect of the same works.

14. The Respondent objected to the Applicant being able to rely on the witness statement of Mr Taylor, which had been served on the morning of the hearing and which, as noted above, was a considerable time after the date required by the Directions Order.

15. In considering the submission, the Tribunal noted that the statement in question was less than two pages long and, for the most part, did little more than provide a narrative confirmation of documents that had already been disclosed and were already in the bundle – albeit, as pointed out by Ms Omar, one additional aspect was that it included a statement that funds had been received from all other lessees. It also contained an express statement that the works had been completed. On balance, the Tribunal determined that in the interests of justice the statement should be allowed, but proposed a short adjournment to allow sufficient time for the Respondent and Ms Omar to review the statement and take necessary instructions.

16. The Tribunal also allowed the Respondent's two alternative quotes to be adduced on the same basis.

17. Thirdly, there was some confusion at the outset as to the correct identity of the Applicant (landlord), given that the claim had initially been filed in the name of 'Cardrew Court'. At the hearing, Mr Taylor confirmed that this was an error and the application should proceed in the correct name of the landlord: 'Cardrew Court Limited'.

18. Fourthly, the Respondent questioned the basis on which Mr Taylor represented the landlord. Further, confusion stemmed from the fact that that the property had previously been managed by Mr Taylor's father, through the firm Mark Taylor Chartered Surveyors, who, according to the Respondent's evidence, had been struck off by the RICS in 2018. According to Mr Elliot Taylor in response, management of Cardrew Court was taken over by Taylor Chartered Surveyors prior to that event. The Respondent subsequently requested for Mr Taylor to provide copies of Taylor Chartered Surveyors' letter of appointment and management agreement. Copies of both, dated 10 February 2017, were eventually provided during the reconvened hearing, albeit, in the Respondent's submission, this alleged lack of transparency was relevant to and indicative of the Applicant's approach to the major works generally.

19. Finally, the Tribunal also records that at the reconvened hearing on 17 December 2019, Mr Taylor indicated that he intended to make a costs application under rule 13 of the Tribunal Procedure (First Tier) (Property chamber) Rules 2013. The basis of this was said to be that he disputed the authenticity of the respondent's two alternative quotes. As no evidence in support had been provided to either the Tribunal or the Respondent in advance of the hearing and given that Mr Aryan was not present at the reconvened hearing given that he resides in Canada and his evidence had been completed on the first day of the hearing, the Tribunal indicated that it would not be possible to determine any such application at the reconvened hearing. Instead, Mr Taylor was invited to make any such application separately in writing in accordance with the provisions of rule 13 of the 2013 Rules, setting out the basis for such application in full so that the Respondent would have proper opportunity to respond as required by rule 13(6) of the 2013 Rules.

The substantive issues in dispute

Major works

20. There was no dispute between the parties that the items claimed in respect of the major works are in principle recoverable as service charges under the terms of the lease. Rather, the Respondent challenged (i) whether the Consultation Requirements under the Service Charges (Consultation Requirements) (England) Regulations 2003, SI 2003/1987 (the "2003 Regulations") were complied with; and (ii) in any event, the reasonableness of the sums claimed.

Consultation

21. Section 20(1) of the 1985 Act provides that:

> "*... [T]he relevant contributions of the 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*
> *b) dispensed with in relation to the works ... by (or on appeal from) a [FTT].*"

22. The applicable consultation requirements are contained in Part 2 of Schedule 4 to the 2003 Regulations.

23. In Mr Taylor's submission, the requirements of Part 2 of Schedule 4 to the 2003 Regulations were complied with in full: a notice of intention was served on 30 January 2017 which, in his submission, complied with the 2003 Regulations; estimates were obtained and a statement of estimates was served on 13 June 2017. Both documents were contained in the bundle. The latter statement contained an analysis of the tenders received and a recommendation as to which contractor be chosen – it also confirmed that the consultation period would end on 22 July 2017. According to Mr Taylor's evidence, following the end of the consultation period, demands for payment were sent to the Respondent and other lessees. Works were commenced on 13 March 2018 and completed on 19 July 2018.

24. The Respondent's principal submission at the hearing was that the consultation notices had not been validly served on the Respondent by the Applicant and that therefore, the consultation had not been in accordance with the requirements of the 2003 Regulations.

25. The Applicant's submission is that the notices under the 2003 Regulations were served on the Respondent by post at the property address. However, in Ms Omar's submission, this did not amount to valid service.

26. Paragraph 1(1) of Part 2 of Schedule 4 to the 2003 Regulations provides that "*The landlord shall give notice in writing of his intention to carry out qualifying works…*". Similarly, in relation to stage 3, paragraph 4(9) provides that the statement "*shall be supplied to … each tenant*" and paragraph 4(1) provides that "*The landlord shall, by notice in writing to each tenant …* [set out where the estimates can be inspected etc]".

27. Mr Aryan's evidence was that he does not live at the Property, nor has he at any material time. Rather, he resides in Canada. Mr Aryan's evidence was also that he had not been forwarded the notices by anyone residing at the property. In response, Mr Taylor submitted that service had been valid.

28. On the documentary evidence before the Tribunal, although the consultation process began in January 2017, the Respondent did not respond to the Applicant or engage in the process until September 2017, after the consultation process had ended. In response to an email sent by Nicole Hayton of Taylor Chartered Surveyors dated 31 August 2017, Mr Aryan responded by email dated 5 September 2017 disputing his liability for the sums claimed.

29. At the hearing, Mr Aryan contended that the managing agents were aware that he did not reside at the property and that they had previously communicated by email.

30. Under cross examination, Mr Taylor did not appear to dispute that there had been previous communications by email. However, Mr Taylor did not accept that he knew that Mr Aryan did not reside at the property, noting that although he attended the site periodically, he did not go into individual flats. In addition he alleged that in relation to a previous section 20 consultation a few years earlier, the relevant notices had been sent by post to the property and Mr Aryan had paid. According to Mr Taylor, the property address was the only address they had for Mr Aryan and all statutory notices were sent to this address.

31. Ms Omar submitted that they had previously communicated by email and that the consultation notices ought to have been served by email rather than by post. On the other hand, there was no evidence before the Tribunal that Mr Aryan had, at an earlier stage, requested that communication be by email or, in particular,

that post was not appropriate or that he would not receive communications sent by post to the property.

32. Finally, Mr Taylor referred to an email from Mr Aryan dated 24 October 2017 in which he stated in the context of offering to provide alternative quotes: "*The fact that we did not respond in previous letters simply means we assumed (maybe mistakenly) that you were trustworthy*". In Mr Taylor's submission, this supported his contention that Mr Aryan was aware of the consultation process, although this is perhaps reading too much into the language used. It was also the case that his witness statement gave the Cardrew Court address, as did the alternative quotes for the works, which had been adduced by Mr Aryan (although the estimate from Capital Trade Services was in the name of 'Shokofeh Shan').

33. Having regard to all of the matters above, on balance, and notwithstanding the forceful submissions on behalf of the Respondent, the Tribunal determines that there was valid service of the relevant notices in accordance with the 2003 Consultation Regulations. In this regard, the Tribunal notes the following in particular:

    (1) There was no documentary evidence confirming that the managing agents were aware that Mr Aryan resided in Canada or that they had an alternative postal address for him besides the property. In response to Mr Aryan's email dated 23 October 2017, in which he stated "*I am residing out of the UK…*". Mr Mark Taylor responded the same date by email stating that "*If you do not reside at Cardrew Court, please can you provide another postal address please*" (sic).

    (2) the proprietorship register for the property lists Mr Aryan's address as the property address.

    It was also the case that in Mr Aryan's witness statement he stated that "*I accept that a Section 20 Notice was served on me on or around 30 January 2017*" – notwithstanding that at the hearing it was nevertheless submitted that this was only an acknowledgement that the notice had been posted, not that there had been valid service.

34. Aside from the question of service, the Respondent sought to make a wider point in relation to the 2003 Consultation Regulations. It was submitted that insofar as the Respondent ultimately did engage with the Applicant and offered to

provide alternative quotes, the Applicant should have paused and taken his observations on board, notwithstanding that the consultation process as required under the 2003 Consultation Regulations had come to an end. His evidence was that "*I made various representations … that I could find a more economical quotation but I was simply ignored*".

35. In response to this, Mr Taylor submitted that the first response received from Mr Aryan in relation to the consultation was an email dated 5 September 2017. In response, Mr Mark Taylor, at the time an employee of Taylor Chartered Surveyors according to Mr Elliot Taylor, wrote back to Mr Aryan on 6 September 2017, stating that that managing agents had written to Mr Aryan, along with other lessees, on 30 January 2017 (the initial notice) and 13 June 2017 (the second notice). They had also written to him on 2 August 2017 requesting his contribution to the works. In the circumstances, the Applicant's position was that Mr Aryan's opportunity to participate in the consultation had passed.

36. In Mr Taylor's evidence, the representations from Mr Aryan were provided after the consultation process had finished. In his evidence, there was no obligation to re-open the consultation and indeed it would have been unfair to other lessees who wished the works to proceed.

37. At the hearing Ms Omar also criticised the process with regard to the opportunities for lessees to review the proposals and make representations. However, no specific breaches of the 2003 Regulations were identified.

38. While the Tribunal notes the Respondent's frustration, aside from the question of service, which has been addressed above, the Respondent could point to no alleged breaches of the 2003 Consultation Regulations by the Applicant. In particular, there is nothing in the 2003 Regulations to require the landlord to take account of observations after the statutory consultation period has passed. Accordingly, this wider objection must fall away.

Reasonableness

39. By s.18 of the 1985 Act:

> "*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."

40. By s.19 of the 1985 Act:

"*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 provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly."

41. According to Mr Taylor, internal works to the premises had been carried out in 2015. The directors of Cardrew Court Limited had then decided to wait for a few years before commencing external works. They subsequently gave instruction to prepare a specification of works. This was done by Mr Mark Smith of Taylor Chartered Surveyors after carrying out an inspection of the premises. According to Mr Taylor, he was given instructions to proceed with the section 20 consultation on 19 January 2017. The initial Notice of Intention, which preceded the works in question, was served on 30 January 2017. A statement of estimates was then served on 13 June 2017.

42. As noted above, according to the Applicant's evidence, the works were carried out between 13 March 2018 and 19 July 2018, on which date the final invoice was provided by the contractor.

43. The Respondent's challenge to the reasonableness of the costs was broadly in two parts. First, Mr Aryan disputed the extent of works carried out. According to his Defence to the County Court claim, Mr Aryan put the Applicant to proof as to the nature and extent of the works that were carried out. In his witness statement, he asserted that "*there is no evidence that the work alleged to have been carried out has been carried out. The Claimant has not supplied any evidence supported with statement of truth (sic.) that the work detailed within the Section 20 notice*

has taken place" (para.8) and that "*the vast amount of evidence supplied by the Claimant by way of purported evidence relates to anticipated works without any evidence that the actual works themselves have taken place*" (para.9). At the hearing he commented that when he visited the property after the works had been completed, it looked as though only a single roof tile had been changed.

44. The evidence on this issue was limited. On the Applicant's side, there was the final account from the contractor, itemising the works done and changes from the initial specification. There was also an invoice from the contractor which, according to Mr Taylor, had been signed off by Mr Mark Smith and stamped 'OK to pay" - albeit Mr Smith had not provided any direct evidence. Mr Elliot Taylor's witness statement, provided on the morning of the hearing, contained an assertion that the works had been done - albeit aside from the Claim Form, which was issued in the incorrect name of 'Cardrew Court', this was the first statement with a statement of truth that the works had been completed.

45. The difficulty for the Respondent was that there was even less evidence that the works had either not been carried out or not carried out to the extent set out in the final invoice.

46. Mr Aryan's own evidence was that he did not reside at the property and it was not clear that he would have been present to see what was happening day to day. In his witness statement, he accepted that he was "*aware that some contractors did attend the premises*", although he disputed that they were there for 3-4 months as alleged by the Applicant. He accepted that some scaffolding was erected but suggested that this masked the fact that very little work was carried out. However, there was no evidence analysing the schedule of works as compared to what had been done. In response, Mr Taylor maintained that much of the works would not have been visible to someone on the ground in any event.

47. Accordingly, while the Applicant's evidence was limited as noted above, the documents did nevertheless comprise in particular: (i) a final account listing works that had been carried out and (ii) a final invoice apparently signed off by a surveyor (Mr Smith) stating that the invoice could be paid. Without anything to contradict this evidence beyond assertion, the Tribunal finds in favour of the Applicant on this head of challenge. In this regard, the Tribunal notes that although the Respondent obtained two quotes from contractors after the works

had been completed, there was nothing from these contractors to suggest that the proposed works had not been completed. There is also no evidence from, for example, any other lessees that the works had not been completed.

48. Mr Aryan's witness statement raised the issue of whether an inspection by the Tribunal would be appropriate. However, this did not appear to be pursued at the hearing and in any event, given that (i) the works had, according to Mr Taylor, been completed approximately 16 months prior to the hearing; and (ii) much of the works were apparently on the roof, an inspection by the Tribunal is likely to have been of little assistance.

49. This leads on to the second area of challenge by the Respondent in relation to the cost of the works. In this regard, the Respondent sought to rely principally on the two alternative quotes produced at the hearing.

50. The two quotes were from J&P Building Services and Capital Trade Services (the latter dated 18 March 2019) and were for £40,550 and £50,715 respectively. The Respondent's position was that although the quotes were obtained some months after the works had been completed, the contractors had been provided with copies of the statement of works.

51. In response, Mr Taylor denied that they were comparable. Rather, he contended that they were not for the same works and moreover, submitted that they were of little value given that they were obtained after the works had been carried out. Mr Taylor also sought to rely on the fact that the quotes obtained for the works by Taylor Chartered Surveyors were all broadly similar, save for one which was more expensive. According to the statement of estimates, four of the five quotes ranged from £123,363 (the one ultimately chosen) to £134,478. The fifth quote came out much higher at £207,470.

52. Looking at the statement of works provided as part of the consultation exercise, the quotes provided by the Respondent do not contain sufficient detail for the Tribunal to conclude that they are genuinely comparable. The scope of works produced by Taylor Chartered Surveyors itemises the specific items of work required. In summary, the proposed works included: erecting scaffolding with alarm; replacing defective or slipped roof tiles; repairing small flat roof areas as necessary; reporting of walls (except the walls facing Friern Park); replacing

plinth on the main rear elevation; removing and replacing cast iron rainwater and waste goods; replacing defective wastepipes, hoppers and downpipes; redecorating soil and vent pipes; replacing tarmac in the front forecourt; replacing two concrete entrance paths; removing and replacing rendered edge surrounds to the inspection chambers and rendered surrounds to benching to the gullies; demolishing the stores/pram sheds adjacent to the refuse area; pressure washing the boundary walls repairing cracks and replacing defective bricks and repointing as required; replacing three doors to the external store recesses; replacing the gas meter housings; clipping back loose wires and removing redundant wires; cleaning uPVC window frames; replacing facia and soffit boards.

53. In contrast, the J&P Building Services Quote makes no mention of scaffolding and lists only broad categories of: guttering, brick pointing, asphalt to the courtyard and waste/rubbish. The quote from Capital Trade Services does include scaffolding but again is in three broad categories: asphalt to the front courtyard, brick pointing to the front, back and side and roof guttering to the three blocks.

54. Further, to the extent that the contractors approached by the Respondent were only able to look at the property some months after the works were completed, the Tribunal agrees that this significantly limits their evidential value as the contractors would not have been able to ascertain the *extent* of what works were required simply by looking at the statement of works.

55. At the hearing, Ms Omar also questioned whether smaller contractors should have been engaged. In response, Mr Taylor's position was that the size of contractors approached was appropriate for the works in question. In the Tribunal's view, there is nothing to suggest that the contractor (or a contractor of such size) was in any way unsuitable for the works in question or more pertinently, that such engagement casts doubt on whether the costs in question were reasonably incurred. Again, the Tribunal is fortified by the fact that the other quotations obtained by the Applicant were for similar sums (save for the one which was higher).

56. In relation to the final invoice, Mr Taylor was challenged as to the 12.5% fee charged by Taylor Chartered Surveyors. Mr Taylor's evidence was that this

related to: preparing the specification; carrying out the tender process; serving notices and analysing responses; attending site meetings with the contractors; signing off the works; and serving demands for payment. In support of the assertion that this sum was reasonable, Mr Taylor also suggested that others might charge both a management fee and a surveyor's fee, which had been avoided in the present case. In the Tribunal's determination, there is nothing to suggest that this sum was not reasonably incurred and accordingly, the sum is allowed.

57. In all the circumstances, the Tribunal concludes that the sums were reasonably incurred for the purposes of section 19 of the 1985 Act.

Administration charges

58. According to the Directions Order, the Applicant claims £750 by way of administration charge. In the County Court claim form, this is described as 'Administrative Fees'.

59. Pursuant to paragraph 2 of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, "*A variable administration charge is payable only to the extent that the amount of the charge is reasonable*".

60. The Respondent's position was that he did not know what this related to (the Applicant not having attended the Directions hearing) and therefore denied liability for such sum.

61. At the hearing, Mr Taylor stated that the sum of £750 in fact related to the court fees associated with filing the County Court claim – which was then transferred to the Tribunal. This sum has not been demanded as an administration charge and no order has been made by the Court as to whether the Respondent should be liable for this sum. In the circumstances, the sum is not payable by way of administration charge at this stage. However, it remains open to the Applicant to seek to recover this sum in the County Court. In relation to such court fees, while they would not have been within the Tribunal's jurisdiction to determine in any event, given that the sum had been understood to be an administration charge and the Respondent had not been prepared to deal with it as a costs item, it was also not considered to be appropriate to determine by a Tribunal Judge under the Deployment Pilot.

Section 20C

62. Section 20C of the 1985 Act provides:

> "*20C (1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration proceedings, are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.*
>
> *(2)The application shall be made—*
>
> *(a)in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;*
>
> *(aa)in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;*
>
> *(b)in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;*
>
> *(c)in the case of proceedings before the Upper Tribunal, to the tribunal;*
>
> *(d)in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.*
>
> *(3)The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances*."

63. As set out above, the Tribunal may make such order as it considers just and equitable in all the circumstances.

64. At the reconvened hearing, Ms Omar submitted that the Tribunal should make such an order noting the Applicant's overall approach to the matter as highlighted above including the failure to comply with provisions in the Directions Order, in particular relating to the late provision of witness evidence. In response, Mr Taylor stated that he did not oppose such an Order on the basis that he considered it would not be fair in any event for other leaseholders to have to pay the costs of a dispute between the Applicant and the Respondent.

65. The Tribunal determines that it would be just and equitable to make a section 20 Order. Notwithstanding the Applicant's effective concession in relation to the point and its success in relation to the principal substantive issue, the Tribunal was minded to make such an order in any event, noting in particular the fact that the Applicant had not provided a witness statement until the morning of the hearing.

Name: A. Sheftel **Date:** 20 January 2020

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case.

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.

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.

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.

If the tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).