FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00CK/LSC/2019/0020**
Property	**:**	**Apartment No. 10 Dolphin Quays, Liddell Street, North Shields, Tyne and Wear NE29 6HF**
Applicant	**:**	**Ms Denise Elliott**
Respondent	**:**	**Dolphin Quays (North Shields) Ltd**
Represented by	**:**	**Mr Matthew Maddison, Counsel.**
Type of Application	**:**	**Landlord and Tenant Act 1985 – section 27A, section 20 and section 20C**
Tribunal Members	**:**	**Judge WL Brown** **Mr I R Harris MBE FRICS**
Date of Hearing	**:**	**12 November 2019**
Date of Determination	**:**	**17 March 2020**

DECISION

Decision

(1) The service charge cost in 2019 for the Major Works to replace the lifts at the Development is reasonably incurred and is reasonable in amount.

(2) Order made under Section 20(C) of the Act

Background

1. The Property forms part of the Dolphin Quays development ("the Development"). It is a large residential development of 122 properties made up of flats and town houses. The Development has 5 blocks of flats which each contain one passenger lift ("the Lifts"). Those blocks are known as blocks 2, 3, 5, 7 and 8 ("the Blocks"). The lifts in blocks 2 and 3 were installed approximately 28 years ago, block 5 approximately 24 years ago and blocks 7 and 8 approximately 23 years ago. The Applicant resides in block 3.

2. By application dated 15 March 2019 (the "Application") the Tribunal was requested to make a determination under Section 27A of the Landlord & Tenant Act 1985 (the 1985 Act) as to the reasonableness of service charges for the Property for the service charge year 2019, specifically regarding the cost of replacing the lifts in the Development ("Major Works").

3. The Tribunal made directions at a case management hearing on 18 July 2019. Various other leaseholders of the Development had been co-Applicants with Ms Elliott, but by the hearing she was the sole remaining Applicant.

4. The service charge payable under the terms of the various leases at the Development was previously subject to a Leasehold Valuation Tribunal application by the Respondent to vary them pursuant to section 37 of the Landlord and Tenant Act 1985. The basis of the Application was to allocate the service charge in a way which was fairer and more reasonable, for example that only the flats with the use of the Lifts contributed to the expenditure in relation to the Lifts.

5. On 12 November 2019 the Tribunal inspected parts of the Development in the presence of the Applicant, Counsel for the Respondent accompanied by his pupil barrister, and others, including officers of the Respondent and Mr Simon Dangerfield from its managing agent, Brannen and Partners.

6. A hearing took place at SSCS Manorview House, Newcastle upon Tyne on 12 November 2019. The Applicant was alone and spoke on her own behalf. The Respondent was represented by its Counsel and Solicitor, Ms L. Ager. Also present and speaking on behalf of the Respondent were Mr Dangerfield from the managing agent and Mr Martin Kaye, the Respondent's Chairman. In addition Mr Johnson and Mr Younger, other board members, were in attendance.

7. The parties initially each provided lengthy Statements of Case. However, following the case management hearing the issues became more focused and for the hearing the Tribunal had the benefit of a Scott Schedule from the parties, who confirmed that it identified those matters in dispute on which the Tribunal was asked to make determinations. That document has been updated by the Tribunal as to its order or presentation, for ease for reference, to reflect the various points of concern from the Applicant and is attached to this Decision as Annex A. It is regarding items numbered 1- 11 to which the Tribunal is asked by the Applicant to make determinations regarding the service charge.

8. In addition, those representing the Respondent co-ordinated into one document their client's Skeleton Argument and the parties' respective submissions. That document is attached to this Decision as Annex B. It is reproduced because it sets out the key evidence and submissions from the parties and therefore has reduced the amount of additional recording required from the Tribunal. However, it is to be understood that the Tribunal has not limited itself to that document in its consideration of the evidence.

9. It is the Applicant's contention that a decision to replace the Lifts immediately is not reasonable and the service charges for this will not be reasonably incurred. That is the issue for the Tribunal now to determine and the issues presented in Annex 1 and at paragraph 7 of Annex B flow from that question.

10. The Applicant was alert to the issue of statutory (Section 20) consultation regarding the Major Works. The Tribunal was informed by the Applicant that no objection to the consultation process was at issue. She had comments to make about the process and information relayed during it, but none so as to present a challenge to the statutory process.

The Lease

11. The service charge payable under the terms of the various leases at the Development was previously subject to a Leasehold Valuation Tribunal application by the Respondent to vary them pursuant to section 37 of the Landlord and Tenant Act 1985. The application included amendment to the basis on which contribution to the expenditure in relation to the Lifts was allocated within the service charge – imposing obligation only on leaseholders of flats with the use of the Lifts.

12. The variation application was approved by the tribunal and the service charge payable under the leases at the Development is now split into part 1, 2 and 3 expenditure. Relevant to the Application is Part 3 expenditure. The Respondent is charging leaseholders at the Development for the expenditure incurred in the repair, maintenance and insurance of the Lifts. Part 2 expenditure is the expenditure incurred or relating to the lighting, cleaning, decorating, repairs and renewals (including floor coverings), emergency lighting, fire alarms, entry systems, door locks and anything else that relates to the internal parts of the building. Part 1 expenditure is all expenditure not otherwise covered within part 2 or 3. The proportion of the expenditure payable by Ms Elliott in respect of the Property is as follows:

Part 1 expenditure 0.735791%
Part 2 expenditure 0.9900099%
Part 3 expenditure 1.204819%

13. As to remaining terms, clause 7(a) records the lessee obligation to "*pay contributions by way of Service Charge… equal to the Tenant's Proportion of the amount which the Management Company may from time to time expend and as may reasonably be required on account of anticipated expenditure on rates services repairs maintenance or insurance being and including expenditure described in the Third Schedule…"*

14. Paragraph 1 of Schedule 3 provides: "*The expenditure (in this Schedule described as "the Service Charge Expenditure") means expenditure: (a) in the performance and observance of the covenants obligations and powers on the part of the Management Company and contained in this Lease or with obligations relation to the Estate or its occupation and imposed by operation of law … (c) in the provision of services facilities amenities improvements and other works where the Management Company in its… absolute discretion from time to time considers the provision to be for the general benefit of the Estate and its tenants and whether or not the Management Company has covenanted to make the provision"*

15. By clause 8(b), the Management Company covenanted to: "*keep in good and substantial repair reinstate replace and renew the Retained Parts…"* By clause 2(f), "the Retained Parts" is defined as including *"…the… lifts…"*

The Law

16. Section 19 of the 1985 Act states

Limitation of service charges: reasonableness

(1) Relevant costs shall be taken into account in determining the amount of a service charge payable for a period –

(a) only to the extent that they are reasonably incurred, and
(b) where they are incurred on the 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.

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

17. Section 27A of the Act states

Liability to pay service charges: jurisdiction

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

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.

18. For the purposes of the Act sections 20, 20ZA, 'qualifying long term agreement' means, subject to s 20ZA(3), an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than 12 months.

Background, chronology and Respondent's evidence

19. In late 2015 Thyssen Krupp ("TK") took over the maintenance of the Lifts. TK identified a number of issues with Lifts. In particular, there had been a number of problems with the lift in block 5.

20. In February 2016, a proposal was obtained from TK for the refurbishment of the Lifts. The quotation was for in the sum of £229,754.28 plus VAT.

21. Due to the advancing age of the Lifts, in Spring 2016 a review was commenced by the Respondent and its managing agent to consider the options to deal with the Lifts moving forward, to include refurbishment and total replacement.

22. In October 2016 the drive mechanism for the lift in block 7 failed and the lift was out of action for approximately one week. Some residents complained. TK raised issues with the Respondent around the availability of parts given the age of the Lifts and queried if consideration had been given to upgrading the Lifts. On 29 November 2016 a meeting took place between TK and the Respondent's managing agent to discuss the future maintenance of the Lifts and the risks associated with the age of the Lifts and the proposal for lift refurbishment put forward by TK. In March 2017 TK contacted Brannen to highlight further issues with the Lifts and particularly the fact that they were likely reaching the end of

their working life. The Respondent agreed that action needed to be taken to avoid the risk of terminal failure of one or more of the Lifts and the significant disruption that would cause to leaseholders residing in the Blocks.

23. The Respondent is a residents' management company. Its Directors are unpaid volunteers from the leaseholders. The Directors did not have the expertise to assess the refurbishment proposal received from TK and/or the technical requirements of the Lifts and so instructed Mr Mantey, the regional director of TUV SUD Dunbar Boardman ("TUV"). Mr Mantey was identified as someone with significant experience in this area having been a specialist lift consultant since 1984. In May 2017 Mr Mantey carried out a survey of the Lifts and provided a report dated 19 May2017 to the Respondent. He reported the following:

a) The Lifts were at, or nearing, the end of their expected serviceable life;
b) Unavailability of major components could cause long downtimes;
c) There were recommended improvements to be made to all Lifts for compliance with the Equality Act;
d) The ropes on the Lifts were the original ropes and showing signs of wear.
e) A total replacement with Machine Roomless Traction Lifts would achieve lifts with a 20 year life span with modest maintenance costs.
f) If undertaking one major refurbishment every 2 years, at the end of the 10 year period it may be necessary for the leaseholders to start funding total lift replacements within a short period.
g) General issues were raised with all the Lifts e.g., hydraulic oil leaks, lighting, wear and tear, motor rooms being used for storing other materials.

24. Mr Mantey considered the refurbishment proposal from TK and compared it with the cost of complete replacement. He estimated costs at that stage of £232,505.56 plus VAT for refurbishment compared to £399,000 plus VAT for full replacement. He commented that the refurbishment proposal appeared to be generic and did not include any technical detail. He stated that the works contained in the quote did not address the poor condition of the existing equipment e.g. costs of replacement of hydraulic rams. The Respondent has subsequently approached TK to obtain an estimate of costs for replacements of the hydraulic rams which are said to be in the region of £10,000 plus VAT per lift. Mr Mantey has raised specific concern about the practicalities of replacing the rams given they were likely installed before the roofs of the Blocks were in place. He has indicated there would be significant cost involved in the necessary scaffolding and crane as well as potentially needing to remove part of the roofs. Mr Mantey commented that refurbishment was an interim solution and that the leaseholders may still find themselves funding a total replacement over a period of years. Although he acknowledged that the cost of fully replacing the Lifts was significantly more than the refurbishment proposed by TK, he advised that it would achieve a fully compliant set of lifts that would provide 20 years plus service where further investment would not be required for a prolonged period and running costs would be lower.

25. In September 2017 TUV were asked to produce a specification based on their professional opinion of the requirements of the Lifts and a formal tender process was initiated in December 2017. The specification produced was for the full replacement of the Lifts. Tenders were received from Kone and Schindler. TK and Otis declined to submit a quote. On 19 April 2018 the Respondent also obtained an updated refurbishment quote from TK. The quote amounted to £268,944.46 plus VAT, but excluded replacement of the rams which would incur and addition expense of approximately a £50,000 plus VAT.

26. In May 2018, TUV produced a tender analysis report for the replacement of the Lifts. Seven companies invited to tender to undertake the work declined to do so. The tender figure from Kone was £436,970 plus VAT. The tender figure from Schindler was £401,800 plus VAT. The tender from Kone was subsequently reduced to £401,350 in accordance with a previous quote obtained from them which had been overlooked due to a change in Kone sales personnel. Mr Mantey set out a detailed analysis of the quotes and recommended the tender from Kone to the Respondent on the basis that it offered superior equipment, lowest capital cost, shortest programme per lift, lowest maintenance costs and most responsive time to breakdowns.

27. In June 2018 the Respondent held an EGM which was attended by the Applicant. Ahead of the EGM the Respondent provided leaseholders with a discussion paper setting out the background and options with respect to the Lifts. Mr Mantey attended the EGM and gave a presentation to leaseholders setting out his findings and recommendations.

28. The Respondent expressed that it has given very careful thought to the pros and cons of the refurbishment of the Lifts as well as complete replacement. It has also taken on board the expert advice received from TUV. Ultimately, the Respondent took the view that complete replacement was the most appropriate solution for the following reasons:

a) The current Lifts were reaching the end of their expected working life.

b) Given the age of the Lifts it was becoming increasingly difficult to source spare parts to carry out repairs.

c) If the refurbishment option was selected, some of the existing components would not be replaced as part of that. They would become increasingly work out over the next 10 years and possibly require replacement adding further downtime and costs.

d) Refurbishment was considered by Mr Mantey to be an interim solution.

e) The quote for refurbishment was not a fixed price and Mr Mantey has pointed out that there are significant items (e.g. hydraulic rams) for which no works or prices are included. The actual cost of refurbishment could therefore have been significantly more than the quoted price of £268,944.46 plus VAT.

f) The Respondent considers total replacement at a cost of £401,350 plus VAT offers better value for money to leaseholders in the long term than refurbishment at a cost of £268,944 plus VAT.

g) Total replacement would mean that every component is renewed and would therefore have a life expectancy of 20 years with regular maintenance.

h) Replacement lifts would comply with the most up to date health and safety regulations and would therefore increase passenger and maintenance personnel safety. It is anticipated that new lifts would not require any safety upgrades for a long period to time.

i) The current Lifts are hydraulic lifts and dated technology. Replacement with modern Machine Roomless Traction lifts would be more energy efficient and all lift machinery and components would be installed within the shaft allowing the current machine rooms to be emptied and used for other purposes.

29. The Respondent has also considered the pros and cons of replacement the Lifts in sequence over a period of 5 years as against replacing all 5 lifts in one period of major work. The cost of the replacement over a 5 years period would be higher. The Respondent considered it was fairer to have the Lifts replaced in one project to ensure that all residents received the benefit of the new lifts within a 12 month period. Replacement of the Lifts over 5 years would require leaseholders in some of the Blocks to contribute to the cost of new Lifts for a period of up to 5 years before having the benefit of actually being able to use them.

30. The Respondent by its managing agent commenced consultation under section 20 of the Landlord and Tenant Act 1985 ("Section 20") in September 2018 with the 83 leaseholders who contribute to Part 3 expenditure with a view to replacing the Lifts. Following consultation with the leaseholders, a contractor was selected - Kone -and the works commenced on 17 June 2019. The total cost of replacing the Lifts as one project is to be £401,350 plus VAT (i.e. £481,620).

31. The Respondent carried out an informal voting process among leaseholders in order to consider the majority view. Voting papers were received from 72 of the 83 leaseholders involved. Three leaseholders voted in favour of option 2 to refurbish the Lifts. The majority of votes received were in favour of option 3 and 4 to replace the Lifts. 21 leaseholders voted in favour option 3 being the replacement over a 5 years period using increased service charge accumulation. 37 leaseholders voted for option 4 being replacement using a one-off charge. 11 leaseholders voted for option 1 being to do nothing other than repair breakdowns.

32. The service charge reserve fund accumulation was £133,053 for "part 3" (lease service charge) expenditure. The replacement of the Lifts is a "part 3" expenditure. The Applicant is liable for 1.204819%. She has been invoiced for £4,200.24.

Applicant's evidence / submissions

33. In addition to the points noted in the Annexes the Applicant levelled some criticisms at the process followed by the directors of the Respondent in making its decision to commission complete replacement of the Lifts in one project. She said that there was difficulty in scrutinising the work of the directors, who had failed to check if sufficient money for the Major Works – whether repair or replacement - was in the service charge sinking fund, or to plan for such funding.

34. In October 2016 the drive mechanism for the lift in block 7 failed. That lift was repaired, demonstrating that spare parts were available. She said that at the time a resident spoke to the maintenance men, who said the lifts did not need to be replaced. TK are a close business "rival" of Kone. The probable reason it took so long to repair was that not enough spares are kept in the UK and the maintenance engineers did not have sufficient training on Otis lifts. The availability of spares is under the total control of Kone. According to their project manager, who appeared for a short time on 27 June 2019, Kone do not make anything. Spare parts could have been obtained while they are available, with the spares from the lift in block 3 and they could have been stored in the newly available cupboard.

35. Particularly concerning to the Applicant was a failure to obtain competitive quotes for refurbishment of the Lifts, despite leaseholder request that this be done.

36. She referred to sanctions for price fixing imposed in certain European jurisdictions on the "big four" lift engineering businesses, including those involved in the issues before the Tribunal.

37. She expressed concern about Mr Mantey supervising/project managing the work when Kone have two project managers available. Mr Mantey's contract sets no standards by which this input can be measured. It also does not specify how often he is to attend site and for how long.

38. She was dissatisfied that 70% of the payments to Kone are due before the work is completed, there is no provision for a retention until the work is completed to the customer's satisfaction.

39. The financial implication for leaseholders of bearing the cost of full replacement has devalued the apartments and affected marketability. She said that an estate agent had informed her that the sale price of an apartment in the Development had fallen and they are difficult to sell because of the problems with the river wall (which also had incurred a cost to leaseholders) and the Lifts.

THE TRIBUNAL'S FINDINGS AND DECISION

40. The Tribunal was first satisfied that the Applicant's lease provides for recovery of the service charge sums at issue and found that these are governed by clause 7(a) of the lease. The Tribunal was satisfied that the works in question are "part 3" expenditure – for repair / maintenance of the lift. The Applicant's proportion of contribution is therefore 1 204819%.

41. Taking each of the items set out in Annex A the Tribunal made the following findings and determinations.

42. Item 1 – The Tribunal was presented with no evidence from the Applicant of comparative cost for the full replacement of the Lifts as one project. Obtaining such information for a lay individual undoubtedly would be difficult. Further, it is to be noted that the Tribunal has insufficient expertise or knowledge to determine whether the sum of £481,620 for the works is excessive, inaccurate or unreasonable. The Tribunal understands that £133,000 from the service charge reserve fund was allocated to the charge, about which the Applicant did not complain. The invoice rendered to the Applicant in the sum of £4,200.24, which is 1.204819% of £348,620 being the additional sum for the Major Works and allowing for VAT adjustment.

43. The dispute put to the Tribunal on the question of whether the costs for the Major Works was reasonably incurred turned on whether it was appropriate for the Respondent to decide to commission and carry out replacement of the Lifts as one project. Once the problems with the Lifts became apparent to them the directors of the Respondent undertook to consider a number of options – to carry out responsive repairs and undertake replacement of each lift whenever repair became impossible or uneconomic; or carry out replacement of each lift, either in one exercise or staggered over a period of time. The Tribunal found that to make their decision on repair or replacement and the issues around each – including cost - could not be made without expert advice on matters such as the extent of works that were, or could become, necessary on the Lifts; the practicality of sourcing spare parts for repair for the foreseeable future and the cost / benefit of each option. Therefore it was reasonable to engage an expert such as Mr Mantey.

44. The Applicant was unhappy that Mr Mantey did not adequately evaluate the options. The Tribunal acknowledged her concern that the 4 major lift suppliers and those supplying to them controlling spares and replacement parts may have self-interest in mind, however on the facts the Tribunal found that her criticisms were ill-founded. On the evidence presented the Tribunal found that Mr Mantey advised the directors comprehensively. Each lift had different issues and a conclusion based upon a general over-view was reasonable.

45. Items 2 and 5 raise similar points – the Applicant having accepted the Section 20 consultation process, it is not necessary for the Tribunal to form a view on the specifics of how the Respondent went about taking its decision. However, it is clear that it went over and above its basic obligation according to that provision in that it polled the leaseholders affected on the basis of alternatives before making its decision to replace as one project. The Respondent sought quotations

from the 5 contractors put forward by the Applicant and arising from the consultation Kone was appointed (7 contractors approached declined to tender). The opinion of each leaseholder is likely to depend upon an individual's personal circumstances and the Tribunal has to take a generalised view. It is relevant that in deciding as it did the issue of wholescale replacement is likely to occur in around 25 years' time when the lifts will be reaching the end of their serviceable lifetime all together again. However, the point is that the Respondent collated sufficient information, from Mr Mantey but also from the leaseholders, to make an informed decision on whether to undertake any works on the Lifts and then on the question of repair or replacement of the Lifts and whether piecemeal or as one project.

46. The Applicant provided no expert evidence, but raised pertinent questions on the quality of the decision to undertake replacement as one project. It is relevant that the Applicant could ill-afford to engage for the purposes of the Application technical expert evidence. Also, if she had instructed an expert that person likely would not have been involved until after the partial replacement works were ongoing, meaning evidence of the physical condition of the lifts and fittings would have been removed. It is a matter of speculation whether another expert would have reached a conclusion in line with that of the Respondent, but without cogent evidence to cast doubt on the merit of Mr Mantey's report its content and findings remain persuasive. The Tribunal found that in deciding to replace in one project the Respondent took account of a sufficient range of information and evaluated the cost/ benefit of each option. In consequence the Tribunal found that the major works were reasonably incurred.

47. In reaching this decision the Tribunal took account of the case law and academic comment set out in paragraphs 26 – 29 of Annex B. The Tribunal found the evidence set out in paragraph 21 above to be persuasive on this issue. Although the Applicant was unhappy with the process, she did not register objection during the Section 20 consultation. The Tribunal accepts that in any event paragraph 1 of Schedule 3 of the lease provides ".....absolute discretion....." to the "Management Company" to make "....improvements....." whether or not it is required to do so. Therefore this extended power means the Respondent is able to undertake works to the Development, the costs of which are recoverable through the service charge, which may go beyond mere repair and a leaseholder concerned about the cost has only to turn to the statutory protection and is unable to overturn a decision for works which comprise more than repair because they are improvements

48. As to the actual costs involved, given the absence of independent evidence that the sums involved were excessive, despite the uncertainties referred to in paragraph 42 the Tribunal must also find that the amount is reasonable.

49. Item 3 - the lease provides for when payments of service charge are to be made (see paragraph 13 above), which the Tribunal interprets to mean that the Applicant can be obliged to make a lump sum payment of service charge by demand from the Respondent. That is a contractual obligation. The Tribunal learned that the Respondent offered leaseholders the option to pay their contribution by 6 monthly instalments. That was an accommodation, but the

liability to pay by lump sum is not affected by the Tribunal's determination on reasonableness of amount involved.

50. While the Applicant has expressed fear about the quality of works to the Lifts (item 4) there was limited evidence of defects in the work taken to the date of the Tribunal's inspection. The Applicant pointed out to the Tribunal some gapping of 3 centimetres at the floor of the entrance to the lift in Black 3 at its thresh on ground and first floor levels, some minor damage to decoration to the adjacent wall / window sill at first floor and some slight mis-alignment of architrave, but none of these appeared to the Tribunal to be significant errors in installation. It would only be if there was evidence of negligent installation, for example, that the power of the Tribunal would be engaged to consider if the charge for works was unreasonably incurred. No expert evidence was produced to suggest the works were being undertaken otherwise than in accordance with specification or that there are subsequent failings in replacement lift functionality. Here, the works have not been completed and there is no basis for the Tribunal to consider that the works involved are not of a reasonable standard.

51. In pursuing item 6 the Applicant seeks to assert the Tribunal has jurisdiction concerning breach of an alleged duty of care owed by the Respondent to the Applicant. The basis of the allegation is that the Respondent caused disruption by undertaking the major works contrary to a duty to avoid such a consequence. That is an allegation of negligence at common law, or breach of an implied term in the lease contract. Such allegations are not within the Tribunal's jurisdiction, which is limited as identified in paragraph 16 above. Without expressing competence on the legal points, in an effort to help the parties find closure in this dispute the Tribunal comments that on the facts presented to it the Tribunal identifies no such cause or causes of action.

52. Item 7 concerns the effect of the cost of the major works on saleability of the Property. The Tribunal is of the opinion that in this case the point can be no more than an additional representation on whether the cost of the major works were reasonably incurred. Having determined that the decisions of the Respondent were reasonable within the ambit of this Section 27(A) application (see paragraph 16) this point does not affect that decision. The Applicant's financial vulnerability is unlikely to be unique among the leaseholders and given that they had to incur a significant outlay within a year or so to repair the river quay wall the Respondent may feel it appropriate to review further whether it can assist in spreading the payment burden.

53. Item 8 seeks to debate whether the cost of the major works (including of the consultant) should or should not be recoverable as a Part 3 Expenditure (see paragraph 12). The Applicant asserts that the cost of the major works being for replacement of the Lifts is not expense for "repair, maintenance or insurance" - the scope of Part 3 Expenditure. Counsel for the Respondent at paragraphs 58 and 59 of Annex B provides persuasive authority broadly to the effect that for these purposes "replacement" and "repair" should be regarded as interchangeable terms. It also is correct that a justification for the lease variation was so that those leaseholders who do not use the Lifts do not have to contribute to the cost of works concerning the Lifts, which expense became Part 3 Expenditure, to which the Applicant is undoubtedly subject.

54. The Applicant asserted that the contracts with TUV, Brannen & Partners and / or for buildings insurance were Qualifying Long-term Agreements ("QLTA"), requiring leaseholder consultation under section 20 because their respective terms exceed 12 months (the duration at which consultation becomes necessary under section 20ZA(2)).

55. The Tribunal finds that the contract with TUV was not a defined time-based one, but its duration was until completion of the Lift replacements. Its purpose was for inspection, production of specifications, engaging in the tendering exercise and overseeing the works including by project managing. No duration was specified and the price quoted was per lift, with the agreement commencing on 19 January 2018. The Tribunal finds that the contract was not entered into with an expectation that it would be for a period exceeding 12 months. Therefore the Tribunal finds that the TUV agreement was not a QLTA.

56. The agreement with the managing agent is dated 1 September 2018 and is to run for one year from that date unless terminated early by 3 months' notice. The contract was amended by agreement, also dated 1 September 2018 so that fees were to negotiated for each piece of work involving Section 20 consultation and contract supervision concerning "…the refurbishment/replacement of the lifts……" . The fact that the contract may be renewed annually does not make it a QLTA (the caselaw authority for which is as cited for the Respondent in paragraph 63 of Annex B) and the Tribunal makes a finding accordingly.

57. The evidence of the insurance contract is that is likewise did not exceed 12 months duration and therefore it was not a QLTA.

58. Item 10 assertion has been taken into account only to the extent that it is relied upon by the Applicant as indicative of improper procedure being adopted by the Respondent, but about which the Tribunal has made its findings as set out in paragraphs 42 – 44. Otherwise the representation relates to a company law point and is outside the Tribunal's jurisdiction.

59. Item 11 concerns the Applicant's dissatisfaction with the performance of Brannen & Partners. She referred the Tribunal to extracts from the current RICS Code of Practice for management of residential premises. Having undertaken a review of the extracts and the evidence of performance the Tribunal finds that the managing agent has endeavoured to comply professionally, as chartered surveyors, with the relevant RICS guidance drawn to the Tribunal's attention. The matter of the agent's fees was not put at issue.

As to Section 20C and Costs

60. The Applicant made application under Section 20C of the Act that an Order be made that the costs incurred, or to be incurred, by the Respondent in connection with the proceedings before the Tribunal should not be regarded as relevant costs to be taken into account in determining the amount of the service charge payable by the Applicant for a future year or years.

61. The Respondent objected to a Section 20(C) Order. It contended that as the Respondent is a residents' management company it is fair that costs of a leaseholder action challenging a service charge should be borne by the leaseholders collectively who are benefitting (here) by the major works.

62. The Tribunal was satisfied that the Respondent had tried to respond to the complaints by the Applicant, both before and during these proceedings. The Application was certainly not mis-conceived and the Applicant provided cogent argument. She conducted herself reasonably in the proceedings and while she has been unsuccessful overall the Tribunal determined that it should make an order under Section 20(C) of the Act so as not to burden her further through the service charge regarding the Respondent's costs.

63. There was no application before the Tribunal concerning fees and it makes no order as to costs.

Tribunal Judge WL Brown
12 November 2019