FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**CHI/29UN/LIS/2017/0055** **CHI/29UN/LIS/2018/0001** **CHI/29UN/LIS/2018/0002** **CHI/29UN/LIS/2018/0012** **CHI/29UN/LIS/2018/0013**
Property	**:**	**Flats 1, 2, 3, 4, and 7, 11 Crow Hill, Broadstairs, Kent, CT10 1 HN**
Applicant	**:**	**Tindrell Limited**
Representative	**:**	**Bradys Solicitors**
Respondent	**:**	**John Harris & Jane Williams (Flat 1)** **Paul Rouhan (Flat 2)** **Adrian & Tara Gilham (Flat 3).** **Callum Hobson (Flat 4)** **Deborah French (Flat 7)**
Representative	**:**	**Tony Fischer of Small Claims (UK) Limited**
Type of application	**:**	**Transferred Proceedings from County Court in relation to service charges**
Tribunal member(s)	**:**	**Judge Tildesley OBE,** **Mr K Ridgeway MRICS**
Venue and Hearing	**:**	**Margate Law Courts** **13 April 2018**
Date of decision	**:**	**21 May 2018**

DECISION
WITH CORRECTIONS OF ACCIDENTAL ERRORS RULE 50 OF 2013 PROCEDURE RULES

Decisions of the Tribunal

I. The Tribunal determines that the sum of £18,000 is a reasonable amount for the service charge in advance in respect of the major works for decoration.

II. The Tribunal determines that the leaseholders of Flats 1 and 7 shall each pay £3,999.60 and the leaseholders of Flats 2, 3 and 4 shall each pay £1,999.80 in respect of the demand for service charges in advance for the major works of decoration.

III. Directions have been issued for written submissions on costs.

Application

1. This is a dispute about the liability of the leaseholders to pay in advance the estimated costs of proposed works to decorate the interior and exterior of 11 Crow Hill, Broadstairs, CT10 1HN ("the Building"), which contains seven flats held on long leaseholds.

2. The Applicant is the registered freeholder of the Building. The Applicant's title was registered under K855257 on 21 August 2015. Ms Francesca Elu is the sole director of the Applicant. On 13 November 2015 the Applicant appointed JH Property Management Limited as managing agents for the Building, the director of which is Mrs Janice Hook.

3. The Respondents are the long leaseholders of Flats 1, 2, 3, 4 and 7 under leases for terms of 125 years from 1 January 2002. They are required to pay a service charge under the lease. Mr Harris and Ms Williams and Ms French of Flats 1 and 7 respectively are each required to contribute 22.22 per cent of the total amount expended by the landlord on services in any one accounting year. The percentage contribution of Mr Rouhan, Mr and Mrs Gilham and Mr Hobson of Flats 2, 3 and 4 is 11.11 per cent respectively. The Respondents together with the leaseholder of Flat 5 set up a RTE and gave notice to purchase the freehold on 15 November 2017.

4. On 14 September 2017 the Applicant issued claims online against the Respondents and the leaseholder for Flat 5. The sum claimed against each of the leaseholders for Flats 1 and 7 respectively is £7,654.79, whilst the sum claimed against each of the leaseholders for Flats 2, 3, 4 and 5 is £3,827.39. The Applicant also claimed against each leaseholder court fees, contractual costs and interest at 8 per cent per annum calculated daily to the date of judgment.

5. Judgment in default has been entered against the leaseholder of flat 5. The Court has transferred the claims against the leaseholders for Flats 1, 2, 3, 4 and 7 to the Tribunal to deal with all matters with the Tribunal

Judge sitting as a County Court Judge once the Tribunal has reached a determination on the payability of the service charges demanded.

6. Judge Tildesley directed the Applicant to prepare the bundles of documents for hearing on the 12 April 2018. References to documents in the decision are in [ ].

7. For the purposes of the County Court hearing the proceedings had been allocated to the small claims track.

The Hearing

8. The Applicant was represented by Chris Bryden, counsel at the hearing. Ms Francesca Elu and Mrs Janice Hook were also in attendance to give evidence in support of their witness statements [8-139] and [140-144].

9. The Respondents were represented by Tony Fischer of Small Claims UK for the Tribunal part of the proceedings. Judge Tildesley gave approval to Mr Fisher to act as McKenzie friend for the Court part of the proceedings. Mr Harris, Ms Williams, Mr Rouhan, Mrs Clair Hobson (the mother of Mr Hobson, leaseholder for Flat 4), Mr and Mrs Gilham and Ms French were in attendance. Mr Harris, Mrs Hobson and Ms French gave evidence.

10. At the end of the hearing it was agreed to invite written representations on the question of costs.

The Property

11. The Tribunal inspected the property in the presence of the parties immediately before the hearing on 12 April 2018.

12. Henley Lawn is a four storey office building built in or around 1902 which was converted into seven flats in 2002. The building is of concrete and flint construction under a pitched clay tile roof. The roof is surrounded by a walkway with a rain gully. The North, East and South elevations are painted Tyrolian rendered. The West elevation is pebbledash and unpainted probably because of access problems over the adjacent property. Most of the original timber windows have been replaced at various times with uPVC.

13. The East elevation paintwork was seen to be sound though in need of cleaning. The North side of the elevation has minor cracking to the rendering on the bays below the windows of Flats 3 and 5. There is also some minor cracking to some of the window sills. In addition, there is minor cracking above the ground and second floor flats. The West and South elevations are decoratively similar to the East Elevation. There is some vegetation growing on a small ledge on the East, South and West elevations below the upper flats' windows. Flat 1 has a small extension on the ground floor to the south side.

14. The Main Entrance with uPVC door is on the East side of the building, with access up several concrete steps with a basic timber balustrade each side. Internally, the common parts are formed of painted stud walls and plaster ceilings with carpeted flooring. The internal decoration is tired and in need of some repair and redecoration. There are signs of damp penetration in the ceiling at the top of the stairs, which appeared dated.

The Leases

15. The leases of the five Flats are in the same or similar format. The relevant clauses for the purpose of this application are set out in the following paragraphs.

16. Clause 6(5) of the lease require the leaseholders to pay a fixed percentage

> "of the total amount from time to time expended by the Landlord or estimated as likely to be expended by the Landlord during the succeeding accounting period or towards a reserve which the Landlord wishes to establish in respect of obligations not of an annually recurring nature (the obligations of the Landlord being described in Clause 7 and in Schedule IV) including the remuneration of any professional person agent or manager staff workmen and others employed or engaged by the Landlord in connection with the provision of any or all such services".

17. Clause 7(2) of the lease requires the Landlord to provide the services and carry out the obligations set forth in Schedule IV.

18. Paragraph 1 of Schedule IV obliges the landlord to decorate the external surfaces of the Building in 2005 and every third year afterwards.

19. Paragraph 2 of Schedule IV obliges the landlord to decorate as and when necessary at least once in every five years the common entrances, stairs, corridors and landings of the Building and the doors and door surrounds of the individual Flats.

The Facts

20. The parties accepted that the common parts and the exterior of the building with the exception of the East elevation were last decorated in 2002, and 2009 respectively. It was also accepted that the previous freeholder and managing agent had missed the various cycles of decoration as laid down in the lease.

21. On 24 March 2017 at an Annual meeting of leaseholders with the managing Agent it was agreed that redecoration works would be carried out in 2017. There were, however, only two leaseholders present at the

meeting Mr Harris and Ms Williams of Flat 1 and Ms French of Flat 7 [225].

22. On 9 May 2017 the Applicant sent the leaseholders a notice of intention to carry out the internal and external decoration of the property and some minor repairs. The Applicant invited the leaseholders to make observations on the proposed works and nominate names of potential contractors [37/38].

23. On 10 May 2017 Mr Cox of Harrisons, a firm of surveyors based in Maidstone Kent, confirmed his appointment to act on the Applicant's behalf in respect of the redecoration of the property. Mr Cox was appointed to prepare the specification, handle the tendering process and manage the contract with the preferred contractor [40].

24. On 10 May 2017 Mr Cox invited tenders for fixed price contracts from Chris Browne Builders Limited, Rowe & Martin Limited and P A Hollingworth on 31 May 2017. The tenders ranged from £26,506.53 to £37,000.00 exclusive of VAT. Mr Cox recommended the contractor providing the lowest tender.

25. On 23 June 2017 the Applicant served a Notice of Estimates on the leaseholders [116-117]. The Notice supplied details of the three tenders including VAT and identified additional charges of £5,264.19 (VAT inclusive) for professional fees and £1,440 (VAT inclusive) to cover CDM Regulations. The Applicant stated its intention subject to observations to accept the lowest tender which gave a total cost of £38,512.03. The Applicant advised the leaseholders it would be seeking from them a contribution of £35,380.71 towards the works with £3,131.32 from reserves. The Applicant recorded that it had received no written observations following the Notice of Intention. The Applicant gave the leaseholders until 25 July 2017 to make observations on the Notice of Estimates.

26. On 28 July 2017 the managing agent provided the leaseholders with a final report which recorded the Applicant's responses to the observations made by the leaseholders following the issue of the Notice of Estimates [15-23]. From the Applicant's perspective the report concluded the section 20 consultation process.

27. The report detailed the outcomes of the independent assessment of the tender estimates obtained by the leaseholders [230-232]. The assessment stated that the quotation from the preferred contractor which supplied the lowest tender was "high but reasonable costs", and that one of the contractors had been excluded because it was not a painting contractor. The assessment also noted that the preferred

tender had included provisional sums totalling £5,000 for repairs plus a contingency of £2,000.

28. In the report the managing agent recorded that the landlord had offered the leaseholders the opportunity to elect to do the works in two phases rather than in one phase. By the end of the consultation on the Notice of Estimates, the managing agent had received one request for the works to be done in two phases which was to complete the internal decorations in 2017 and the external decorations in 2018. The Applicant concluded that it was not practical to phase the works because it would increase costs. Also the Applicant did not consider it feasible to delay the external decoration to 2018 since it would be required under the lease to decorate the exterior again in 2020.

29. Mr Harris of Flat 1 queried in an email about how the Applicant had arrived at the figure of £3,131.32 from existing reserves, and why it was not possible to take more from reserves which stood at £7,000.47 as at 24 December 2016. The Applicant responded by saying that it could not commit all the reserve funds as this would leave nothing in the reserve fund pot for any future major works or unforeseen expenditure.

30. On 28 July 2017 the Applicant sent out the demand for the decoration works with the report requiring payment of the additional contribution in full within 21 days [24]. A summary of Rights and Obligations was attached to the demand [25-27].

31. On 21 August 2017 Ms French and Mrs Hobson contacted the managing agent to advise that the leaseholders had collectively agreed to purchase the freehold. The managing agent informed the leaseholders that a formal solicitors' letter was required for the Applicant to consider stopping debt recovery action.

32. On 24 August 2017 the managing agent sent out final reminders for payment (letter before action) requiring the leaseholders to settle their account by 1 September 2017 failing which the Applicant would proceed with legal action to recover the outstanding amounts [28].

33. On 7 September 2017 the leaseholders' solicitors emailed a copy of a letter to the Applicant which stated that

> "We understand that you require notification of our client's intentions (for the purchase of the freehold) as there are certain works proposed pursuant to previous section 20 notices and that such works will not be pursued given our clients' intentions to enfranchise".

34. On 14 September 2017 the Applicant responded by saying that the letter did not absolve the Applicant from its repair and maintenance

obligations under the lease, and that until a valid claim notice had been served, a purchase price has been agreed and a deposit paid for the purchase of the freehold, the Applicant remained contractually bound to uphold the terms of the lease [151].

35. On 14 September 2017 the Applicant made online Money Claims against each leaseholder.

36. On 15 November 2017 solicitors acting for the leaseholders served a section 13 notice on the Applicant to purchase the freehold [158-181]. On the 23 January 2018 the Applicant's solicitors served a section 21 counter notice and also wrote disputing the validity of the section 13 Notice [152-157].

37. The leaseholders produced quotations from various contractors for the purpose of challenging the reasonableness of the costs demanded.

38. The first was from Inline Contactors Ltd dated 2 February 2018 which supplied a quotation in the sum of £5,780 for jet water washing the exterior of the building. Mr Gough, the director, stated that

> "having viewed the flats, although the decorative standard of the external walls remain of a good quality and free of structural defects or paint failure there are a number of patches just below the roof level which are dirty mainly due to water run off from those roof areas. Other parts of the walls of three elevations being considered are grubby from general atmospheric pollution. As the external walls are of good decorative quality and free from defects those walls would certainly benefit from a warm water wash using jet washers on fan spray and would be more cost effective than the most expensive redecorating being proposed" [213].

39. The second was from Sam Terry, Painter and Decorator dated 10 March 2018 which gave a quotation of £3,650 for painting the exterior [214]. This quotation was supplemented by an estimate of £5,550 for the costs scaffolding for a period of eight weeks from Broadstairs Scaffolding Limited [215]. The estimate was dated 7 March 2018 and subject to a site visit.

40. The third was from "The Lady Decorator" dated 10 March 2018 which gave a quotation of £5,130 for painting the exterior of the walls, the old and new sash windows and the main access steps. The Lady Decorator stated this was an estimate, and that although the building appeared to be in good condition she could not be sure of the full extent of the work until the scaffold was in place.

41. The Applicant stated that when it became the owner of the building there had been many incidents when patch repairs had been required to the exterior of the building and there had also been incidents of water ingress to the flats. The Applicants relied on the Summary of Patch repairs at [36].

42. The leaseholders considered the "Summary of Patch repairs" gave a misleading picture. Mr Harris pointed out that the water staining of the external wall was caused by a central heating boiler failure overflow at Flat 7. Mr Harris also stated that the painting of the communal front steps was a requirement of the 10 year guarantee to the tanking works carried out in Flat 1 alcove in 2012. Finally Mr Harris indicated that the patch repairs mentioned at 8, 9, 10 and 11 of the Summary were works which the Applicant had included in the decorating major works project, and related to such items as removal of a satellite dish and window boxes. Mrs French gave evidence that there was no recent incidence of water ingress in the communal areas, the water staining on the walls was old.

43. Miss Elu and Mrs Hook declined to comment on Mr Gough' statement that "the decorative standard of the external walls remained of a good quality and free of structural defects or paint failure" on the ground that they were not surveyors.

44. The Applicant did not call the surveyor to give evidence and did not include a copy of his surveys of the building in the bundle. Counsel for the Applicant asked the Tribunal to draw an inference that the works set out in the specification are the works the surveyor considered to be done.

Reasons

45. The Applicant argued that it was obliged to decorate the property in accordance with the terms of the lease, and that it was entitled under the terms of the lease to charge for anticipated or estimated costs on account for the decoration works provided it had consulted on those works before they were actually carried out.

46. The leaseholders contended that the proposed works were poorly planned, and unnecessary at the current time and that the proposed costs were unreasonable. The leaseholders believed that the Applicant was acting unreasonably in pursuing the action particularly as the building was not in dire need of work and because of their enfranchisement claim which they said was at an advanced stage.

47. The Tribunal starts with the terms of the lease which governs the contractual relationship between the parties.

48. The landlord's covenants in respect of the decoration of external surfaces and common parts impose an obligation to carry out the decoration after prescribed periods of time, every third year after 2005 in the case of external decorations and at least once in every five years of the common parts. The Tribunal is satisfied that the covenants would be breached if the Applicant did not decorate the property in the year specified in the lease regardless whether or not decoration is required having regard to the state of the property[1].

49. The Tribunal finds that the Applicant was correct in asserting its obligations under the lease to decorate the external surfaces and the communal parts in 2017. This year coincided with the three year cycle for the external surfaces and with the five year cycle for the communal parts which was last decorated in 2002. Even if 2017 had not coincided with the cyclic requirements for decorations, the Applicant would still have been entitled to carry out its obligations under the lease because of the failure of the previous landlord to decorate the building in accordance with the lease. In the Tribunal's view the Applicant's decision to adhere to the terms of the lease was not constrained by the leaseholders' concerns about the necessity for the works.

50. The Tribunal observes that the landlord's decorating covenants were silent on how they should be performed and on the standard of decorations. The Tribunal considered whether jet-washing fell within the definition of decoration but concluded it did not because of the existence of a separate covenant which referred to cleaning of the reserved portion of the building (see paragraph 5 of schedule IV).

51. The Tribunal records that where there is no express provision on how the covenant should be performed, the general rule is that the covenantor (the landlord in this case) decides upon the colour scheme and materials used.

52. The Tribunal, however, considers that the position on the required standard for the proposed works in this case was complicated by the inclusion of repairs to the external and internal surfaces in the specification. In the Tribunal's view, the work of repair goes beyond the terms of the decorating covenants. In those circumstances the Tribunal considers the leaseholders' concerns about the necessity for the repairs were legitimate matters for consideration.

53. Counsel for the Applicant asked the Tribunal to draw an inference that the surveyor had considered the repairs necessary because he had included them in the specification. The Applicant, however, chose not

[1] See A[3325] Hill & Redman's Law of Landlord and Tenant

to call the surveyor to give evidence or to include copies of his "two very detailed inspections of the property" in the bundle. The leaseholders, however, maintained that the property was not in disrepair. In this regard they later obtained quotations from In Line Contracting and The Lady Decorator which indicated that the property was free from structural defects and in good condition. Ms Elu and Mrs Hook declined to comment on Mr Gough's[2] statement that the external walls were free of structural defects. The Tribunal observed at the inspection some minor cracks in the render and noted a patch of water ingress on the ceiling of the common which appeared dated.

54. The Tribunal finds that the Applicant is not entitled to rely on the obligatory wording of the decorating covenants to carry out the repairs identified in the specification. The Tribunal is satisfied that the Applicant has not demonstrated the necessity for the repairs.

55. The next question in relation to the terms of the lease is whether the Applicant can require the leaseholders to pay the service charges for the decoration works in advance. Clause 6(5)(a) of the lease provides the necessary authority:

> "of the total amount from time to time expended by the Landlord or estimated as likely to be expended by the Landlord during the succeeding accounting period or towards a reserve which the Landlord wishes to establish in respect of obligations not of an annually recurring nature (the obligations of the Landlord being described in Clause 7 and in Schedule IV)".

56. Clause 7(2)(a) indicates that leaseholders are required to pay any sums due within 21 days after due notice has been given by the Applicant. On 28 July 2017 the Applicant sent a demand to each leaseholder requiring payment within 21 days.

57. The Tribunal concludes on the contractual position of the parties that the Applicant is entitled to demand in advance from each leaseholder an estimated sum for the costs of the proposed decoration works to the external surfaces and common areas payable in full within 21 days.

58. The contractual position, however, is modified by section 19(2) of the 1985 Act which provides that

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

[2] Director of InLine Contractors see paragraph above

59. The effect of section 19(2) is to modify the contractual obligation so that no greater amount than is reasonable is payable before the relevant costs are incurred. The language of the subsection suggests that the statutory ceiling applies at the time the leaseholder's liability arises. If, at that date, the on-account payment is greater than a reasonable sum, the leaseholder's contractual obligation is to pay only the lesser reasonable sum[3].

60. Under section 19(2) the Tribunal is not concerned with the reasonableness of the contractual obligation but only with the reasonableness of the proposed amount.

61. In the Upper Tribunal decision of *Charles Knapper and others v Martin Francis and Rebekah Francis [2017] UKUT 3 LC Para 30.* Martin Rodger QC Deputy Chamber President indicated:

> "In principle it seems to me that the FTT was correct in disregarding matters which became known only after the appellants' contractual liability arose. Those facts did not turn what had been a reasonable sum into an unreasonable sum. The question of what sum ought reasonably to be paid on a particular date, or ought reasonably to have been paid at an earlier date, necessarily depends on circumstances in existence at that date, and should not vary depending on the point in time at which the question is asked".

62. The decision in *"Knapper"* established the principle that the question of the reasonableness of the proposed amount should be assessed against the circumstances known at the time of the demand. Martin Rodger QC, however, in the later decision of *Avon Ground Rents Limited v Mrs Rosemary Cowley and Others* [2018] UKUT 92(LC) emphasised that whether an amount is reasonable as a payment in advance is not generally to be determined by the application of rigid rules, but must be assessed in the light of the specific facts of the particular case. In this regard Martin Rodger QC at [51] referred to the Lands Tribunal decision in *Parker and Beckett v Parham* LRX/35/2002:

> "It is not inconsistent with the Tribunal's decision in *Knapper* for the likelihood of a particular event occurring during the period covered by an advance payment to be taken into account in determining the reasonableness of the amount of the payment. In *Parker* the Tribunal mentioned at several points that the certainty that works would be carried out, and thus the certainty of the anticipated costs, were matters which it was permissible to take into account in considering the reasonableness of the advance payment: "if the cost of the works is uncertain, so that there is a wide range of possible outcomes around the amount that the LVT has found to be reasonable, that could well be something that could affect the reasonableness of an advance payment" .

[3] UT Decision in *Charles Knapper and others v Martin Francis and Rebekah Francis [2017] UKUT 3 LC Para 30.*

63. Turning now to the facts of this case, and starting with the circumstances known as at the date of demand, 28 July 2017, the Tribunal finds that

a) The Applicant had completed a section 20 consultation exercise on the proposed works of decoration, and had accepted the lowest tender.

b) The lowest tender came in at £26,506.53 excluding VAT and included £200 external render (repairs small), provisional sum of £1,000 for external render repairs (large), provisional sum of £2,000 for windows/external door repairs, provisional sum of £500 for repairs to the fascias and soffits, provisional sum of £500 for repairs to canopy and balustrade repairs, £550 for removing window boxes, a provisional sum of £1,000 for repairs to the communal areas, and a contingency of £2,000.

c) The tender assessment carried out by the leaseholders identified the lowest tender as high but reasonable.

d) The lead time for the contractor with the lowest tender was 8 weeks which would mean that the earliest that the works would take place was the 1 October 2017 and would take until the end of November 2017.

e) The Applicant had not entered into a contract with the contractor and would only do so once it had collected the monies from the leaseholders, which would increase the likelihood of the works not being started until March 2018 after the winter months.

f) The amount in reserves was in the region of £7,000.

g) Some leaseholders had affordability issues.

h) The designer for the project was Harrisons surveyors whose role was to provide a specification, go out to tender, analyse the quotes received and oversee the works. Their fee of £3,498.86 was 11 per cent of the estimated contract sum £26,506.53 plus VAT. Harrisons Surveyors had already incurred costs, and an invoice for 50 per cent of the fees (£1,749.43) had been submitted on 31 May 2017 [66].

i) The costs included the fees of a CDM Advisor which was £960 about 3.5 per cent of the estimated contract sum.

j) The managing agent included her fees of £1,325.33 in the costs which was 5 per cent of the estimated contract sum. The fees were for appointing the surveyor, liaise with appointed contractor, produce the Section 20 Notices, answer leasehold enquiries and collect payments. A fee of 5 per cent was below the industry average of 10 to 15 per cent.

64. The Applicant placed significant weight on the careful and thorough approach which had been taken to the section 20 procedure which was fully compliant with the statutory requirements. The Applicant pointed out that it had obtained three estimates and chose the lowest tender. The Applicant said that it had fully considered the matters raised by the leaseholders during the consultation which was demonstrated by its detailed response. Further the Applicant had been sensitive to the question of affordability but had decided for good reason not to go ahead with phasing the works over two years. The Applicant asserted that its adherence to the section 20 consultation process provided a good indication of the reasonableness of the costs.

65. The Tribunal considers that the carrying out of a section 20 process is a relevant matter but not determinative of the decision of whether the estimated service charges are no greater amount than is reasonable. The requirement to consult is a protection given to tenants in respect of costs incurred and as such has limited impact on estimated service charges (*23 Dollis Avenue (1998) Limited v Nikkan Vejdani Nahidah Echragi* [2016 UKUT 0365]).

66. The Tribunal considers the picture painted by of the circumstances known at the date of the demand was that there remained uncertainty about the eventual costs of the works and about when the works would be carried out. Also the works specified in the tender included elements of repair which went beyond the requirement to decorate the building.

67. The Tribunal takes the lowest tender £26,506.53 as its starting point for arriving at the amount that is no greater than reasonable. The Tribunal finds that the provisional sums allocated to repairs, the contingency and the costs associated with the window box are not certain and unreasonable in the context of advance payments of service. This results in a reduction of £7,750.

68. The Tribunal turns to the professional fees. The Tribunal notes that the Applicant has already incurred costs of £1,457.86 plus VAT of £291.57 on the services of Harrisons Surveyors [66]. The Tribunal would include that sum in the estimated service charge. The Tribunal, however, would not at this stage incorporate any further sum in respect of the proposed costs for Harrisons Surveyors. The Tribunal considers that the rate of 11 per cent was on the high side for a project of this

scope and size, and that the eventual costs of the contract is likely to be lower than the estimated contract sum. The Tribunal would exclude the sum for the fees of CDM adviser. The Tribunal is not convinced of the need for an independent adviser and would have thought that if the role is required, Harrison Surveyors should be able to take it on at lower cost. The Tribunal accepts that the rate of 5 per cent charged by the managing agent was below the industry norm and that the agent had carried out the majority of work associated with her role in the project. In those circumstances the Tribunal would allow £750 for managing agent's fees in the estimated service charge.

69. The Tribunal's focus so far has been on those circumstances known at the date of the demand. The Tribunal's attention now turns to the immediate horizon to identify any factors that might create further uncertainty about whether the works would take place.

70. On 21 August 2017 Ms French and Mrs Hobson advised the managing agent that the leaseholders had collectively agreed to purchase the freehold. The managing agent informed the leaseholders that a formal solicitors' letter was required for the Applicant to consider stopping debt recovery action. They provided this letter on 7 September 2017 prior to the court action.

71. The Applicant submitted that the leaseholders' reliance on their intention to purchase the freehold was misconceived. The Applicant argued that the enfranchisement process did not halt the obligations of the landlord under the lease and that in any event the section 13 notice was not served until November 2017.

72. The Applicant's submission displays a misunderstanding of the analysis required when determining the amount that is reasonable for estimated service charges. In this regard the Tribunal is not dealing with certainties but with probabilities. The Tribunal has found on the circumstances known at the time the scope, the costs and the timing of the works were uncertain. The Tribunal regards the leaseholders' indication to purchase the freehold relevant because it had been formalised with a solicitors' letter and was expressed within the margin of appreciation associated with the circumstances as at the date of the demand. The Tribunal does not consider the intention to purchase the freehold as a showstopper but another piece of the jigsaw that adds to the whirlpool of uncertainty associated with the project.

73. The Tribunal's task is to arrive at an amount which enables the Applicant to take forward its obligation to decorate the building at a foreseeable future date but respects the leaseholders' protection of contributing no more than is reasonable.

74. The Tribunal so far has made the following adjustments to the amount demanded. The tender contract price and the professional fees have been reduced to £22,507.84 (£18,756.53 plus VAT of £3,751.31) and £2,517.43 respectively which produces a total of £25,025.27. The Tribunal notes that the reserves were in the region of £7,000.

75. The Tribunal decides that an amount of £18,000 is a reasonable sum to demand in advance from the leaseholders in respect of the decoration works. The Tribunal considers that this amount should provide an adequate springboard together with a contribution from the reserves for the Applicant to take forward its plans to decorate the property if it decides to go ahead. The Tribunal notes that the two quotations obtained by the leaseholders for external decorations and scaffolding were in the region of £10,000. The Tribunal did not consider these quotations within the rationale for arriving at the sum of £18,000 because they were obtained long after the date of the demand which is the reference point for the factual context of this dispute. The Tribunal, however, considers the quotations provide a measure of comfort for its decision on the reasonable amount.

76. The Tribunal determines that the leaseholders of Flats 1 and 7 shall each pay £3,999.60 and the leaseholders of Flats 2, 3 and 4 shall each pay £1,999.80 in respect of the demand for service charges in advance for the major works of decoration.

Costs

77. It was agreed at the hearing that the various applications to do with costs would be dealt with by means of written representations once the Tribunal's determination on liability had been determined. Although the directions refer to applications under section 20C of the 1985 and paragraph 5A of Schedule 11 of the 2002 Act to limit the landlord's ability to recover costs, there appears to be no applications from the leaseholders. There is a new application from the leaseholders challenging the 2018 service charge which refers to section 20C and paragraph 5A of Schedule 11 of the 2002 Act but that does not relate to these proceedings.

78. Judge Tildesley sitting as a County Court Judge exercising the jurisdiction of the District Judge will not issue judgment until all matters had been determined. Judge Tildesley in that capacity directs as follows.

    1) Judge Tildesley notes that the leaseholders nominated Mr Harris of Flat 1 as their representative for the costs application.

2) If the **leaseholders** wish to make applications under section 20C and paragraph 5A of Schedule 11 of the 2002 Act they must do so within **7 days from the date of the decision** and inform the Applicant accordingly.

3) **By 8 June 2018 the Applicant** to provide the leaseholders and the Tribunal written submissions on the following:

- Details of its claim for recoverable costs under Part 27 CPR.

- Details of its claim for contractual costs, which includes setting out the amount, the contractual provisions relied upon and why they are met, and dealing with the question of reasonableness (Judge Tildesley takes the view that they are administration charges unless persuaded otherwise).

- Calculation of the number of days for interest, details of the rate claimed for each leaseholder subject to the proceedings. The date of judgment will be the 2 July 2018.

- Response to any applications under section 20C Application and paragraph 5A of Schedule 11 of the 2002 Act .

4) **By 22 June 2018 the Leaseholders** to provide a full response to the Applicant's submissions on costs to the Applicant and the Tribunal.

5) B**y 29 June 2018 the Applicant** has brief right of reply which must be sent to the leaseholders and the Tribunal.

6) The time limit for applying for permission to appeal will start when the determination on costs and judgment have been delivered.