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

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| **Case reference** | : | **CAM/00MC/LIS/2020/0014**<br>**CAM/00MC/LSC/2020/0015**<br>**CAM/00MC/LDC/2020/0032** |
| **HMCTS code (paper, video, audio)** | : | **P:PAPERREMOTE** |
| **Property** | : | **Tetbury Court, Prospect Street, Reading, Berkshire RG1 7TR** |
| **Applicants** | : | **1. John Francis Smith (No. 35)**<br>**2. James Dale (No. 18)**<br>**3. Alan Cossey (No. 36)**<br>**4. The other 16 leaseholders named in Schedule 1 to the Decision, represented by Amanda Prior** |
| **Respondent** | : | **June Baker (acting by her attorney Jeremy Baker)** |
| **Representative** | : | **Womble Bond Dickinson (UK) LLP** |
| **Type of application** | : | **Application for permission to appeal** |
| **Tribunal members** | : | **Judge David Wyatt**<br>**Miss M Krisko BSc (Est Man) FRICS**<br>**Mr J E Francis QPM** |
| **Date of decision** | : | **9 July 2021** |

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**DECISION**

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## Covid-19 pandemic: description of decision

This has been a remote decision on the papers. The form of remote decision was P:PAPERREMOTE. A hearing was not held because it was not necessary; all issues could be determined on paper. The documents we were referred to are those described in our decision dated 28 April 2021 (the "**Decision**") and paragraphs 4 to 8 below.

### DECISION OF THE TRIBUNAL

1. The tribunal has considered the requests for permission to appeal based on the grounds of appeal provided and decided that:
   (a) Schedule 1 to the Decision is corrected as follows:
      i. "Chin" is deleted and replaced with "Chinn"; and
      ii. the amounts set out in relation to Mr and Mrs Chinn in the fourth and fifth columns are deleted and replaced with £4,428.57 and £6,489.14 respectively;
   (b) the tribunal will not review its Decision; and
   (c) permission to appeal is refused.

2. In accordance with section 11 of the Tribunals, Courts and Enforcement Act 2007 and rule 21 of the Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010, each party who applied for permission to appeal may make further application for permission to appeal to the Upper Tribunal (Lands Chamber). Such application must be made in writing and received by the Upper Tribunal (Lands Chamber) no later than 14 days after the date on which the First-tier Tribunal sent notice of this refusal to the party applying for permission to appeal.

3. Where possible, you should send any such further application for permission to appeal **by email** to Lands@justice.gov.uk, as this will enable the Upper Tribunal (Lands Chamber) to deal with it more efficiently. Alternatively, the Upper Tribunal (Lands Chamber) may be contacted at: 5th Floor, Rolls Building, 7 Rolls Buildings, Fetter Lane, London EC4A 1NL (tel: 020 7612 9710).

### REASONS FOR THE DECISION

4. The substantive Decision was sent to the parties on 28 April 2021. On 17 May 2021, the first Applicant, Mr Smith, applied for permission to appeal with his grounds of appeal (four pages) and the following day he sent further documents in support of his application (17 pages). On 25 May 2021, the Respondent applied for permission to appeal and provided their grounds of appeal (six pages). On 26 May 2021, the Applicants represented by Ms Prior applied for permission to appeal and the following day they produced a revised version of their grounds of appeal (37 pages), which included a request for a correction. On 9 June

2021, the applicants represented by Ms Prior sent a further request for a correction, attaching new documents.

5. This decision is about those applications and requests. The applications under section 20C of the Landlord and Tenant Act 1985 (the "**1985 Act**") and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002, and under rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 (the "**Rules**"), will be considered and determined separately, as explained in the case management directions sent to the parties on 21 May 2021.

*Correction requests*

6. In addition to seeking permission to appeal, Ms Prior explained at the end of her grounds of appeal that some information provided to the tribunal had been wrong. The name of the leaseholders of No.30 was Stuart and Veronica Chinn (not Chin) and they had acquired their original lease in 1997, not 6 March 2018 (which was in fact the date they extended their lease). The procedural judge wrote to the parties about this request, highlighting the lower amount that would be payable by Mr and Mrs Chinn if the requested correction was made. On 3 June 2021, the Respondent confirmed through their solicitors that they recognised: "*…that Stuart and Victoria Chinn acquired their interest in 1997 and any determination should reflect this…*", while reiterating that: "*…it is absolutely not accepted that the adjusted sums are due for the reasons set out generally in its grounds of appeal, and particularly in this case as the particular applicants had confirmed that they were using and accessing the garages as storage.*"

7. Rule 50 gives the tribunal power to at any time correct any clerical mistake or other accidental slip or omission in a decision. Ms Prior or Counsel gave us the wrong date by mistake, apparently based on what they could see from the current Land Registry entries. It is not disputed that Mr and Mrs Chinn have been leaseholders since 1997, so they are not confined to damages only from 6 March 2018 to set off against the service charges otherwise payable. Accordingly, we correct the error so that the set-off and balance payable by Mr and Mrs Chinn are the same as those for all the Applicants except Mr Wilson, who acquired his lease later.

8. On 9 June 2021, Ms Prior sent a further e-mail with attachments asking for a further correction. She said the figure in the landlord's statement of estimates for the major works to the block (produced in the bundles) was wrong. She produced documents described as a copy estimate from the relevant contractor (which does not appear to have been produced in the bundles) and said these were for a lower figure, saying in effect that the difference should result in most of the leaseholders paying £308.55 less in service charges for the estimated costs. We decline to "correct" or review our decision in this respect. The request was made after the 28-day period for any application for permission to appeal had expired. There was no suggestion during the proceedings that the figure in the

statement of estimates was wrong. On the contrary, the relevant figure from the statement of estimates was put to Ms Prior in cross-examination and Ms Prior accepted that it was a reasonable estimated cost. The parties need to move on from attempting to re-litigate these proceedings; generally, they cannot raise points now that they could and should have raised at the hearing. Further, the Decision makes it clear that it is determining the reasonable cost payable in advance for these and other major works. It would not preclude any party from making a new application to the tribunal in future to determine payability of balancing or other service charges (if it is said that the actual cost incurred was greater, or less, than the reasonable estimated cost, or the relevant works are not of a reasonable standard; see section 19(1) and (2) of the 1985 Act).

*Appeal*

9. We consider that none of the grounds of appeal have any realistic prospect of success. For the benefit of the parties and of the Upper Tribunal (Lands Chamber) (if any further application(s) for permission to appeal are made), we have in the attached Appendix set out comments on some of the specific points raised by the relevant parties in their grounds of appeal.

## APPENDIX TO THE DECISION
## REFUSING PERMISSION TO APPEAL

References below in [square brackets] are to those paragraphs in the main body of the Decision.

### Application from the first Applicant, Mr Smith

1. The matters described in the documents from Mr Smith, and the apologies he would like the managing agents or others to make, are not grounds of appeal. There was no error or misunderstanding in relation to the roof sheets above the bin store; Ms Prior and Mr Smith simply said (slightly) different things about them.

### Application from the Applicants represented by Ms Prior

2. These lengthy grounds of appeal contain only attempts to re-litigate the matter or disagreements with the tribunal's decision.

### Application from the Respondent

3. The Respondent applied for permission to appeal against our decision on issue 8 [103-112].

4. The inconvenience of using garages which may be a long way from the building, and difficulty of renting enough garages, was noted as part of the explanation from the Applicants of how (apart from the actual rental figures they produced) they had arrived at their suggested claim figure of £20 per week [109]. Following Moorjani and Earle, our assessment of general damages was based on the rental value of "these" garages at Tetbury Court [110], not what the Applicants might have to pay for an alternative garage. The fact the Applicants arrived at an appropriate net figure by the wrong method does not change this.

5. The Respondent produced no real evidence of the rental value of the garages; they chose instead simply to put the Applicants to proof. The Applicants produced their evidence. We asked the Respondent at the hearing about the Applicants' figure of £20 per week [109] as a rental value for these garages. The Respondent made no suggestion that the rental figures included VAT or that any notional discount should be made for any possibility that the sample private garages being offered for rental might include VAT. We are an expert tribunal and we noted [104] that assessment of damages is, or can be, a matter for our judgment, and does not necessarily require expert valuation evidence. As we said, a garage is a valuable property asset. It was obvious from the evidence produced by the parties about Tetbury Court, the garages themselves, the location and conditions in Reading and the parking pressure shown in the photographs, as noted in more detail in the Decision, that the suggested figure of £20 per week was low as a rental figure for these garages in this location if they had been kept in repair, and the true rental value was likely to be substantially higher [110].

6. The Respondent put it to Ms Prior that storage space might be cheaper but produced no evidence for this (and again it was obvious that storage space was likely to be more expensive [110]). This had been raised by the Respondent, although it was not relevant except for any effect it might have on values of comparable garages as part of assessing the rental values of the garages at Tetbury Court. In the proceedings, the Respondent did not make the point that Mr Wilson and Mr and Mrs Chinn may have paid a lower premium when they extended their leases. The Respondent was the landlord throughout and could have made this point and produced evidence of any such premia (just as it could have produced rental value evidence) in the proceedings, but did not do so.

7. We noted that in the circumstances in Moorjani (and Earle) the damages were reduced by half in view of the non-occupation of the tenant. With that in mind, our assessment was of minimum general damages, reducing the likely rental value to the Applicants' suggested claim figure of £20 per week to take into account the relevant factors, including the possibility that some leaseholders might never have used their garages even if they had been kept in repair, or had some use of them, or had some responsibility for the delay [111].

8. This case suffered from an excess of some documents/duplicates and unproductive correspondence, together with refusal or failure by the Respondent to keep or disclose relevant documents. Nonetheless, the thrust of the Applicants' complaints about the disrepair to the garages was entirely clear from the facts and evidence set out in the statements of case and documents produced in the bundles. These were lay people explaining the facts which gave rise to an obvious entitlement to general damages. None of the Applicants had been represented when they prepared their statements of case and evidence. The Applicants represented by Ms Prior were represented by Counsel at the hearing, but the other Applicants were not. As we said in the Decision, Ms Prior had explained her claims and calculations in different ways and had included specific claims to additional repair costs and special damages which were not adequately pleaded or evidenced. However, her statement of case made it clear [page 752 of the bundle] that compensation was being sought from 2017 at £20 per week "*per leaseholder, based on one leaseholder per flat*". She also then suggested figures for each year which did not appear to include all the Applicants (or all those Applicants she represented) and intimated in cross-examination that some leaseholders had not been included in these figures (one had continued to use his garage, for example), but specifically described these figures as an "*example*" [page 754 of the bundle].

9. The claims in relation to the garages were not expressed as being made only by named individuals. The various Applicants said, in effect, that they adopted each other's statements of case and relied on each other's evidence, as would be expected in this type of proceedings. They were all in the same position, having all (except Mr Wilson, who was represented by Ms Prior and was in the same position in relation to the period he had owned his lease) owned the leases of their garages since

before they fell into such an advanced state of disrepair that the Respondent said they were dangerous and sought to forbid their use. The Respondent may not have engaged as fully as they could have done with this aspect of the consequences of their breach of the covenant to keep the garages in repair (despite seeking to recover substantial service charges mainly comprised of the costs of repairing those garages), but that was a matter for them. They were professionally represented throughout by a substantial firm of specialist property solicitors who have been involved with the Respondent and Tetbury Court for many years (their name appears on the leases produced in the hearing bundles). The Respondent's statement of case was settled by Counsel.

10. In the circumstances, in relation to the entitlement to general damages it would not have been appropriate or in accordance with the overriding objective to attempt to divide the Applicants by reference to their statements of case or limit them to the "*example*" figures used in Ms Prior's statement of case. Moreover, there was no suggestion at the hearing that we should do so, even when we specifically asked about assessment of general damages in relation to the Applicants. We did not merely ask about general damages in "*closing submissions*" as is suggested in the grounds of appeal. The Respondent agreed a trial timetable providing for witnesses to give factual evidence and then the parties to make their submissions. We specifically asked the Respondent's relevant witness (Mr Gwynn) about the claim in relation to the garages and the claimed figure of £20 per week as a rental figure. We asked for confirmation of the dates each Applicant had acquired their lease, since these had only been provided in advance in relation to the Applicants represented by Ms Prior. We specifically asked Counsel for the Respondent to address us on the question of general damages, referring to the relevant extracts from Earle and Moorjani. In order to determine payability of the relevant service charges, it was necessary for us to assess general damages for the most serious period of disrepair of the garages, from 2017 onwards.

11. The Respondent asserts that the relevant principle has wide application, but it is not new. We followed White, Griffin, Earle and Moorjani.

12. Further, for the reasons explained in the decision, we deliberately assessed the damages as the minimum to which any Applicant would be entitled and took these into account (generally and as a cross-check) when deciding that the other damages claims (for increased repair costs, interim repair work and the like) did not exceed the level of these minimum damages, as explained in issues 1 and 4. If the general damages figures were reduced, that might affect our decision on those other issues.

**Judge David Wyatt** **9 July 2021**