FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/00HY/LSC/2021/0050
Property	:	126 Carmelite Way, The Friary, Salisbury, Wiltshire SP1 2HW
Applicant	:	Ms Grace Alba Parks
Representative	:	----
Respondent	:	Wiltshire Council
Representative	:	Ms Hemans of Counsel instructed by Davitt Jones Bould Limited
Type of Application	:	Section 27a and Section 20CLandlord and Tenant Act 1985- determination of service charges and recovery of legal costs through service charges
Tribunal Member(s)	:	Judge J Dobson Mr N Robinson FRICS Mr M Jenkinson
Date and venue of hearing	:	27th and 28th February 2022, Havant Justice Centre
Date of Decision	:	30th May 2022

DECISION

Summary of the Decision

1. **The Applicants' application pursuant to section 27A of the Landlord and Tenant Act 1985 is dismissed.**

2. **The Tribunal grants the Applicants' application pursuant to section 20 of the Landlord and Tenant Act 1985 in part. The Tribunal limits of the costs of these proceedings which the Respondent may recover as service charges to two- thirds.**

The Application and history of the case

3. The Applicant sought what has been treated throughout as a determination of service charges in the year 2019, said to be approximately £18,500 by way of an application dated 4th June 2021 and pursuant to section 27A of the Landlord and Tenant Act 1985 ("the Act"). The two particular costs for which service charges had been demanded in issue were the costs of replacement of windows and, most significantly, works to the roof.

4. The Applicant also sought a determination that the Respondent's costs of the proceedings should not be recoverable as service charges pursuant to section 20C of the Act by application of the same date. Indeed, the application made, whilst plainly intended to relate principally to the service charges, was made on the form for an application under section 20C with reference to the section 27A application under the heading "other applications". No point has been taken as to that and so there is no need to dwell on it now.

5. It merits brief mention that there is no application pursuant to paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 for an order that the liability to pay an administration charge in respect of contractual litigation costs be reduced or extinguished. It may be that reflects the Applicant having used an incorrect form and so the question as to a paragraph 5A application which would have appeared on the correct form did not appear on the form used and specific to a section 20C application. It cannot be known what approach the Applicant might have wished to take had she been aware, although making an application appears more likely than not. However, there is no application before the Tribunal and so the Applicant will need to make one separately if she wishes to do in light of the matters covered in this Decision.

6. Several sets of Directions were given, including a set at a Case Management Hearing. Those particularly included Directions given in relation to questions by the Applicant of the Respondent's expert, most of which were directed to be answered, and then by the Respondent's representative in relation to documents to be included in the hearing bundle.

7. The Directions provided for the Respondent to produce a bundle of documents relied on by the parties in relation to the issues for determination. The Respondent did so. The PDF bundle amounted to 872

pages. A short supplemental bundle, of 57 pages, was also supplied by the Applicant a few days before the hearing. Whilst the Tribunal has read those bundles, the Tribunal does not refer to many of them in detail in this Decision, it being impractical and unnecessary to do so. Insofar as the Tribunal does refer to specific pages from the bundles, the Tribunal does so by numbers in square brackets [ ], adding an "S" for supplemental bundle if relevant and with reference to electronic PDF bundle page-numbering, rather than the numbering system adopted on behalf of the Respondent. That was divided into sections beginning with a letter and then each followed by numbering starting at 1, contrary to the requirement of the Directions.

8. Ms Hemans, on behalf of the Respondent, also provided a 10- page Skeleton Argument, dated 23rd February 2022 with various attachments.

9. There has been a rather longer delay in this Decision being produced than the usual and longer than the target date. Whilst it is a minor factor, it should be mentioned that the Tribunal could not reach a decision at the hearing itself due to the time of that finishing on the second day allotted. Therefore, a reconvene was required and took place on 15th March 2022. It is only appropriate to apologise to the parties for the delay since then and for any frustration and inconvenience arising from that.

The Background

10. The application explains that the Applicant is the lessee of a three bedroom maisonette, number 126 Carmelite Way ("the Property"), within a building comprising the even numbers of 116- 128 ("the Building) and situated on The Friary estate ("the Estate") in Salisbury. There are therefore seven dwellings in the Building. For the purpose of this Decision, the dwellings, including the Property, will each be referred to individually as a "Flat" or collectively as "Flats", given the lack of certainty on the part of the Tribunal as to the exact nature of the other dwellings and because that fits more easily with the wording used in the legislation applicable to this dispute.

11. The Building is three storeys tall, with a flat roof. The Tribunal did no inspect the Property but considered photographic evidence- as the Drections had set out. The Respondent is the freeholder of the Property and of the Building, indeed of the Buildings on the Estate generally. It is also the local Council with separate duties for matters arising on the Estate pursuant to that.

12. The majority of properties in the Estate are let by the Respondent on tenancies. However, some of the properties have been the subject of exercise of the right to buy and so are now held on long leases. That is relevant because insofar as there is no long lease for any given property, any expenses fall on the Respondent, to be paid for from rental or other income. In contrast, contributions to costs are recoverable from long lessees such as the Applicant, by way of service charges.

13. The Applicant holds a lease for a term of one hundred and twenty- five years commencing 25th December 1986 ("the Lease"). The Lease is dated 6th November 1989 and was originally granted pursuant to a right to buy. The Applicant holds the Property in a previous name shown on office copies of the registered title (and some of the correspondence shows that name) but there was no dispute that the registered owner and the Applicant are one and the same.

14. Whilst the challenge was brought only by this Applicant, it was apparent that in the event that the Applicant was successful in demonstrating the consultation requirements not to have been met or otherwise sums were not payable, that may be significant for the Respondent, not least if other challenges were to be made by other lessees in reliance on the findings and determinations now made. That caused the Decision to be of some potential significance, albeit that has no relevance to proper way in which to approach it nor has it to the conclusions reached by the Tribunal.

The Lease

15. The Lease appeared in the bundle at page 530 onwards. The principal pertinent parts of the Lease with regard to service charges and matters for which they are payable state as follows.

16. Clause 1. (h) defines "the Lessee's expenses", being a one seventh share of the Respondent's expenses in relation to the Building and one two hundred and eighteenth of those in respect of the "remainder of the estate".

17. At clause 3. the Applicant agreed to pay, amongst other elements, "the Lessee's expenses" (including, if relevant, payments on account). There are various requirements to be met by the Respondent, but the Applicant has not asserted any breach of any of those and so there is no need to make further reference to them.

18. Clause 3. (8) requires the Applicant to permit access to the Respondent for the purposes of "making repairing maintaining supporting rebuilding cleansing lighting and keeping in order and good condition all roofs foundations walls sewers drain pipes cables watercourses gutters wires televisions apparatus (if any) party or other structures", and so on.

19. Clause 5. provides that, subject it is said the Applicant complying with her covenants but where there was no argument that amounts to a condition precedent, the Respondent shall carry out the obligations in the Fifth Schedule.

20. The First Schedule describes the Building as:

21. "ALL THOSE dwellings comprising the seven flats situate at Carmelite Way Salisbury Wiltshire and located within the building Shown edged green on the Plan annexed hereto and known as numbers 116 to 128 (even) Carmelite Way Salisbury aforesaid."

22. Whilst that definition does not say so, the Building is plainly also the common parts and the structure of that Building, together with various pipes, conduits and similar. That is apparent from the other clauses.

23. The Second Schedule describes the Property:

> "flat number 126 Carmelite Way Wiltshire situate on the first floor of the building…. TOGETHER WITH ….
> (a) all landlord's fixtures and fittings now thereon or therein
> (b) the floors ceilings walls doors and windows thereof so far as not hereinafter excepted as set out in the Fourth Schedule hereto …"

24. The Fourth Schedule states that:

> "there is excepted and reserved out of this demise to the Council and owners lessees tenants and occupiers of other flats comprised in the building…. (f) the main structure of the building including the roof and foundations and solid floors and joists all external walls the entrance(s) passages and stairs of the building (but not glass in windows the non-structural walls wholly within the property nor the interior joinery plasterwork tiling and other surfaces.)"

25. The Fifth Schedule contains "the Council's obligations" and requires the Respondent to:

> "repair, rebuild, maintain or repoint or otherwise treat the main structure of the building including the external main walls foundations and roof and keep every part thereof in good and substantial repair order and condition renewing and replacing all worn or damaged parts thereof and painting with good quality paint those areas usually painted in a proper and workmanlike manner …".

26. The Sixth Schedule identifies "the Council's expenses". Those include expenses incurred by the Respondent in carrying out the obligations imposed on it under Clause 5 and the Fifth Schedule.

The relevant Statute Law and Regulations

27. The relevant statute law is set out in the Appendix to this Decision.

28. Essentially, the Tribunal has the power to decide about all aspects of liability to pay service charges and can interpret the Lease where necessary to resolve disputes or uncertainties. Service charges are sums of money that are payable – or would be payable - by a lessee to a lessor for the costs of services, repairs, maintenance or insurance and the lessor's costs of management, under the terms of the Lease.

29. The Tribunal can decide by whom, to whom, how much, when and how a service charge is payable. A service charge is only payable insofar as it is reasonably incurred and works to which it related are of a reasonable

standard. The Tribunal therefore also determines the reasonableness of the charges.

30. The Tribunal takes into account the Third Edition of the RICS Service Charge Residential Management Code ("the Code") approved by the Secretary for State under section 87 of the Leasehold Reform Housing and Urban Development Act 1993 and effective from 1 June 2016. The Code contains a number of provisions relating to variable service charges and their collection. It gives advice and directions to all landlords and their managing agents of residential leasehold property as to their duties.

31. The Approval of Code of Management Practice (Residential Management) (Service Charges) (England) Order 2009 states: Failure to comply with any provision of an approved code does not of itself render any person liable to any proceedings, but in any proceedings, the codes of practice shall be admissible as evidence and any provision that appears to be relevant to any question arising in the proceedings is taken into account.

32. In respect of how the lessor addresses required works, as Ms Hemans correctly summarised, the question is whether the method adopted was a reasonable one in all the circumstances. That is to say one of what may be a number of reasonable courses, even if other reasonable decisions could also have been made.

33. In respect of a consultation process, section 20 of the Act applies.

34. Section 20(1) provides that the "relevant contributions of tenants" will be: "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 agreement, or (b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal." Whereas the Act refers to tenants, that does not mean tenants under short- term tenancies but rather lessees, the term adopted in this Decision, under long leases.

35. Section 20ZA(4) of the Act provides that "the consultation requirements" be prescribed by statutory instrument. requirements" in respect of qualifying long- term agreements ("QLTA"s) for which public notice is required are set out at Schedule 2 to the Service Charges (Consultation Requirements) (England) Regulations 2003 (the "Regulations").

36. The details which are to be included in a written notice of intention are identified in paragraph 1(2) to schedule 2 of the 2003 Regulations. Those require the lessor to, amongst other things, "(a) describe, in general terms, the relevant matters…(b) state the landlord's reasons for considering it necessary to enter into the agreement; (c) where the relevant matters consist of or include qualifying works, state the landlord's reasons for considering it necessary to carry out those works…".

37. Paragraph 4 of the same schedule identifies the information which the lessor's proposals must contain. That includes, amongst other matters, that

where it is reasonably practicable, estimates of the relevant contribution to be incurred by the tenant or estimates of the total expenditure for the building should be included. Paragraph 5 states that the lessor must give notice in writing to the tenant of the above proposals.

38. The Regulations continue, providing that where observations are received from a lessee in accordance with paragraph 6, the lessor is, paragraph 7, to give responses to those observations within 21 days of receipt. Further, having done so, the lessor then has to within 21 days after "receiving sufficient information to enable him to estimate the amount, cost or rate… give notice in writing of the estimated amount" to the tenant (paragraph 8).

39. In the event of failure by the Respondent to comply with requirements in respect of a QLTA, regulation 4(1) provides that the liability of a lessee is limited to £100 for a given service charge year.

40. Schedule 3 of the Regulations deals with works which the lessor then wishes to undertake under the QLTA.

41. Paragraph 1 (1) provides that notice must be given of the intention to carry out qualifying works under a qualifying agreement. Paragraph 1 (2) is where the details to be provided are found and sets out the required contents of the notice, including describing in general terms the works proposed, the reasons for the works, the estimate of expenditure and an invitation to make observations in respect of the works or the estimate.

42. Paragraph 3 requires the lessor to have regard to the observations in relation to the works or estimate. Paragraph 4 provides that where such observations are received, the lessor shall state its response to the observations within 21 days.

Caselaw

43. There are innumerable case authorities in respect of several and varied aspects of service charge disputes. Many have no direct relevance to this dispute. However, examples of authorities in respect of reasonableness of service charges relevant for the purpose of this Decision and the key points arising from them are set out below:

Holding and Management Limited V Property Holdings and Investment Trust PLC [1990] 1 All E.R.938

The test to adopt in deciding whether or not particular works can be regarded as repair depend on the context in which repair appears in the lease, the defect, the remedial works proposed and various circumstances listed, the weight to be given to which will vary from case to case.

Forcelux v Sweetman [2001] 2 EGLR 173

There are two elements to the answer to the question of whether the cost of any given service charge item is reasonably incurred, namely
i. Was the decision-making process reasonable; and
ii. Is the sum to be charged reasonable in light of the evidence?
The second element was stated to be particularly important.

Lord Mayor and Citizens of Westminster v Fleury and Others [2010] UKUT 136 (LT)

The first element principally involves a consideration of whether the proposed method is a reasonable one in all the circumstances, even if other reasonable decisions could have been made. However, that is not a complete answer to the question and other evidence should be considered.

The London Borough of Hounslow v Waaler [2017] EWCA Civ 45

The process is relevant but to be tested against the outcome. The fact that the costs of the work will be borne by the lessees is part of the context to whether the costs have been or will be reasonably incurred and interests of the lessees must be conscientiously considered and given the weight due, although they are not determinative- the lessees have no veto and are not entitled to insist on the cheapest possible means of fulfilling the landlord's objective. Reasonableness is to be determined applying an objective test.

Waaler importantly distinguishes between costs of repairs and costs of improvements (the case concerning improvements) and the circumstances of the lessees being of greater import in the latter than the former.

Garside v Maunder Taylor [2011] UKUT 367 (LC)

The nature and location of the property and the amount demanded in previous years, in particular any significant increase and the financial impact on the tenants are relevant to the question of whether costs have been reasonably incurred. So too, the degree of disrepair and the urgency or otherwise of work being undertaken.

Plough Investments v Manchester City Council [1989] 1 EGLR 244.

The lessees are not entitled to require the landlord to adopt a minimum standard of repair, the choice being the landlords' provided it is reasonable, but on the other hand, the lessor could only recover for what were truly repairs. That assumes of course no provision in respect of improvements, although it has been said there is no bright line between the two.

44. Different decisions have quite properly been reached as to the appropriateness of repair of an element of a building on the one hand and of replacement on the other in different cases. The correct answer to the question is fact sensitive. The question can only be answered by considering all of the evidence relevant in light of the provisions in the Lease.

45. Ms Parks did not cite any caselaw. Ms Hemans did so, both to the extent of referring the Tribunal to the relevant chapter in Service Charges and Management by Tanfield Chambers provided with her Skeleton Argument- which was also provided to the Applicant- and by referring to *Waaler* in particular in closing. The chapter in Tanfield makes reference to most of the above cases, together with numerous others.

46. Ms Hemans also referred to caselaw in respect of the section 20C application and with regard to the fact that a person must have given consent or authority to the making of that application on their behalf. The authority referred to by her is *Plantation Wharf Management Limited v Fairman* 2019 UKUT 236 (LC) 2020, a decision of HHJ Bridge sitting in the Upper Tribunal.

The Hearing

47. The hearing was conducted in person at Havant Justice Centre across two days, 23rd and 24th February 2022.

48. The Applicant represented herself. She was accompanied by Mr Ian Toombs on day one and by Ms Liz Painter. The Respondent was represented by Ms Hemans of Counsel. Mr Richard Harmer and Mr Jamie Peters were also in attendance for the Respondent.

49. The Tribunal dealt firstly with the Applicant's supplemental documents. Mis Hemans stated that she took issue with new photographs. However, Ms Parks, the Applicant, argued that they formed part of her response. They were admitted into evidence.

50. In terms of the substantive issues, the Tribunal first considered the windows, given a distinct issue which arose in respect of that aspect. Then the Tribunal heard the arguments as to the section 20 consultation process prior to hearing in respect of reasonableness of the service charges. The Tribunal adopted that course given that, in the absence of an application for dispensation being made and granted, if the Tribunal found that the process was not followed and the service charges recoverable by the Respondent were substantially limited accordingly, the remaining issues raised in respect of the works to the roof were effectively irrelevant. The relevant evidence and arguments were also distinct from those in relation to the works themselves. For the reasons explained below, the Tribunal held that the Respondent had complied with the consultation requirements and so the Tribunal then moved onto the Applicant's other challenges to the roof works and to the reasonableness of the works and payability and reasonableness of the service charges.

51. Oral evidence was given on behalf of the Applicant by the Applicant and Mr Toomes. Oral evidence was given on behalf of the Respondent by Mr Peters, Mr Harmer and by Mr Green, FRICS, the Respondent's expert. Ms Parks also served a third witness statement, from Mr Tom McCullough. However, Mr McCullough did not attend the hearing enabling the evidence

to be challenged where appropriate. The Tribunal could properly little weight on that evidence in those circumstances, although the statement was only seven lines long and only went to there having been, he said, a meeting at which the Respondent had said the material in the roof was non- combustible. The materials used are discussed at some length below.

52. The Tribunal had received lengthy expert evidence from Mr Green by way of his original report and two supplemental reports prepared in response to questions asked by the Applicant, the first supplemental report having answered some of the Applicant's questions but not all of those that the Tribunal subsequently considered that Mr Green ought to and in response to application by the Applicant.

53. Both sides made oral closing submissions in respect of the reasonableness of the roof works and the other issues.

54. It should be recorded for the avoidance of doubt that the Tribunal did not seek submissions in respect of any of the cases mentioned by the Tribunal above but not specifically referenced by the parties, whether directly or obliquely, in the case of Ms Hemans in part, as being mentioned the relevant chapter of Tanfield. The Tribunal considers that the authorities are well-established and that nothing controversial arises from any of them. They set out applicable principles from what were inevitably different factual scenarios.

Consideration of the Disputed Issues

55. The Tribunal does not set out the parties' cases at length in advance of discussion of the relevant issues. The cases were set out extensively in writing, supplemented by recorded oral evidence and submissions. The Tribunal refers to the relevant parts of the parties' cases in its consideration of the issues below.

56. However, in very brief and broad terms, the Applicant's case was that there had been work to the roof covering in 2013 and so there was, or ought to be, no need for one in 2019; that there had been historic neglect of the roof; that the new roof including insulation was an improvement rather than a repair and that there were issues with the woodwool structure. She also asserted that the insulation was highly combustible. The Applicant additionally referred to the testing of roofs having been a significant time before the undertaking of the work. The Applicant argued that there had been a breach of section 20 consultation requirements such that the amount recoverable by the Respondent was in any event limited. In respect of the windows, the Applicant's case was that they were part of the Respondent's responsibility.

57. In similarly brief and broad terms, the Respondent's case in respect of the roof was that twenty- two block roofs were replaced in 2018. The Respondent asserted the consultation referred to by the Applicant in 2013 had been carried out pursuant to section 20 of the Act in 2012 in respect of QLTAs rather than the particular works which resulted in the service

charges, although those were also notified at the appropriate time. The Respondent asserted that the works were reasonable and that so too were the service charges. In respect of the windows, the Respondent said that it gave the Applicant the choice to opt into the Respondent's programme of window replacement. However, that was at the Applicant's own cost because the windows formed part of the Applicant's demise under the terms of the Lease. The Respondent asserted that the parties entered into a separate contractual agreement pursuant to which the Respondent carried out work to supply and fit double glazed units at a cost of £4,287.12 (of which it was contended that £3,627.12 remained outstanding).

58. The Tribunal first addresses the windows, given a distinct issue which arose in respect of that aspect, followed by the application to dispense with consultation requirements and then thirdly the Tribunal considers reasonableness.

i) The works to the windows

59. A payment of £4287.12 was demanded by the Respondent from the Applicant in respect of works to windows. The Applicant has sought determination of the reasonableness of that as a service charge.

60. However, a specific agreement was entered into in writing and dated 11th July 2018 between the parties [376] that the window replacement would be carried out by Ian Williams Limited (see further below in relation to that company) at the Applicant's cost. The sum to be invoiced as stated in the agreement was in fact £4817.18 but that has no relevance in itself. Payment terms were also agreed but that has no relevance to the current issue either.

61. The agreement followed correspondence from the Respondent dated 18th May 2018 which explained the Respondent's position that the works to the windows which the Respondent had intended to undertake and to charge for as service charges would not be undertaken, on the basis that it was not the Respondent's responsibility to attend to the windows. It was asserted that responsibility for any replacement lay with the Applicant and hence the works would not proceed unless the Applicant requested it. The Respondent stated that it would be happy for the windows to be included in the works to be undertaken but the Applicant would be charged in full.

62. The Applicant sought to argue that at the time that she signed the agreement in respect of the windows, the Respondent knew that she could not afford the cost for the windows. However, the Tribunal found that she was not compelled to enter into the agreement but rather had chosen to do so. The cost could have been avoided.

63. The contractor undertook work to the windows pursuant to that agreement and so any sum owed by the Applicant to the Respondent in respect of the windows is specifically owed for that reason. It is not explicit that the Respondent was to pay for the window works and then re-charge. The document is open to the interpretation that the contractor would charge

the Applicant direct. However, it was adequately clear that the Respondent had paid the contractor and the Applicant received the benefit of that and any other issues which might arise from the specific terms of the contract fall outside of the jurisdiction of the Tribunal.

64. The Tribunal determines that costs were not service costs pursuant to the Lease and the charge for it is not therefore a service charge as defined in the Act (section 18).

65. In any event, the Tribunal finds that the charge is not a variable one. In contrast, a specific price was agreed for one- off specific work. The fact that the amount stated in the agreement and the amount of the later invoice differ in amount does not make the charge variable.

66. The matter consequently does not fall within the jurisdiction of the Tribunal in these proceedings or at all for both of those reasons. There is no other determination for the Tribunal to make in respect of this aspect of the application for that reason.

67. If it had been relevant, the Tribunal would have agreed with the Respondent that the windows form part of the Property. The answer in any given instance will depend on the terms of the particular Lease. The Tribunal understands why the parties differed on that matter, the Lease being rather less clear than it might ideally have been.

68. In this instance, the Tribunal considers that Schedules 2 and 4 of the Lease identify that the windows (including the oddly and troublingly positioned door- see below) belong to the Applicant. The definition of the Property makes specific reference to various elements including the windows, unless excepted by the Fourth Schedule.

69. The Fourth Schedule is far from being as clear as it could be in the context of the Second Schedule, although it does not in itself contain what the Tribunal regards as unusual wording. There is specific reference to the glass in the windows not forming part of the main structure. Implicitly, there is acceptance of there being another part of the windows, as of course there is, namely the frames. On its own, that suggests that the window frames may form part of the main structure. They would also not be captured by the exemption of internal joinery.

70. However, the windows have already been specifically referenced in the Second Schedule as part of the Property by the time one reaches the Fourth Schedule. The Fourth Schedule does not then contradict that by including the frames in the list of elements included in the main structure. The Tribunal notes that the list is not comprehensive in respect of elements of the structure of the Building but also notes that such of the Building as falls outside of the Property and the other flats is the “main structure”, which may imply that elements which are part of the structure may nevertheless fall within the Property or the other Flats.

71. The Tribunal considers that the decisive point would be the explicit statement of the windows forming part of the Property, arguably irrespective of any later contradiction but certainly in the absence of any. On that basis, both the rather simpler element of the window glass and the less clear element of the window frames form part of the Applicant's Property and are not reserved to the Respondent.

72. The Respondent also made reference to the provision in Schedule 7 that the Applicant should keep the windows "properly cleansed". The Tribunal did not find that greatly assisted in interpretation of the other Schedules as the Respondent suggested, but that mattered little where the terms of the other Schedules were clear.

73. Therefore, the Tribunal considers that Respondent had no obligation to, or entitlement to, undertake work to the windows to the Property save pursuant to the Agreement. As the matter falls outside of the jurisdiction of the Tribunal for the reasons explained in paragraphs 64 and 65 above, it is unnecessary to address this aspect at greater length.

ii) Compliance with consultation requirements

74. The Tribunal determines that the Respondent complied with consultation requirements and that the recoverable service charges against the Applicant were not therefore limited.

75. The Applicant made two contentions, namely that the Respondent failed to provide estimates within, her written case asserted, 21 days and also that the Respondent failed to describe the exact works which were to be carried out rather than proposed works. She therefore asserted that the Respondent had not followed the consultation process.

76. In respect of the first, the Applicant argued orally that the Respondent had failed to provide estimates at the second stage of consultation in 2013 and not until the early part of 2018- she referred to specific dates form 30th January 2018 to 23rd April 2018 for specific matters. In respect of the second, she argued that the wording used by the Respondent was equivocal as to whether there would be works and so was not an outline of works which were going to happen.

77. The Applicant asserted that the Respondent knew from surveys in 2006 and 2008 what work was needed and that estimates should have been provided in 2012/ 2013. She pointed out that even by the Respondent's letter of 7th June 2017 [365] reference was made to what works may included and may not be the works actually undertaken. The Applicant also argued that the roof works and insultation were different and further argued that there was no mention of insulation. She additionally asserted that insufficient information was given about the contractor.

78. The Respondent argued that the points were one of law rather than requiring evidence. Ms Hemans also noted she had understood the Applicant's case to relate to the QLTA but reference had been made to

2018 documents and so to information and estimates about the specific works. The Respondent further argued that the process in respect of the QLTA started in March 2012 and that when the proposal was prepared in 2013, the programmes of work which were later undertaken had not been finalised. Therefore, it was not possible for detailed estimates to be given at that time. Reasonable practicality needed to be considered as at the time of the notice.

79. It was asserted by Ms Hemans that the Respondent's notice of intention complied with the requirement of paragraph 1 of schedule 2 to the Regulations, asserting that the landlord was not required to outline the exact works to be undertaken, but only to set them out in general terms, and contending that the Respondent would have been unable to do so in advance of the consultation process being completed (which necessarily it was not at that point). Ms Hemans invited the Tribunal to consider the schedules to the QLTA. She took the Tribunal through the documents produced by the Respondent [182 to 195]. Reference was also made to a letter dated 12th March 2013 [216] but that the particular matters then related to emergency works for which the Respondent accepted there had been no consultation and so only , she understood, £250 had been charged to the Applicant. In fact, the oral evidence of Mr Peters later in the hearing (and correspondence from the Respondent to the Application dated 10th April 2018 referred to further below said the same) was that whilst the Respondent had written referring to charges being limited to £250, in practice no sum had ever been demanded.

80. The Respondent additionally argued that the Regulations provide no time limit for the landlord to give written notice of the proposals in respect of the works. The Respondent refers to the need for a lessor to respond to observations by the lessees within twenty-one days of receipt of those and twenty-one days to give written notice of the written amount on receiving sufficient information to enable an estimate (see The Statute Law and Regulations section above).

81. Ms Hemans identified that a challenge to works would engage schedule 3. On 28 March 2018 a new notice of intention was sent which included detailed cost information for the actual works once available. The Respondent argued that it complied with requirements, identifying that the Applicant made observations on 3 April 2018, including asserting that she had not previously been informed about cost, and seven days later on 10 April 2018 a response was given to those. Subsequently, on 18 May 2018, the Respondent sent to the Applicant a letter in part regarding the window replacement but also including a new estimated cost for the roof works. Ms Hemans noted that detailed documents were provided, which included reference to insulation and noted that any asserted lack of competency of a contractor may be relevant to the works themselves but not to the consultation.

82. The Tribunal well appreciates the significance of this element of the case to both parties. The difference between £100 and the actual service charges demanded is substantial.

83. It is important to be clear what the Respondent consulted about and therefore the nature of the process and the relevant parts of the Regulations.

84. In 2012/ 2013, the Tribunal finds that the Respondent was looking to enter into QLTAs or various categories of work which may be required across its housing stock. It is apparent from the Respondent's Notification of Proposed Contracts Statement [147] that it entered into a QLTA with Ian Williams Limited with estimated start date of March 2013 for various types of work which included roofing and relayed works. The Tribunal accepts that the roof works the subject of the service charges challenged were undertaken in the context of that QLTA but much later than the QLTA itself. The QLTA process was one to which public consultation requirements applied as being one entered into by the Respondent as a local Council and thereby a public body.

85. The Tribunal finds that the notices of intention served by the Respondent and the information provided did comply with the requirement of paragraph 1 of Schedule 2 to the Regulations. The notice [182] related to an intention to enter into a number of agreements in respect of a range of works, of which re-roofing and related was only one item. In addition, the agreement for re- roofing itself was across properties as a whole and not specific to the Estate, still less the Building. The Respondent explained why intended to enter into the agreements quite clearly, in a paragraph in respect of each intended agreement and headed that it provided the reasons. The information given was sufficient at that time and consistent with the nature of the intended agreements. It was clearly stated in the notice being sent out across the properties owned by the Respondent that the Respondent could not foresee all works and so details were given of the sort of works which might arise, which the Tribunal regards as entirely reasonable. Various relevant matters were explained. Insofar as requirements applied, they were met. Subsequent documentation also complied with the requirements for QLTAs. The details of the contractors were provided once specific contractors were proposed.

86. The Applicant accepted that she made no observations and so there was nothing to trigger the requirement to give responses to those observations within 21 days of receipt. The Tribunal agrees with the Respondent that there is no time limit of twenty- one days for the provision by the Respondent of written notice of its proposals in respect of the works. Necessarily, lack of provision within twenty- one days by the Respondent is not therefore a breach.

87. The Tribunal finds that the Respondent subsequently gave appropriate details in respect of the specific works by way of a Notice of Intention [369], explained to be under the QLTA with Ian Williams, engaging Schedule 3 of the Regulations. The Tribunal also agrees that insofar as the Regulations provide time limits of twenty-one days for certain steps, any relevant steps were taken by the Respondent within those periods. The Tribunal finds that the insulation was not a separate matter.

88. However, the Applicant stated at the start of the second day- after the Tribunal had stated on the first day that it found the Respondent to have met consultation requirements but would give reasons in writing- that the breach challenged was of schedule 2 and was not of schedule 3. Consequently, the Tribunal does not seek to elaborate about a matter not in dispute.

89. The Tribunal is very much aware from the hearing that the Applicant had received advice in respect of this application and believed that she had a strong argument in respect of this aspect of the application, which, as identified above, could have rendered the remainder effectively irrelevant. The Tribunal is equally aware that was a factor in the application being made and is mindful of the Applicant's disappointment about the Tribunal's decision as to the consultation process as indicated by her during the hearing. That cannot of course alter the outcome itself.

90. Ms Hemans had in her Skeleton Argument, and in the alternative to arguing compliance, indicated that the Respondent would seek dispensation from the consultation requirements. Given the information which had been provided to the Applicant and the lack of any identifiable prejudice, the Tribunal considers that there would have been a good chance of such an application being successful, on conditions had any been identifiable as appropriate. However, in light of the above, the Tribunal did not need to determine any application from dispensation from consultation requirements and so gives no determination on that.

91. For completeness, Ms Hemans sought to make additional submissions in closing about this element, although the Tribunal had indicated its decision, albeit not the reasons, and hence the Tribunal refused to hear anything further at that later stage.

iii) Reasonableness of the service charges in respect of the roof works

92. This was the issue which was addressed for significantly the longest in the course of the hearing.

93. The Tribunal was assisted by the written and oral evidence of the witnesses, who all addressed this aspect of the application. Mr Harmer gave evidence at comfortably the greatest length. There was detailed questioning of him, including by the members of the Tribunal. The Tribunal also considered the expert evidence given by Mr Green in writing both in his initial report and in response to the extensive and often searching written questions put to Mr Green by the Applicant.

94. The Tribunal determines that the approach taken by the Respondent in respect of the replacement of the roof was reasonable and that the cost of the works was reasonable. Accordingly, the sum of £12, 346.11 is payable by the Applicant to the Respondent in respect of the roof works.

95. The Applicant did not argue that the works were ones for which no service charges were payable under the terms of the Lease or that she could not be liable to pay them. The question was therefore one of the reasonableness of the charges, and hence of the work undertaken and the costs incurred, potentially together with whether the works undertaken were of a reasonable standard.

96. The Tribunal understands that the roof in situ as at the time of the relevant works had been originally installed in 1968. That was common ground. Repair works had been undertaken from time to time. It was asserted on behalf of the Respondent- and the Applicant could not gainsay it- that over-felting had been carried out to blocks on the Estate in 1994/ 1995 with an expectation of extending the life of the roofs by twenty- five years. Further, investigations into other roofs on the Estate indicated that the roofs comprised a 20mm asphalt layer on top (subject to having been over-felted), laid on unscreeded woodwool layer with a timber structure below. It was apparent that whether at the time asserted by the Respondent or otherwise, at some later stage felt had been laid. For the avoidance of doubt, the Tribunal accepts the Respondent' case as to the timing of that.

Were works required?

97. The Tribunal firstly deals with the question of whether works to replace the roof of the Building were appropriate. The Tribunal has considered the cases advanced by both parties in relation to this aspect and the ones dealt with further below.

98. In terms of the history of the project, it was the Respondent's case, which the Tribunal accepts, that as the end of the period of twenty- five years from the over- felting in 1994/ 1995 approached the Respondent employed Relph Ross Associates to undertake an intrusive survey with the assistance of IKO Group Technical Services, such survey reports being issued 20th August 2014 [231 onwards]. The Respondent's case is that those identified the woodwool layer to be dry to the blocks surveyed, from which the Respondent surmised that the timber underneath would be dry. IKO recommended that the existing roof be overlaid. The Applicant is correct to say that no survey was carried out to the roof of her Building.

99. Works had been undertaken to the roof of the Building in 2013. The Applicant relied on that in her application, contending that there was new roof covering and that the new covering should have lasted for forty years or more. The Tribunal found on the evidence provided that the works to the roof of the Building in 2013 had amounted to ongoing reactive repairs to areas of the roof which required those and no more than that. The Tribunal found that did not equate to a new roof covering which should last forty years or more or indeed anything close to that. Rather there had been a temporary repair.

100. The Respondent's Counsel summarised the relevant conclusions of Mr Green as being that it was reasonable to replace the roof in 2018 as it was nearing the end of its life and that opting to carry out more regular

maintenance instead of replacing the roof would have led to ongoing work and cost and would have left other areas exposed to imminent failure. It would not have prolonged the lifespan of the roof due to progressive ageing of the roofing materials.

101. The Tribunal found it to be of some significance that Mr Green had to rely on such photographs of the Building as were supplied to him. Those were also the only photographs before the Tribunal. Mr Harmer said in evidence they were all of those the Respondent possessed of the roof of the Building and that they were taken just prior to the works to the roof of the Building in 2018. He pointed out scaffolding shown in the photograph and also separately clarified that the photographs were taken prior to the works, that being apparent from the condition of the roof shown. The Tribunal accepted those matters. Mr Green had not seen the Building prior to or during the roof works and indeed had not visited the Estate or the Building at all.

102. A relevant consideration was the extent to which that impacted on the cogency of Mr Green's opinions on this aspect and the works undertaken. The Applicant also asserted in closing that Mr Green had not been given the IKO report originally and assumed it to be recent. In the event, the Tribunal considered that Mr Green had given careful and balanced evidence, including in response to the questions from the Applicant.

103. The Tribunal sought clarification in the hearing of the Applicant's position as to whether work should have been undertaken sooner or left until later, both positions being suggested to one extent or another in the Applicant's case. Ms Parks asserted that the Applicant knew that the roofs required attention in 2006 but did not hold the funds to undertake the works. She also asserted that the roofs should have been renewed around 1994, in effect rejecting the over- felting at that time as appropriate.

104. Insofar as the Applicant's case suggested an earlier date, the Tribunal found that there was insufficient evidence to demonstrate that the roof ought to have been replaced earlier and in particular insufficient evidence that felting of the roof in 1993, which was far from an unusual approach and indeed is one which the Tribunal commonly encounters, had been an inappropriate approach. Rather, the Tribunal considered it to have been an entirely reasonable course, considerably extending the life of the roof at a likely reasonable cost. The fact that it so happened that further works were required approximately twenty- five years later and that the Applicant had by then purchased the Property could not detract from that. The Tribunal found nothing to support any case that the work needed to be undertaken at that stage such that it was not properly later undertaken in 2018.

105. It was a plank of the Applicant's case that there had been insufficient historical maintenance. She firstly asserted that there had been many years of patch repairs. That was not disputed by the Respondent. Rather, the Respondent's position was that reactive maintenance had been undertaken as and when required. That was further to the 1993 felting work.

106. It was contended by the Applicant that her case was supported by the lack of reference to roof maintenance in her service charges in previous years. However, the Tribunal noted that the Respondent had, Mr Peters had said and had not been challenged about it, failed to charge for the 2013 works even to the extent that it could have done in the absence of consultation and hence there was inevitably no reference to that in service charge demands. Further, Ms Parks had not identified any specific issue with the roof to the Building in subsequent years which might have attracted service charges. The replacement of the roof was part of a planned programme in response to the roofs of the blocks on the Estate reaching the end of their lives notwithstanding the extension of that by the felting and not an immediate issue.

107. Ms Parks said in oral evidence that with more regular- annual- inspections and with more regular clearing of downpipes and guttering- she could identify only two or three instances of such work- the roof may have lasted longer. The Applicant established from Mr Harmer that the Respondent had a seven-yearly programme of roof inspections.

108. However, the Applicant appeared to accept that the roof would have been nearing the end of its life and did not adduce any clear evidence that anything which might have been done at another time would have been likely to significantly affect the position reached. She went on to express a number of concerns about emergency works, blistering and a partial collapse of a roof in 2015 but accepted that did not relate to the Building.

109. The Tribunal did not identify any specific inspection regime to be provided for in the Lease and neither party referred to any specific clause. There was nothing to demonstrate that the inspection regime was from a wider perspective obviously unreasonable. Regularity of inspection varies, and the Tribunal considers there to be no single correct answer. More pertinently, the Tribunal found that a more regular series of inspections and any more regular minor maintenance works would not have affected the condition of the roof as a whole to more than a modest extent, if at all, and not so as to render replacement of the roof unreasonable in 2018. The Tribunal accepted Mr Green's evidence in that regard and applied its own expertise.

110. The Tribunal did not find any historic neglect on the part of the Respondent which impacted on the appropriateness of replacement of the roof or the timing of it. The Tribunal makes no findings and no determination as to whether there may have been any wider historic neglect falling outside the matters relevant to this application.

111. The available evidence, including that of Mr Green, identified that the roof to the Building had suffered from defects to the asphalt and the roof felt. As mentioned above, there had been repair works in 2013. The Applicant queried about the works undertaken at that time and about the contractor. However, Mr Harmer's responses essentially amounted to speculation as to what he perceived would have happened- he did not know- and so did not assist. The Applicant did not then or otherwise

identify anything which might have rendered the work in 2018 inappropriate.

112. The Tribunal was concerned that the core samples obtained in respect of roofs to potentially be the subject of works were limited. Whilst the roof works were undertaken in 2018, the core samples were taken in 2014. Of most immediate relevance, none of the core samples were of the roof of the Building, the works to which resulted in the service charges demanded of the Applicant and in dispute in this case. Neither had there been any other specific survey. Inevitably, that resulted in uncertainty as to the condition of the particular roof, much as there was an indication of the condition from the 2013 works and the photographs as well as evidence of the condition of roofs on the Estate more generally. The Applicant understandably made that point and queried the lack of core samples of the roof of the Building and other blocks. She made the related point that it was not known that the woodwool layer was dry.

113. The Applicant specifically referred to the answer of Mr Green to questions asked of him about the IKO report and timing of it as compared to the date of the works. It also merits noting that Mr Green, unsurprisingly, considered that it would have preferable for there to have been reports as to the roofs of each block, therefore including the Building, or at least two blocks of different heights [853].

114. Mr Harmer's explanation was that samples were taken from the worst roofs, as assessed by the repairs surveyor from his knowledge. He added that once scaffolding had been erected, the contractors undertook a visual survey of the given relevant roof and investigated blistering. Mr Harmer explained that they cut back to a dry point and if that went beyond the asphalt layer, more core samples were considered to be needed. There was nothing indicating any effect from water penetration on the woodwool layer to the roof of this Building.

115. The Tribunal has no reason to doubt that being correct and understands that no such issue arose with the roof to the Building, although inevitably it leaves open some uncertainty about the condition of the layers of the original roof of the Building. Mr Harmer subsequently also stated that all of the blocks had been built around the same time and by the same builder. He asserted that the roofs were all in similar condition to the extent of being near the end of their life.

116. The Tribunal noted that the Applicant relied on the lifespan of the roof having elapsed twenty years ago. It is not uncommon in the Tribunal's experience for the lifespan of a flat roof to be expressed as a given number of years. However, the Tribunal is also aware from its experience that flat roofs can continue to be effective much longer than the indicated lifespan with maintenance and good fortune. Indicated lifespans are no more than that. Nevertheless, by 2018 the roof had some way exceeded that lifespan and was old. Whilst Mr Harmer stated that works had been planned for 2019-2020 and brought forward to avoid the ongoing need to deal with reactive repairs, the Tribunal did not consider that detracted from any

appropriateness of the works being undertaken in 2018, rather the explanation was sensible and may have saved cost for further reactive work and consequent service charges.

117. The Tribunal was mindful that it may have been possible to patch up some of the roofs for a further period, but that would most likely have been with ongoing cost and with risks of water penetration or other issue. The Tribunal was equally mindful that the division of the project into a number of parts would have been likely to increase the overall costs. The Tribunal had careful regard to the unsatisfactory lack of any core sample taken of the roof of the Building. However, the Tribunal weighed that against the other evidence of the condition of the roof and the merits of work to that.

118. Balancing the evidence and considerations, the Tribunal could not arrive close to concluding that the replacement of the roof ought not to have been undertaken. The lack of specific report as to the condition of the roof of the Building in particular was comfortably outweighed by the other evidence which supported the replacement of the roof being appropriate. Having weighed the evidence as whole, the Tribunal concluded that it was an entirely reasonable course of those available to it for the Respondent to replace the roof to this Building.

Was a proper process followed?

119. The next issue is whether the Respondent followed a reasonable process and whether the nature of the works undertaken was appropriate and the cost reasonable.

120. The Tribunal determined that the process followed by the Applicant was reasonable overall. The Tribunal does not embark on a forensic analysis of every step and document. In *Forcelux* itself, the Court did not do so. Reasonableness allows for a range of actions and should be taken in the round. Nevertheless, the fact that part of the cost of the work falls on those with long leases is relevant to whether the costs have been or will be reasonably incurred and hence was important that proper consideration was given by the Respondent to those interests of the lessees.

121. The approach taken by the Respondent of inviting tenders for a (qualifying) long- term agreement and entering into such an agreement is not an unusual one. The Tribunal is well aware that local authorities and other organisations not uncommonly enter into QLTAs with contractors for given types of works. They do so having invited interest in entering into such a QLTA and the interested parties having provided the requisite details. A suitable contractor is then selected.

122. The Respondent's case, which the Tribunal accepts, and which reflects the usual reasons for which such organisations follow the same course, was that it entered into QLTAs and similar in order to achieve value for money. An acceptable pricing structure with rates was agreed. The Respondent accordingly approached the contractor with which it had entered into the QLTA. It is right to say, as Mr Harmer did in response to questioning by

the Tribunal, that all work covered by the contract must go through the contract. However, that is a feature of such contracts.

123. In the event, Mr Harmer said that other companies could be approached for contract of this particular nature and it was not a necessity to use the services of Ian Williams Limited under the QLTA for this project. The Respondent had, it was said, agreed rates with Ian Williams Limited but those had been with regard to smaller jobs. However, Mr Harmer said that was not considered suitable to approach other contractors for this project. The important point is that there had been consideration and a decision taken following that. The decision was to proceed through the QLTA with Ian Williams Limited.

124. The Tribunal determined, irrespective of whether a different reasonable decision might have been taken, that proceeding as the Respondent did with the contractor with whom there is a QLTA for work of the relevant nature was a reasonable approach to take. The Tribunal considered the point with some care.

125. Two relevant factors, although not the only two, were firstly that, as discussed further below, the Applicant had not disputed the reasonableness of the cost of the works. Whilst it would be to some extent to mix the process with the result, if there had been evidence that the cost could have been significantly lower utilising another contractor, that may have begun to call into question the decision not to seek other quotes.

126. Secondly, Mr Harmer's evidence, which was not disputed, was that whilst the project works were not specifically within the pricing in the QLTA the quote nevertheless had to relate to those prices. Further, the QLTA rates had been competitively tendered. He stated that the contractor had agreed an architype rate, including for roof removal and new roofs including verges against a set area.

127. Mr Harmer further stated that Ian Williams Limited went out to competitive tender with sub- contractors, testing the market. That was not a surprise to the Tribunal, which would have anticipated the main contractor using sub- contractors for different aspects of the work. Mr Harmer did not know whether more than one sub-contractor had tendered. The specific details of what Ian Williams did and how the contract was entered into by that company with Chalk Valley Roofing Limited ("Chalk") were not apparent but the Tribunal determined that nothing would turn on any matter unclear. If the case had specifically turned on any of that, the Tribunal would have expected to be taken to better evidence.

128. It is a feature of the Estate and therefore of these works, that most of the properties are owned by the Respondent and let on tenancies. Consequently, most of the cost of the roofing works across the relevant buildings must be borne by the Respondent and is not recoverable from anyone. The Respondent had a considerable interest in avoiding unnecessary cost, much as the Applicant and other lessees did. That may

be contrasted with a building in which all of the flats are subject to long leases and where the freeholder, or other relevant party, will not face any cost to itself on recovery of sums from the lessees.

129. The Tribunal had little doubt that the Respondent would have sought to avoid unnecessary cost, given that it would bear the majority of that cost, although there was no direct comparator. As to whether it is "penny-pinching" as Mr Harmer stated is not apparent but neither is the Respondent being so the relevant test for these purposes.

130. However, the process was not, by any assessment, a flawless one.

131. Firstly, the Tribunal considered that the approach of the Respondent in communicating matters to the Applicant and other lessees was somewhat less than perfect. It was not difficult to see why that may have caused concern to a lessee under a long lease who was faced with a substantial service charge bill. The Tribunal found the Respondent to have approached the situation from the principal perspective of the occupiers being tenants and not to have given as much consideration as it ought to the fact that some occupiers were lessees. The lessees were plainly in a different position to the shorter- term tenants.

132. That goes hand in hand with the second issue, namely that it is not apparent that that Respondent considered the Applicant's means sufficiently or even at all. On the evidence presented, which on the Respondent's side did not identifiably address the matter, the Tribunal finds that the Respondent did not. By way of example, in response to the Applicant's observation in her letter of 3rd April 2018 that she was a single mother on minimum wage (although she provided no figures), the Respondent referred to a payment plan- see more below- but not to any potential impact of that on the undertaking of the works, whether in a given manner, at a given time or otherwise.

133. Whilst the fact of works being undertaking has some relevance to secure and other tenants, not least in terms of any better repair of where they live, the cost of it is of more marginal interest. However, plainly the lessees, such as the Applicant, have a wider interest given that they will be required to contribute to the cost. The impact on them of having to meet that cost, and their ability or otherwise to do so, ought sensibly to be expected to have significance to them.

134. The failure to get to identifiably get to grips with the different positions of the lessees as compared to the tenants is not something which can be discounted. Irrespective of the remainder of the process being reasonable, to the extent that there was a failure to sufficiently consider the Applicant's means, that was not reasonable.

135. The flaws created an environment which the Tribunal finds at the very least contributed to this application coming about, a matter returned to below.

136. It is important on the other hand, to be mindful that the process is to be tested against the outcome. The concerns about failure to identifiably consider appropriate the means of the Applicant, and to a lesser extent the failure of communication, would only be directly relevant to the substantive point if they had affected the appropriateness of the decision reached.

137. The Tribunal does not find that. Whilst the Applicant may be disappointed that the above findings of the Tribunal have no greater impact on the outcome, that is the effect of applying *Waaler* and other caselaw, where it is logical that if the net effect was the same, the failure should not render unreasonable the whole demand for the service charges. The Tribunal explains the basis for its determination of that below.

138. The Tribunal also addresses below the question of the Applicant's means further when considering the amount of the service charges.

Was the work reasonable?

139. For the present, the Tribunal turns to the work undertaken and for which costs were incurred which resulted in the service charges demanded of the Applicant.

140. As touched upon above, the specific approach taken to the roof works was not to remove the existing roof but to build up a new roof over it. Mr Green's expert opinion supported that approach, Mr Green expressing the view that it was reasonable to use the existing roof covering as a vapour barrier and overlay the new insulation and waterproof covering on top and indeed IKO had proposed that approach be taken in the 2014 report.

141. The alternative approach identified would have been to remove the existing roof in its entirety and fit an entirely new roof to the Building.

142. The Tribunal accepted it to be reasonable not to strip off the woodwool or indeed the existing roof more generally and considered that would have been likely to be a considerably more expensive option. All else aside, that could have given rise to argument that more cost- effective alternative approaches- such as the one actually taken- were appropriate whereas the removal of the woodwool and other existing roof elements were not.

143. Aside from the cost of removal itself, it was the Respondent's case, which the Tribunal accepted the logic of, that removal of the existing roof would run a considerable risk of water penetration and other damage. The Tribunal anticpated, applying its experience, that relatively expensive tent scaffolding would have been needed to attempt to alleviate the risk of such water penetration. Mr Harmer described it in evidence as a "Top hat enclosure", which he suggested would have increased scaffolding costs from £1500 to £5000 per lessee. Whilst direct evidence of cost is lacking, the suggestion of significant additional cost was consistent with the Tribunal's expectation.

144. Leaving the existing roof in situ and building up over it was considered by the Tribunal to be a reasonable approach to take and one well within the range of reasonable approaches open to the Respondent.

145. The Applicant had expressed concern as to the condition of the existing roof and the suitability of that to remain. However, the Tribunal agreed with Mr Green that as there had been no identified complaints of leaks inside the Building to suggest water penetration and any likely damage to the roof, the woodwool slabs were likely to be in a sound condition and there was no evidence to suggest any cause for concern with the ability of the existing roof to remain in situ and support the new roof laid over it. The Applicant failed to prove any issue relevant to the roof work undertaken. As Mr Green expressed in his reports, the nature of the roofing solutions designed out a need to remove the woodwool layer, or indeed the asphalt.

146. In terms of the specific roof system adopted and whether that could be said not to be reasonable, it was a particular feature of the case that the Respondent had originally intended to fit a Goldseal roof system, which the IKO report recommend and more specifically described as a Goldseal Guardian system, including upgrading the insulation to the roofs. The insulation product used would have been Kingspan. However, in the event, what was fitted was a Topseal roof with Xtratherm insulation. The Applicant queried with Mr Harmer and more generally as to why the Respondent had not proceeded with IKO and contracted for a Goldseal roof.

147. The answer given by Mr Harmer was that the Respondent had the QLTA and that the roofing work needed to be delivered through that. It was explained that Chalk were not accredited to fit a Goldseal roof. Consequently, he said that the contractor was asked to look for a similarly performing product, that is to say similar in terms of thermal properties and fire resistance. The product proposed was the Topseal roof system, where the sub-contractor was approved to fit that and so a guarantee would be provided. The Applicant queried with Mr Harmer his answer, observing that Chalk were not accredited with Topseal either. He replied that to be the reason why a sub-contractor- ARS- carried out works to roofs on the Estate until Chalk became accredited.

148. The Tribunal finds the reasoning to have been explained less than entirely clearly. However, of more relevance is that ARS undertook the roof work to the Building, Mr Harmer said, achieving a Topseal guarantee and so there would be no issue unless the Topseal product had not been a reasonable one. The Tribunal considers it rather more important that a suitable roofing solution was provided than the exact manufacturer.

149. Mr Greens' evidence which the Tribunal accepted, was that whilst Goldseal and Topseal offered different solutions- the weatherproofing membranes used were technically different- the outcome of fitting either, in terms of lifespan, performance and other relevant criteria was the same or thereabouts, so that in effect they were alternatives and not solutions

where one was markedly preferable to the other. Mr Harmer essentially repeated that when questioned. He was unconcerned that a different solution to that proposed by IKO had been adopted because they were, he said, like for like. He also said that other solutions had been considered but did not offer the same longevity and performance.

150. IKO in an email 25th November 2021 also stated that the Goldseal system is like for like with the Topseal one. The Applicant quoted that referring to the need for a sound substrate. However, the absence of one had not been demonstrated. Of more immediate relevance is the further confirmation that Topseal was an equivalent system and there was no hint that its use troubled IKO.

151. There were a number of other points made by the Applicant in cross-examination of Mr Harmer as to accreditations, quality statements and technical requirements. However, the Tribunal finds that the key matters is that Mr Harmer's unchallenged evidence was that Topseal inspected during and after the works and raised no issue with the work not having been done properly. Whilst it was unclear whether quality statements had been produced- the Applicant pressed the point but Mr Harmer did not know- the Tribunal accepted that Topseal had been satisfied so as to issue a guarantee for the roof fitted. The Tribunal finds it appropriate to infer from the fact that Topseal provided a 20-year guarantee that the roof has been installed to a reasonable standard. There is nothing which goes to suggest that it was unreasonable to use the particular companies to install the roofing system adopted which may go to indicate that the system was not an appropriate one to be installed.

152. The Tribunal was satisfied on the evidence above that the decision to choose a Topseal roof was a reasonable one.

153. The Applicant had, as referred to in respect of the consultation, queried about insulation. The Tribunal sought to clarify that aspect with Mr Harmer. He said that the Respondent had informed the contractor that a given amount of insulation was required, doing so in the specification provided. The Respondent was not specific as to the type of insulation. The Tribunal identified nothing unreasonable in seeking appropriate insulation as part of the roofing work.

154. The Tribunal considered whether the argument that the insulation specification involved an improvement as opposed to repair. The Tribunal noted that the Applicant had argued in her application that it was, contending that she was not therefore liable for it. She relied on Building Regulations.

155. However, the Tribunal determined that the insulation was part and parcel of supplying an appropriate roof to repair by way of replacement the existing roof which was in poor condition. It was intended that the roof would have better heat retention properties than the existing roof and understandably so. The fact that the new roof covering would do so was not such that there was an improvement. The Respondent was prevented

from being able to install a new roof covering which did no better than meet standards applied in 1968.

156. The insulation as part of the new roof system to be installed consequently formed part of the repair which could only be effectively attended to by providing a replacement roof, not constituting what should be regarded as an improvement.

157. The Applicant raised a particular issues as to the insultation layer and the level to which that was combustible. It was her case that the insulation used was highly combustible. The Applicant suggested the use of a highly combustible product to be inappropriate. In contrast, she said that the Kingspan insulation which would have been provided with a Goldseal roof would have been considerably less so and hence that would have been a better option.

158. She identified that the particular insulation produce was Xtratherm Thin- R Flat Roof Insulation Board, which is described in Agrement Certificate 11/4878 [2S] as:

> "a rigid thermoset polyisocyanurate mineral- coated glassfibre- faced insulation board for use as a thermal insulation layer and to create or improve falls on limited access concreate, timber, or metal flat roof decks..... It is used in conjunction with a vapour control layer and mechanically- fixed or adhesively-bonded waterproofing membrane."

159. The product is certified by the British Board of Agreement (BBA), under the above certificate, and is said that roofs incorporating the product can satisfy Building Regulations, being the 2010 version at the time of the works relevant to this case. The reaction to fire classification in accordance with British Standards BS EN 13501- 1: 2007 is Class E. The certificate explains that:

> "the fire rating of any roof containing the product will depend upon the type of deck and the nature of the roof waterproof covering"

However, a roofing system comprising the product and appropriate others can be classified as BROOF [10S]. That is to say the roof has the highest of the five ratings under the European classification.

160. Fire safety is quite rightly of considerable concern, not least since the horrific event of the Grenfell Tower fire and the understanding of the causes of that. Some care is required in recognising that occurred in June 2017, whereas these roofing works were completed by October 2018 and we are now in 2022. There is a different level of information and understanding than there was during 2018. Mr Harmer was correct to identify that the requirements of Building Regulations have changed since the work was undertaken. The Building, of three storeys, is also quite a different one to a high tower block and the significance of that must be borne in mind. Nevertheless, it is important to be satisfied that there is

nothing in respect of fire safety which renders the approach taken by the Respondent not to be reasonable.

161. Mr Harmer accepted in cross- examination that installation of the insulation alone would not have been wise, but he asserted that the whole roof overlay met BROOF classification. The Tribunal is aware that is not an indication of the reaction to fire of each individual components but rather to the roof components collectively.

162. Ms Hemans sought to clarify Mr Harmer's evidence about use of the insulation product. Mr Harmer clarified that what he meant was that the insulation would not be appropriate for, for example, the underside of a roof or otherwise outside of a roofing system. However, he asserted that was not relevant because the product was fully bonded and was suitable in this system. He added that the Topseal solution including such insulation had been subjected to tests before receiving the BROOF classification. Ms Hemans contended that adopting the Topseal system ensured compliance with requirements.

163. The Tribunal was troubled that the insulation had a fire rating of grade E. The Tribunal is aware from it experience, aside from the evidence in this case, that Grade E is the rating given to products which have a high contribution to fire. They are better rated then products classified as F but less good than those classified as D and so on and hence some way from the best rating of A1. Taken at face value that rather suggested the insulation used to be an unsuitable product.

164. The Tribunal also noted that Mr Green had initially understood the fire rating of the Xtratherm insulation product to be a different one, which had a better rating, of Grade C. His opinion then was that the materials were not considered highly combustible and the fire risk to the roof had not increased. However, Mr Green altered his comments in response to questions from the Applicant [48S and 54S] in his further Report of 21st February 2022. He noted the correct identification of the particular product. He accepted that is plainly is a more combustible grade than the other product which Mr Green had understood to be used.

165. Mr Green said however that his opinion overall about the roofing system used was unchanged. He referred to an email send by a Fire Safety Officer at Dorset and Wiltshire Fire and Rescue Services dated 22nd October 2020 which stated that the roof insulation was compliant with Building Regulations (in force at the time of installation). He also referred to the BBA opinion of the system meeting BROOF rating.

166. The Tribunal also recognised the considerable relevance, both in relation to the BROOF rating, and more significantly appropriateness of use in this particular case, of the fact that the insulation layer was fully bonded within the new roofing deck and above the old roofing deck. The Tribunal noted that fire would take some time to reach the insulation layer, which was only one part of the whole. Therefore, it was not appropriate to consider the insulation product in isolation.

167. The Tribunal accepted on careful consideration of the evidence to satisfy itself as to the level of risk, that the relevance of the combustible nature of the insulation was significantly reduced by the wider roofing system and the impact on fire safety of the characteristics of the specific product were very much limited by the manner of its use in the roof system installed. The Tribunal accepted that, in light of those matters, the roof as a whole properly met BROOF standard and the insulation did not prevent it being a reasonable alternative to the Goldseal system.

168. One other element raised by the Applicant related to any wall dividing the particular set of flats of which the Property is one from the next building along. The Applicant had asserted there to be no wall, which certainly might have been relevant to the fire properties of the roof in the context of fire safety more generally. The Applicant subsequently contended that the wall went only some of the way up.

169. However, Mr Harmer said that whilst there had been some uncertainty at the time of a fire risk assessment in 2019, when a flat was subsequently opened up, it was established that there were fire break walls up to the roof deck. He accepted that a photograph provided to the expert was said by Mr Green to only go part way. Mr Harmer also observed that the plastered ceiling would provide thirty minutes of compartmentalisation and the woodwool, although that was part of the roof system above, another thirty minutes because of the cement binding.

170. The evidence was limited, not least in respect of the Building. It was neither demonstrated that there was a fire break wall reaching the roof deck or that there was not. The Tribunal has little doubt that if the insulation had not been bonded and without the old roof used as vapour control layer, including the woodwool layer, below, the lack of clarity as to fire break walls would have added to the relevance of the insulation product. However, taking the nature of the Building and the nature of the roof, the Tribunal found the potential lack of compartmentalisation did not render the roofing system unreasonable, which was the relevant question for the Tribunal, whereas any other matters which may arise in respect of any lack of a fire break wall were not in this case.

171. The Applicant also made fairly brief mention of the UPVC facias in closing, although she had not asked any questions of Mr Harmer or Mr Peters about those. There was insufficient to affect the outcome in respect of the roof system installed.

172. The net effect was that the Tribunal found there to be nothing in evidence before it sufficient to affect the wider assessment of the suitability of the roof system installed. Although the Applicant asked a number of other questions of Mr Harmer in respect of fire risk assessment and compartmentalisation than those referred to above, there was nothing which arose which affected the Tribunals' determination of this matter.

173. The Tribunal accepted that the evidence, including that of Mr Green, of that the fact that the roof met BROOF standard produced the result that the overall fire rating was well within an acceptable range and irrespective of whether the roof would comply with newer Building Regulations, it complied with those in force at the time of installation. The roofing system would reasonably have been regarded as suitable for a three- storey residential building of the nature of the Building.

174. Therefore, the roof was in that regard an appropriate one and a reasonable roof system for the Respondent to adopt.

175. The Applicant additionally expressed concern as to the potential for condensation arising out of the roofing solution adopted. She suggested to Mr Harmer that there ought to have been a survey. However, Mr Harmer responded- and the Tribunal agrees with him- that the use of the existing roof as the vapour control later and the laying of a warm deck roof above ought to have significantly reduced the risk of condensation. Although Ms Parks pressed the point about condensation and potential relevance of it, the Tribunal was content that there was no identifiable issue with condensation which rendered the nature of the roof fitted to the Building unreasonable. As discussed above, there was no evidence that previous condensation had affected the roof structure- whilst there were no core samples of the roof to the Building and there was no other specific survey, the Tribunal accepted that there was no evidence indicating a problem.

176. The Applicant relied on a number of matters which would have been relevant in the event of a change but which were not relevant otherwise. She provided an extract from the Building Regulations 2010. Those Regulations in the context of fire break walls have been referred to above. Whilst the Tribunal understands Building Regulations would now require better fire break than provided by the existing walls, that is not relevant in this context where the walls to the Building have not been altered and so the current Building Regulations do not apply

177. The Applicant made a more general point about assessments of the Property and other flats under the Housing Health and Safety Rating System ("HHSRS"), stating in questioning of Mr Harmer that every flat should have one. It was not apparent to the Tribunal that there was any point which affected the appropriate outcome of these proceedings. Nevertheless, it was difficult to understand why HHSRS was not used by the Respondent, which is what Mr Harmer's evidence was.

178. The Applicant made a further point that there may be asbestos, she particularly suggested in the roof felt and that ought to have been tested but Mr Harmer explained that there had been an asbestos survey, which identified some asbestos in external facias. It was established in the course of Mr Harmer's evidence that the main contractor, Ian Williams, dealt with external decoration and facias- which indeed fell within the QLTA. He said that as and where asbestos was found in the make- up of a roof, it would be sealed in. However, asbestos had not been found in the roof by the

accredited company. The Tribunal considered there to be nothing which affected the overall reasonableness or otherwise of the works.

179. The Applicant briefly raised other matters which she said had not been done or done correctly in her Response. However, the Tribunal made no point was made out of significance, not least where Topseal had been satisfied.

180. Finally, the Applicant queried a lack of a completion certificate from Building Control but Mr Harmer explained that they had specifically been approached and that the work was classed for those purposes as repair work such that there was no need to go through Building Control. The Tribunal had no reason to disbelieve Mr Harmer but, in any event, did not find anything which affected the reasonableness of the works and charges.

181. Therefore, having considered the various points made and the evidence received, the Tribunal was satisfied that not only was the replacement of the roof reasonable generally, but the method adopted by the Respondent was a reasonable one. None of the points made by the Applicant, whether individually or collectively, demonstrated otherwise.

182. There was no evidence before the Tribunal that there are failings in the standard of work to the Building such that such standard was not a reasonable one. The Applicant made certain allegations or pointed to very specific matters, an example being an assertion that some insulation boards were uncovered in the rain but where it could not be shown they had been applied in a wet condition to the Building, if installed in the Building at all. There was no demonstrated failing in respect of the roof of the Building to overcome the clear matter that Topseal had provide a guarantee.

183. Insofar as there was any evidence to work from, that was the fact that the roof had been guaranteed and so was in a sufficient condition for that, and that no identifiable problems has arisen with the roof in the, admittedly not especially lengthy, period since the works. The Tribunal is mindful that it ventured into this issue when addressing the nature of the roofing solution adopted. The fact of the guarantee means that if issues arise, the guarantee will apply. It will be unlikely to provide any answer for Topseal to say that it should not have given the guarantee. The Applicant was troubled that the guarantee might not operate but provided no evidence that any issue was likely.

184. Mr Harmer accepted in response to the Applicant's questions that if there was "neglect in maintenance" causing the guarantee not to provide cover then the Respondent would have to meet the cost. However, that is not a matter relevant to the works themselves.

185. The Applicant made reference, including in oral evidence, to roof leaks since the programme of roof works. However, she accepted that those referred to had not been to the Building and accepted that none had occurred to the Building. Insofar as she suggested inadequate standard of

work, that was not demonstrated in respect of the Building, the only block which the Tribunal was able to consider.

186. The Tribunal has not referred above to the evidence of Mr Toomes and so ought for the avoidance of doubt. Mr Toomes explained that he had been a Councillor since 1995 and was able to recall discussions having taken place about replacing the flats roofs with pitched roofs. However, neither that nor his other oral evidence in response to limited cross-examination, although of interest, assisted the Tribunal with any specific matter requiring determination in the event.

187. The Tribunal determined that it is the lessor's choice as to how to have work undertaken. Any given approach to the replacement of the roof would only be one of several options available. The Tribunal determined having considered all of the above matters re was nothing unreasonable about the option taken. The Tribunal was content that the type of system fitted was an appropriate and reasonable one for the Respondent to have adopted.

The consequent service charges

188. As Ms Hemans correctly submitted, the Applicant did not assert that the cost of the works undertaken was not reasonable or that the work could have been carried out at a cheaper price. She did not challenge time spent, rates of charges or similar. As such a point was not taken by Ms Parks, it is unnecessary to address the question of whether the cost of the work was reasonable at great length. Indeed, the Applicant specifically accepted in closing and in response to enquiry by the Tribunal, that she did not consider that the cost was too high if the work was of appropriate quality. She said that she did not think the quality was appropriate. However, the Tribunal is against her on that, as explained above.

189. The Tribunal was also mindful that there is not only one cost of any given work which is reasonable and the lessee is not entitled to insist on the cheapest solution. The Tribunal has nevertheless considered the available evidence as to the work and the cost and did not take it as read that the cost was one which must be accepted as reasonable.

190. The Tribunal has referred above to the approach taken by the Respondent to the price for the works and concluded that to be one of a range of reasonable approaches, having accepted that it was reasonable to undertake works and that the works were reasonable. There was no evidence that the resultant cost was uncompetitive or otherwise unreasonable. The Tribunal has noted the lack of alternative tenders and the lack of ability to undertake a comparison of the cost of the works as agreed by the Respondent and the cost from another contractor. The fact that there were rates in the QLTA, albeit not directly applicable in this instance, would have been evidence of a reasonable rate but not a complete answer. It was noted that more extensive work involving removal of the existing roof would have most likely resulted in considerably greater cost and the Respondent had demonstrated a desire to avoid greater cost than necessary in rejecting that approach.

191. The Applicant had provided no evidence of other potential costs whether in the event of undertaking any other approach or adopting the approach to the roofing system which was taken. It would have been for the Applicant to demonstrate that the cost may be unreasonable and to provide some evidence if she had so alleged. A lessee cannot simply require the Respondent to justify the cost incurred. The Tribunal had no evidence at all that an appropriate outcome was achievable for such a lower sum that the cost incurred by the Respondent was one which was unreasonable.

192. The Tribunal determines the cost incurred to have been a reasonable one and so turns to payment of it, including by a contribution to it through service charges.

193. Mr Peters explained in evidence that there had been no Decent Homes funding for the roofing works. That was not challenged. There was no evidence that the work could have been undertaken paid for by other funding than by the Respondent where the flats were tenanted and through service charges where long leases were held.

194. Pursuant to the terms of the Lease, the Applicant was liable for a share of those in accordance with the service charges demanded from her. Having made the findings above, it cannot be said that a charge was in itself unreasonable.

195. As touched upon above, the Respondent's case was not strong on the question of taking account of the means of the Applicant or other lessees. Whilst it is right to say that the Respondent had avoided more expensive options and had not increased the costs to lessees such as the Applicant, that was not the relevant point. The works being undertaken in a manner which may be cost- effective does not, much as Ms Hemans sought to assert it, amount to taking account of the lessees means. Indeed, Mr Harmer's evidence demonstrated that it related to a desire not to incur more cost than reasonably necessary on the part of the Respondent.

196. The Tribunal considered the level of service charges produced and in the context of the considerable spike in those charges during the 2019 service charge year as compared to previous year's charges. As identified in *Waaler*, service charges may not be reasonable where there is a marked difference between those and previous service charges and where that may be relevant to the timing and nature of repairs.

197. Whilst it was abundantly clear that the service charges demanded in 2019 were significantly higher than they had been in previous years, there was a clear and obvious reason for that. The charges being significantly higher was inevitable where a major item of works was undertaken The works were not ones of improvement and no identifiable less expensive course was appropriate. The charges reflected a particular cost not required to be incurred in previous years and not likely to be incurred for a significant number of future years. The Tribunal determined that the contrast between the level of service charges in previous years, to the

extent of the evidence provided of those, and the level of service charges in 2019 is not such that the service charges in 2019 were not reasonable.

198. The Tribunal considered the effect of the case of *Garside v Maunder Taylor*. The Tribunal consider that there was no evidence that the works could have been staged, reducing the immediate cost to the Applicant. The Applicant did not advance that argument and it was certainly not otherwise obvious that there was any way of staging the roof works, indeed that appeared to the Tribunal very unlikely. The service charges related to works to the roof and not to various different items of work undertaken at the same time. There was no discernible way in which those works could practically have been split.

199. The Tribunal has carefully borne in mind the resources of the Applicant and well appreciates that service charges of £12,346.11 are a considerable sum to find (still more so once the costs of the windows are added), not least for someone on a relatively low income. Nevertheless, in the absence of any other manner in which the work could have been undertaken than in one go, there was nothing which the Respondent could have considered which might have lessened the impact.

200. Ms Hemans argued in closing in response to the Tribunal's query as to consideration of the Applicant's means, hardship to the Applicant is not in itself a reason why service charges could be found by the Tribunal to be unreasonable, which the Tribunal accepts as a correct statement of the legal position.

201. The Applicant specifically challenged Mr Peters as to whether he regarded one year of notice of an £18,000 (as she stated it) bill was adequate. He said that he did not think that was a consideration for him when sending out the correspondence, which the Tribunal accepted to the extent of that limited point. The Applicant also suggested that a responsible, competent landlord ought to take into consideration how a lessee could pay for the service charges for the work, to which Mr Peters referred to the payment plan offered to the Applicant.

202. The Respondent had offered the Applicant the option of paying the 2019 service charges for the roof works over a period of time and interest free. Although that would have enabled regular payments each of a portion of the total demand, rather than being required to pay the whole sum by a given date, it was far from a complete solution for the Respondent. Ms Hemans referred to that in cross-examination of the Applicant, although Ms Parks said that the required payments plus those required for the windows would amount to £500 per month, which she could not pay. Ms Hemans also put that the Respondent had also offered to accept a charge on the Property, but the Applicant said that was not possible because of existing charges, including a homebuyer's loan where the company would not agree.

203. However, irrespective of any other matters potentially relevant to the payment plan or charge, that does not affect the actual level of the service charges.

204. The Applicant also queried with Mr Peters the lack of a sinking fund but Mr Peters correctly responded that there is no provision in the Lease for such a fund. As to whether that would have assisted the Applicant in any event is unclear, but not relevant. It merits mention, and this is perhaps as good a place as any, that much of the questioning by the Applicant of Mr Peters related to matters which Mr Peters effectively said were not within his remit.

205. The Tribunal noted that it in other circumstances may well have been possible for a lessor to build up funds in a reserve account, to which the lessees contributed year on year in significantly lower sums per year than the 2019 demands. However, the Lease gives no entitlement to the Respondent to hold such a reserve account and so no entitlement to demand sums to be placed in such a reserve. There was no ability to build up a reserve fund over a period of time by charging higher service charges for several years until the funds built up. Consequently, the Tribunal determined that the Respondent had little option but to make the demands as, or much as, it did.

206. The net effect is that it is not apparent that the service charges could have been any different to that which they were. It is not apparent that any consideration of the Applicant's means could have produced any different outcome. The Tribunal finds that the failings in process had no effect on the works undertaken or the cost of them and consequently on the service charges demanded, such that the amount of the service charges in 2019 is not rendered unreasonable on that basis.

207. It should be mentioned that the Applicant said that she may not have purchased the Property if she had been aware at the time of the likelihood of works such as those in issue in this application. She said that she thought the 2013 work was the roof work required. However, the Tribunal determines that, whilst plainly the Applicant would not have been charged these service charges for this Property if the roofing works in question had not been undertaken, nevertheless the point does not assist her. It is no part of the Tribunal's role to speculate on what might or might not have happened in given different circumstances some time back.

208. The Tribunal therefore determines, notwithstanding the above failure, that the service charges were reasonable.

Decision and other comments

209. The effect of the above findings and determinations is that on the one hand, the Tribunal finds that there was no failure to comply with consultation requirement and so the Respondent's ability to charge service charges is not limited for that reason.

210. On the other, the course of action followed, notwithstanding some imperfections, produced what the Tribunal found to be one of a number of potential reasonable outcomes, resulting in service charges which were reasonably incurred. The service charges of £12,346.11 are payable and reasonable.

211. The Tribunal is mindful that matters can be problematic where a Respondent is, for example, a council with duties to both tenants and lessees. The Tribunal also emphasises that it is not without sympathy for the Applicant, who appears to have a limited income and for whom her share of the costs of the roof works as payable through the service charges demanded of her is no small sum. However, that does not make the service charges unreasonable in this instance and avoid the requirement for her to pay them.

212. The Tribunal observes, albeit not part of this Decision itself, that if there should prove to be any issue with the replacement roof to the Building in the relatively short term, not least because overlaying it over the existing roof was for some reason not appropriate after all, it may be quite difficult for the Respondent to then justify further service charges to contribute to any cost that it may incur in any such issues being resolved. The Tribunal does not seek to go beyond that general comment lest there may be any such service charges in the coming years in respect of which a determination is required.

213. The Tribunal re-iterates that the cost of the windows falls outside of its jurisdiction.

Applications in respect of costs and refund of fees

214. As referred to above, an application was made by the Applicant that any costs incurred in connection with proceedings before the Tribunal should not be included in the amount of any service charge payable by the tenant pursuant to section 20C of the Landlord and Tenant Act 1985. The application was made by the Applicant on behalf of herself and "Nicola" of 120 Carmelite Way. It was established in the hearing that Nicola was Nicola Tosh.

215. The Tribunal is given a wide discretion to do that which it considers just and equitable in all the relevant circumstances. Whilst there is caselaw in respect of general principles, in practice much will depend on the specific circumstances of the particular case.

216. The Respondent argued that if the application were granted, the Applicant would avoid paying any contribution to the Respondent's costs of these proceedings whereas the other lessees of the Estate would bear shares of them, which would not be fair. Reference was also to the amount of documentation generated in the course of the proceedings and other specific matters. Ms Hemans noted in closing that the Respondent had been successful in respect of the windows and consultation, where the

Tribunal had indicated its decision. She suggested that the conduct of the Respondent had been reasonable including in respect of the payment plan.

217. The Applicant referred in closing to her means and the impracticality of payment even over 10 years. She did not seek to add anything specific about the approach to the section 20C application.

218. Neither party addressed the question of whether the Lease does in fact permit the Respondent to recover any litigation costs as service charges in any event. The Respondent did not point to any clause on which it relied in respect of any assertion that it was permitted to recover such costs. However, in opposing the Applicant's application rather that suggesting it to be irrelevant, the Tribunal perceives that the Respondent must consider that it may be able to recover such costs.

219. The Tribunal has not made any determination as to whether the Respondent is in fact able to recover any costs in the first place. The Tribunal assumes for these purposes that the Respondent may be able to do so but that assumption should not be taken any higher.

220. The Tribunal does not consider it to be just and equitable to grant the applications in full in light of the Applicant's lack of success in this matter and in light of the wider circumstances. The first element alone is not determinative, although it is never irrelevant. The Tribunal will always bear in mind the potential practical and financial consequences of the approach taken, but that is only one of a number of relevant considerations.

221. The Respondent has incurred what is likely to have been considerable expense in dealing with this application. The appropriateness of seeking external legal advice and incurring the expense of such is a matter which may be very relevant to the amount of any service charges demanded. It is not a proper basis for preventing the Respondent charging costs as service charges at all under section 20C.

222. However, the Tribunal considers that taking a just and equitable approach merits recognition of the communications failings of the Respondent and their contribution to an environment in which the Applicant could consider that the Respondent had not fully addressed all relevant matters and had not had proper regard to the interests of lessees such as the Applicant who were liable for a share of the costs incurred in the works being undertaken. Further, the Tribunal has found the Respondent's wider approach to be a reasonable one but that was not a ringing endorsement of all elements of it. The Tribunal further notes that the answer in respect of the windows, whilst in favour of the Respondent, was less clear cut than it could have been had the Lease (which whilst entered into by both the Respondent and the Applicant's predecessor in title was the Tribunal infers drafted at least predominantly on behalf of the Respondent) rather clearer.

223. In respect of the application sought to be made on behalf of Ms Tosh, there was nothing stating that she wished an application to be made on her behalf and she had not authorised the Applicant to make such an application. The *Plantation Wharf* decision would have applied. Therefore, had it been relevant, the Tribunal considers that it would have found itself unable to grant an application on behalf of Nicola in any event.

224. Taking all of the above matters together, the Tribunal considers that it is appropriate for there to be an appreciable reduction in the costs recoverable in the first instance as service charges, irrespective of any later challenge to the amount. The Tribunal limits the costs recoverable as service charges to two-thirds.

225. Finally, the Tribunal records that both sides produced statements of costs. However, save in limited circumstances, the Tribunal does not award costs to one party from another and no application has been made engaging the limited costs jurisdiction of the Tribunal to prompt consideration of any costs incurred.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.ogv.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

Section 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.

Section 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 provisions 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 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.

Section 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 First-Tier 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 –.....
(ba) in the case of proceedings before the First-Tier Tribunal, to the Tribunal.
(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.

Section 20 ZA Consultation requirements: supplementary

(1)Where an application is made to [the appropriate tribunal] for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works or qualifying long term agreement, the

tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements.
(2)In section 20 and this section—
"qualifying works" means works on a building or any other premises, and
"qualifying long term agreement" means (subject to subsection (3)) an agreement entered into, by or on behalf of the landlord or a superior landlord, for a term of more than twelve months.
(3)The Secretary of State may by regulations provide that an agreement is not a qualifying long term agreement—
(a)if it is an agreement of a description prescribed by the regulations, or
(b)in any circumstances so prescribed.
(4)In section 20 and this section "the consultation requirements" means requirements prescribed by regulations made by the Secretary of State.
(5)Regulations under subsection (4) may in particular include provision requiring the landlord—
(a)to provide details of proposed works or agreements to tenants or the recognised tenants' association representing them,
(b)to obtain estimates for proposed works or agreements,
(c)to invite tenants or the recognised tenants' association to propose the names of persons from whom the landlord should try to obtain other estimates,
(d)to have regard to observations made by tenants or the recognised tenants' association in relation to proposed works or agreements and estimates, and
(e)to give reasons in prescribed circumstances for carrying out works or entering into agreements.
(6)Regulations under section 20 or this section—
(a)may make provision generally or only in relation to specific cases, and
(b)may make different provision for different purposes.
(7)Regulations under section 20 or this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

Section 27A

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

(4) No application under subsection (1) or (3) may be made in respect of a matter which -
(a) has been agreed or admitted by the tenant,
(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a party,
(c) has been the subject of determination by a court, or
(d) has been the subject of determination by an arbitral tribunal pursuant to a post-dispute arbitration agreement.
(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

The Service Charges (Consultation Requirements) (England) Regulations 2003

Application of section 20 to qualifying long term agreements
4.(1) Section 20 shall apply to a qualifying long term agreement if relevant costs(1) incurred under the agreement in any accounting period exceed an amount which results in the relevant contribution of any tenant, in respect of that period, being more than £100.
(2) In paragraph (1), "accounting period" means the period—
(a)beginning with the relevant date, and
(b)ending with the date that falls twelve months after the relevant date.
(3) In the case of the first accounting period, the relevant date is—
(a)if the relevant accounts are made up for periods of twelve months, the date on which the period that includes the date on which these Regulations come into force ends, or
(b)if the accounts are not so made up, the date on which these Regulations come into force.
(4) In the case of subsequent accounting periods, the relevant date is the date immediately following the end of the previous accounting period.

The consultation requirements: qualifying long term agreements
5.(1) Subject to paragraphs (2) and (3), in relation to qualifying long term agreements to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA are the requirements specified in Schedule 1.
(2) Where public notice is required to be given of the relevant matters to which a qualifying long term agreement relates, the consultation requirements for the purposes of sections 20 and 20ZA, as regards the agreement, are the requirements specified in Schedule 2.
(3) In relation to a RTB tenant and a particular qualifying long term agreement, nothing in paragraph (1) or (2) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

Application of section 20 to qualifying works
6. For the purposes of subsection (3) of section 20 the appropriate amount is an amount which results in the relevant contribution of any tenant being more than £250.

The consultation requirements: qualifying works

7.—(1) Subject to paragraph (5), where qualifying works are the subject (whether alone or with other matters) of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works, are the requirements specified in Schedule 3
(2) Subject to paragraph (5), in a case to which paragraph (3) applies the consultation requirements for the purposes of sections 20 and 20ZA, as regards qualifying works referred to in that paragraph, are those specified in Schedule 3.
(3) This paragraph applies where—
(a)under an agreement entered into, by or on behalf of the landlord or a superior landlord, before the coming into force of these Regulations, qualifying works are carried out at any time on or after the date that falls two months after the date on which these Regulations come into force; or
(b)under an agreement for a term of more than twelve months entered into, by or on behalf of the landlord or a superior landlord, qualifying works for which public notice has been given before the date on which these Regulations come into force are carried out at any time on or after the date.
(4) Except in a case to which paragraph (3) applies, and subject to paragraph (5), where qualifying works are not the subject of a qualifying long term agreement to which section 20 applies, the consultation requirements for the purposes of that section and section 20ZA, as regards those works—
(a)in a case where public notice of those works is required to be given, are those specified in Part 1 of Schedule 4;
(b)in any other case, are those specified in Part 2 of that Schedule.
(5) In relation to a RTB tenant and particular qualifying works, nothing in paragraph (1), (2) or (4) requires a landlord to comply with any of the consultation requirements applicable to that agreement that arise before the thirty-first day of the RTB tenancy.

Schedule 2 Consultation requirements for qualifying long- term agreements for which public notice is required

Notice of intention
1.(1) The landlord shall give notice in writing of his intention to enter into the agreement—
(a)to each tenant; and
(b)where a recognised tenants' association represents some or all of the tenants, to the association.
(2) The notice shall—
(a)describe, in general terms, the relevant matters or specify the place and hours at which a description of the relevant matters may be inspected;
(b)state the landlord’s reasons for considering it necessary to enter into the agreement;
(c)where the relevant matters consist of or include qualifying works, state the landlord’s reasons for considering it necessary to carry out those works;
(d)state that the reason why the landlord is not inviting recipients of the notice to nominate persons from whom he should try to obtain an estimate for the relevant matters is that public notice of the relevant matters is to be given;
(e)invite the making, in writing, of observations in relation to the relevant matters; and

(f)specify—
(i)the address to which such observations may be sent;
(ii)that they must be delivered within the relevant period; and
(iii)the date on which the relevant period ends.

Inspection of description of relevant matters

2.(1) Where a notice under paragraph 1 specifies a place and hours for inspection—
(a)the place and hours so specified must be reasonable; and
(b)a description of the relevant matters must be available for inspection, free of charge, at that place and during those hours.
(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to relevant matters

3. Where, within the relevant period, observations are made, in relation to the relevant matters by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Preparation of landlord's proposal

4.(1) The landlord shall prepare, in accordance with the following provisions of this paragraph, a proposal in respect of the proposed agreement.
(2) The proposal shall contain a statement—
(a)of the name and address of every party to the proposed agreement (other than the landlord); and
(b)of any connection (apart from the proposed agreement) between the landlord and any other party.
(3) For the purpose of sub-paragraph (2)(b), it shall be assumed that there is a connection between the landlord and a party—
(a)where the landlord is a company, if the party is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
(b)where the landlord is a company, and the party is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;
(c)where both the landlord and the party are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;
(d)where the party is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or
(e)where the party is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.
(4) Where, as regards each tenant's unit of occupation, it is reasonably practicable for the landlord to estimate the relevant contribution to be incurred by the tenant attributable to the relevant matters to which the proposed agreement relates, the proposal shall contain a statement of that contribution.
(5) Where—
(a)it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4); and

(b)it is reasonably practicable for the landlord to estimate, as regards the building or other premises to which the proposed agreement relates, the total amount of his expenditure under the proposed agreement,
the proposal shall contain a statement of the amount of that estimated expenditure.
(6) Where—
(a)it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (4) or (5)(b); and
(b)it is reasonably practicable for the landlord to ascertain the current unit cost or hourly or daily rate applicable to the relevant matters to which the proposed agreement relates,
the proposal shall contain a statement of that cost or rate.
(7) Where it is not reasonably practicable for the landlord to make the estimate mentioned in sub-paragraph (6)(b), the proposal shall contain a statement of the reasons why he cannot comply and the date by which he expects to be able to provide an estimate, cost or rate.
(8) Where the relevant matters comprise or include the proposed appointment by the landlord of an agent to discharge any of the landlord's obligations to the tenants which relate to the management by him of premises to which the agreement relates, each proposal shall contain a statement—
(a)that the person whose appointment is proposed—
(i)is or, as the case may be, is not, a member of a professional body or trade association; and
(ii)subscribes or, as the case may be, does not subscribe, to any code of practice or voluntary accreditation scheme relevant to the functions of managing agents; and
(b)if the person is a member of a professional body trade association, of the name of the body or association.
(9) Each proposal shall contain a statement of the intended duration of the proposed agreement.
(10) Where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, the proposal shall contain a statement summarising the observations and setting out the landlord's response to them.

Notification of landlord's proposal
5.(1) The landlord shall give notice in writing of the proposal prepared under paragraph 4—
(a)to each tenant; and
(b)where a recognised tenants' association represents some or all of the tenants, to the association.
(2) The notice shall—
(a)be accompanied by a copy of the proposal or specify the place and hours at which the proposal may be inspected;
(b)invite the making, in writing, of observations in relation to the proposal; and
(c)specify—
(i)the address to which such observations may be sent;
(ii)that they must be delivered within the relevant period; and
(iii)the date on which the relevant period ends.

(3) Paragraph 2 shall apply to a proposal made available for inspection under this paragraph as it applies to a description made available for inspection under that paragraph.

Duty to have regard to observations in relation to proposal

6. Where, within the relevant period, observations are made in relation to the landlord's proposal by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Landlord's response to observations

7. Where the landlord receives observations to which (in accordance with paragraph 6) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.

Supplementary information

8. Where a proposal prepared under paragraph 4 contains such a statement as is mentioned in sub-paragraph (7) of that paragraph, the landlord shall, within 21 days of receiving sufficient information to enable him to estimate the amount, cost or rate referred to in sub-paragraph (4), (5) or (6) of that paragraph, give notice in writing of the estimated amount, cost or rate (as the case may be)—

(a)to each tenant; and

(b)where a recognised tenants' association represents some or all of the tenants, to the association.

Schedule 3 Consultation requirements for Qualifying Works under Qualifying Long Term Agreements and Agreement to which Regulation 7(3) applies

Notice of intention

1.(1) The landlord shall give notice in writing of his intention to carry out qualifying works—

(a)to each tenant; and

(b)where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall—

(a)describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b)state the landlord's reasons for considering it necessary to carry out the proposed works;

(c)contain a statement of the total amount of the expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works;

(d)invite the making, in writing, of observations in relation to the proposed works or the landlord's estimated expenditure;

(e)specify—

(i)the address to which such observations may be sent;

(ii)that they must be delivered within the relevant period; and

(iii)the date on which the relevant period ends.

Inspection of description of proposed works

2.(1) Where a notice under paragraph 1 specifies a place and hours for inspection—

(a)the place and hours so specified must be reasonable; and

(b)a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Duty to have regard to observations in relation to proposed works and estimated expenditure

3. Where, within the relevant period, observations are made in relation to the proposed works or the landlord's estimated expenditure by any tenant or the recognised tenants' association, the landlord shall have regard to those observations.

Landlord's response to observations

4. Where the landlord receives observations to which (in accordance with paragraph 3) he is required to have regard, he shall, within 21 days of their receipt, by notice in writing to the person by whom the observations were made, state his response to the observations.