FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/OOCG/LSC/2019/0059**
Property	:	**Daisy Spring Works, 1 Dun Street Sheffield S3 8DR**
Applicant	:	**Avon Ground Rents Limited**
Representative	:	**Mr Justin Bates, Counsel** **Scott Cohen Solicitors**
Respondent	:	**Various Long Leaseholders: see Annex A**
Representative	:	**1. Mr Howard Wade : Cactus Property Holdings LLP and Daisy Spring Investments Limited** **2. Mr. Andrew Fluck – Morgan Stewart Developments** **3. Messrs Gary Thompson– Barnsdales Surveyors**
Type of Application	:	**Section 20ZA Landlord and Tenant Act 1985** **Section 27A Landlord and Tenant Act 1985**
Tribunal Members	:	**Mr John Murray LLB** **Mr Amin Hossain**
Date of Determination	:	**1 December 2021**
Date of Decision	:	**8 February 2022**

DECISION

DECISION

The Tribunal finds that the charges for the major works to the roof are payable by the Respondents under the repairing and service charge provisions of the leases and the proposal costs of those works are reasonable for the purposes of s19.Landlord and Tenant Act 1985.

INTRODUCTION

1. The Applicant issued two applications dated 26 July 2019; the first under 20ZA of the Landlord and Tenant Act 1985 ("the Act") for dispensation from the consultation requirements of s20 with regards to external works to the roof and the Rain Screen Walling ("the Works"), and the second under s27A of the Act for a determination as to the payability and reasonableness of the costs via service charges under the lease for the property at Daisy Spring Works, 1 Dun Street, Sheffield S3 8DR ("the Property").

2. The Tribunal struck out the s20ZA application on 2 March 2021. The Applicant had confirmed to the Tribunal that the statutory requirements had been complied with and that they considered that an order on their application was not necessary. The Tribunal confirmed in the strike out order that the Applicant was at liberty at any time to make an application to the Tribunal for either a finding that the statutory requirements had been fully complied, with or for dispensation.

3. The Works subject matter of this application were to replace a flat roof and rain screen walling to the Property, at a total estimated cost of £343,706.76 inclusive of professional fees, management fees and VAT. There was reference within the proceedings to other major works required at the Property, in particular for fire safety works; the Applicant confirmed that these works did not form part of the application.

THE PROCEEDINGS

4. Directions were made in September 2019, February 2020 and 12 February 2021 to bring this matter to a hearing.

5. In the directions dated 12 February 2021, Leaseholders who wished to oppose the application or participate in the proceedings were invited to complete a reply form, and send it to the Tribunal by 3 March 2021.

6. The Applicant was directed to file and serve on each participating Respondent a statement of case within 28 days of the directions, together with various documents as specified in the order.

7. The Respondent was to submit a statement of case within 28 days of receipt of the Applicant's case, and state whether a s20C Order was required.

8. The Applicant was afforded an opportunity to respond within 14 days.

9. The Applicant filed

   a. an undated statement of case

   b. a statement of response by solicitor Lorraine Scott

   c. a statement from managing agent Mr. Yaron Hazan dated 12 March 2021 and 28 May 2021

   d. a statement by Mr. Robert Innocent dated 23 July 2021

10. The Respondents filed

   a. a statement by Mr. Gary F Thompson, a surveyor of Barnsdales instructed by a Long Leaseholder Group of 37 of the leaseholders.

   b. an application seeking an order under s20C Landlord and Tenant Act 1985 and an application under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002

THE PROPERTY

11. The Property was described by the Respondent's surveyor Mr. Thompson as a contemporary block of flats of varying design and construction heights with a prominent residential tower to the south west corner having seven residential storey over a ground floor of commercial premises.

12. The Property has a triangular footprint with an open courtyard of similar shape to the inner sitting over an enclosed car park. comprises 5 commercial units and 132 private flats, and is situated in the Little Kelham area of Sheffield.

13. The roof has been constructed an inverted ("upside down") roof, with a principal insulation layer located above both the roof structural deck and above the waterproofing course.

THE LEASES

14. The Properties are held by the Respondents under leases which are all for a term of 999 years from 1 January 2005. Most leases seem to have been conveyed in 2009, suggesting the building is in the region of 12 years old.

15. The Leases within the development were said to be in common form. A sample lease provided contained covenants and obligations on the part of the Tenant, including:

   a) Under Clause 3, the covenant to perform and observe the obligations set out in the Fourth Schedule.

b) Under Clause 10 of the Fourth Schedule to pay to the Landlord within 7 days of demand the Residential Service Charge Proportion, Building Service Charge Proportion and Parking Service Charge Proportion of:

i. such of the costs charges and expenses which the Landlord shall incur in complying with its obligations set out in Part I of the Sixth Schedule; which the Landlord (acting reasonably) designates as being the respective Residential Service Charge Item, Building Service Charge Item or Parking Service Charge Item,

ii. the costs charges and-expenses which the Landlord shall properly incur in doing any works or things to the Building or respective Parking Area

iii. any other costs charges or expenses incurred by the Landlord which the Landlord designates as the respective Residential Service Charge Item, Building Service Charge Item or Parking Service Charge Item.

Residential Service Charge Item is defined at Clause 1(a) as an item of expenditure which is (or is intended) to be chargeable (in whole or in part) to the residential lessees of the Building.

Building Service Charge Item is defined at Clause 1(a) as an item of expenditure which is (or is intended) to be chargeable (in whole or in part) to the lessees of the Building (both residential and commercial).

Parking Service Charge Item is defined at Clause 1(a) as an item of expenditure which is (or is intended) to be chargeable (in whole or in part) to the lessees who have a right to use one or more parking spaces in the Parking Area.

Residential Service Charge Proportion is defined at Clause 1(a) to mean such fair proportion as the Landlord acting reasonably shall from time to time determine.

Building Service Charge Proportion is defined at Clause 1(a) to mean such fair proportion as the Landlord acting reasonably shall from time to time determine.

Parking Service Charge Proportion is defined at Clause 1(a) to mean the fraction of the costs charges and expenses referred to in Paragraph 10 (c) of the Fourth Schedule of which the numerator is the number of parking spaces to be allocated to the Tenant and the denominator is the total number of parking spaces in the Parking Area.

Service Charges are defined in Clause 1(a) as the Residential Service Charge, the Building Service Charge and the Parking Service Charge or any one of them / combination of them as appropriate.

The Service Charge Proportions is defined at Clause 1(a) of the Lease as the Residential Service Charge Proportion, the Building Service Charge Proportion, the Estate Service Charge Proportion and the Parking Service Charge Proportion or any one of them / combination of them as appropriate.

c) Under Clause 11(a) of the Fourth Schedule the covenant to pay to the Landlord on the 1sl day of January and 1st day of July each year such sum the Landlord shall estimate to be half of the amount prospectively payable by the Tenant under Clause 10 of the Fourth Schedule (such sum being taken into account and credited against the amount eventually determined to be so payable).

d) Clause 11(b) of the Fourth Schedule provides for the Tenant to pay on demand the respective proportion of any shortfall in sums collected by the Landlord towards the costs of carrying out obligations or works if expenditure exceeds the sums collected on account.

e) Under Clause 13 of the Fourth Schedule the covenant to, within 14 days after receipt of a copy of the certification provided for in the Sixth Schedule, pay to the Landlord the net amount (in any) appearing by such notice to be due to the Landlord from the Tenant.

The Landlord's Covenants are particularised in the 6th Schedule of the Lease and are separated into two parts. Under Clause 3 of Part 1 the Landlord is obliged to keep in good repair and decorative condition:

(a) the roof foundations and structural parts of the Building
(b) the exterior of the Building
(c) the communal service media serving the Building
(d) the communal service media serving the Estate
(e) the entrance-halls, stairways, passages, landings, lifts and other parts of the Building and
(f) the Common Parts and all fixtures and fittings in the Common Parts (including lifts and refuse shoots if any) and additions thereto (including any renewal and replacement of all worn or damaged parts

The Common Parts are defined at Clause 1 of the lease as:

(a) those parts of the Building and the Estate intended for the communal use by the Tenant with (or at the discretion of the Landlord without) other occupiers of the Building and the Estate; and
(b) such parts of the Building and the Estate as are for the time being not comprised or intended in due course to be comprised in ay lease granted or to be granted by the Landlord

By Clause 10 (e) of the lease the Tenant acknowledges that in the management of the Building and the Estate and the performance of the obligations of the

Landlord that the Landlord is entitled to employ or retain the services of any employee agent consultant service company contractor engineer or other advisers of whatever nature as the Landlord may require and the expenses incurred by the Landlord in connection therewith shall be deemed to be an expense incurred by the landlord under which the Tenant shall be liable to make an appropriate contribution.

LEGISLATION

16. The relevant legislation is contained in of sections 19, and 27A of the Landlord and Tenant Act 1985 the relevant paragraphs of which read as follows:

s19 Limitation of service charges: reasonableness.

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

(a) only to the extent that they are reasonably incurred, and

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard; and the amount payable shall be limited accordingly.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than 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

s27A Liability to pay service charges: jurisdiction.

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—

(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject of an application under subsection (1) or (3).

(7) The jurisdiction conferred on a leasehold valuation tribunal in respect of any matter by virtue of this section is in addition to any jurisdiction of a court in respect of the matter.

THE HEARING

17. The matter was listed for a full video hearing with the agreement of the parties; no inspection of the Property was arranged.

18. The Applicant was represented by Counsel Mr. Justin Bates. He was accompanied by Mr. Yaron Hazan, of Y and Y Management, managing agent for the Applicant, and Expert Surveyor Mr. Robert Innocent

19. A number of the Respondents were represented by surveyor Mr. Gary Thompson who said he was representative of more than 37 of the leaseholders.

20. Mr. Howard Wade owned 2 apartments at the Property and had a lead part on the residents committee; he was present as a watching brief.

21. Mr. Andrew Fluck of Morgan Stewart Developments was also present as a watching brief for Aviva who own 45 apartments in the Property.

PRELIMINARY ISSUES

22. The parties were asked to agree that no issue was raised by either party in relation to the consultation process, and confirmed that there were none to raise.

SUBMISSIONS AND EVIDENCE

THE APPLICANT

23. In setting out his case, Mr. Bates for the Applicant stated that the freehold title for the Property dated back to 2005. The Applicant had acquired the freehold in 2016, were not the developer and had played no part in construction of the Property. The Applicant was freeholder to leases of over 130 residential flats, together with commercial units on the ground floor.

24. He referred to the application at page 23 of the bundle and the statement of Mr. Hazan at page 174. In paragraphs 3 and 4 of the statement, Mr. Hazan described how Chartered Building Surveyors IGL had been utilised to carry out inspections on the condition of the roof, with numerous site inspections to open up the roof, investigate form of constructions, materials and identify defects. Initial inspections were in the summer of 2018, and a form report was requested of the surveyors in November 2018. The matter went to consultation on the 11th December 2018.

25. Mr. Bates referred to the report of Mr Innocence at p521 of bundle which set out in detail the findings made and the work necessary to the flat roofed areas and parapet upstands to enable the roof to be provided with a minimum 20 – 25 year guarantee.

26. Mr. Bates made reference to a letter from Y and Y dated 11th December 2018 at page 178 of the bundle which stated that the roofing system had been allowing water to ingress into a large number of flats, and that the roof would need to be replaced. The warrantees had been put on notice, and a claim against them formally logged. It was accepted that works to the podium were as a result of poor workmanship by the developers and Y and Y would have to address issues ignored by previous managing agents. They would look to combine cladding and roofing works to minimise scaffolding costs. Due to the leaks, there has been a large number of insurance claims which affected premiums; evidence of loss adjuster concerns could be seen in a letter dated 23rd July 2019 from Y and Y on page 188 of the bundle.

27. Mr. Bates referred to page 220 of the bundle, being a letter dated 20 May 2021 from Mr. Innocent of IGL to Y and Y which had effectively been converted into Mr. Innocent's witness statement at p237 of the bundle In summary Mr. Innocent stated that the roof is not fit for purpose and requires complete renewal; ad hoc repairs that had been carried out "were barely sticking plasters when there is a large wound".

28. It was common ground that there are problems with the roof which needs repair. Mr. Bates drew the Tribunal's attention to paragraph 7.2 of Mr. Thompson's statement of case at page 251 of the bundle. The Property was subject to continuing structural defects due to deficiencies in construction; problems had been identified with workmanship and the design of the rain screen cladding; this information was known to the Applicant at the time of construction. The point was made again in a letter from Mr. Thompson to the Applicant's solicitor at page 605 of the bundle, in which he stated that it was clear that the roof needed to be replaced; Mr. Thompson said that there was an obligation on behalf of the Applicant to undertake the remedial works.

29. At page 463 of the bundle, Mr. Wade confirmed that he was awrae that the Property suffered water ingress damage, and that the selling agents Allsops in 2015 were clear that the Property was subject to structural defects through poor workmanship.

30. Mr. Bates stated that the defect was a construction issue; if a warranty claim was successful, then money would be refunded to the payees. He stated that the actual challenge made by the Respondents was not that the work needed doing, (this was agreed by all) but that the roof condition was an "inherent defect", and the Applicant bought the freehold with knowledge of its existence.

31. In response to this challenge, Mr. Bates stated that the concept of inherent defect was a fallacy; the lease did not carve out any exceptions for such circumstances.

32. Mr. Bates referred to the three quotes received for the works, from NRA, Castle Environmental and BBR. At page 170 of the bundle, the comparable prices had been set out, whowin NRA as being the most competitive. The stage 2 consultation notice had been sent out in June 2019 (page182 of the bundle) but was replaced by a further consultation notice in September 2019 (page192 of the bundle) as the earlier notice had made reference to cladding works which were the subject of a different consultation process.

33. It was common ground that roof is defective, there has been a consultation process for the works, and the cheapest quote accepted. The landlord was obliged to carry out the repair works on account of Clause 5a of the lease and the Clauses 3(a) (b) and (f) of the Sixth Schedule.

34. For their part the leaseholders were obliged by clause 3 of the lease to observe the covenants in paragraphs 10(b) and 10(e)(3)of the Fourth Schedule; to pay for the repairs carried out by the Freeholder.

35. Mr. Bates stated that it was unclear what the Respondents objections were, as they did not challenge the consultation process, and did not challenge the level of expenditure or put forward alternative costings. Mr. Thompson, at p241 of the bundle, acting as advocate no expert, stated that the leaseholders had no liability to pay for the repairs, as the roof was defective when the roof was built, and as

the Applicant should have been aware of the defects when it bought the property, it should bear the entire cost.

36. Mr. Bates relied upon the case of City of London v Leaseholders of Great Arthur House [2021] EWCA Civ 431 to respond to the "inherent defect" argument, quoting the following passage :

37. “10. Until the landmark decision of Forbes J in Ravenseft Properties Ltd v Davstone (Holdings) Ltd [1980] Q.B. 12 it had been widely thought that a repairing covenant did not require the covenantor to make good what was described as an “inherent defect” in the subject-matter of the covenant. An “inherent defect” used in this sense was a fault in the original design of a building as opposed to faulty materials or workmanship: see [1980] Q.B. 12 at 18. Forbes J held that that was a misconception. Whether works amount to repair was a question of fact and degree; and the relevant inquiry was whether the carrying out of the works in question would involve giving back to the covenantee a wholly different thing from that which was demised. If a scheme of works did not amount to giving back to the covenantee a wholly different thing to that which was demised, they were works of repair. They did not cease to be works of repair merely because they also eradicated an inherent defect which had given rise to the need to repair in the first place.”

38. As the Applicant was obliged to keep the roof in good repair (Sch.6, Pt.1, para.3), that obligation to “keep” it in repair includes a duty to “put” it into repair Anstruther-Gough-Calthorpe v McOscar [1924] 1 K.B. 716 CA at 734, per Atkin LJ: "The covenant to ‘keep in repair’ means an obligation to ‘put and keep in repair’, for that which is not put into repair cannot be kept in repair."

39. Mr. Bates called Mr. Hazan to confirm his witness statements filed. Mr. Hazan described the current status of the warranty claim as "un-concluded". There had been some intrusive investigations. At a later stage the loss adjuster/warranty provider would consider liability, and if liability was accepted, and an offer of compensation made, it would be credited to service charges.

40. A Building Safety Fund application had been made over 12months ago. Mr. Hazan had received a response to the application the week before the hearing. Two of four issues were eligible, he was not currently clear how in practical terms that would affect these works. The Building Safety Fund application covered cladding or external wall material. Anticipate will hear about funding in next few weeks.

41. Mr. Thompson asked Mr. Hazan when Y and Y were first notified of problems with the roof? Mr. Hazan did not remember exactly, but said that it was probably in the first year, year and a half of the Applicant buying the freehold. His response was to appoint a surveyor to investigate on Y and Y's behalf for a professional opinion.

42. Mr. Bates then called Mr. Innocent who confirmed his witness statement. Mr. Thompson for the Respondents confirmed that Mr. Innocent's report was "a good report".

43. When he was appointed by Y and Y Management he would have travelled to Daisy Spring Works. He carried out several inspections over a period and arranged for opening up to find out where water was getting in.

44. He described the Property as a triangular building on various levels, with tower clad with stainless steel. On some elevations, there were pitched rooves with artificial slate, and flat roofs with interstitial insulation, and an upside down roof, using stone to create a thermal barrier. The Property is surrounded by roads, with an atrium in the middle. He produced a specification of works which Mr. Thompson said he would not criticise.

45. Mr. Innocent confirmed that the roof was inadequate for its purposes due to water coming into various sections. Cladding was allowing water in behind roof finishes, coming in through parapet or getting in at the base. He said it was not possible to replace like for like as Building Regulations required an upgrade; the existing roof is a cold roof with stone finish. His proposed solution was a warm roof for corner area and podium.

THE RESPONDENTS

46. The Respondents in their statement of case prepared by Mr. Thompson stated that the roof was structurally deficient and in need of complete replacement after eleven years, which compared with a minimum life expectancy of fifteen years for a flat roof, Mr. Thompson stated that he had no experience of such a short lifespan outside of construction disputes.

47. Mr. Thompson attached an appendix to the statement of case which contained the Schedule of remedial works which referred to the removal of existing roof materials which had only been in place since 2007. He pointed to Mr Innocents report which confirmed that the roof had been constructed with defects in terms of quality, design and construction. He described the construction of the upside down roof. He stated that the roof was in need of complete replacement in eleven years ,comparing with a minimum life expectancy of fifteen years for a felt roof.

48. He referred to a letter dated 19 February 2021 from Y and Y Management stating that in response to questions as to whether their client could recover costs from the original contractor, their client was not a party to the original construction contracts and acquired the reversion some years after completion. He stated this letter contradicted an earlier claim by Y and Y Management that the leaseholder was to reclaim the cost of works from the contractor contained in Appendix M to his report. That letter at page 495 of the bundle states that it may be prudent for leaseholders to take advice as to whether there might be a claim against a third party. These statements in the Tribunal's judgement are not contradictory; they

point out the difference between the freeholder's position and the leaseholder's position in terms of possible contractual remedies.

49. He stated that in 2015 Allsops LLP had offered the leaseholder interest of 43 flats forming part of the Property for sale, an in their brochure two of the flats were found to be uninhabitable. He said it was clear that the Property was subject to continuing structural defects due to deficiencies in construction. Water ingress would have been inevitable shortly after construction in light of Mr Innocents findings.

50. He referred to case law involving Oxford City Council (although the cases were not cited) and said that improvements were not payable under the service charge provisions. He made reference to a number of other cases in his submissions, many of which were about cladding, but in which the landlord was entitled to recover costs so it was not clear to the Tribunal what relevance they had to the present case.

51. He stated that primarily, the fact that the freeholder had acquired this freehold and must have been aware of the issues surrounding the roof he stated that there must be liability in terms of construction of the building, and he held a strong belief that recovery of cost of defective construction was not covered by covenants.

THE DETERMINATION

52. The Tribunal was asked by the Applicant to make a determination under s19 Landlord and Tenant Act 1985 that the proposed costs of roof works to the Property to be undertaken were reasonable in scope and cost, and payable by the Respondents.

53. A statutory consultation exercise had been conducted by the Applicant who had then put forward the works to tender. NRA Roofing were one of three contractors who responded and put forward the lowest tender proposed costs which the Applicant accepted as follows:

- Roof works - £241,706.59

  - professional fees - £26,587.72 (surveyor fees:11% of costs of work)
  - management fee - £18,127.99 (agent fees:7.5% of costs of work)
  - VAT - £57,284.46

- Total £343,706.76

54. No objections were made by any of the Respondents to the necessity of the works, the proposed costs of the works, or the consultation process. As such, both parties were in agreement that the roof needed repairing. Where they disagreed, was who should pay for the necessary works. the only question the Tribunal is asked

to determine therefore, is whether or not the Respondents are obliged as a matter of first principle, to pay anything at all towards the costs of the repairs.

55. The Respondents concerns, which were entirely understandable and to which the Tribunal has sympathy, is that they are faced with paying substantial costs of major repair works to the roof of the Property less than fifteen years after it was built.

56. The Respondent's advocate Mr. Thompson asserted that he would not expect a roof of this type of construction to need replacement at this stage in its lifecycle; the only time he had come across such situations would be in the midst of a construction dispute. In the present case, the apartments in the Property had suffered from roof leaks for several years on the evidence presented to the Tribunal, buildings insurance was going to prove problematical.

57. Mr. Thompson in his summing up likened the situation to a consumer purchasing a car, driving it from the dealership, and the door falling off. In such a situation the purchaser would expect to see the door being replaced under warranty by the dealership.

58. Mr. Thompson was not wrong in that comparison, and, subject to the wording of the warranty on the car, the door would likely be replaced. As Mr. Hazan confirmed to the Tribunal in his oral evidence, if the warranty on the Property were to cover any of the costs of the current works, monies recovered through would be credited to the Respondent's service charge accounts. The warranty claim is ongoing. That however is a matter outside of these proceedings.

59. Mr. Thompson's main point is that the condition of the roof was an "inherent defect" and consequently not covered by the service charge provisions under the lease. His proposition was that inherent defects should be addressed by the original developer, its contractor, or, in this instance by the Applicant successor freeholder who would, or ought to have known the condition of the building they purchased.

60. The Tribunal does not accept that argument. In simple terms, the position is covered by the lease; it is the responsibility of the Freeholder to carry out repairs, and the responsibility of the Leaseholder to pay for those repairs. There is no separate covenant in the lease that would render the Applicant responsible for paying for defective design or construction in existence at the time of construction; there is no distinction in the lease between defects that exist on account of poor construction or design and those that arise due to wear and tear; if a repair is necessary, and it is common ground that the roof needs repairing, the lease obliges the Applicant to carry out the repair, and the Respondents to pay for that repair through the service charge.

61. A new build Property will often come with an insurance backed warranty and perhaps other guarantees for component parts; that is the assurance provided to

purchasers. The lease does not otherwise require Freeholder to make good defects at their own cost, whether it goes wrong after 1 year, 15 years or 100, caveat emptor being the general principle in these situations.

62. In the present case it was common ground that the design and construction of the roof had reduced the effectiveness of a flat roof which might have a lifespan of fifteen years; it has had to have more repairs to date than might ordinarily be expected, which have presumably been paid for by the Respondents via the service charge. At the time of the hearing, the works to replace the roof have not been carried out, and the roof is almost fifteen years old, a time when, on the Respondent's submissions, replacement might be anticipated in any event.

63. The Tribunal finds that the charges for the major works to the roof are payable by the Respondents under the repairing and service charge provisions of the leases and the proposal costs of those works are reasonable for the purposes of s19.Landlord and Tenant Act 1985.

Mr J Murray
Tribunal Judge
8 February 2022