



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

**Case Reference** : CAM/00ME/LSC/2022/0027  
CAM/00ME/LSC/2022/0041  
CAM/00ME/LSC/2022/0042  
CAM/00ME/LDC/2022/0033

**Property** : Charters Mansion, Charters Road, Ascot,  
Berkshire SL5 9QZ

**Applicants** : Dynamic Plus Limited (1)  
Timothy Edwards (2)  
(Respondents in case CAM/00ME/LDC/2022/0033)

**Representative** : Mr Jonathan Upton of Counsel, instructed by  
CP Law Solicitors

**Respondent** : Sunninghill and Ascot Property Company  
Limited  
(Applicants in case CAM/00ME/LDC/2022/0033)

**Representative** : Mr Christopher Mann of Counsel, instructed by  
JB Leitch Solicitors

**Type of Application** : (1) Application for the determination of  
reasonableness and payability of service  
charges under section 27A of the Landlord and  
Tenant Act 1985  
(2) Application for dispensation from the  
consultation requirements pursuant to section  
20ZA of the Landlord and Tenant Act 1985

**Tribunal Members** : Judge Dutton  
Mrs S Redmond BSc Econ MRICS

**Date of Hearing** : 7<sup>th</sup> February 2023

**Date of Decision** : 1 March 2023

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**DECISION**

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## **DESCRIPTION OF HEARING**

This was a remote video hearing which had been consented to by the parties. The form of remote hearing was CVP Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The documents to which we were referred were contained in a bundle of 500 plus pages in respect of the section 27A application and a further 85 papers in respect of the section 20ZA application.

## **DECISIONS OF THE TRIBUNAL**

1. The Tribunal determines that the Applicants are liable to pay the sums set out on the attached schedule in respect of the roofing works in the year 2020 for the reasons set out below.
2. The Tribunal records that the Respondents have waived their claim in the sum of £2,469 in respect of professional fees.
3. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) in respect of both the application for the determination of service charge payability and reasonableness under section 27A of the Act and in relation to the Respondent's application for dispensation under section 20ZA of the Act.
4. The Tribunal determines that the Applicant shall have no liability to make any payments for costs by virtue of paragraph 5 of schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of all applications before us.

## **BACKGROUND**

1. The Applicants, Dynamic Plus Limited and Mr Edwards made applications against the Respondents, Sunninghill and Ascot Property Company Limited, relating to service charges for the years 2018 and 2020. It is not necessary for us to make a determination in connection with the claim for professional fees in 2018 of £2,469 as the Respondent has conceded that those are not recoverable and there is to be a repayment, if not already made, to Mr Edwards in respect of this item.
2. The main area of contention for us to consider relates to roofing works in 2020 to the mansion known as Charters House in which there are flats owned by Dynamic and by Mr Edwards.
3. Charters Estate is a redeveloped private estate with some 34 flats and apartments, although in this particular case the building that we are concerned with is a Grade II Listed 1930s mansion known as Charters House which has been converted into six flats. Dynamic is the leaseholder of Flat M5 during the relevant period in dispute and Mr Edwards is the owner of flats M2 and M6. It appears that at some time after this dispute arose, Mr Edwards assigned his interest in the flats M5 on behalf of Dynamic and M2 on his own behalf to Trade Sales Limited (TSL). This assignment was initially an issue in these proceedings, but we will deal with that element in due course.

4. In the bundles that were provided to us before the hearing we had legal submissions made on behalf of both parties, a witness statement by Mr Edwards and one by Mrs Sharon Wild for the Respondent, copies of the leases for apartments 2 and 5 but the lease variation only for apartment M6. We were also provided with service charge certificates and other accounting details, which we will return to in due course.
5. In the bundle in respect of the section 20ZA application we were provided with a statement on behalf of the Respondents setting out their position and a statement made in reply by Mr Edwards on his behalf and on behalf of Dynamic. We have noted these documents and do not propose to repeat the contents in any great detail, as they are common to both parties. The only live evidence we heard was from Mr Edwards. The Respondents had not called anybody apart from Mrs Wild who was incapacitated. She did attend the morning of the hearing but did not give any evidence other than to make one or two comments and was not able to attend in the afternoon. In any event, it had been agreed that she did not need to attend the hearing as her evidence was really nothing more than production of documents, the more so as she did not join the Respondent as the estate manager until April of 2020 when the issues relating to the roofing works had already occurred.
6. What is clear from the legal submissions made is that there is some confusion as to the exact sums that have been spent in respect of the roofing works, whether those are properly payable and whether or not dispensation is required. It is the Respondent's position, that is to say Sunninghill and Ascot Property Company Limited (SAPC) that dispensation that had been granted by the Tribunal in a decision dated 8<sup>th</sup> January 2020 in case number CAM/OOME/LDC/2019/0038 involving the same parties save that it involved all the leaseholders of the mansion block covered all works to the roof. In that case, dispensation was granted "for the dispensation of any or all of the consultation requirements in respect of urgent roof works in particular the installation of membrane roof system waterproofing." The decision of the Tribunal was that it granted dispensation from all the consultation requirements in relation to the works that were set out in the application. The application refers to the qualifying works consisting of the supply and installation of membrane roof system waterproofing with an intention that the works would be carried out in September 2019. In a statement in support, the then estate manager John Davies, again repeats that the works consist of the supply and installation of membrane roof system waterproofing. At the end of the witness statement, Mr Davies says as follows: "*Works to install scaffolding to provide access to facilitate the required roof overlay have already been completed in December of 2019.*"
7. It was, as stated above, the main plank of the Respondent's case that this dispensation related to all the works that were subsequently undertaken in respect of the roof. This was disputed and resulted in this second section 20ZA application being made in case CAM/OOME/LDC/2022/0033. It is not necessary for us to spend any great time on this by reason of the findings that we make in this decision.
8. Mr Edwards provided a witness statement and attended the hearing to be cross-examined. His statement is to be found at D1 in the bundle of papers before us and confirms his ownership of the three flats at the time of the dispute and that

two of these flats have now been transferred to a company owned by a Mr Fil Gray who is a character involved in this dispute but who does not participate in these proceedings. It is noted also that Mr Edwards was absent from the block from 6<sup>th</sup> November 2019 returning in January of 2022. Accordingly, his actual knowledge of the works that were undertaken has to be read in that light. We have noted all that was said in his statement and the evidence that he gave to us at the hearing. He said that he was only aware of one leak affecting his apartment and that appeared to be from water entering from Mr Gray's apartment.

9. The thrust of Mr Edwards' evidence was that he accepted that the works undertaken by LR Services for overlaying the roof were covered by the original section 20ZA application and are payable. Insofar as any scaffolding cost is concerned, he was of the view that the figure quoted by Elite in their document which is at page D231 of the bundle of £4,580, it would seem exclusive of VAT, was the sum that he would be prepared to accept should be payable in relation to the scaffolding element.
10. He disputed any other costs associated with the roofing works on the basis that these were either not the subject of the original 2020 dispensation order and although referred to in the present section 20ZA related to works that were not associated with the roofing issues affecting his property. In fact, it was alleged these works related to roofing works associated with Mr Gray's property for which he (Mr Gray) was solely liable.
11. We were taken to the LR Services Limited invoices which appeared at a number of places in the bundle but could be easily found at pages D11 and D12. These showed invoices in the sum of £21,944.58 and £8,911.02. These invoices were accepted by Mr Edwards. Of relevance is that these two amounts appear under analysis of costs for repairs and recharging provided by the accountants acting on behalf of the Respondents. This spreadsheet was at page D150 and D151 of the main bundle and contains a number of other entries which were disputed by Mr Edwards. These formed part of the new section 20ZA application. The total sum which it is said was spent in relation to the roofing works was £111,615.66 which by a handwritten notation had been broken down into the percentages payable under the terms of the leases for the three apartments in question.
12. Mrs Wild who prepared a witness statement at D152 of the bundle dated 28<sup>th</sup> September 2022 referred us to exhibits at SW3 which she said were the invoices which the Respondent has on record relating to the works which are relevant to this application. These include the LR Services invoice dated 20<sup>th</sup> February 2020 in the sum of £8,911.02 which has been referred to above and then a number of other invoices as follows: (i) M&M Mobile Crane Hire in the sum of £1,020 said to be for the hire of a 60-tonne challenger all-terrain crane. A number of invoices from West London Industrial Park (ii) dated 10<sup>th</sup> March 2020 said to be for the supply of Danzo roofing felt in the sum of £6,636 at page D237 and further invoices also from West London Industrial Park (iii) dated 12<sup>th</sup> August 2020 to remove all glass balcony steels, decking and timber joists and other works in the sum of £50,400 at D241 (iv) a further invoice for scaffold over hire of £732 at D242 and another invoice (v) relating to the leaks to steps, sauna and toilets in the sum of £22,800 dated 12<sup>th</sup> August 2020 at D243 which was in fact withdrawn by Mr Gray. It should be noted that West London Industrial Park, which is a trading name, it would seem, of Trade Sale Limited is, we understand, owned and or

controlled by Mr Gray. It is Trade Sales Limited to which Mr Edwards assigned two of his apartments.

13. There then followed invoices from Agile Scaffolding. These start at page 238 in the bundle and it is an invoice dated 31<sup>st</sup> December 2019 in the sum of £5,880 which is the amount that appears on the spread sheet at D150 of roofing costs and which it is said Mr Edwards is obliged to pay. There then followed further invoices dated 30<sup>th</sup> November 2019 in the sum of £18,672, an invoice on 31<sup>st</sup> December 2019 in the sum of £28,128 and an invoice on 30<sup>th</sup> July 2020 in the sum of £2,040. These sums total £54,720 which is subject to the deduction of £5,880 leaving a balancing charge of £48,840.
14. Pausing there, it appears for reasons that were never explained to us, that this balancing charge for the scaffolding at the mansion block has appeared as an estate charge and has been recovered from all the leaseholders. We are confirmed in this understanding by reference to the Respondent's statement of case at page B18 and 19 where at paragraph 26 the Respondent says as follows: *"The leaseholders of the mansion block were not charged directly for the costs of the scaffolding. The costs of the scaffolding were charged to the estate and demanded to all of the leaseholders as part of the balancing charge for the 2019 period. The costs of the scaffolding were considerably more at £54,720, however only £5,880 was applied to the invoice raised for the roof work costs for the mansion block, the rest was charged through the balancing charge for 2019."*
15. Things are further confused by an email from Mr Anthony Graham, whose status is not wholly clear, but who appeared to be acting on behalf of the directors of SAPC. He wrote to Mr Edwards on 4<sup>th</sup> June 2021 and said at page D136 penultimate paragraph the following: *"Under cost category labelled Hard Services there is a "fabrics repair and maintenance" charge of £25,994.67. £4,061 of this was for ballroom redecoration to Oakwood (invoice attached). The balance of £21,882.67 was paid to LR Services for roof repairs. This invoice comprising a number of smaller invoices should be combined with invoices for a further £10,260 to LR Services for roof repairs allocated to the cost category labelled Major Works. These two sets of invoices together total £32,142.67 paid against a quote from LR Services of £34,263 dated 22<sup>nd</sup> November 2019 (attached). That is the total for roof repairs billed in 2020 is lower than the quote accepted by the Tribunal."* This letter also went on to confirm that Mr Gray had withdrawn the charge of £22,800 which we referred to above.
16. The letter goes on to say that the works completed by LR Services were not fully successful and leaks continued, and new leaks appeared. This was the subject of dispute because according to Mr Edwards the company who were providing insurance for LR Services were very happy with the work. Furthermore, in an email from Mrs Wild to Mr Edwards dated 24<sup>th</sup> January 2022 she says this: *"Also attached is something I found while looking for the paperwork. I don't know who did the report as it is just saved as a PDF file. The date is 2019. It clearly shows though that there was damage all over the roof and LR Services show they did the part they were approved to do but when it came to other areas such as having to lift the balustrades across Mr Gray's area, they couldn't do it. I believe that is why he asked them to leave and he would finish it. I am not certain of that but I will ask Mr Gray again when I meet him on 31<sup>st</sup>. Jason will be with me so he can confirm the conversation."*

17. We are not aware that there was any further information on this point, and we do not know what the report was as it was not as far as we can tell included within the bundle before us.
18. In cross-examination Mr Edwards was asked about certain emails that had emanated from Mr Davies. These were at bundle page D72 and D73. The first one relates to the need to replace the PVC roof covering the Parkinson Wing of the mansion, which as we understood it is the roof immediately above Mr Gray's apartment, Mr Edwards' apartment lying to the side. There is also an email from Mr Davies dated 20<sup>th</sup> November 2019 confirming that in order to complete the works scaffolding round the Parkinson Wing of the mansion was necessary extending across the ballroom. We have photographs of the scaffolding, which is extensive, but which is predominantly to the left side of the Property when looking from the rear or the right side when looking at page D55 showing the Parkinson Wing as coloured yellow.
19. Mr Edwards was asked why he had not obtained alternative quotes, but he said that was not possible as he was not provided with the invoices until several months after he queried matters. He reaffirmed that the only leak he was aware of had come from Mr Gray's apartment. It was also suggested that a terrace above Mr Gray's Property was within the demise of that flat and that therefore any repair works associated thereto were Mr Gray's responsibility and not a service charge item.
20. We should just review the items of expenditure for which the section 20ZA application was made. Those are set out at paragraph 8 of the statement of case in support of the application which was contained within a separate bundle. They are also shown on analysis of roof repair costs at page D150 of the bundle. It is thought that most of these invoices are to be found behind exhibit SW3 in Mrs Wild's statement, but the Applicant also deals in some detail with these invoices at paragraph 24 of the reply to the Respondent's statement of case. We have noted all that was said in that document which in truth was not subject of any great questioning at the hearing. In any event, doing the best we can given the nature of the documentation before us and the somewhat unhelpful layout of the bundle, we propose to endeavour to go through those invoices shown on the analysis for costs at page D150/1 starting with:
  - (a) That of LR Services dated 31<sup>st</sup> January 2020 in the sum of £21,944.58 which is not disputed by Mr Edwards.
  - (b) The next invoice on the schedule is Smart Properties in the sum of £220 said to be dated 6<sup>th</sup> March 2020 for roof leaks but no explanation is given and indeed we cannot find a copy of that invoice.
  - (c) The next invoice is dated 20<sup>th</sup> April with LR Services in the sum of £8,911.02; again this is not disputed as being payable by Mr Edwards.
  - (d) We then find an invoice dated 25<sup>th</sup> April 2020 for crane hire in the sum of £1,020 which does appear in the bundle of invoices behind SW3 from M&M Mobile Crane Hire in the sum of £850 plus VAT. This merely states that this is for the hire of a 60 tonne challenger all-terrain crane. On this point it was said by Mr Edwards that Mr Gray was carrying out works to his Property and there is conjecture that the crane hire did not relate to the works undertaken by LR Services.

- (e) The next item of expenditure is further Crane Hire, this time 31<sup>st</sup> March 2020 in the sum of £1,774.14. We could not find a copy of this invoice in the bundle behind SW3.
  - (f) The next invoice is one from West London in the sum of £6,363 said to be work carried out by Mr Gray. We could not find a copy of the invoice for £6,363 but it appears this is dated 17<sup>th</sup> June 2020 which is it seems sometime after the works were undertaken by LR Services.
  - (g) The next invoice we have on the list is from Agile Scaffolding which is the £5,880 we have referred to before being the balance of the total scaffolding costs the remainder of which appeared as a balancing fund.
  - (h) The next invoice relates to costs of Smart Property Development. This is dated 30<sup>th</sup> April 2020 and says that they attended site to carry out roof repairs following a leak as per quotation in the sum of £2,244. Insofar as we are aware no quotation was provided and again this seems to be some time after the works that were undertaken by LR Services had been concluded. The invoice date is 16<sup>th</sup> March 2020.
  - (i) The next invoice for which dispensation was sought was from Ithaca Roofing in the sum of £11,852.40 dated 30<sup>th</sup> October 2020 which includes repairs to the top front shelf area of manor building, glass balustrade removal and reinstatement and additional ply and PVC works to balustrade bases. It is said by Mr Edwards that these works were materially different to the original dispensation application and were not urgent and given the apparent repairing obligations in relation to the ‘shelf’ area and generally it is unclear whether this invoice relates to the roofing works for the common parts at the Property.
  - (j) The next invoice is again from West London Industrial Park in the sum of £50,400 dated 12<sup>th</sup> August 2020. This refers to three roof leaks at the mansion and includes the removal of all glass balcony steels, decking and timber joists, reinstatement using new fixing and gadgets, repair roof on neighbour’s roof, reinstate joist decking to complete. Given that these works were apparently undertaken some months after the application for dispensation was first made and dealt with by the Tribunal in January 2020, it is unclear as to the works that were actually being undertaken.
  - (k) The final invoice is from West London Services for additional scaffold hire, but this is August of 2020 and gives no details.
21. Finally, we should deal with the skeleton arguments received by us on the morning of the hearing. The first was from the Counsel for the Applicant Mr Upton. After setting out the basic information he confirmed with us that the company Dynamic had assigned their interest in flat M5 to Trade Sales Limited, Mr Gray’s company, on 5<sup>th</sup> October 2021 and that Mr Edwards had assigned his interest in flat M2 to Trade Sales Limited on 9<sup>th</sup> November 2020. It was said that as a result of the assignment of this last lease of flat M2 that as this had taken place before the roof works were first demanded, which we were told was 23<sup>rd</sup> June 2021, Mr Edwards is not liable to make any payment under the provisions of sections 5 and 24 of the Landlord and Tenant (Covenants) Act 1995.
22. Mr Upton in his skeleton argument then went on to assert that no valid demands had been made within 18 months or indeed at all and that accordingly the provisions of section 20B bit preventing the Respondents from recovering any monies.

23. These two matters rather caught the Applicants on the hop. It was suggested that if the matter was to proceed on this basis, they would need time to consider the matter. We agreed with them. We indicated to Mr Upton that if he wished to put forward these late submissions, which are not referred to in any of the statements of case, there would need to be an amendment and time given to the Respondents to reply. There was also the question of how costs would fall. As a result of this, Mr Upton took further instructions from Mr Edwards and confirmed with us that he would not pursue these two submissions.
24. We were then left to deal with the matter on the basis as it originally started, that is to say whether dispensation should be granted and or whether section 27A applied and the costs were irrecoverable as being unreasonable.
25. The Respondent's skeleton argument confirmed that the professional fees raised against Mr Edwards in the sum of £2,649 were no longer pursued. It is conceded in the skeleton argument that there is a "considerable evidential overlap" between the section 27A application and the section 20ZA application. The skeleton argument confirms that conditional dispensation, if necessary, would be sought.
26. The statement then goes on to deal in some detail with the section 20ZA outlining the various items for which dispensation is sought, which mirror those contained in the Respondent's statement of case. Mention is also made of the evidence of Mrs Wild.
27. Under the heading Issues it is said that the scope of dispensation granted in January 2020 will need to be considered and then whether in the present dispensation application there should be an absolute or conditional dispensation for those works. The next issues to be determined are those under section 27A in respect of the service charge for the 2020 roof works and a catch-all comment relating to the section 20C and paragraph 5A issues. We have noted what is said under the heading Scope of dispensation and dispensation itself with the various references to the case of Dejan Investments v Benson and an extract from Woodfall on landlord and tenants. In this skeleton it raises the suggestion that LR Services did not carry out the works to a satisfactory conclusion and were asked to leave site and as a result West London who purportedly had expertise and knowledge were instructed to complete the works. We have noted these points.

## **FINDINGS**

28. The first thing we should say is that we express surprise that the Respondents called no live evidence. Although Mrs Wild had tendered a witness statement, she was not really able to assist us, the more so as of course she was unwell and could not finish the hearing. In any event her evidence was limited to the production of invoices and an assertion that the Respondent's statement of case was true to the best of her knowledge and belief and that its contents were adopted. This was a somewhat strange assertion to make as she was not at the Property at the time these issues arose. Furthermore, the invoices exhibited that are said to be relevant to the works under the application are limited.
29. We are therefore surprised that a member of SAPC was not called to give evidence and also that Mr Gray, who appears to have been a major player in this matter, did not provide any evidence to assist us in our determination. In addition, the

documentation is in part lacking and is difficult to find. The index of the bundle is unhelpful, for example the witness statement of Sharon Wild is recorded with exhibit SW1. There are, however, a number of other exhibits that appear within the 120 pages which appear to govern the extent of her evidence. In addition, we were not provided with a copy of the apartment 6 lease but just a variation thereto.

30. Dealing firstly with the section 20 application and decision made in January of 2020. We have no doubt that this was limited to the emergency roofing works, which is what is referred to in the application and statement by Mr Davies. He does refer to the question of scaffolding and to an extent we have sympathy with the Respondent's position that the works to the roof could not have been undertaken without scaffolding and such scaffolding was in place and obvious to all concerned. The fact that Mr Edwards may have been abroad at the time, is not it seems to us a matter that should weigh heavily on us. He presumably had contact with the estate and would have been able to have satisfied himself as to whether scaffolding was in situ. In any event, he accepts that some form of scaffolding would have been required and is prepared to accept a figure along the lines of the Elite quote.
31. Accordingly, we are satisfied that the section 20 order made in January of 2020 would cover the scaffolding insofar as it related to the emergency works to be conducted at the Property. We are not altogether satisfied however that the scaffolding was limited to that element, and this may be why it appears as a balancing charge. We cannot comment as to why that is the case and that is a matter that will need to be resolved between the Respondent and the other leaseholders.
32. It is at this point that we get into an overlap with the section 27A application. Our findings are that the costs associated with the LR Services in the sum of £21,944.50 and £8,911.02 are properly payable and are indeed accepted as such by Mr Edwards. Insofar as the scaffolding is concerned, we accept the figure of £5,880 by Agile Scaffolding. In respect of the balance of the scaffolding costs, we consider that Mr Edwards should make his contribution to those as a balancing charge. Looking at the certificates that have been produced in this case by Philip Carroll Accountants, we see that as at 22<sup>nd</sup> December 2020 for flats M2, 5 and 6 the estate contribution is respectively 3.75%, 3.69% and 2.51%. The sums payable under the lease in respect of service charges are again respectively 16.12%, 15.85% and 10.8%. We set out on the attached schedule the sums that we find at payable in respect of the three flats.
33. We must then turn to the section 27A application, it being inextricably linked with the section 20ZA application. As we have indicated above, we were concerned that there was in truth, no real evidence produced on behalf of the Respondents. The only document we have to go on which would appear to indicate what the Respondent considers is payable, is the analysis of costs at page D150 and 151 of the bundle. We have been through those insofar as they related to the individual costs shown thereon.
34. As far as LR Services are concerned, we reject the suggestion that their work was somehow deficient. This does not seem to be supported by Mrs Wild for in her email to Mr Edwards of 23<sup>rd</sup> August 2020, she indicates that they had undertaken the work they were approved to do but that when it came to other areas, such as

the lifting of balustrades across Mr Gray's area, they could not do it. It then appears that Mr Gray, on what authority we do not know, asked them to leave and that he would finish it. He finished these works using his own business. We find that somewhat surprising and suggests to us a lack of control by the directors of the Respondent Company. This is to an extent supported by the apparent unclear reduction by Mr Gray of some £22,800 from costs of roofing works.

35. It is clear on the evidence before us that Mr Gray was undertaking works to the roof and that there had to be works needed to stem flooding to Mr Edward's Property. Indeed, the invoices which we have referred to before and in particular the one of £22,800, referred to leak to steps next door, dig out sauna, toilet, shower and floors. The fact that that appeared initially as a cost as a service charge leads us to question the other invoices from West London Industrial Park. On the face of it this invoice related to anything other than service charge costs. The same can be said of the invoice for £50,400 which removes glass balcony, steels, decking etc. Mrs Wild's email we referred to above refers to lifting the balustrades across Mr Gray's area.
36. We are concerned that on the evidence before us we cannot be certain the costs associated with the roof works as set out on the analysis are service charge relating to repairs to the common parts for which the Applicants have responsibility. There is evidence before us that some of these works, certainly on the face of the invoice, related to matters that clearly were not common parts related. Also, for example, the Ithaca Roofing invoice of £11,852 refers to matters that do not on the face of it appear to relate to any repairs to the roof which was leaking. The crane hire appears to have been placed by Mr Gray and given the evidence we had that there were works being undertaken by Mr Gray to his property, again we cannot be certain that these related solely to service charge costs for which Mr Edwards and Dynamic Plus had a responsibility.
37. For these reasons we accept Mr Edward's contention that he is responsible for the LR Services costs and as to the scaffolding costs we find that the sum of £5,880 plus the share of the balancing fund is reasonable and payable and covered by the initial s20 order in January 2020 and if not would be covered by the fresh s20ZA application as not prejudicing the Applicants and being reasonable.. The remaining costs which were not only the subject of the section 20ZA application but also the section 27A application, we dismiss. As we have indicated above, we are not satisfied on the evidence produced to us by the Respondents, that these costs are rightly claimable from Mr Edwards or from Dynamic Plus Limited. There is too much involvement in Mr Gray, both in utilising his own company, for which no quotes were obtained and also for ordering various items, his name appearing on the invoices, see for example the Agile Scaffolding invoice in the sum of £5,880 at D238 whereas other invoices from Agile do appear to have been issued to the Respondents. In addition, as we have indicated above, we do not understand by what authority Mr Gray removed LR Services from site. In the light of these matters, we are not confident in finding that these costs, which are the subject both of the section 20ZA and the section 27A application are properly claimable from Mr Edwards or Dynamic and accordingly we reject them as being payable.
38. On the question of costs, given our findings we are content to make an order under section 20C that the costs of the Respondents are not recoverable as service charge

considering it just and equitable so to do and we make the same finding in connection with the application to avoid costs under paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002.

39. Mr Upton urged us to make findings of dishonesty. We are not prepared to do that. We did not have the opportunity of receiving credible evidence from the Respondents and whilst there may be some concerns as to the involvement of Mr Gray and his companies, it does not seem to us that this enables us to make findings of dishonesty in this case.

*Andrew Dutton*

Judge: \_\_\_\_\_  
A A Dutton

Date: 1 March 2023

### **Schedule of costs payable by the Applicants**

#### **Roofing costs and scaffolding**

LR Services £21944.58 + £8911.02 + Agile cost £5,880 = £36,735.60  
plus % of balancing charge of £48,840

**Flat M2** 16.21% = £5,954.84  
+ % of Balancing charge at 3.75% = £1,831.50

**Flat M5** 15.85% = £5,822.60  
+ % of Balancing charge at 3.69% = £1,802.19

**Flat M6** 10.80% = £3,967.44  
+ % of Balancing charge at 2.51% = £1,225.88

### **ANNEX – RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.



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**Type of Application** : (1) Application for the determination of  
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Tenant Act 1985  
(2) Application for dispensation from the  
consultation requirements pursuant to section  
20ZA of the Landlord and Tenant Act 1985

**Tribunal Members** : Judge Dutton  
Mrs S Redmond BSc Econ MRICS

**Date of Hearing** : 7<sup>th</sup> February 2023

**Date of Decision** : 1 March 2023

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**DECISION**

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## **DESCRIPTION OF HEARING**

This was a remote video hearing which had been consented to by the parties. The form of remote hearing was CVP Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The documents to which we were referred were contained in a bundle of 500 plus pages in respect of the section 27A application and a further 85 papers in respect of the section 20ZA application.

## **DECISIONS OF THE TRIBUNAL**

1. The Tribunal determines that the Applicants are liable to pay the sums set out on the attached schedule in respect of the roofing works in the year 2020 for the reasons set out below.
2. The Tribunal records that the Respondents have waived their claim in the sum of £2,469 in respect of professional fees.
3. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) in respect of both the application for the determination of service charge payability and reasonableness under section 27A of the Act and in relation to the Respondent's application for dispensation under section 20ZA of the Act.
4. The Tribunal determines that the Applicant shall have no liability to make any payments for costs by virtue of paragraph 5 of schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of all applications before us.

## **BACKGROUND**

1. The Applicants, Dynamic Plus Limited and Mr Edwards made applications against the Respondents, Sunninghill and Ascot Property Company Limited, relating to service charges for the years 2018 and 2020. It is not necessary for us to make a determination in connection with the claim for professional fees in 2018 of £2,469 as the Respondent has conceded that those are not recoverable and there is to be a repayment, if not already made, to Mr Edwards in respect of this item.
2. The main area of contention for us to consider relates to roofing works in 2020 to the mansion known as Charters House in which there are flats owned by Dynamic and by Mr Edwards.
3. Charters Estate is a redeveloped private estate with some 34 flats and apartments, although in this particular case the building that we are concerned with is a Grade II Listed 1930s mansion known as Charters House which has been converted into six flats. Dynamic is the leaseholder of Flat M5 during the relevant period in dispute and Mr Edwards is the owner of flats M2 and M6. It appears that at some time after this dispute arose, Mr Edwards assigned his interest in the flats M5 on behalf of Dynamic and M2 on his own behalf to Trade Sales Limited (TSL). This assignment was initially an issue in these proceedings, but we will deal with that element in due course.

4. In the bundles that were provided to us before the hearing we had legal submissions made on behalf of both parties, a witness statement by Mr Edwards and one by Mrs Sharon Wild for the Respondent, copies of the leases for apartments 2 and 5 but the lease variation only for apartment M6. We were also provided with service charge certificates and other accounting details, which we will return to in due course.
5. In the bundle in respect of the section 20ZA application we were provided with a statement on behalf of the Respondents setting out their position and a statement made in reply by Mr Edwards on his behalf and on behalf of Dynamic. We have noted these documents and do not propose to repeat the contents in any great detail, as they are common to both parties. The only live evidence we heard was from Mr Edwards. The Respondents had not called anybody apart from Mrs Wild who was incapacitated. She did attend the morning of the hearing but did not give any evidence other than to make one or two comments and was not able to attend in the afternoon. In any event, it had been agreed that she did not need to attend the hearing as her evidence was really nothing more than production of documents, the more so as she did not join the Respondent as the estate manager until April of 2020 when the issues relating to the roofing works had already occurred.
6. What is clear from the legal submissions made is that there is some confusion as to the exact sums that have been spent in respect of the roofing works, whether those are properly payable and whether or not dispensation is required. It is the Respondent's position, that is to say Sunninghill and Ascot Property Company Limited (SAPC) that dispensation that had been granted by the Tribunal in a decision dated 8<sup>th</sup> January 2020 in case number CAM/OOME/LDC/2019/0038 involving the same parties save that it involved all the leaseholders of the mansion block covered all works to the roof. In that case, dispensation was granted "for the dispensation of any or all of the consultation requirements in respect of urgent roof works in particular the installation of membrane roof system waterproofing." The decision of the Tribunal was that it granted dispensation from all the consultation requirements in relation to the works that were set out in the application. The application refers to the qualifying works consisting of the supply and installation of membrane roof system waterproofing with an intention that the works would be carried out in September 2019. In a statement in support, the then estate manager John Davies, again repeats that the works consist of the supply and installation of membrane roof system waterproofing. At the end of the witness statement, Mr Davies says as follows: "*Works to install scaffolding to provide access to facilitate the required roof overlay have already been completed in December of 2019.*"
7. It was, as stated above, the main plank of the Respondent's case that this dispensation related to all the works that were subsequently undertaken in respect of the roof. This was disputed and resulted in this second section 20ZA application being made in case CAM/OOME/LDC/2022/0033. It is not necessary for us to spend any great time on this by reason of the findings that we make in this decision.
8. Mr Edwards provided a witness statement and attended the hearing to be cross-examined. His statement is to be found at D1 in the bundle of papers before us and confirms his ownership of the three flats at the time of the dispute and that

two of these flats have now been transferred to a company owned by a Mr Fil Gray who is a character involved in this dispute but who does not participate in these proceedings. It is noted also that Mr Edwards was absent from the block from 6<sup>th</sup> November 2019 returning in January of 2022. Accordingly, his actual knowledge of the works that were undertaken has to be read in that light. We have noted all that was said in his statement and the evidence that he gave to us at the hearing. He said that he was only aware of one leak affecting his apartment and that appeared to be from water entering from Mr Gray's apartment.

9. The thrust of Mr Edwards' evidence was that he accepted that the works undertaken by LR Services for overlaying the roof were covered by the original section 20ZA application and are payable. Insofar as any scaffolding cost is concerned, he was of the view that the figure quoted by Elite in their document which is at page D231 of the bundle of £4,580, it would seem exclusive of VAT, was the sum that he would be prepared to accept should be payable in relation to the scaffolding element.
10. He disputed any other costs associated with the roofing works on the basis that these were either not the subject of the original 2020 dispensation order and although referred to in the present section 20ZA related to works that were not associated with the roofing issues affecting his property. In fact, it was alleged these works related to roofing works associated with Mr Gray's property for which he (Mr Gray) was solely liable.
11. We were taken to the LR Services Limited invoices which appeared at a number of places in the bundle but could be easily found at pages D11 and D12. These showed invoices in the sum of £21,944.58 and £8,911.02. These invoices were accepted by Mr Edwards. Of relevance is that these two amounts appear under analysis of costs for repairs and recharging provided by the accountants acting on behalf of the Respondents. This spreadsheet was at page D150 and D151 of the main bundle and contains a number of other entries which were disputed by Mr Edwards. These formed part of the new section 20ZA application. The total sum which it is said was spent in relation to the roofing works was £111,615.66 which by a handwritten notation had been broken down into the percentages payable under the terms of the leases for the three apartments in question.
12. Mrs Wild who prepared a witness statement at D152 of the bundle dated 28<sup>th</sup> September 2022 referred us to exhibits at SW3 which she said were the invoices which the Respondent has on record relating to the works which are relevant to this application. These include the LR Services invoice dated 20<sup>th</sup> February 2020 in the sum of £8,911.02 which has been referred to above and then a number of other invoices as follows: (i) M&M Mobile Crane Hire in the sum of £1,020 said to be for the hire of a 60-tonne challenger all-terrain crane. A number of invoices from West London Industrial Park (ii) dated 10<sup>th</sup> March 2020 said to be for the supply of Danzo roofing felt in the sum of £6,636 at page D237 and further invoices also from West London Industrial Park (iii) dated 12<sup>th</sup> August 2020 to remove all glass balcony steels, decking and timber joists and other works in the sum of £50,400 at D241 (iv) a further invoice for scaffold over hire of £732 at D242 and another invoice (v) relating to the leaks to steps, sauna and toilets in the sum of £22,800 dated 12<sup>th</sup> August 2020 at D243 which was in fact withdrawn by Mr Gray. It should be noted that West London Industrial Park, which is a trading name, it would seem, of Trade Sale Limited is, we understand, owned and or

controlled by Mr Gray. It is Trade Sales Limited to which Mr Edwards assigned two of his apartments.

13. There then followed invoices from Agile Scaffolding. These start at page 238 in the bundle and it is an invoice dated 31<sup>st</sup> December 2019 in the sum of £5,880 which is the amount that appears on the spread sheet at D150 of roofing costs and which it is said Mr Edwards is obliged to pay. There then followed further invoices dated 30<sup>th</sup> November 2019 in the sum of £18,672, an invoice on 31<sup>st</sup> December 2019 in the sum of £28,128 and an invoice on 30<sup>th</sup> July 2020 in the sum of £2,040. These sums total £54,720 which is subject to the deduction of £5,880 leaving a balancing charge of £48,840.
14. Pausing there, it appears for reasons that were never explained to us, that this balancing charge for the scaffolding at the mansion block has appeared as an estate charge and has been recovered from all the leaseholders. We are confirmed in this understanding by reference to the Respondent's statement of case at page B18 and 19 where at paragraph 26 the Respondent says as follows: *"The leaseholders of the mansion block were not charged directly for the costs of the scaffolding. The costs of the scaffolding were charged to the estate and demanded to all of the leaseholders as part of the balancing charge for the 2019 period. The costs of the scaffolding were considerably more at £54,720, however only £5,880 was applied to the invoice raised for the roof work costs for the mansion block, the rest was charged through the balancing charge for 2019."*
15. Things are further confused by an email from Mr Anthony Graham, whose status is not wholly clear, but who appeared to be acting on behalf of the directors of SAPC. He wrote to Mr Edwards on 4<sup>th</sup> June 2021 and said at page D136 penultimate paragraph the following: *"Under cost category labelled Hard Services there is a "fabrics repair and maintenance" charge of £25,994.67. £4,061 of this was for ballroom redecoration to Oakwood (invoice attached). The balance of £21,882.67 was paid to LR Services for roof repairs. This invoice comprising a number of smaller invoices should be combined with invoices for a further £10,260 to LR Services for roof repairs allocated to the cost category labelled Major Works. These two sets of invoices together total £32,142.67 paid against a quote from LR Services of £34,263 dated 22<sup>nd</sup> November 2019 (attached). That is the total for roof repairs billed in 2020 is lower than the quote accepted by the Tribunal."* This letter also went on to confirm that Mr Gray had withdrawn the charge of £22,800 which we referred to above.
16. The letter goes on to say that the works completed by LR Services were not fully successful and leaks continued, and new leaks appeared. This was the subject of dispute because according to Mr Edwards the company who were providing insurance for LR Services were very happy with the work. Furthermore, in an email from Mrs Wild to Mr Edwards dated 24<sup>th</sup> January 2022 she says this: *"Also attached is something I found while looking for the paperwork. I don't know who did the report as it is just saved as a PDF file. The date is 2019. It clearly shows though that there was damage all over the roof and LR Services show they did the part they were approved to do but when it came to other areas such as having to lift the balustrades across Mr Gray's area, they couldn't do it. I believe that is why he asked them to leave and he would finish it. I am not certain of that but I will ask Mr Gray again when I meet him on 31<sup>st</sup>. Jason will be with me so he can confirm the conversation."*

17. We are not aware that there was any further information on this point, and we do not know what the report was as it was not as far as we can tell included within the bundle before us.
18. In cross-examination Mr Edwards was asked about certain emails that had emanated from Mr Davies. These were at bundle page D72 and D73. The first one relates to the need to replace the PVC roof covering the Parkinson Wing of the mansion, which as we understood it is the roof immediately above Mr Gray's apartment, Mr Edwards' apartment lying to the side. There is also an email from Mr Davies dated 20<sup>th</sup> November 2019 confirming that in order to complete the works scaffolding round the Parkinson Wing of the mansion was necessary extending across the ballroom. We have photographs of the scaffolding, which is extensive, but which is predominantly to the left side of the Property when looking from the rear or the right side when looking at page D55 showing the Parkinson Wing as coloured yellow.
19. Mr Edwards was asked why he had not obtained alternative quotes, but he said that was not possible as he was not provided with the invoices until several months after he queried matters. He reaffirmed that the only leak he was aware of had come from Mr Gray's apartment. It was also suggested that a terrace above Mr Gray's Property was within the demise of that flat and that therefore any repair works associated thereto were Mr Gray's responsibility and not a service charge item.
20. We should just review the items of expenditure for which the section 20ZA application was made. Those are set out at paragraph 8 of the statement of case in support of the application which was contained within a separate bundle. They are also shown on analysis of roof repair costs at page D150 of the bundle. It is thought that most of these invoices are to be found behind exhibit SW3 in Mrs Wild's statement, but the Applicant also deals in some detail with these invoices at paragraph 24 of the reply to the Respondent's statement of case. We have noted all that was said in that document which in truth was not subject of any great questioning at the hearing. In any event, doing the best we can given the nature of the documentation before us and the somewhat unhelpful layout of the bundle, we propose to endeavour to go through those invoices shown on the analysis for costs at page D150/1 starting with:
  - (a) That of LR Services dated 31<sup>st</sup> January 2020 in the sum of £21,944.58 which is not disputed by Mr Edwards.
  - (b) The next invoice on the schedule is Smart Properties in the sum of £220 said to be dated 6<sup>th</sup> March 2020 for roof leaks but no explanation is given and indeed we cannot find a copy of that invoice.
  - (c) The next invoice is dated 20<sup>th</sup> April with LR Services in the sum of £8,911.02; again this is not disputed as being payable by Mr Edwards.
  - (d) We then find an invoice dated 25<sup>th</sup> April 2020 for crane hire in the sum of £1,020 which does appear in the bundle of invoices behind SW3 from M&M Mobile Crane Hire in the sum of £850 plus VAT. This merely states that this is for the hire of a 60 tonne challenger all-terrain crane. On this point it was said by Mr Edwards that Mr Gray was carrying out works to his Property and there is conjecture that the crane hire did not relate to the works undertaken by LR Services.

- (e) The next item of expenditure is further Crane Hire, this time 31<sup>st</sup> March 2020 in the sum of £1,774.14. We could not find a copy of this invoice in the bundle behind SW3.
  - (f) The next invoice is one from West London in the sum of £6,363 said to be work carried out by Mr Gray. We could not find a copy of the invoice for £6,363 but it appears this is dated 17<sup>th</sup> June 2020 which is it seems sometime after the works were undertaken by LR Services.
  - (g) The next invoice we have on the list is from Agile Scaffolding which is the £5,880 we have referred to before being the balance of the total scaffolding costs the remainder of which appeared as a balancing fund.
  - (h) The next invoice relates to costs of Smart Property Development. This is dated 30<sup>th</sup> April 2020 and says that they attended site to carry out roof repairs following a leak as per quotation in the sum of £2,244. Insofar as we are aware no quotation was provided and again this seems to be some time after the works that were undertaken by LR Services had been concluded. The invoice date is 16<sup>th</sup> March 2020.
  - (i) The next invoice for which dispensation was sought was from Ithaca Roofing in the sum of £11,852.40 dated 30<sup>th</sup> October 2020 which includes repairs to the top front shelf area of manor building, glass balustrade removal and reinstatement and additional ply and PVC works to balustrade bases. It is said by Mr Edwards that these works were materially different to the original dispensation application and were not urgent and given the apparent repairing obligations in relation to the ‘shelf’ area and generally it is unclear whether this invoice relates to the roofing works for the common parts at the Property.
  - (j) The next invoice is again from West London Industrial Park in the sum of £50,400 dated 12<sup>th</sup> August 2020. This refers to three roof leaks at the mansion and includes the removal of all glass balcony steels, decking and timber joists, reinstatement using new fixing and gadgets, repair roof on neighbour’s roof, reinstate joist decking to complete. Given that these works were apparently undertaken some months after the application for dispensation was first made and dealt with by the Tribunal in January 2020, it is unclear as to the works that were actually being undertaken.
  - (k) The final invoice is from West London Services for additional scaffold hire, but this is August of 2020 and gives no details.
21. Finally, we should deal with the skeleton arguments received by us on the morning of the hearing. The first was from the Counsel for the Applicant Mr Upton. After setting out the basic information he confirmed with us that the company Dynamic had assigned their interest in flat M5 to Trade Sales Limited, Mr Gray’s company, on 5<sup>th</sup> October 2021 and that Mr Edwards had assigned his interest in flat M2 to Trade Sales Limited on 9<sup>th</sup> November 2020. It was said that as a result of the assignment of this last lease of flat M2 that as this had taken place before the roof works were first demanded, which we were told was 23<sup>rd</sup> June 2021, Mr Edwards is not liable to make any payment under the provisions of sections 5 and 24 of the Landlord and Tenant (Covenants) Act 1995.
22. Mr Upton in his skeleton argument then went on to assert that no valid demands had been made within 18 months or indeed at all and that accordingly the provisions of section 20B bit preventing the Respondents from recovering any monies.

23. These two matters rather caught the Applicants on the hop. It was suggested that if the matter was to proceed on this basis, they would need time to consider the matter. We agreed with them. We indicated to Mr Upton that if he wished to put forward these late submissions, which are not referred to in any of the statements of case, there would need to be an amendment and time given to the Respondents to reply. There was also the question of how costs would fall. As a result of this, Mr Upton took further instructions from Mr Edwards and confirmed with us that he would not pursue these two submissions.
24. We were then left to deal with the matter on the basis as it originally started, that is to say whether dispensation should be granted and or whether section 27A applied and the costs were irrecoverable as being unreasonable.
25. The Respondent's skeleton argument confirmed that the professional fees raised against Mr Edwards in the sum of £2,649 were no longer pursued. It is conceded in the skeleton argument that there is a "considerable evidential overlap" between the section 27A application and the section 20ZA application. The skeleton argument confirms that conditional dispensation, if necessary, would be sought.
26. The statement then goes on to deal in some detail with the section 20ZA outlining the various items for which dispensation is sought, which mirror those contained in the Respondent's statement of case. Mention is also made of the evidence of Mrs Wild.
27. Under the heading Issues it is said that the scope of dispensation granted in January 2020 will need to be considered and then whether in the present dispensation application there should be an absolute or conditional dispensation for those works. The next issues to be determined are those under section 27A in respect of the service charge for the 2020 roof works and a catch-all comment relating to the section 20C and paragraph 5A issues. We have noted what is said under the heading Scope of dispensation and dispensation itself with the various references to the case of Dejan Investments v Benson and an extract from Woodfall on landlord and tenants. In this skeleton it raises the suggestion that LR Services did not carry out the works to a satisfactory conclusion and were asked to leave site and as a result West London who purportedly had expertise and knowledge were instructed to complete the works. We have noted these points.

## **FINDINGS**

28. The first thing we should say is that we express surprise that the Respondents called no live evidence. Although Mrs Wild had tendered a witness statement, she was not really able to assist us, the more so as of course she was unwell and could not finish the hearing. In any event her evidence was limited to the production of invoices and an assertion that the Respondent's statement of case was true to the best of her knowledge and belief and that its contents were adopted. This was a somewhat strange assertion to make as she was not at the Property at the time these issues arose. Furthermore, the invoices exhibited that are said to be relevant to the works under the application are limited.
29. We are therefore surprised that a member of SAPC was not called to give evidence and also that Mr Gray, who appears to have been a major player in this matter, did not provide any evidence to assist us in our determination. In addition, the

documentation is in part lacking and is difficult to find. The index of the bundle is unhelpful, for example the witness statement of Sharon Wild is recorded with exhibit SW1. There are, however, a number of other exhibits that appear within the 120 pages which appear to govern the extent of her evidence. In addition, we were not provided with a copy of the apartment 6 lease but just a variation thereto.

30. Dealing firstly with the section 20 application and decision made in January of 2020. We have no doubt that this was limited to the emergency roofing works, which is what is referred to in the application and statement by Mr Davies. He does refer to the question of scaffolding and to an extent we have sympathy with the Respondent's position that the works to the roof could not have been undertaken without scaffolding and such scaffolding was in place and obvious to all concerned. The fact that Mr Edwards may have been abroad at the time, is not it seems to us a matter that should weigh heavily on us. He presumably had contact with the estate and would have been able to have satisfied himself as to whether scaffolding was in situ. In any event, he accepts that some form of scaffolding would have been required and is prepared to accept a figure along the lines of the Elite quote.
31. Accordingly, we are satisfied that the section 20 order made in January of 2020 would cover the scaffolding insofar as it related to the emergency works to be conducted at the Property. We are not altogether satisfied however that the scaffolding was limited to that element, and this may be why it appears as a balancing charge. We cannot comment as to why that is the case and that is a matter that will need to be resolved between the Respondent and the other leaseholders.
32. It is at this point that we get into an overlap with the section 27A application. Our findings are that the costs associated with the LR Services in the sum of £21,944.50 and £8,911.02 are properly payable and are indeed accepted as such by Mr Edwards. Insofar as the scaffolding is concerned, we accept the figure of £5,880 by Agile Scaffolding. In respect of the balance of the scaffolding costs, we consider that Mr Edwards should make his contribution to those as a balancing charge. Looking at the certificates that have been produced in this case by Philip Carroll Accountants, we see that as at 22<sup>nd</sup> December 2020 for flats M2, 5 and 6 the estate contribution is respectively 3.75%, 3.69% and 2.51%. The sums payable under the lease in respect of service charges are again respectively 16.12%, 15.85% and 10.8%. We set out on the attached schedule the sums that we find at payable in respect of the three flats.
33. We must then turn to the section 27A application, it being inextricably linked with the section 20ZA application. As we have indicated above, we were concerned that there was in truth, no real evidence produced on behalf of the Respondents. The only document we have to go on which would appear to indicate what the Respondent considers is payable, is the analysis of costs at page D150 and 151 of the bundle. We have been through those insofar as they related to the individual costs shown thereon.
34. As far as LR Services are concerned, we reject the suggestion that their work was somehow deficient. This does not seem to be supported by Mrs Wild for in her email to Mr Edwards of 23<sup>rd</sup> August 2020, she indicates that they had undertaken the work they were approved to do but that when it came to other areas, such as

the lifting of balustrades across Mr Gray's area, they could not do it. It then appears that Mr Gray, on what authority we do not know, asked them to leave and that he would finish it. He finished these works using his own business. We find that somewhat surprising and suggests to us a lack of control by the directors of the Respondent Company. This is to an extent supported by the apparent unclear reduction by Mr Gray of some £22,800 from costs of roofing works.

35. It is clear on the evidence before us that Mr Gray was undertaking works to the roof and that there had to be works needed to stem flooding to Mr Edward's Property. Indeed, the invoices which we have referred to before and in particular the one of £22,800, referred to leak to steps next door, dig out sauna, toilet, shower and floors. The fact that that appeared initially as a cost as a service charge leads us to question the other invoices from West London Industrial Park. On the face of it this invoice related to anything other than service charge costs. The same can be said of the invoice for £50,400 which removes glass balcony, steels, decking etc. Mrs Wild's email we referred to above refers to lifting the balustrades across Mr Gray's area.
36. We are concerned that on the evidence before us we cannot be certain the costs associated with the roof works as set out on the analysis are service charge relating to repairs to the common parts for which the Applicants have responsibility. There is evidence before us that some of these works, certainly on the face of the invoice, related to matters that clearly were not common parts related. Also, for example, the Ithaca Roofing invoice of £11,852 refers to matters that do not on the face of it appear to relate to any repairs to the roof which was leaking. The crane hire appears to have been placed by Mr Gray and given the evidence we had that there were works being undertaken by Mr Gray to his property, again we cannot be certain that these related solely to service charge costs for which Mr Edwards and Dynamic Plus had a responsibility.
37. For these reasons we accept Mr Edward's contention that he is responsible for the LR Services costs and as to the scaffolding costs we find that the sum of £5,880 plus the share of the balancing fund is reasonable and payable and covered by the initial s20 order in January 2020 and if not would be covered by the fresh s20ZA application as not prejudicing the Applicants and being reasonable.. The remaining costs which were not only the subject of the section 20ZA application but also the section 27A application, we dismiss. As we have indicated above, we are not satisfied on the evidence produced to us by the Respondents, that these costs are rightly claimable from Mr Edwards or from Dynamic Plus Limited. There is too much involvement in Mr Gray, both in utilising his own company, for which no quotes were obtained and also for ordering various items, his name appearing on the invoices, see for example the Agile Scaffolding invoice in the sum of £5,880 at D238 whereas other invoices from Agile do appear to have been issued to the Respondents. In addition, as we have indicated above, we do not understand by what authority Mr Gray removed LR Services from site. In the light of these matters, we are not confident in finding that these costs, which are the subject both of the section 20ZA and the section 27A application are properly claimable from Mr Edwards or Dynamic and accordingly we reject them as being payable.
38. On the question of costs, given our findings we are content to make an order under section 20C that the costs of the Respondents are not recoverable as service charge

considering it just and equitable so to do and we make the same finding in connection with the application to avoid costs under paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002.

39. Mr Upton urged us to make findings of dishonesty. We are not prepared to do that. We did not have the opportunity of receiving credible evidence from the Respondents and whilst there may be some concerns as to the involvement of Mr Gray and his companies, it does not seem to us that this enables us to make findings of dishonesty in this case.

*Andrew Dutton*

Judge: \_\_\_\_\_  
A A Dutton

Date: 1 March 2023

### **Schedule of costs payable by the Applicants**

#### **Roofing costs and scaffolding**

LR Services £21944.58 + £8911.02 + Agile cost £5,880 = £36,735.60  
plus % of balancing charge of £48,840

**Flat M2** 16.21% = £5,954.84  
+ % of Balancing charge at 3.75% = £1,831.50

**Flat M5** 15.85% = £5,822.60  
+ % of Balancing charge at 3.69% = £1,802.19

**Flat M6** 10.80% = £3,967.44  
+ % of Balancing charge at 2.51% = £1,225.88

### **ANNEX – RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.



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

**Case Reference** : CAM/00ME/LSC/2022/0027  
CAM/00ME/LSC/2022/0041  
CAM/00ME/LSC/2022/0042  
CAM/00ME/LDC/2022/0033

**Property** : Charters Mansion, Charters Road, Ascot,  
Berkshire SL5 9QZ

**Applicants** : Dynamic Plus Limited (1)  
Timothy Edwards (2)  
(Respondents in case CAM/00ME/LDC/2022/0033)

**Representative** : Mr Jonathan Upton of Counsel, instructed by  
CP Law Solicitors

**Respondent** : Sunninghill and Ascot Property Company  
Limited  
(Applicants in case CAM/00ME/LDC/2022/0033)

**Representative** : Mr Christopher Mann of Counsel, instructed by  
JB Leitch Solicitors

**Type of Application** : (1) Application for the determination of  
reasonableness and payability of service  
charges under section 27A of the Landlord and  
Tenant Act 1985  
(2) Application for dispensation from the  
consultation requirements pursuant to section  
20ZA of the Landlord and Tenant Act 1985

**Tribunal Members** : Judge Dutton  
Mrs S Redmond BSc Econ MRICS

**Date of Hearing** : 7<sup>th</sup> February 2023

**Date of Decision** : 1 March 2023

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**DECISION**

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## **DESCRIPTION OF HEARING**

This was a remote video hearing which had been consented to by the parties. The form of remote hearing was CVP Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The documents to which we were referred were contained in a bundle of 500 plus pages in respect of the section 27A application and a further 85 papers in respect of the section 20ZA application.

## **DECISIONS OF THE TRIBUNAL**

1. The Tribunal determines that the Applicants are liable to pay the sums set out on the attached schedule in respect of the roofing works in the year 2020 for the reasons set out below.
2. The Tribunal records that the Respondents have waived their claim in the sum of £2,469 in respect of professional fees.
3. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) in respect of both the application for the determination of service charge payability and reasonableness under section 27A of the Act and in relation to the Respondent's application for dispensation under section 20ZA of the Act.
4. The Tribunal determines that the Applicant shall have no liability to make any payments for costs by virtue of paragraph 5 of schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of all applications before us.

## **BACKGROUND**

1. The Applicants, Dynamic Plus Limited and Mr Edwards made applications against the Respondents, Sunninghill and Ascot Property Company Limited, relating to service charges for the years 2018 and 2020. It is not necessary for us to make a determination in connection with the claim for professional fees in 2018 of £2,469 as the Respondent has conceded that those are not recoverable and there is to be a repayment, if not already made, to Mr Edwards in respect of this item.
2. The main area of contention for us to consider relates to roofing works in 2020 to the mansion known as Charters House in which there are flats owned by Dynamic and by Mr Edwards.
3. Charters Estate is a redeveloped private estate with some 34 flats and apartments, although in this particular case the building that we are concerned with is a Grade II Listed 1930s mansion known as Charters House which has been converted into six flats. Dynamic is the leaseholder of Flat M5 during the relevant period in dispute and Mr Edwards is the owner of flats M2 and M6. It appears that at some time after this dispute arose, Mr Edwards assigned his interest in the flats M5 on behalf of Dynamic and M2 on his own behalf to Trade Sales Limited (TSL). This assignment was initially an issue in these proceedings, but we will deal with that element in due course.

4. In the bundles that were provided to us before the hearing we had legal submissions made on behalf of both parties, a witness statement by Mr Edwards and one by Mrs Sharon Wild for the Respondent, copies of the leases for apartments 2 and 5 but the lease variation only for apartment M6. We were also provided with service charge certificates and other accounting details, which we will return to in due course.
5. In the bundle in respect of the section 20ZA application we were provided with a statement on behalf of the Respondents setting out their position and a statement made in reply by Mr Edwards on his behalf and on behalf of Dynamic. We have noted these documents and do not propose to repeat the contents in any great detail, as they are common to both parties. The only live evidence we heard was from Mr Edwards. The Respondents had not called anybody apart from Mrs Wild who was incapacitated. She did attend the morning of the hearing but did not give any evidence other than to make one or two comments and was not able to attend in the afternoon. In any event, it had been agreed that she did not need to attend the hearing as her evidence was really nothing more than production of documents, the more so as she did not join the Respondent as the estate manager until April of 2020 when the issues relating to the roofing works had already occurred.
6. What is clear from the legal submissions made is that there is some confusion as to the exact sums that have been spent in respect of the roofing works, whether those are properly payable and whether or not dispensation is required. It is the Respondent's position, that is to say Sunninghill and Ascot Property Company Limited (SAPC) that dispensation that had been granted by the Tribunal in a decision dated 8<sup>th</sup> January 2020 in case number CAM/OOME/LDC/2019/0038 involving the same parties save that it involved all the leaseholders of the mansion block covered all works to the roof. In that case, dispensation was granted "for the dispensation of any or all of the consultation requirements in respect of urgent roof works in particular the installation of membrane roof system waterproofing." The decision of the Tribunal was that it granted dispensation from all the consultation requirements in relation to the works that were set out in the application. The application refers to the qualifying works consisting of the supply and installation of membrane roof system waterproofing with an intention that the works would be carried out in September 2019. In a statement in support, the then estate manager John Davies, again repeats that the works consist of the supply and installation of membrane roof system waterproofing. At the end of the witness statement, Mr Davies says as follows: "*Works to install scaffolding to provide access to facilitate the required roof overlay have already been completed in December of 2019.*"
7. It was, as stated above, the main plank of the Respondent's case that this dispensation related to all the works that were subsequently undertaken in respect of the roof. This was disputed and resulted in this second section 20ZA application being made in case CAM/OOME/LDC/2022/0033. It is not necessary for us to spend any great time on this by reason of the findings that we make in this decision.
8. Mr Edwards provided a witness statement and attended the hearing to be cross-examined. His statement is to be found at D1 in the bundle of papers before us and confirms his ownership of the three flats at the time of the dispute and that

two of these flats have now been transferred to a company owned by a Mr Fil Gray who is a character involved in this dispute but who does not participate in these proceedings. It is noted also that Mr Edwards was absent from the block from 6<sup>th</sup> November 2019 returning in January of 2022. Accordingly, his actual knowledge of the works that were undertaken has to be read in that light. We have noted all that was said in his statement and the evidence that he gave to us at the hearing. He said that he was only aware of one leak affecting his apartment and that appeared to be from water entering from Mr Gray's apartment.

9. The thrust of Mr Edwards' evidence was that he accepted that the works undertaken by LR Services for overlaying the roof were covered by the original section 20ZA application and are payable. Insofar as any scaffolding cost is concerned, he was of the view that the figure quoted by Elite in their document which is at page D231 of the bundle of £4,580, it would seem exclusive of VAT, was the sum that he would be prepared to accept should be payable in relation to the scaffolding element.
10. He disputed any other costs associated with the roofing works on the basis that these were either not the subject of the original 2020 dispensation order and although referred to in the present section 20ZA related to works that were not associated with the roofing issues affecting his property. In fact, it was alleged these works related to roofing works associated with Mr Gray's property for which he (Mr Gray) was solely liable.
11. We were taken to the LR Services Limited invoices which appeared at a number of places in the bundle but could be easily found at pages D11 and D12. These showed invoices in the sum of £21,944.58 and £8,911.02. These invoices were accepted by Mr Edwards. Of relevance is that these two amounts appear under analysis of costs for repairs and recharging provided by the accountants acting on behalf of the Respondents. This spreadsheet was at page D150 and D151 of the main bundle and contains a number of other entries which were disputed by Mr Edwards. These formed part of the new section 20ZA application. The total sum which it is said was spent in relation to the roofing works was £111,615.66 which by a handwritten notation had been broken down into the percentages payable under the terms of the leases for the three apartments in question.
12. Mrs Wild who prepared a witness statement at D152 of the bundle dated 28<sup>th</sup> September 2022 referred us to exhibits at SW3 which she said were the invoices which the Respondent has on record relating to the works which are relevant to this application. These include the LR Services invoice dated 20<sup>th</sup> February 2020 in the sum of £8,911.02 which has been referred to above and then a number of other invoices as follows: (i) M&M Mobile Crane Hire in the sum of £1,020 said to be for the hire of a 60-tonne challenger all-terrain crane. A number of invoices from West London Industrial Park (ii) dated 10<sup>th</sup> March 2020 said to be for the supply of Danzo roofing felt in the sum of £6,636 at page D237 and further invoices also from West London Industrial Park (iii) dated 12<sup>th</sup> August 2020 to remove all glass balcony steels, decking and timber joists and other works in the sum of £50,400 at D241 (iv) a further invoice for scaffold over hire of £732 at D242 and another invoice (v) relating to the leaks to steps, sauna and toilets in the sum of £22,800 dated 12<sup>th</sup> August 2020 at D243 which was in fact withdrawn by Mr Gray. It should be noted that West London Industrial Park, which is a trading name, it would seem, of Trade Sale Limited is, we understand, owned and or

controlled by Mr Gray. It is Trade Sales Limited to which Mr Edwards assigned two of his apartments.

13. There then followed invoices from Agile Scaffolding. These start at page 238 in the bundle and it is an invoice dated 31<sup>st</sup> December 2019 in the sum of £5,880 which is the amount that appears on the spread sheet at D150 of roofing costs and which it is said Mr Edwards is obliged to pay. There then followed further invoices dated 30<sup>th</sup> November 2019 in the sum of £18,672, an invoice on 31<sup>st</sup> December 2019 in the sum of £28,128 and an invoice on 30<sup>th</sup> July 2020 in the sum of £2,040. These sums total £54,720 which is subject to the deduction of £5,880 leaving a balancing charge of £48,840.
14. Pausing there, it appears for reasons that were never explained to us, that this balancing charge for the scaffolding at the mansion block has appeared as an estate charge and has been recovered from all the leaseholders. We are confirmed in this understanding by reference to the Respondent's statement of case at page B18 and 19 where at paragraph 26 the Respondent says as follows: *"The leaseholders of the mansion block were not charged directly for the costs of the scaffolding. The costs of the scaffolding were charged to the estate and demanded to all of the leaseholders as part of the balancing charge for the 2019 period. The costs of the scaffolding were considerably more at £54,720, however only £5,880 was applied to the invoice raised for the roof work costs for the mansion block, the rest was charged through the balancing charge for 2019."*
15. Things are further confused by an email from Mr Anthony Graham, whose status is not wholly clear, but who appeared to be acting on behalf of the directors of SAPC. He wrote to Mr Edwards on 4<sup>th</sup> June 2021 and said at page D136 penultimate paragraph the following: *"Under cost category labelled Hard Services there is a "fabrics repair and maintenance" charge of £25,994.67. £4,061 of this was for ballroom redecoration to Oakwood (invoice attached). The balance of £21,882.67 was paid to LR Services for roof repairs. This invoice comprising a number of smaller invoices should be combined with invoices for a further £10,260 to LR Services for roof repairs allocated to the cost category labelled Major Works. These two sets of invoices together total £32,142.67 paid against a quote from LR Services of £34,263 dated 22<sup>nd</sup> November 2019 (attached). That is the total for roof repairs billed in 2020 is lower than the quote accepted by the Tribunal."* This letter also went on to confirm that Mr Gray had withdrawn the charge of £22,800 which we referred to above.
16. The letter goes on to say that the works completed by LR Services were not fully successful and leaks continued, and new leaks appeared. This was the subject of dispute because according to Mr Edwards the company who were providing insurance for LR Services were very happy with the work. Furthermore, in an email from Mrs Wild to Mr Edwards dated 24<sup>th</sup> January 2022 she says this: *"Also attached is something I found while looking for the paperwork. I don't know who did the report as it is just saved as a PDF file. The date is 2019. It clearly shows though that there was damage all over the roof and LR Services show they did the part they were approved to do but when it came to other areas such as having to lift the balustrades across Mr Gray's area, they couldn't do it. I believe that is why he asked them to leave and he would finish it. I am not certain of that but I will ask Mr Gray again when I meet him on 31<sup>st</sup>. Jason will be with me so he can confirm the conversation."*

17. We are not aware that there was any further information on this point, and we do not know what the report was as it was not as far as we can tell included within the bundle before us.
18. In cross-examination Mr Edwards was asked about certain emails that had emanated from Mr Davies. These were at bundle page D72 and D73. The first one relates to the need to replace the PVC roof covering the Parkinson Wing of the mansion, which as we understood it is the roof immediately above Mr Gray's apartment, Mr Edwards' apartment lying to the side. There is also an email from Mr Davies dated 20<sup>th</sup> November 2019 confirming that in order to complete the works scaffolding round the Parkinson Wing of the mansion was necessary extending across the ballroom. We have photographs of the scaffolding, which is extensive, but which is predominantly to the left side of the Property when looking from the rear or the right side when looking at page D55 showing the Parkinson Wing as coloured yellow.
19. Mr Edwards was asked why he had not obtained alternative quotes, but he said that was not possible as he was not provided with the invoices until several months after he queried matters. He reaffirmed that the only leak he was aware of had come from Mr Gray's apartment. It was also suggested that a terrace above Mr Gray's Property was within the demise of that flat and that therefore any repair works associated thereto were Mr Gray's responsibility and not a service charge item.
20. We should just review the items of expenditure for which the section 20ZA application was made. Those are set out at paragraph 8 of the statement of case in support of the application which was contained within a separate bundle. They are also shown on analysis of roof repair costs at page D150 of the bundle. It is thought that most of these invoices are to be found behind exhibit SW3 in Mrs Wild's statement, but the Applicant also deals in some detail with these invoices at paragraph 24 of the reply to the Respondent's statement of case. We have noted all that was said in that document which in truth was not subject of any great questioning at the hearing. In any event, doing the best we can given the nature of the documentation before us and the somewhat unhelpful layout of the bundle, we propose to endeavour to go through those invoices shown on the analysis for costs at page D150/1 starting with:
  - (a) That of LR Services dated 31<sup>st</sup> January 2020 in the sum of £21,944.58 which is not disputed by Mr Edwards.
  - (b) The next invoice on the schedule is Smart Properties in the sum of £220 said to be dated 6<sup>th</sup> March 2020 for roof leaks but no explanation is given and indeed we cannot find a copy of that invoice.
  - (c) The next invoice is dated 20<sup>th</sup> April with LR Services in the sum of £8,911.02; again this is not disputed as being payable by Mr Edwards.
  - (d) We then find an invoice dated 25<sup>th</sup> April 2020 for crane hire in the sum of £1,020 which does appear in the bundle of invoices behind SW3 from M&M Mobile Crane Hire in the sum of £850 plus VAT. This merely states that this is for the hire of a 60 tonne challenger all-terrain crane. On this point it was said by Mr Edwards that Mr Gray was carrying out works to his Property and there is conjecture that the crane hire did not relate to the works undertaken by LR Services.

- (e) The next item of expenditure is further Crane Hire, this time 31<sup>st</sup> March 2020 in the sum of £1,774.14. We could not find a copy of this invoice in the bundle behind SW3.
  - (f) The next invoice is one from West London in the sum of £6,363 said to be work carried out by Mr Gray. We could not find a copy of the invoice for £6,363 but it appears this is dated 17<sup>th</sup> June 2020 which is it seems sometime after the works were undertaken by LR Services.
  - (g) The next invoice we have on the list is from Agile Scaffolding which is the £5,880 we have referred to before being the balance of the total scaffolding costs the remainder of which appeared as a balancing fund.
  - (h) The next invoice relates to costs of Smart Property Development. This is dated 30<sup>th</sup> April 2020 and says that they attended site to carry out roof repairs following a leak as per quotation in the sum of £2,244. Insofar as we are aware no quotation was provided and again this seems to be some time after the works that were undertaken by LR Services had been concluded. The invoice date is 16<sup>th</sup> March 2020.
  - (i) The next invoice for which dispensation was sought was from Ithaca Roofing in the sum of £11,852.40 dated 30<sup>th</sup> October 2020 which includes repairs to the top front shelf area of manor building, glass balustrade removal and reinstatement and additional ply and PVC works to balustrade bases. It is said by Mr Edwards that these works were materially different to the original dispensation application and were not urgent and given the apparent repairing obligations in relation to the ‘shelf’ area and generally it is unclear whether this invoice relates to the roofing works for the common parts at the Property.
  - (j) The next invoice is again from West London Industrial Park in the sum of £50,400 dated 12<sup>th</sup> August 2020. This refers to three roof leaks at the mansion and includes the removal of all glass balcony steels, decking and timber joists, reinstatement using new fixing and gadgets, repair roof on neighbour’s roof, reinstate joist decking to complete. Given that these works were apparently undertaken some months after the application for dispensation was first made and dealt with by the Tribunal in January 2020, it is unclear as to the works that were actually being undertaken.
  - (k) The final invoice is from West London Services for additional scaffold hire, but this is August of 2020 and gives no details.
21. Finally, we should deal with the skeleton arguments received by us on the morning of the hearing. The first was from the Counsel for the Applicant Mr Upton. After setting out the basic information he confirmed with us that the company Dynamic had assigned their interest in flat M5 to Trade Sales Limited, Mr Gray’s company, on 5<sup>th</sup> October 2021 and that Mr Edwards had assigned his interest in flat M2 to Trade Sales Limited on 9<sup>th</sup> November 2020. It was said that as a result of the assignment of this last lease of flat M2 that as this had taken place before the roof works were first demanded, which we were told was 23<sup>rd</sup> June 2021, Mr Edwards is not liable to make any payment under the provisions of sections 5 and 24 of the Landlord and Tenant (Covenants) Act 1995.
22. Mr Upton in his skeleton argument then went on to assert that no valid demands had been made within 18 months or indeed at all and that accordingly the provisions of section 20B bit preventing the Respondents from recovering any monies.

23. These two matters rather caught the Applicants on the hop. It was suggested that if the matter was to proceed on this basis, they would need time to consider the matter. We agreed with them. We indicated to Mr Upton that if he wished to put forward these late submissions, which are not referred to in any of the statements of case, there would need to be an amendment and time given to the Respondents to reply. There was also the question of how costs would fall. As a result of this, Mr Upton took further instructions from Mr Edwards and confirmed with us that he would not pursue these two submissions.
24. We were then left to deal with the matter on the basis as it originally started, that is to say whether dispensation should be granted and or whether section 27A applied and the costs were irrecoverable as being unreasonable.
25. The Respondent's skeleton argument confirmed that the professional fees raised against Mr Edwards in the sum of £2,649 were no longer pursued. It is conceded in the skeleton argument that there is a "considerable evidential overlap" between the section 27A application and the section 20ZA application. The skeleton argument confirms that conditional dispensation, if necessary, would be sought.
26. The statement then goes on to deal in some detail with the section 20ZA outlining the various items for which dispensation is sought, which mirror those contained in the Respondent's statement of case. Mention is also made of the evidence of Mrs Wild.
27. Under the heading Issues it is said that the scope of dispensation granted in January 2020 will need to be considered and then whether in the present dispensation application there should be an absolute or conditional dispensation for those works. The next issues to be determined are those under section 27A in respect of the service charge for the 2020 roof works and a catch-all comment relating to the section 20C and paragraph 5A issues. We have noted what is said under the heading Scope of dispensation and dispensation itself with the various references to the case of Dejan Investments v Benson and an extract from Woodfall on landlord and tenants. In this skeleton it raises the suggestion that LR Services did not carry out the works to a satisfactory conclusion and were asked to leave site and as a result West London who purportedly had expertise and knowledge were instructed to complete the works. We have noted these points.

## **FINDINGS**

28. The first thing we should say is that we express surprise that the Respondents called no live evidence. Although Mrs Wild had tendered a witness statement, she was not really able to assist us, the more so as of course she was unwell and could not finish the hearing. In any event her evidence was limited to the production of invoices and an assertion that the Respondent's statement of case was true to the best of her knowledge and belief and that its contents were adopted. This was a somewhat strange assertion to make as she was not at the Property at the time these issues arose. Furthermore, the invoices exhibited that are said to be relevant to the works under the application are limited.
29. We are therefore surprised that a member of SAPC was not called to give evidence and also that Mr Gray, who appears to have been a major player in this matter, did not provide any evidence to assist us in our determination. In addition, the

documentation is in part lacking and is difficult to find. The index of the bundle is unhelpful, for example the witness statement of Sharon Wild is recorded with exhibit SW1. There are, however, a number of other exhibits that appear within the 120 pages which appear to govern the extent of her evidence. In addition, we were not provided with a copy of the apartment 6 lease but just a variation thereto.

30. Dealing firstly with the section 20 application and decision made in January of 2020. We have no doubt that this was limited to the emergency roofing works, which is what is referred to in the application and statement by Mr Davies. He does refer to the question of scaffolding and to an extent we have sympathy with the Respondent's position that the works to the roof could not have been undertaken without scaffolding and such scaffolding was in place and obvious to all concerned. The fact that Mr Edwards may have been abroad at the time, is not it seems to us a matter that should weigh heavily on us. He presumably had contact with the estate and would have been able to have satisfied himself as to whether scaffolding was in situ. In any event, he accepts that some form of scaffolding would have been required and is prepared to accept a figure along the lines of the Elite quote.
31. Accordingly, we are satisfied that the section 20 order made in January of 2020 would cover the scaffolding insofar as it related to the emergency works to be conducted at the Property. We are not altogether satisfied however that the scaffolding was limited to that element, and this may be why it appears as a balancing charge. We cannot comment as to why that is the case and that is a matter that will need to be resolved between the Respondent and the other leaseholders.
32. It is at this point that we get into an overlap with the section 27A application. Our findings are that the costs associated with the LR Services in the sum of £21,944.50 and £8,911.02 are properly payable and are indeed accepted as such by Mr Edwards. Insofar as the scaffolding is concerned, we accept the figure of £5,880 by Agile Scaffolding. In respect of the balance of the scaffolding costs, we consider that Mr Edwards should make his contribution to those as a balancing charge. Looking at the certificates that have been produced in this case by Philip Carroll Accountants, we see that as at 22<sup>nd</sup> December 2020 for flats M2, 5 and 6 the estate contribution is respectively 3.75%, 3.69% and 2.51%. The sums payable under the lease in respect of service charges are again respectively 16.12%, 15.85% and 10.8%. We set out on the attached schedule the sums that we find at payable in respect of the three flats.
33. We must then turn to the section 27A application, it being inextricably linked with the section 20ZA application. As we have indicated above, we were concerned that there was in truth, no real evidence produced on behalf of the Respondents. The only document we have to go on which would appear to indicate what the Respondent considers is payable, is the analysis of costs at page D150 and 151 of the bundle. We have been through those insofar as they related to the individual costs shown thereon.
34. As far as LR Services are concerned, we reject the suggestion that their work was somehow deficient. This does not seem to be supported by Mrs Wild for in her email to Mr Edwards of 23<sup>rd</sup> August 2020, she indicates that they had undertaken the work they were approved to do but that when it came to other areas, such as

the lifting of balustrades across Mr Gray's area, they could not do it. It then appears that Mr Gray, on what authority we do not know, asked them to leave and that he would finish it. He finished these works using his own business. We find that somewhat surprising and suggests to us a lack of control by the directors of the Respondent Company. This is to an extent supported by the apparent unclear reduction by Mr Gray of some £22,800 from costs of roofing works.

35. It is clear on the evidence before us that Mr Gray was undertaking works to the roof and that there had to be works needed to stem flooding to Mr Edward's Property. Indeed, the invoices which we have referred to before and in particular the one of £22,800, referred to leak to steps next door, dig out sauna, toilet, shower and floors. The fact that that appeared initially as a cost as a service charge leads us to question the other invoices from West London Industrial Park. On the face of it this invoice related to anything other than service charge costs. The same can be said of the invoice for £50,400 which removes glass balcony, steels, decking etc. Mrs Wild's email we referred to above refers to lifting the balustrades across Mr Gray's area.
36. We are concerned that on the evidence before us we cannot be certain the costs associated with the roof works as set out on the analysis are service charge relating to repairs to the common parts for which the Applicants have responsibility. There is evidence before us that some of these works, certainly on the face of the invoice, related to matters that clearly were not common parts related. Also, for example, the Ithaca Roofing invoice of £11,852 refers to matters that do not on the face of it appear to relate to any repairs to the roof which was leaking. The crane hire appears to have been placed by Mr Gray and given the evidence we had that there were works being undertaken by Mr Gray to his property, again we cannot be certain that these related solely to service charge costs for which Mr Edwards and Dynamic Plus had a responsibility.
37. For these reasons we accept Mr Edward's contention that he is responsible for the LR Services costs and as to the scaffolding costs we find that the sum of £5,880 plus the share of the balancing fund is reasonable and payable and covered by the initial s20 order in January 2020 and if not would be covered by the fresh s20ZA application as not prejudicing the Applicants and being reasonable.. The remaining costs which were not only the subject of the section 20ZA application but also the section 27A application, we dismiss. As we have indicated above, we are not satisfied on the evidence produced to us by the Respondents, that these costs are rightly claimable from Mr Edwards or from Dynamic Plus Limited. There is too much involvement in Mr Gray, both in utilising his own company, for which no quotes were obtained and also for ordering various items, his name appearing on the invoices, see for example the Agile Scaffolding invoice in the sum of £5,880 at D238 whereas other invoices from Agile do appear to have been issued to the Respondents. In addition, as we have indicated above, we do not understand by what authority Mr Gray removed LR Services from site. In the light of these matters, we are not confident in finding that these costs, which are the subject both of the section 20ZA and the section 27A application are properly claimable from Mr Edwards or Dynamic and accordingly we reject them as being payable.
38. On the question of costs, given our findings we are content to make an order under section 20C that the costs of the Respondents are not recoverable as service charge

considering it just and equitable so to do and we make the same finding in connection with the application to avoid costs under paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002.

39. Mr Upton urged us to make findings of dishonesty. We are not prepared to do that. We did not have the opportunity of receiving credible evidence from the Respondents and whilst there may be some concerns as to the involvement of Mr Gray and his companies, it does not seem to us that this enables us to make findings of dishonesty in this case.

*Andrew Dutton*

Judge: \_\_\_\_\_  
A A Dutton

Date: 1 March 2023

### **Schedule of costs payable by the Applicants**

#### **Roofing costs and scaffolding**

LR Services £21944.58 + £8911.02 + Agile cost £5,880 = £36,735.60  
plus % of balancing charge of £48,840

**Flat M2** 16.21% = £5,954.84  
+ % of Balancing charge at 3.75% = £1,831.50

**Flat M5** 15.85% = £5,822.60  
+ % of Balancing charge at 3.69% = £1,802.19

**Flat M6** 10.80% = £3,967.44  
+ % of Balancing charge at 2.51% = £1,225.88

### **ANNEX – RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.



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

**Case Reference** : CAM/00ME/LSC/2022/0027  
CAM/00ME/LSC/2022/0041  
CAM/00ME/LSC/2022/0042  
CAM/00ME/LDC/2022/0033

**Property** : Charters Mansion, Charters Road, Ascot,  
Berkshire SL5 9QZ

**Applicants** : Dynamic Plus Limited (1)  
Timothy Edwards (2)  
(Respondents in case CAM/00ME/LDC/2022/0033)

**Representative** : Mr Jonathan Upton of Counsel, instructed by  
CP Law Solicitors

**Respondent** : Sunninghill and Ascot Property Company  
Limited  
(Applicants in case CAM/00ME/LDC/2022/0033)

**Representative** : Mr Christopher Mann of Counsel, instructed by  
JB Leitch Solicitors

**Type of Application** : (1) Application for the determination of  
reasonableness and payability of service  
charges under section 27A of the Landlord and  
Tenant Act 1985  
(2) Application for dispensation from the  
consultation requirements pursuant to section  
20ZA of the Landlord and Tenant Act 1985

**Tribunal Members** : Judge Dutton  
Mrs S Redmond BSc Econ MRICS

**Date of Hearing** : 7<sup>th</sup> February 2023

**Date of Decision** : 1 March 2023

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**DECISION**

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## **DESCRIPTION OF HEARING**

This was a remote video hearing which had been consented to by the parties. The form of remote hearing was CVP Video Remote. A face-to-face hearing was not held because it was not practicable and all issues could be determined in a remote hearing.

The documents to which we were referred were contained in a bundle of 500 plus pages in respect of the section 27A application and a further 85 papers in respect of the section 20ZA application.

## **DECISIONS OF THE TRIBUNAL**

1. The Tribunal determines that the Applicants are liable to pay the sums set out on the attached schedule in respect of the roofing works in the year 2020 for the reasons set out below.
2. The Tribunal records that the Respondents have waived their claim in the sum of £2,469 in respect of professional fees.
3. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 (the Act) in respect of both the application for the determination of service charge payability and reasonableness under section 27A of the Act and in relation to the Respondent's application for dispensation under section 20ZA of the Act.
4. The Tribunal determines that the Applicant shall have no liability to make any payments for costs by virtue of paragraph 5 of schedule 11 to the Commonhold and Leasehold Reform Act 2002 in respect of all applications before us.

## **BACKGROUND**

1. The Applicants, Dynamic Plus Limited and Mr Edwards made applications against the Respondents, Sunninghill and Ascot Property Company Limited, relating to service charges for the years 2018 and 2020. It is not necessary for us to make a determination in connection with the claim for professional fees in 2018 of £2,469 as the Respondent has conceded that those are not recoverable and there is to be a repayment, if not already made, to Mr Edwards in respect of this item.
2. The main area of contention for us to consider relates to roofing works in 2020 to the mansion known as Charters House in which there are flats owned by Dynamic and by Mr Edwards.
3. Charters Estate is a redeveloped private estate with some 34 flats and apartments, although in this particular case the building that we are concerned with is a Grade II Listed 1930s mansion known as Charters House which has been converted into six flats. Dynamic is the leaseholder of Flat M5 during the relevant period in dispute and Mr Edwards is the owner of flats M2 and M6. It appears that at some time after this dispute arose, Mr Edwards assigned his interest in the flats M5 on behalf of Dynamic and M2 on his own behalf to Trade Sales Limited (TSL). This assignment was initially an issue in these proceedings, but we will deal with that element in due course.

4. In the bundles that were provided to us before the hearing we had legal submissions made on behalf of both parties, a witness statement by Mr Edwards and one by Mrs Sharon Wild for the Respondent, copies of the leases for apartments 2 and 5 but the lease variation only for apartment M6. We were also provided with service charge certificates and other accounting details, which we will return to in due course.
5. In the bundle in respect of the section 20ZA application we were provided with a statement on behalf of the Respondents setting out their position and a statement made in reply by Mr Edwards on his behalf and on behalf of Dynamic. We have noted these documents and do not propose to repeat the contents in any great detail, as they are common to both parties. The only live evidence we heard was from Mr Edwards. The Respondents had not called anybody apart from Mrs Wild who was incapacitated. She did attend the morning of the hearing but did not give any evidence other than to make one or two comments and was not able to attend in the afternoon. In any event, it had been agreed that she did not need to attend the hearing as her evidence was really nothing more than production of documents, the more so as she did not join the Respondent as the estate manager until April of 2020 when the issues relating to the roofing works had already occurred.
6. What is clear from the legal submissions made is that there is some confusion as to the exact sums that have been spent in respect of the roofing works, whether those are properly payable and whether or not dispensation is required. It is the Respondent's position, that is to say Sunninghill and Ascot Property Company Limited (SAPC) that dispensation that had been granted by the Tribunal in a decision dated 8<sup>th</sup> January 2020 in case number CAM/OOME/LDC/2019/0038 involving the same parties save that it involved all the leaseholders of the mansion block covered all works to the roof. In that case, dispensation was granted "for the dispensation of any or all of the consultation requirements in respect of urgent roof works in particular the installation of membrane roof system waterproofing." The decision of the Tribunal was that it granted dispensation from all the consultation requirements in relation to the works that were set out in the application. The application refers to the qualifying works consisting of the supply and installation of membrane roof system waterproofing with an intention that the works would be carried out in September 2019. In a statement in support, the then estate manager John Davies, again repeats that the works consist of the supply and installation of membrane roof system waterproofing. At the end of the witness statement, Mr Davies says as follows: "*Works to install scaffolding to provide access to facilitate the required roof overlay have already been completed in December of 2019.*"
7. It was, as stated above, the main plank of the Respondent's case that this dispensation related to all the works that were subsequently undertaken in respect of the roof. This was disputed and resulted in this second section 20ZA application being made in case CAM/OOME/LDC/2022/0033. It is not necessary for us to spend any great time on this by reason of the findings that we make in this decision.
8. Mr Edwards provided a witness statement and attended the hearing to be cross-examined. His statement is to be found at D1 in the bundle of papers before us and confirms his ownership of the three flats at the time of the dispute and that

two of these flats have now been transferred to a company owned by a Mr Fil Gray who is a character involved in this dispute but who does not participate in these proceedings. It is noted also that Mr Edwards was absent from the block from 6<sup>th</sup> November 2019 returning in January of 2022. Accordingly, his actual knowledge of the works that were undertaken has to be read in that light. We have noted all that was said in his statement and the evidence that he gave to us at the hearing. He said that he was only aware of one leak affecting his apartment and that appeared to be from water entering from Mr Gray's apartment.

9. The thrust of Mr Edwards' evidence was that he accepted that the works undertaken by LR Services for overlaying the roof were covered by the original section 20ZA application and are payable. Insofar as any scaffolding cost is concerned, he was of the view that the figure quoted by Elite in their document which is at page D231 of the bundle of £4,580, it would seem exclusive of VAT, was the sum that he would be prepared to accept should be payable in relation to the scaffolding element.
10. He disputed any other costs associated with the roofing works on the basis that these were either not the subject of the original 2020 dispensation order and although referred to in the present section 20ZA related to works that were not associated with the roofing issues affecting his property. In fact, it was alleged these works related to roofing works associated with Mr Gray's property for which he (Mr Gray) was solely liable.
11. We were taken to the LR Services Limited invoices which appeared at a number of places in the bundle but could be easily found at pages D11 and D12. These showed invoices in the sum of £21,944.58 and £8,911.02. These invoices were accepted by Mr Edwards. Of relevance is that these two amounts appear under analysis of costs for repairs and recharging provided by the accountants acting on behalf of the Respondents. This spreadsheet was at page D150 and D151 of the main bundle and contains a number of other entries which were disputed by Mr Edwards. These formed part of the new section 20ZA application. The total sum which it is said was spent in relation to the roofing works was £111,615.66 which by a handwritten notation had been broken down into the percentages payable under the terms of the leases for the three apartments in question.
12. Mrs Wild who prepared a witness statement at D152 of the bundle dated 28<sup>th</sup> September 2022 referred us to exhibits at SW3 which she said were the invoices which the Respondent has on record relating to the works which are relevant to this application. These include the LR Services invoice dated 20<sup>th</sup> February 2020 in the sum of £8,911.02 which has been referred to above and then a number of other invoices as follows: (i) M&M Mobile Crane Hire in the sum of £1,020 said to be for the hire of a 60-tonne challenger all-terrain crane. A number of invoices from West London Industrial Park (ii) dated 10<sup>th</sup> March 2020 said to be for the supply of Danzo roofing felt in the sum of £6,636 at page D237 and further invoices also from West London Industrial Park (iii) dated 12<sup>th</sup> August 2020 to remove all glass balcony steels, decking and timber joists and other works in the sum of £50,400 at D241 (iv) a further invoice for scaffold over hire of £732 at D242 and another invoice (v) relating to the leaks to steps, sauna and toilets in the sum of £22,800 dated 12<sup>th</sup> August 2020 at D243 which was in fact withdrawn by Mr Gray. It should be noted that West London Industrial Park, which is a trading name, it would seem, of Trade Sale Limited is, we understand, owned and or

controlled by Mr Gray. It is Trade Sales Limited to which Mr Edwards assigned two of his apartments.

13. There then followed invoices from Agile Scaffolding. These start at page 238 in the bundle and it is an invoice dated 31<sup>st</sup> December 2019 in the sum of £5,880 which is the amount that appears on the spread sheet at D150 of roofing costs and which it is said Mr Edwards is obliged to pay. There then followed further invoices dated 30<sup>th</sup> November 2019 in the sum of £18,672, an invoice on 31<sup>st</sup> December 2019 in the sum of £28,128 and an invoice on 30<sup>th</sup> July 2020 in the sum of £2,040. These sums total £54,720 which is subject to the deduction of £5,880 leaving a balancing charge of £48,840.
14. Pausing there, it appears for reasons that were never explained to us, that this balancing charge for the scaffolding at the mansion block has appeared as an estate charge and has been recovered from all the leaseholders. We are confirmed in this understanding by reference to the Respondent's statement of case at page B18 and 19 where at paragraph 26 the Respondent says as follows: *"The leaseholders of the mansion block were not charged directly for the costs of the scaffolding. The costs of the scaffolding were charged to the estate and demanded to all of the leaseholders as part of the balancing charge for the 2019 period. The costs of the scaffolding were considerably more at £54,720, however only £5,880 was applied to the invoice raised for the roof work costs for the mansion block, the rest was charged through the balancing charge for 2019."*
15. Things are further confused by an email from Mr Anthony Graham, whose status is not wholly clear, but who appeared to be acting on behalf of the directors of SAPC. He wrote to Mr Edwards on 4<sup>th</sup> June 2021 and said at page D136 penultimate paragraph the following: *"Under cost category labelled Hard Services there is a "fabrics repair and maintenance" charge of £25,994.67. £4,061 of this was for ballroom redecoration to Oakwood (invoice attached). The balance of £21,882.67 was paid to LR Services for roof repairs. This invoice comprising a number of smaller invoices should be combined with invoices for a further £10,260 to LR Services for roof repairs allocated to the cost category labelled Major Works. These two sets of invoices together total £32,142.67 paid against a quote from LR Services of £34,263 dated 22<sup>nd</sup> November 2019 (attached). That is the total for roof repairs billed in 2020 is lower than the quote accepted by the Tribunal."* This letter also went on to confirm that Mr Gray had withdrawn the charge of £22,800 which we referred to above.
16. The letter goes on to say that the works completed by LR Services were not fully successful and leaks continued, and new leaks appeared. This was the subject of dispute because according to Mr Edwards the company who were providing insurance for LR Services were very happy with the work. Furthermore, in an email from Mrs Wild to Mr Edwards dated 24<sup>th</sup> January 2022 she says this: *"Also attached is something I found while looking for the paperwork. I don't know who did the report as it is just saved as a PDF file. The date is 2019. It clearly shows though that there was damage all over the roof and LR Services show they did the part they were approved to do but when it came to other areas such as having to lift the balustrades across Mr Gray's area, they couldn't do it. I believe that is why he asked them to leave and he would finish it. I am not certain of that but I will ask Mr Gray again when I meet him on 31<sup>st</sup>. Jason will be with me so he can confirm the conversation."*

17. We are not aware that there was any further information on this point, and we do not know what the report was as it was not as far as we can tell included within the bundle before us.
18. In cross-examination Mr Edwards was asked about certain emails that had emanated from Mr Davies. These were at bundle page D72 and D73. The first one relates to the need to replace the PVC roof covering the Parkinson Wing of the mansion, which as we understood it is the roof immediately above Mr Gray's apartment, Mr Edwards' apartment lying to the side. There is also an email from Mr Davies dated 20<sup>th</sup> November 2019 confirming that in order to complete the works scaffolding round the Parkinson Wing of the mansion was necessary extending across the ballroom. We have photographs of the scaffolding, which is extensive, but which is predominantly to the left side of the Property when looking from the rear or the right side when looking at page D55 showing the Parkinson Wing as coloured yellow.
19. Mr Edwards was asked why he had not obtained alternative quotes, but he said that was not possible as he was not provided with the invoices until several months after he queried matters. He reaffirmed that the only leak he was aware of had come from Mr Gray's apartment. It was also suggested that a terrace above Mr Gray's Property was within the demise of that flat and that therefore any repair works associated thereto were Mr Gray's responsibility and not a service charge item.
20. We should just review the items of expenditure for which the section 20ZA application was made. Those are set out at paragraph 8 of the statement of case in support of the application which was contained within a separate bundle. They are also shown on analysis of roof repair costs at page D150 of the bundle. It is thought that most of these invoices are to be found behind exhibit SW3 in Mrs Wild's statement, but the Applicant also deals in some detail with these invoices at paragraph 24 of the reply to the Respondent's statement of case. We have noted all that was said in that document which in truth was not subject of any great questioning at the hearing. In any event, doing the best we can given the nature of the documentation before us and the somewhat unhelpful layout of the bundle, we propose to endeavour to go through those invoices shown on the analysis for costs at page D150/1 starting with:
  - (a) That of LR Services dated 31<sup>st</sup> January 2020 in the sum of £21,944.58 which is not disputed by Mr Edwards.
  - (b) The next invoice on the schedule is Smart Properties in the sum of £220 said to be dated 6<sup>th</sup> March 2020 for roof leaks but no explanation is given and indeed we cannot find a copy of that invoice.
  - (c) The next invoice is dated 20<sup>th</sup> April with LR Services in the sum of £8,911.02; again this is not disputed as being payable by Mr Edwards.
  - (d) We then find an invoice dated 25<sup>th</sup> April 2020 for crane hire in the sum of £1,020 which does appear in the bundle of invoices behind SW3 from M&M Mobile Crane Hire in the sum of £850 plus VAT. This merely states that this is for the hire of a 60 tonne challenger all-terrain crane. On this point it was said by Mr Edwards that Mr Gray was carrying out works to his Property and there is conjecture that the crane hire did not relate to the works undertaken by LR Services.

- (e) The next item of expenditure is further Crane Hire, this time 31<sup>st</sup> March 2020 in the sum of £1,774.14. We could not find a copy of this invoice in the bundle behind SW3.
  - (f) The next invoice is one from West London in the sum of £6,363 said to be work carried out by Mr Gray. We could not find a copy of the invoice for £6,363 but it appears this is dated 17<sup>th</sup> June 2020 which is it seems sometime after the works were undertaken by LR Services.
  - (g) The next invoice we have on the list is from Agile Scaffolding which is the £5,880 we have referred to before being the balance of the total scaffolding costs the remainder of which appeared as a balancing fund.
  - (h) The next invoice relates to costs of Smart Property Development. This is dated 30<sup>th</sup> April 2020 and says that they attended site to carry out roof repairs following a leak as per quotation in the sum of £2,244. Insofar as we are aware no quotation was provided and again this seems to be some time after the works that were undertaken by LR Services had been concluded. The invoice date is 16<sup>th</sup> March 2020.
  - (i) The next invoice for which dispensation was sought was from Ithaca Roofing in the sum of £11,852.40 dated 30<sup>th</sup> October 2020 which includes repairs to the top front shelf area of manor building, glass balustrade removal and reinstatement and additional ply and PVC works to balustrade bases. It is said by Mr Edwards that these works were materially different to the original dispensation application and were not urgent and given the apparent repairing obligations in relation to the ‘shelf’ area and generally it is unclear whether this invoice relates to the roofing works for the common parts at the Property.
  - (j) The next invoice is again from West London Industrial Park in the sum of £50,400 dated 12<sup>th</sup> August 2020. This refers to three roof leaks at the mansion and includes the removal of all glass balcony steels, decking and timber joists, reinstatement using new fixing and gadgets, repair roof on neighbour’s roof, reinstate joist decking to complete. Given that these works were apparently undertaken some months after the application for dispensation was first made and dealt with by the Tribunal in January 2020, it is unclear as to the works that were actually being undertaken.
  - (k) The final invoice is from West London Services for additional scaffold hire, but this is August of 2020 and gives no details.
21. Finally, we should deal with the skeleton arguments received by us on the morning of the hearing. The first was from the Counsel for the Applicant Mr Upton. After setting out the basic information he confirmed with us that the company Dynamic had assigned their interest in flat M5 to Trade Sales Limited, Mr Gray’s company, on 5<sup>th</sup> October 2021 and that Mr Edwards had assigned his interest in flat M2 to Trade Sales Limited on 9<sup>th</sup> November 2020. It was said that as a result of the assignment of this last lease of flat M2 that as this had taken place before the roof works were first demanded, which we were told was 23<sup>rd</sup> June 2021, Mr Edwards is not liable to make any payment under the provisions of sections 5 and 24 of the Landlord and Tenant (Covenants) Act 1995.
22. Mr Upton in his skeleton argument then went on to assert that no valid demands had been made within 18 months or indeed at all and that accordingly the provisions of section 20B bit preventing the Respondents from recovering any monies.

23. These two matters rather caught the Applicants on the hop. It was suggested that if the matter was to proceed on this basis, they would need time to consider the matter. We agreed with them. We indicated to Mr Upton that if he wished to put forward these late submissions, which are not referred to in any of the statements of case, there would need to be an amendment and time given to the Respondents to reply. There was also the question of how costs would fall. As a result of this, Mr Upton took further instructions from Mr Edwards and confirmed with us that he would not pursue these two submissions.
24. We were then left to deal with the matter on the basis as it originally started, that is to say whether dispensation should be granted and or whether section 27A applied and the costs were irrecoverable as being unreasonable.
25. The Respondent's skeleton argument confirmed that the professional fees raised against Mr Edwards in the sum of £2,649 were no longer pursued. It is conceded in the skeleton argument that there is a "considerable evidential overlap" between the section 27A application and the section 20ZA application. The skeleton argument confirms that conditional dispensation, if necessary, would be sought.
26. The statement then goes on to deal in some detail with the section 20ZA outlining the various items for which dispensation is sought, which mirror those contained in the Respondent's statement of case. Mention is also made of the evidence of Mrs Wild.
27. Under the heading Issues it is said that the scope of dispensation granted in January 2020 will need to be considered and then whether in the present dispensation application there should be an absolute or conditional dispensation for those works. The next issues to be determined are those under section 27A in respect of the service charge for the 2020 roof works and a catch-all comment relating to the section 20C and paragraph 5A issues. We have noted what is said under the heading Scope of dispensation and dispensation itself with the various references to the case of Dejan Investments v Benson and an extract from Woodfall on landlord and tenants. In this skeleton it raises the suggestion that LR Services did not carry out the works to a satisfactory conclusion and were asked to leave site and as a result West London who purportedly had expertise and knowledge were instructed to complete the works. We have noted these points.

## **FINDINGS**

28. The first thing we should say is that we express surprise that the Respondents called no live evidence. Although Mrs Wild had tendered a witness statement, she was not really able to assist us, the more so as of course she was unwell and could not finish the hearing. In any event her evidence was limited to the production of invoices and an assertion that the Respondent's statement of case was true to the best of her knowledge and belief and that its contents were adopted. This was a somewhat strange assertion to make as she was not at the Property at the time these issues arose. Furthermore, the invoices exhibited that are said to be relevant to the works under the application are limited.
29. We are therefore surprised that a member of SAPC was not called to give evidence and also that Mr Gray, who appears to have been a major player in this matter, did not provide any evidence to assist us in our determination. In addition, the

documentation is in part lacking and is difficult to find. The index of the bundle is unhelpful, for example the witness statement of Sharon Wild is recorded with exhibit SW1. There are, however, a number of other exhibits that appear within the 120 pages which appear to govern the extent of her evidence. In addition, we were not provided with a copy of the apartment 6 lease but just a variation thereto.

30. Dealing firstly with the section 20 application and decision made in January of 2020. We have no doubt that this was limited to the emergency roofing works, which is what is referred to in the application and statement by Mr Davies. He does refer to the question of scaffolding and to an extent we have sympathy with the Respondent's position that the works to the roof could not have been undertaken without scaffolding and such scaffolding was in place and obvious to all concerned. The fact that Mr Edwards may have been abroad at the time, is not it seems to us a matter that should weigh heavily on us. He presumably had contact with the estate and would have been able to have satisfied himself as to whether scaffolding was in situ. In any event, he accepts that some form of scaffolding would have been required and is prepared to accept a figure along the lines of the Elite quote.
31. Accordingly, we are satisfied that the section 20 order made in January of 2020 would cover the scaffolding insofar as it related to the emergency works to be conducted at the Property. We are not altogether satisfied however that the scaffolding was limited to that element, and this may be why it appears as a balancing charge. We cannot comment as to why that is the case and that is a matter that will need to be resolved between the Respondent and the other leaseholders.
32. It is at this point that we get into an overlap with the section 27A application. Our findings are that the costs associated with the LR Services in the sum of £21,944.50 and £8,911.02 are properly payable and are indeed accepted as such by Mr Edwards. Insofar as the scaffolding is concerned, we accept the figure of £5,880 by Agile Scaffolding. In respect of the balance of the scaffolding costs, we consider that Mr Edwards should make his contribution to those as a balancing charge. Looking at the certificates that have been produced in this case by Philip Carroll Accountants, we see that as at 22<sup>nd</sup> December 2020 for flats M2, 5 and 6 the estate contribution is respectively 3.75%, 3.69% and 2.51%. The sums payable under the lease in respect of service charges are again respectively 16.12%, 15.85% and 10.8%. We set out on the attached schedule the sums that we find at payable in respect of the three flats.
33. We must then turn to the section 27A application, it being inextricably linked with the section 20ZA application. As we have indicated above, we were concerned that there was in truth, no real evidence produced on behalf of the Respondents. The only document we have to go on which would appear to indicate what the Respondent considers is payable, is the analysis of costs at page D150 and 151 of the bundle. We have been through those insofar as they related to the individual costs shown thereon.
34. As far as LR Services are concerned, we reject the suggestion that their work was somehow deficient. This does not seem to be supported by Mrs Wild for in her email to Mr Edwards of 23<sup>rd</sup> August 2020, she indicates that they had undertaken the work they were approved to do but that when it came to other areas, such as

the lifting of balustrades across Mr Gray's area, they could not do it. It then appears that Mr Gray, on what authority we do not know, asked them to leave and that he would finish it. He finished these works using his own business. We find that somewhat surprising and suggests to us a lack of control by the directors of the Respondent Company. This is to an extent supported by the apparent unclear reduction by Mr Gray of some £22,800 from costs of roofing works.

35. It is clear on the evidence before us that Mr Gray was undertaking works to the roof and that there had to be works needed to stem flooding to Mr Edward's Property. Indeed, the invoices which we have referred to before and in particular the one of £22,800, referred to leak to steps next door, dig out sauna, toilet, shower and floors. The fact that that appeared initially as a cost as a service charge leads us to question the other invoices from West London Industrial Park. On the face of it this invoice related to anything other than service charge costs. The same can be said of the invoice for £50,400 which removes glass balcony, steels, decking etc. Mrs Wild's email we referred to above refers to lifting the balustrades across Mr Gray's area.
36. We are concerned that on the evidence before us we cannot be certain the costs associated with the roof works as set out on the analysis are service charge relating to repairs to the common parts for which the Applicants have responsibility. There is evidence before us that some of these works, certainly on the face of the invoice, related to matters that clearly were not common parts related. Also, for example, the Ithaca Roofing invoice of £11,852 refers to matters that do not on the face of it appear to relate to any repairs to the roof which was leaking. The crane hire appears to have been placed by Mr Gray and given the evidence we had that there were works being undertaken by Mr Gray to his property, again we cannot be certain that these related solely to service charge costs for which Mr Edwards and Dynamic Plus had a responsibility.
37. For these reasons we accept Mr Edward's contention that he is responsible for the LR Services costs and as to the scaffolding costs we find that the sum of £5,880 plus the share of the balancing fund is reasonable and payable and covered by the initial s20 order in January 2020 and if not would be covered by the fresh s20ZA application as not prejudicing the Applicants and being reasonable.. The remaining costs which were not only the subject of the section 20ZA application but also the section 27A application, we dismiss. As we have indicated above, we are not satisfied on the evidence produced to us by the Respondents, that these costs are rightly claimable from Mr Edwards or from Dynamic Plus Limited. There is too much involvement in Mr Gray, both in utilising his own company, for which no quotes were obtained and also for ordering various items, his name appearing on the invoices, see for example the Agile Scaffolding invoice in the sum of £5,880 at D238 whereas other invoices from Agile do appear to have been issued to the Respondents. In addition, as we have indicated above, we do not understand by what authority Mr Gray removed LR Services from site. In the light of these matters, we are not confident in finding that these costs, which are the subject both of the section 20ZA and the section 27A application are properly claimable from Mr Edwards or Dynamic and accordingly we reject them as being payable.
38. On the question of costs, given our findings we are content to make an order under section 20C that the costs of the Respondents are not recoverable as service charge

considering it just and equitable so to do and we make the same finding in connection with the application to avoid costs under paragraph 5A of schedule 11 of the Commonhold and Leasehold Reform Act 2002.

39. Mr Upton urged us to make findings of dishonesty. We are not prepared to do that. We did not have the opportunity of receiving credible evidence from the Respondents and whilst there may be some concerns as to the involvement of Mr Gray and his companies, it does not seem to us that this enables us to make findings of dishonesty in this case.

*Andrew Dutton*

Judge: \_\_\_\_\_  
A A Dutton

Date: 1 March 2023

### **Schedule of costs payable by the Applicants**

#### **Roofing costs and scaffolding**

LR Services £21944.58 + £8911.02 + Agile cost £5,880 = £36,735.60  
plus % of balancing charge of £48,840

**Flat M2** 16.21% = £5,954.84  
+ % of Balancing charge at 3.75% = £1,831.50

**Flat M5** 15.85% = £5,822.60  
+ % of Balancing charge at 3.69% = £1,802.19

**Flat M6** 10.80% = £3,967.44  
+ % of Balancing charge at 2.51% = £1,225.88

### **ANNEX – RIGHTS OF APPEAL**

1. If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. The application for permission to appeal must arrive at the Regional Office within 28 days after the Tribunal sends written reasons for the decision to the person making the application.
3. If the application is not made within the 28-day time limit, such application must include a request to an extension of time and the reason for not complying with the 28-day time limit; the Tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed despite not being within the time limit.
4. The application for permission to appeal must identify the decision of the Tribunal to which it relates (ie give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.