FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY) &
IN THE COUNTY COURT at Plymouth, sitting at Havant Justice Centre, Elmleigh Road, Havant, PO9 2AL

Tribunal reference	:	**CHI/00HG/LSC/2022/0070-72**
Court claim number	:	**H6QZ3Y1M, H6QZ4Y3M, H6QZ3Y5M**
Property	:	**34 Herbert Street, Plymouth PL2 1RX** **96 Rothesay Gardens Plymouth PL5 3TA** **146 Rothesay Gardens Plymouth PL5 3TA**
Applicant/Claimant	:	**Plymouth Community Homes Limited**
Representative	:	**Tozers Solicitors**
Respondent/Defendant	:	**Crisplane Limited**
Representative	:	**Curtis Whiteford Crocker**
Tribunal members	:	**Judge Tildesley OBE** **Judge A Cresswell** **Mr R Brown FRICS**
In the county court	:	**Judge Tildesley OBE**
Date and Place of Hearing	:	**7 March 2023** **Plymouth Magistrates' Court**
Date of decision	:	**12 April 2023**

COMBINED DECISION

Summary of the decisions made by the FTT

1. The following sums are payable by the Respondent to the Applicant:

   (i) Service charges: £16,396.67.

Summary of the decisions made by the County Court

   (ii) Service charges: £16,396.67.

   (iii) Costs: £1,025 (Court Fees).

   (iv) Interest at 2 per cent until 1 October 2022 then 4 per cent calculated in the case of the service charge demands. The parties to agree the calculations for the interest.

Background

2. The Applicant landlord issued proceedings issued against the Respondent on 4 April 2019 in the County Court Business Centre under claim numbers H6QZ3Y1M, H6QZ4Y3M, and H6QZ3Y5M for unpaid major works and service charges.

3. The Respondent filed a Defence and an Amended Defence. The proceedings were transferred to the County Court at Plymouth and then to this Tribunal by orders of Deputy District Judge Deacon dated 21 March 2022 and of District Judge Leech dated 11 May 2022 giving power to a Tribunal Judge sitting also as a Judge of the County Court to consolidate the Claims and to determine all matters.

4. Under the terms of the transfer the Tribunal is required to make a determination of service charges under section 27A of the Landlord and Tenants Act 1985. These are matters within the jurisdiction of the Tribunal.

5. The Applicant also claimed interest and court costs. These are matters within the jurisdiction of the Court. As a result of amendments made to the County Courts Act 1984, First-tier Tribunal judges are now also judges of the County Court. This means that, in a suitable case, the Tribunal Judge sitting as a County Court Judge can decide the issues that would otherwise have to be separately decided in the County Court.

6. On 23 June 2022 Judge Tildesley OBE allocated the County Court issues to the Small Claims track and directed that the Claims be heard together.

7. On 27 July 2022 the Tribunal held a case management hearing at which the Tribunal gave permission for the parties to rely on the jointly

instructed written evidence of an expert surveyor, FRICS qualified, to give an expert opinion on the major works in dispute.

8. On 25 November 2022 a further case management hearing was held. The Tribunal had before it the expert report of Guy Sheer Bolt MRICS. The Respondent requested the appointment of another expert to deal with the issue of whether it was necessary to replace the roofs at 96 and 146 Rothesay Gardens. The Applicant opposed the appointment of another expert stating that this was not necessary because it had a surveyor's report which dealt with this issue at the time the works were commissioned. The Tribunal was not prepared to appoint a further expert, and reserved its position pending the disclosure of the surveyor's report in the possession of the Applicant with a further case management hearing fixed for the 20 December 2022.

9. On the 20 December 2022 Mr Knapper for the Respondent raised a new issue about whether the costs for the new roofs were recoverable as service charge under the Leases for 96 and 146 Rothesay Gardens. Mr Bramwell pointed out that the Respondent would be required to file an application to amend the defence, if it wished to pursue the issue of the lease. Judge Tildesley directed that an application to amend the defence be filed and served by the Defendant by no later than 9 January 2023. The Application to be on N244 with the appropriate fee. The Claimant to file and serve a response by 23 January 2023. Judge Tildesley would sit as a Judge of the County Court (District Judge) to determine the Application which was likely to be done without a hearing. Judge Tildesley also advised Mr Bramwell to address this point in any event in the Applicant's statement of case. Directions were then issued to progress the matter to a hearing on 7 March 2023. The parties indicated that there was no application to call the expert witnesses to speak to their reports.

10. On 18 January 2023 Judge Tildesley sitting as a Judge of the County Court gave permission to the Respondent/Defendant to amend its defence to include the question whether the terms of the leases for 96 and 146 Rothesay Gardens permitted the Landlord to recover the costs for the replacement of roofs from the Tenant through the service charge.

11. On 7 March 2023 Mr Jonathan Ward of Counsel appeared for the Applicant. Mr Simon Bramwell of Tozers was in attendance. Mrs Philippa McDonald, Leasehold Officer, gave evidence for the Applicant. Mr Charles Knapper of Curtis Whiteford Crocker represented the Respondent. Mr Allen Trump, Managing Director, gave evidence for the Respondent.

12. The Applicant prepared the bundle of documents for the hearing comprising 464 pages and was admitted in evidence. The page numbers of the documents referred to in this decision are in [ ].

13. The bundle included the expert report of Mr Guy Bolt MRICS [388-446]. Mr Bolt has over 20 years of experience working as a Quantity Surveyor in private practice. Mr Bold held an Honours Degree in Quantity Surveying and a Diploma in Surveying Practice, and achieved Chartered Quantity Surveyor status becoming a member of the Royal Institution of Chartered Surveyors in 2010. Mr Bolt was instructed to prepare opinion evidence on the following issues:

> I. The reasonableness of the cost of the work carried out at 34 Herbert Street, Plymouth, PL2 1RX.
>
> II. The reasonableness of the cost of the work carried out at 96 Rothesay Gardens, Plymouth, PL5 3TA.
>
> III. The reasonableness of the cost of the work carried out at 146 Rothesay Gardens, Plymouth, PL5 3TA.
>
> IV. The reasonableness of the use of the contractors instructed.

14. Mr Bolt declared that his report had been prepared in contemplation of litigation and to be compliant with the requirements of CPR Part 35, its Practice Direction and the Civil Justice Council's 'Guidance for the Instruction of Experts in Civil Claims'. Mr Bolt was also bound as a member of the Royal Institution of Chartered Surveyors (RICS) to adhere to the Practice Statement 'Surveyors Acting as Expert Witnesses'. Mr Bolt's report was endorsed with the Statement of Truth required by CPR Part 35 and the Declaration required by the Royal Institution of Chartered Surveyors.

15. The bundle also included two separate reports on the "Condition of Roof Coverings and Associated Items" for 146/148 Rothesay Gardens Plymouth and for 94/96 Rothesay Gardens Plymouth dated 11 December 2018 prepared by Mr James Barron MRICS [447-464].

16. In 2018 Mr L Edwards of Plymouth Community Homes instructed Mr Barron to inspect the properties and provide a brief report and opinion on the condition of the roof coverings and associated items. The instructions required Mr Barron (1) to access the loft space as far as possible to inspect the underside of the roof coverings and associated items, and (2) to inspect from the outside with a builder in attendance able to erect a ladder for close inspection of the roof coverings from above. The Tribunal understands that Mr Barron was unable to access the loft spaces of both properties at the time of his inspections.

17. On the 7 March 2023 the Tribunal sat first to hear those matters that fell within its jurisdiction. The Tribunal then retired having reserved its decision. Judge Tildesley returned to sit as a Judge of the County Court to deal with those matters within the Court's jurisdiction. Judge

Tildesley indicated that he would hand down the judgment once the Tribunal had published its decision.

The Issues

18. The Applicant is a Housing Association and has a property portfolio of over 16,000 residential properties and 170 commercial properties in or around Plymouth. The Applicant is the freeholder of the three properties which are the subject of this Application.

19. The Respondent is a Private Limited Company in the business of other letting and operating of own or leased real estate and has a property portfolio in excess of 200 properties. The Respondent is the long leaseholder of the three properties concerned.

20. The property at 34 Herbert Street Plymouth is a first floor flat in a block of six flats. Flat 34 is the only flat within the block held on a long lease, the remaining flats are let by the Applicant on assured tenancies. Flats 96 and 146 Rothesay Gardens Plymouth are half houses. Flat 96 is the Upper Flat of a house, whilst Flat 146 is the Lower Flat of a house. The Applicant owns the other halves of the houses concerned, 94 and 148 Rothesay Gardens which it lets out on assured tenancies.

21. The leases for the three properties were originally granted by Plymouth City Council for terms of 125 years pursuant to the "Right to Buy" legislation under the Housing Act 1985.

22. The dispute in relation to 34 Herbert Street concerned a sum of £465.47 for major works (communal washdown and repairs) and administration costs demanded on 6 November 2021 [A25]. The Respondent contended that the charges were not reasonable. The evidence of the jointly instructed expert, Mr Bolt, was that in his opinion, the Respondent's contribution should have been £2,298.05 which was some £1,832.58 higher than what the Respondent had contributed to the cost of the works. Mr Trump in his witness statement [261-265] gave no evidence on why the Respondent was contesting the service charges for 34 Herbert Street. At the end of the hearing on 7 March 2023 **Mr Knapper conceded on behalf of the Respondent that it had no defence to the Claim for £465.47 and that the Respondent was liable to pay the disputed sum.**

23. The dispute in relation to the properties at 96 and 146 Rothesay Gardens concerned the costs of replacing the roofs and associated works, which were £7,965.60 for each property and demanded on 15 October 2019 [35] & [49].

24. The Respondent was required to file further and better particulars of its defence which it did on the 22 July 2022 and read as follows:

> "The Defendant denies that the sum of £7,965.60 is due on the basis that the sums demanded are not reasonable and the tribunal should make a determination as to the reasonableness of the works. The Defendant contends that the estimates for the works are from a closed number of contactors who are always used by the Claimants and that the sums charged are not reasonable having regard to the price that would normally be charged. The Defendant contends that the works should be valued by a chartered quantity surveyor acting as a single joint expert in order to assist the Tribunal".

25. The Tribunal sets out the parties' evidence in respect of the further and better particulars filed by the Defendant on the 22 July 2022.

26. On 17 December 2018 the Applicant gave separate Notices of Intention to carry out the renewal of roof and decoration works at 96 and 146 Rothesay Gardens to the Respondent in accordance with the consultation requirements of section 20 of the 1985 Act. The Applicant explained that the works were to be carried out under an existing long term agreement previously consulted upon with Bell Group. The reason given was that "the Applicant considered it necessary to carry out these works as the roof was considered to have reached the end of its useful life and in need in renewal". The Applicant estimated the total costs of the works at £7,965.60. The Applicant gave a period of 32 days for responses to the consultation.

27. On 8 January 2019 Mr Trump on behalf of the Respondent made the following observations in respect of the Notices of Intention to carry out the works [182]:

> 1. As this is a unilateral decision by you (*Plymouth Community Homes Limited*) we reserve our right to dispute the necessity for this work and ultimately, if necessary, the cost if we consider that cost to be unreasonable or not obtained to our satisfaction by accepted commercially tendered means.
>
> 2. We have no knowledge of any "long term agreement" with Bell Group and we will need to be satisfied that any agreement with Bell Group does not prejudice our rights.
>
> 3. We require sight from you of at least three independent quotations for this work, both the re-roofing and decoration.
>
> 4. We require sight from you of a surveyor's report or equivalent suitably qualified person detailing the work to be undertaken and the reasons, in their opinion, that this work needs to be undertaken.
>
> 5. We will require our own surveyor to inspect the roofs and decoration requirement and report on the necessity for the work

to be undertaken and our own contractors to advise on the suitable cost, assuming we are satisfied the work either partially or in full needs doing.

6. Depending on your reply we reserve the right to instruct our own solicitor to act in this matter.

28. On 11 and 18 January 2019, Julie da Rosa, Leasehold Officer for the Applicant, replied to the points made by Mr Trump [182 & 185]:

1. The roof renewals in Rothesay Gardens are part of a programme of works, based on the recommendations from the independent reports attached, and the general age of the roof coverings which are deemed close to the end of their economic life and requiring replacement. As you may be aware, Plymouth Community Homes have an obligation to maintain the exterior of its housing stock and are fulfilling that obligation based on the recommendations. Both of these leasehold properties are half-house flats and your leases state in the Third Schedule (12) "The Lessee shall contribute and shall keep the Lessor indemnified from and against one half of all costs incurred by the Lessor in carrying out its obligations "

2. Last year we consulted with all of our leaseholders in respect of re-tendering our Roofing and Planned Maintenance contracts, to be replaced with one contract to cover both elements of delivery. You would have been advised with your Annual Service Charge Invoices who the three chosen contractors were for our long term agreements. Bell Group were one of those successful contractors.

3. Due to the above, it was not a necessary requirement to obtain any other estimates, as rates had been agreed on entering into the long term agreement last year.

4. Please find attached redacted copies of the independent report undertaken on the two properties that you lease from us in Rothesay Gardens (96 & 146) as requested.

5. It is of course your decision if you wish to go to the expense of instructing your own surveyor to inspect the current roof coverings. However, I will advise that in respect of an internal inspection of the roof space of 146 Rothesay Gardens, your representative may not gain access.

6. Noted.

29. Mr Bolt, in his report, gave expert opinion on the reasonableness of the quantum of the costs claimed for the roof works and repairs to the exterior of the property. Mr Bolt's estimate was £22,911.35 for each of the houses at 94/96 and 146/148 Rothesay Gardens of which the Respondent's contribution would have been £11,455.68 for each set of works at 96 and 146 Rothesay Gardens. Mr Bolt's estimate of the reasonable costs for the roof works and associated repairs was some £3,490.08 more than the contribution of £7,965.60 demanded by the Applicant from the Respondent for each flat. The Respondent did not challenge the findings of Mr Bolt's report.

30. The Tribunal observes that the Applicant carried out the consultation in respect of the proposed roof works to the properties at Rothesay Gardens in accordance with section 20 of the 1985 Act and paragraph 1 of Schedule 3 of the Service Charges (Consultation etc) (England) Regulations 2003 ("2003 Regulations"). The requirements for consultation in schedule 3 are not as onerous and detailed as the consultation requirements for qualifying works where there is no qualifying long term agreement (QLTA). The reason for the abridged nature of the requirements under schedule 3 is because there has been a separate consultation exercise to appoint the contractor under a QLTA, which the Applicant carried out in 2017. Schedule 3 requires the following steps to be taken:

- A notice of intention to carry out the relevant works must be served on each tenant and a recognised tenants association. The notice must describe in general terms the works proposed to be carried out and give the reasons why the landlord considers it necessary to carry out the works. The notice must contain a statement of the total amount of expenditure estimated by the landlord as likely to be incurred by him on and in connection with the proposed works. The notice must invite the making in writing of observations in relation to the proposed works or the landlord's estimated expenditure within the relevant period which is defined as the period of 30 days beginning with the date of the Notice.

- The landlord has a duty to have regard to the observations made by any tenant or recognised tenants association and to respond to those observations within 21 days of receipt.

31. The Tribunal is satisfied from the facts which are set out in paragraphs 26-28 above that the Applicant complied with the consultation requirements for the works to the roof and exterior of property. The fact that the Applicant had entered into QLTA with a contractor for these works the previous year after consultation to ensure best value meant that there was no substance to the Respondent's challenge that the costs were unreasonable because the estimate of works was from a closed number of contactors who are always used by the Applicant. The steps

taken by the Applicant to ensure the reasonableness of the costs of the works were confirmed by the expert evidence of Mr Bolt. Thus, the Respondent did not pursue its dispute on the reasonableness of the actual costs for the replacement of the roof and associated works.

32. The Respondent's remaining issue on the works themselves was whether it was necessary to replace the roof. The Applicant relied on the findings of Mr Barron's survey reports dated 11 December 2018 to justify the costs incurred for replacing the roof. The Respondent, on the other hand, stated that the reports only revealed minor disrepair which it said did not justify the replacement of the roof. The question for the Tribunal to determine is whether the Applicant's action to replace the roof was reasonable, and if so did it lead to a reasonable outcome?

33. On 18 January 2023 Judge Tildesley permitted an amendment to the Defence. The Respondent added that the lease specifically excludes the roof from the Applicant's repairing obligation at paragraph 5 of Schedule 4 to the lease. The Respondent asserted that on its construction of the lease it had no liability to contribute towards the costs of the replacement of the roof because the Applicant had no repairing obligation in respect of the roof under the terms of the leases for the respective properties.

34. The Applicant disagreed with the Respondent's construction of the lease. The Applicant submitted that it had a responsibility for shelter of the demised property under paragraph 5 of the First Schedule of the lease for which it could recover the costs of so doing from the leaseholder as a service charge. Further the Applicant stated that it was entitled to rely on the covenant to repair which is implied in every Right to Buy lease by virtue of section 139 of the Housing Act 1985.

35. The second question for determination by the Tribunal is whether the leases for 96 and 146 Rothesay Gardens authorise the Applicant to recover its costs for the replacement of the roof from the Respondent through the service charge.

Summary of Issues for the Tribunal

36. The Tribunal is required to determine two questions, namely:

1) Whether the leases for 96 and 146 Rothesay Gardens authorise the Applicant to recover its costs for the replacement of the roof from the Respondent through the service charge?

2) Whether the Applicant's action to replace the roof at both 96 and 146 Rothesay Gardens was reasonable, and if so did it lead to a reasonable outcome?

37. The Tribunal has described the procedural history in detail to demonstrate the latitude given by the Applicant and the Tribunal to the Respondent to enable it to put forward its case for disputing liability to meet the service charge for the replacements of roofs at the two properties. The Respondent at the hearing attempted to introduce a new line of argument about whether the replacement of the roof was a repair or an improvement. The Tribunal indicated that it would not allow the Respondent to pursue this point. The Tribunal explained that, given the opportunities the Respondent had been provided to crystalise its defence, it would be prejudicial to the Applicant to deal with a new argument and contrary to the overriding objective.

38. The Tribunal also observed that the expert evidence of Mr Bolt identified two elements of the costs for the works to 96 and 146 Rothesay Gardens. Mr Bolt estimated that the Respondent's contribution would have been £11,455.68 for the complete works including the replacement of the roof; and £5,627.10 for the works to the exterior of the property excluding the estimated costs for the roof. The Respondent accepted the expert evidence of Mr Bolt. The Respondent put forward no evidence against the works to the exterior of the property other than the roof. Thus, it followed that if the Respondent was successful with its challenge to the costs of the roof replacement it would still be liable for an estimated 49 per cent of the service charge of £7,965.60 demanded on the 15 October 2019 which would amount to £3,903.14 for each property.

Whether the leases for 96 and 146 Rothesay Gardens authorise the Applicant to recover its costs for the replacement of the roof from the Respondent through the service charge?

39. The lease for 96 Rothesay Gardens is dated 26 February 1990 and made between the Council of the City of Plymouth of the one part (the Lessor), and Patrick Charles Whitehead and Jacqueline Whitehead of the other part (the Lessee) for a term expiring on 25 February 2115 on payment of a yearly rent of £10 and the service charge [312].

40. The lease for 146 Rothesay Gardens is dated 25 June 1990 and made between the Council of the City of Plymouth of the one part (the Lessor), and Steven John Midgley of the other part (the Lessee) for a term expiring on 24 June 2115 on payment of a yearly rent of £10 and the service charge [270].

41. Both leases have identical terms and provisions, save for the descriptions of the demised premises.

42. Under clause 2 the Lessor acting pursuant to the provisions of section 122 of the Housing Act 1985 demises to the Lessee the demised premises together with the rights set out in the First Schedule hereto

[but as to those rights SUBJECT TO and upon the conditions expressed in the Third Schedule] hereto.

43. In respect of 96 Rothesay Gardens the demised premises is the upper storey of the property including the floor thereof and one half in depth of the joists supporting that floor the roof and rainwater gutters of the property and the staircase giving access to the upper storey of the property.

44. In respect of 146 Rothesay Gardens the demised premises is the lower flat consisting of the ground floor of the property including the ceiling thereof and one half in depth of the joists supporting that ceiling but excluding all parts of the staircase giving access to 148 Rothesay Gardens.

45. The property is defined as the building coloured pink on the attached plan. The Tribunal understands the property to mean the building in which both flats are located.

46. Paragraph 12 of The Third Schedule sets out the Lessee's covenant to pay the service charge, and states that

> "The Lessee shall contribute and shall keep the Lessor indemnified from and against one half of all costs and expenses incurred by the Lessor in carrying out its obligations under and giving effect to the provisions of the Fourth Schedule hereto including clauses *8* and *9* of that Schedule *but excluding clause 4 of the said Schedule*, and in enabling the Lessee to enjoy the rights contained in the First Schedule hereto".

47. The Tribunal notes that the leases for the properties have typed amendments in respect of paragraph 12 which are recorded in italics in the above extract.

48. The relevant parts of the First Schedule and the Fourth Schedule of the respective leases are as follows:

> **The First Schedule**
>
> 5. Repairing maintaining renewing altering or rebuilding the demised premises or any part of the property giving subjacent or lateral support shelter or protection to the demised premises and for the purpose of cleaning the windows of the demised premises with the right for such purposes only to erect ladders cradles or scaffolding against or before the external walls or windows of the property or on the premises causing as little obstruction or inconvenience to the Lessor or other the owners or occupiers of the reserved premises in the exercise of such right.
>
> **The Fourth Schedule**
>
> 4. The Lessor shall keep the reserved premises and all fixtures fittings and apparatus therein and additions thereto in a good and tenantable state of repair decoration and condition. *(and—in particular)* 5. The Lessor shall keep and maintain the exterior of the property (excluding the roof thereof) in good and tenantable repair decoration and condition PROVIDED THAT nothing herein contained shall prejudice

> the Lessor's right to recover from the Lessee or any other person the amount of value of any loss or damage suffered by or caused to the Lessor or the reserved premises by the negligence or other wrongful act or default of the Lessee or such other person.

49. The Tribunal notes that the leases exhibited showed an amendment by type to paragraph 4 to the Fourth Schedule. This amendment deleted the phrase *"and—in particular",* and created a new paragraph 5. As originally drafted paragraph 4 comprised the new paragraph 5 by inserting the words, "and in particular shall keep and maintain the exterior of the property".

50. Mr Knapper for the Respondent submitted that the Tribunal should construe the ordinary and natural meaning of the words used in the lease to ascertain the parties' intentions. Mr Knapper relied on the fact that the leases showed amendments to the draft which indicated that the parties had applied their minds to it. Also, the parties had agreed the particular wording in knowledge that the lease was a "Right to Buy" lease to which the provisions of the Housing Act 1985 applied.

51. Mr Knapper contended that the parties' intentions were clear from the unambiguous words in the lease, namely, the lessor's repairing covenant was limited to the exterior of the property, and did not extend to the roof. According to Mr Knapper this construction was also consistent with the wording for the demised premises which in the case of the upper flat included the roof within the definition of the demised property. Mr Knapper concluded that the lease did not authorise the lessor to recover the costs of repairing the roof as a service charge.

52. Mr Ward stated that the Applicant was relying on both limbs of paragraph 12 of The Third Schedule to demonstrate the Applicant's liability to pay the service charge for the replacement of the roofs at 96 and 146 Rothesay Gardens.

53. Mr Ward asserted that as this was a "Right to Buy" lease it was necessary to insert the implied covenants by the Landlord as set out in paragraph 14 of schedule 6 of the Housing Act 1985. The specific covenant relied upon was: *"To keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated (including drains, gutters and external pipes) and make good any defects affecting the structure"* (paragraph 14(2)(a)).

54. Mr Ward pointed out that no modification could be made to the terms of the implied repairing covenant unless it had been ordered by the County Court with the consent of the parties and if it appeared to the Court reasonable to do so in accordance with paragraph 14(4) of schedule 6. Mr Ward asserted that there was no evidence of such an Order being made. This meant that the attempt to limit the extent of the Landlord's repairing covenant by removing responsibility for the roof was of no effect.

55. Mr Ward relied on the decision of the then President of the Lands Tribunal in *Sheffield City Council v Hazel St Clare Oliver* LRX/146/2007 for his proposition that the roof was part of the structure and exterior of the building, and, therefore, caught by the implied repairing covenant. Thus according to Mr Ward the Respondent was liable under paragraph 12 of the Fourth Schedule to contribute one half of all costs and expenses incurred by the Lessor in carrying out its obligations under the implied repairing covenant.

56. In addition, Mr Ward submitted that the Respondent was liable to contribute one half of all costs because the Applicant enabled the Respondent to enjoy its rights under paragraph 5 of the First Schedule. This right was much wider than the implied landlord's repairing covenant it extended to *repairing maintaining renewing altering or rebuilding the demised premises or any part of the property giving subjacent or lateral support shelter or protection*. According to Mr Ward, the replacement of the roof ensured that the demised premises at 96 and 146 Rothesay Gardens had protection and shelter.

57. The Tribunal starts with the proposition that as the two leases were granted pursuant to section 122 of the Housing Act 1985, the legislation is an aid to the construction of the lease[1].

58. The relevant legislation in this case is the Housing Act 1985 as it was in force in 1990 when the leases were granted. Section 139 of the 1985 Act states that a grant of lease so executed shall conform with Parts I and Part III and parts of Part IV of Schedule 6.

59. Sub paragraph 2(1) of Part 1 defines the Rights that should be afforded to the parties on grant of the lease and include rights of support, rights to the access of light, rights associated with the various utilities serving the property, rights to the use or maintenance of cables and other installations supplying electricity, and telecommunications. Sub Paragraph 2(3) states that paragraph 2 does not restrict any wider operation which a grant may have apart from this paragraph; but is subject to any provision to the contrary that may be included in the grant with the consent of the tenant. Paragraph 3 part 1 gives the landlord and tenant rights of way over the property and land not comprising the property.

60. Part III of Schedule 6 contains terms specific to Leases. Paragraphs 14 and 15 are headed "Covenants by Landlord". Paragraph 14 is pertinent to the construction of the leases for 96 and 146 Rothesay Gardens which reads as follows:

> "14(1) This paragraph applies where the dwelling-house is a flat.

[1] The Mayor and Commonality and Citizens of the City of London v Various Leaseholders of Great Arthur House.

(2) There are implied covenants by the landlord—

(a)to keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated (including drains, gutters and external pipes) and to make good any defect affecting that structure;

(b)to keep in repair any other property over or in respect of which the tenant has rights by virtue of this Schedule;

(c)to ensure, so far as practicable, that services which are to be provided by the landlord and to which the tenant is entitled (whether by himself or in common with others) are maintained at a reasonable level and to keep in repair any installation connected with the provision of those services;

but subject to paragraph 15(3) (restrictions where landlord's interest is leasehold)".

(3) The covenant to keep in repair implied by sub-paragraph (2)(a) includes a requirement that the landlord shall rebuild or reinstate the dwelling-house and the building in which it is situated in the case of destruction or damage by fire, tempest, flood or any other cause against the risk of which it is normal practice to insure.

(4) The county court may, by order made with the consent of the parties, authorise the inclusion in the lease or in an agreement collateral to it of provisions excluding or modifying the obligations of the landlord under the covenants implied by this paragraph, if it appears to the court that it is reasonable to do so".

61. The legal effect of paragraph 14 is that the leases for 96 and 146 Rothesay Gardens will be subject to the implied covenants by the landlord. There is no requirement for the leases to make express reference to them for the implied covenants to apply. In the Tribunal's view the Landlord's covenants set out in paragraph 14(1)(2) form part of the Landlord's obligations under the Fourth Schedule of the leases.

62. The Tribunal is satisfied that the Respondent's reliance on the wording of paragraph 5 of the Fourth Schedule which excludes the roof is without effect. The parties cannot contract out of the implied covenants unless it has been ordered by the County Court. There was no evidence of such an Order being made in respect of the leases for 96 and 146 Rothesay Gardens. Further the express covenant under paragraph 5 in the lease is not covering the same subject matter as the implied repairing covenant under paragraph 14(2)(a). Paragraph 5 is directed at the exterior of the property not at the structure of the property which is the focus of the implied covenant. Paragraph 5 also does not match the scope of the implied repairing covenant which by incorporating "to make good any defect affecting that structure" contemplates works that go beyond what is meant in the words "by repair".

63. The Tribunal construes the leases of 96 and 146 Rothesay Gardens as including the implied covenant "to keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated

(including drains, gutters and external pipes) and to make good any defect affecting that structure".

64. The Tribunal adopts the definition of "structure" as used by Mr Thayne Forbes QC sitting as a Deputy Judge of the Queen's Bench Division in *Irvine v Morgan* [1991] 1 EGLR 261 at 262 F-G:

> "I have come to the view that the structure of the dwelling-house consists of those elements of the overall dwelling-house which give it its essential appearances, stability and shape. The expression does not extend to the many and various ways in which the dwelling-house will be fitted out, equipped, decorated and generally made to be habitable, but what I do feel is, as regards the words 'structure of the dwelling-house', that in order to be part of the structure of the dwelling-house a particular element must be a material or significant element in the overall construction".

65. The Tribunal is satisfied that roofs are part of the structure of the buildings in which the subject flats are located. The Tribunal concludes that the works to the roofs and the exteriors of 96 and 146 Rothesay Gardens fall within the Applicant's covenant, implied under paragraph 14(2)(a), to keep in repair the structure and exterior of the dwelling-house and of the building in which it is situated (including drains, gutters and external pipes) and to make good any defect affecting that structure. The Respondent put forward no argument about whether the replacement of the roof constituted a repair.

66. The next question is whether the leases for 96 and 146 Rothesay enable the Applicant to recover a contribution to the costs of the works to the roofs through the service charge from the Respondent.

67. On the face of it the wording of paragraph 12 of The Third Schedule of the Lease gives the necessary authority by requiring the Lessee to contribute one half of all costs and expenses incurred by the Lessor in carrying out its obligations relating to the Fourth and First Schedules as detailed above. (In the Tribunal's view the word "obligations" also includes the implied repairing obligation of the Landlord.)

68. The service charge provision in the leases, however, has to be read against paragraph 18 of Schedule 6 of the Housing Act 1985:

> 18(1) Subject to the following provisions of this paragraph, where the dwelling-house is a flat, a provision of the lease or of an agreement collateral to it is void in so far as it purports—
>
> (a) to enable the landlord to recover from the tenant any part of costs incurred by the landlord in discharging or insuring against the obligations imposed by the covenants implied by virtue of paragraph 14(2)(a) or (b) (landlord's obligations with respect to repair of dwelling-house, etc.), or

(b) to enable any person to recover from the tenant any part of costs incurred, whether by him or by another person, in discharging or insuring against any obligations to the like effect as the obligations which would be so imposed but for paragraph 15(3) (obligations not to be implied which landlord would not be entitled to discharge).

18(2) A provision is not void by virtue of sub-paragraph (1) in so far as it requires the tenant to bear a reasonable part of the costs of carrying out repairs not amounting to the making good of structural defects.

18(3) A provision is not void by virtue of sub-paragraph (1) in so far as it requires the tenant to bear a reasonable part of costs incurred in respect of a structural defect—

(a) of the existence of which the landlord informed the tenant in the notice under section 125 (landlord's notice of purchase price, etc.), stating the landlord's estimate of the amount (at current prices) which would be payable by the tenant towards the cost of making it good, or

(b) of the existence of which the landlord becomes aware ten years or more after the grant of the lease.

69. The effect of paragraph 18 is that sub-paragraph 1 starts by imposing a blanket ban on recovery from the Tenants of any part of the costs of the Landlord's compliance with the implied covenants under paragraph 14. Sub paragraphs 18(2) and 18(3), however, create a carve-out from the prohibition on recovery of costs from the Tenants. Sub-paragraph 18(2) is relevant to this case as it permits the Landlord to recover from the Tenants a reasonable part of the costs of repair to the structure of the building provided the repair does not amount to making good structural defects. Thus, sub-paragraph 18(2) qualifies the express term in paragraph 12 of The Third Schedule by the requirement that the tenant's contribution must constitute a reasonable part of the costs of the repair. In the Tribunal's view, 50 per cent of the costs constitutes a reasonable part.

70. The Tribunal determines that when interpreting the leases for 96 and 146 Rothesay Gardens it is necessary to construe the terms of the respective leases alongside the provisions of Schedule 6 of the Housing Act 1985. The Tribunal considers the Respondent's approach to the issue of construction was not correct. This approach involved examining the terms of the lease in isolation which in turn created a conflict with the statutory terms set out in Schedule 6, and that conflict, according to the Respondent, could only be resolved by the Tribunal deciding what the intentions of the parties were at the time of the grant of the lease. Essentially the Respondent was advocating that the parties had decided not to incorporate the implied terms of Schedule 6 in the respective leases. The Tribunal has previously pointed out that the parties cannot contract out of the provisions of Schedule 6 unless ordered by the County Court, and there was no evidence of such an Order in this case.

Moreover, the Tribunal maintains there is no conflict if the provisions of Schedule 6 are implied in the respective leases. The Tribunal decided that paragraph 5 of The Fourth Schedule of the lease was not covering the same subject matter as the implied repairing covenant under paragraph 14(2)(a) schedule 6 of the 1985 Act. The Tribunal interprets the service charge provision in paragraph 12 of The Third Schedule of the lease as meeting the requirement of a reasonable part as laid down by sub-paragraph 18(2) of Schedule 6 of the 1985 Act.

71. The Tribunal concludes that the Applicant under the terms of the lease has an obligation to keep in repair the structure and exterior of the buildings in which flats 96 and 146 Rothesay Gardens are located. The Tribunal finds that the roof is part of the structure of the building and the replacement of the roof falls within the Applicant's repairing obligation. Under paragraph 12 of The Third Schedule the Applicant is entitled to recover from the Respondent a contribution of one half of all costs and expenses incurred by it in carrying out its obligations. The Tribunal is satisfied that a contribution of one half meets the requirement of a reasonable part as laid down by sub-paragraph 18(2) of Schedule 6 of the 1985 Act.

72. **The Tribunal, therefore, determines that the leases for 96 and 146 Rothesay Gardens authorise the Applicant to recover its costs for the replacement of the roof from the Respondent through the service charge.**

73. In view of its finding that the leases should be construed in accordance with the provisions of Schedule 6 of the Housing Act 1985, the Tribunal decides it is unnecessary to consider Mr Ward's alternative submission that the Applicant was entitled to recover the costs of replacing the roof because it enabled the Respondent to enjoy its rights under paragraph 5 of the First Schedule.

Whether the Applicant's action to replace the roof at both 96 and 146 Rothesay Gardens was reasonable, and, if so, did it lead to a reasonable outcome?

74. Under section 27A of the 1985 Act the Tribunal must be satisfied on the balance of probabilities that the costs for the replacement of roofs and associated works on 96 and 146 Rothesay Gardens were reasonably incurred by the Applicant. The requirement of "reasonably incurred" is a wide one and is not limited to the reasonableness of the actual costs or the standard of the works.

75. The Court of Appeal in *Waaler v Hounslow LBC* [2017] EWCA Civ 45 stated that that "reasonableness" in the context of section 19(1)(a) of the 1985 Act has to be determined by reference to an objective standard, not by the lower standard of rationality. The landlord's decision-making process is a relevant factor but this must then be tested against the

outcome of that decision. The fact that the cost of the relevant works is to be borne by the lessees is part of the context for deciding whether they have been reasonably incurred. Where a landlord has chosen a course of action which leads to a reasonable outcome, the costs of pursuing that course of action will have been reasonably incurred even if there was a cheaper outcome which would also have been reasonable.

76. The Lands Tribunal in *Forcelux Ltd v Sweetman* [2001] 2 E.G.L.R. 173 also considered the term "reasonably incurred" as applied in section 19(1)(a) of the 1985 Act. The Lands Tribunal decided that "reasonably incurred" involved a two-stage test: (1) Was the Landlord's decision-making process reasonable?, and (2) Is the sum to be charged reasonable in the light of market evidence?

77. The issue in this case is whether the Applicant's decision to replace the roofs at 96 and 146 Rothesay Gardens was reasonable, and, if it was, did it lead to a reasonable outcome?

78. The properties housing 96 and 146 Rothesay Gardens are post-war Cornish Unit style concrete frame dwellings which were built in in the 1940's and 1950's. The properties are arranged as semi-detached pairs of purpose-built flats with four individual flats within each block. The properties are constructed over two storeys. The ground floor walls are rendered and painted. The first floor walls have a tile hung finish with concrete plain tiles hung off timber battens, Above that, there is a traditional timber pitched roof structure with hipped ends either side of the pair of properties. The pitched roof coverings are a concrete single lap interlocking tile with half round concrete ridges and hips.

79. The Tribunal understands that the works which were carried out to the properties housing 96 and 146 Rothesay Gardens were: "remove and replace all existing tile roof coverings and vertical tile claddings (to the first floor floor) together with battens and membranes, fascias/soffits, leadwork; and all necessary temporary works. The Tribunal noted that when Mr Bolt inspected the property at 146 Rothesay Gardens, he saw no evidence of any work undertaken to the chimneys. Further Mr Bolt found no mention of insulation in any of the documents other than the original report prepared by Mr Barron. As a result, Mr Bolt assumed that the works to the roofs and exterior of 96 and 146 Rothesay did not include repairs to the chimney and insulation.

80. The Applicant justified its decision to replace the roofs on the grounds that they were 70 years old and past their expected lifespan and to avoid the onset of a significant defect in the protection given to the properties by the roofs. In this regard the Applicant relied on the findings of Mr Barron's surveys to substantiate its decision to replace the roof coverings at 96 and 146 Rothesay Gardens.

81. The Tribunal sets out Mr Barron's summary of his findings which were the same for both properties [455 & 464]:

> "The roof coverings at this property consist of a single lap interlocking concrete tile roof covering to the three upper pitched roof slopes, together with concrete plain tile vertical cladding to the three first floor walls wrapping around the property.
>
> These are the original roof coverings and, therefore, in the order of 70 years old.
>
> In our experience, the typical lifespan for concrete tile roof coverings is around 60 years. Therefore, the roof coverings at this property will be reaching the end of their economic life.
>
> There are no significant areas of slipped, missing or broken tiling to the pitched roof slopes. However, the nibs on the backs of the tiles and the nail fixings will be corroding and becoming brittle and the battens onto which the tiles are hung will not be treated softwood. The roofer's membrane beneath the roof tiles is also the original and will be becoming brittle and defective.
>
> The vertical plain tile hanging is in poorer condition than the pitched roof tile claddings. There are areas where the vertical tile hanging is slipped, missing or broken and this will be because of the general ageing and weathering of the tiles and breaking of the nibs which hang the tile onto a timber batten.
>
> You ("the Applicant") should make plans to have the pitched roof coverings and the vertical tile claddings at this property stripped and renewed in the short term, prior to the onset of significant defect. When you do so, you will need to replace all roof membranes, battens and fixings.
>
> Whilst there is high level scaffold access, you should take the opportunity to ensure that all gutters, downpipes, fascias and soffit boards are in good condition and that the chimney stacks are refurbished, including ensuring that chimney pots are well seated".

82. Mrs McDonald explained in her witness statement that the Applicant holds an asset register for its entire housing stock which records for each property when it was built, the details of repairs carried out and the likely date when parts of the structure required replacing. The Applicant used the information in the asset register to develop its planned maintenance programme. Mrs McDonald emphasised that the Applicant did not select properties at random for repairs, all works on properties was carried out in accordance with the asset register and the natural life of the structural item.

83. In this case the Applicant identified from the asset register around 40 properties of similar design and age including 96 and 146 Rothesay Gardens which might require replacement of the roofs. This was why, in November 2018, the Applicant commissioned Mr Barron to survey the roofs of those properties [332]. Mrs McDonald pointed out that failing roofs created huge problems for the Applicant and additional costs to leaseholders if they were allowed to deteriorate. Mrs McDonald acknowledged that she was not involved in the decision to replace the roofs and there was no record on the file as to who made that decision. Mrs McDonald stated that the Applicant had retained ownership of most of the 40 properties where the roofs were renewed, and in those cases the Applicant had funded the works from its own resources.

84. The Respondent contended that the surveys conducted by Mr Barron only showed that minor works were required to the roofs and that they did not give the Applicant a green light to embark on substantial works to the roofs.

85. Mr Trump supported the Respondent's contention by reference to the photographs in Mr Barron's report which he said showed five and eight slipped tiles on the side elevations of 96 Rothesay Gardens and 146 Rothesay Gardens respectively and no evidence of significant failure with the main roofs of the properties. Mr Trump also pointed out that in both reports Mr Barron qualified his opinion because he did not have access to the internal roof areas and compiled the report on the basis of an external inspection only. Mr Trump asserted that prior to embarking on substantial works it must be reasonable to expect an internal inspection to take place so that the membranes and the battens could be inspected. The Respondent contended that Mr Barron's surveys supported its view that the Applicant could have replaced the slipped tiles and then monitored the position rather than incurring significant cost in replacing the roofs.

86. Mr Trump objected to the Applicant spending the Respondent's money on roofs that did not require a major overhaul. Mr Trump said that the Respondent owned similar post war properties which had perfectly sound roofs. Mr Trump accepted that the Respondent had not appointed a surveyor to give an expert opinion on the state of the roofs at 96 and 146 Rothesay Gardens. Mr Trump, however, said that he had instructed one of the Respondent's building managers to look at the roofs and he confirmed that the roofs did not require replacing. Mr Trump pointed out that the Applicant had refused the Respondent access to the loft space of 148 Rothesay Gardens which was the upper flat to 146 Rothesay Gardens to inspect the felt under the pitched roof. Mr Trump acknowledged that the Respondent owned 96 Rothesay Gardens and had access to the loft there.

87. The Tribunal finds the following facts:

a) The roof coverings at 96 and 146 Rothesay Gardens comprised a single lap interlocking concrete tile roof covering to the three upper pitch roof slopes with concrete plain tile vertical cladding to the three first floor walls wrapping around the property.

b) The roofs at 96 and 146 Rothesay Gardens were the original ones when the properties were built and were in the region of 70 years old.

c) The typical lifespan for concrete tile roofs was around 60 years which meant that the roof coverings at 96 and 146 Rothesay Gardens were at or nearing the end of their economic life.

d) The roof coverings showed signs of disrepair in the form of slipped tiles principally on the plain tile vertical cladding to the first floor. There were no significant areas of slipped, missing or broken tiling to the pitched roofs. The photographs showed only one slipped tile on the pitched roof.

e) The Tribunal accepted Mr Barron's expert opinion that the nibs on the back of tiles and the nail fixings would be corroding and becoming brittle and the battens onto which the tiles were hung would be slender untreated softwood.

f) The bitumen roofers felt under the pitched roof was the original one when the properties were constructed. Although Mr Barron was unable to access the lofts at 96 and 146 Rothesay Gardens, he inspected lofts of other properties of the same design which were part of the same survey as the subject properties. Mr Barron found that the roof membrane in the other properties had undergone repairs in the past and to be hanging down in areas [452]. The Tribunal infers that the roof membranes at 96 and 146 Rothesay Gardens would have been in a similar condition of disrepair.

g) Mr Barron recommended that the Applicant should have plans in the short term to replace the roofs, the vertical side claddings. roof membranes, battens and fixings prior to the onset of significant defect. Mr Barron also recommended that the Applicant took the opportunity to ensure that all gutters, downpipes, fascias and soffit boards were in good condition whilst there was high level scaffold access in place.

h) The Applicant consulted with the Respondent about the proposed works to replace the roof and provided the Respondent with copies of Mr Barron's surveys. The Applicant answered the points raised by the Respondent.

i) The Applicant was footing the costs of the roof repairs to the majority of the properties in the same cohort as 96 and 146 Rothesay Gardens.

j) The Respondent accepted the expert opinion of Mr Bolt that the actual costs incurred by the Applicant in carrying out the works to the roofs and exteriors of 96 and 146 Rothesay Gardens were reasonable and lower than Mr Bolt's estimates for the costs of the works.

88. **The Tribunal is satisfied from the facts found that the Applicant's decision to replace the roofs for 96 and 146 Rothesay Gardens was reasonable.** The Tribunal relies on its findings that the roofs were in disrepair and beyond their economic life. Although the roofs had not failed, the Respondent put forward no evidence how long the roofs would last before serious problems emerged. The Tribunal noted that Mr Barron recommended that the Applicant had plans in the short term to replace the roofs, which the Tribunal interpreted that the onset of significant defects with the roofs was imminent. The Applicant's action to replace roofs at the end of their economic life but before the onset of significant defects was consistent with established good practice of planned maintenance, and one within the margins of reasonableness

89. **The Tribunal considers it was reasonable for the Applicant to carry out repairs to the exterior of the properties at the same time as replacing the roofs.** This was because of the availability of high level scaffolding access which would lessen the costs to leaseholders if the repairs to the exterior were carried out separately.

90. The Tribunal found that the Applicant had consulted with the Respondent before embarking on the roof works, and had provided the Respondent with copies of Mr Barron's surveys of 96 and 146 Rothesay Gardens. The Respondent did not take the opportunity to appoint its own surveyor to review the conditions of the property and made no substantive counter proposals to the Applicant. The Tribunal takes into account that the Applicant was funding the repairs from its own resources for the majority of the properties which were the subject of the roof repairs and paying half of the costs of the roof works at 96 and 146 Rothesay Gardens. In the Tribunal's view the Applicant would not part lightly with its own resources unless satisfied that the roofs required replacing. The Respondent accepted the expert opinion of Mr Bolt that the actual costs incurred by the Applicant in carrying out the works to the roofs and exteriors of 96 and 146 Rothesay Gardens were reasonable. The Respondent did not challenge the quality of the standard of the repairs to 96 and 146 Rothesay Gardens. **The Tribunal concludes that the Applicant's decision to replace the roofs and undertake repairs to the exterior of 96 and 146**

Rothesay Gardens produced a reasonable outcome. The costs incurred by the Applicant were, therefore, reasonable.

The Decision of the Tribunal

91. The Tribunal determines that

a) The Respondent is liable to pay the sum of £465.47 for major works (communal washdown and repairs) in respect of 34 Herbert Street, Plymouth PL2 1RX and administration costs demanded on 6 November 2021.

b) The leases for 96 and 146 Rothesay Gardens authorise the Applicant to recover its costs for the replacement of the roof from the Respondent through the service charge.

c) The Applicant's decision to replace the roofs for 96 and 146 Rothesay Gardens was reasonable.

d) It was reasonable for the Applicant to carry out repairs to the exterior of the properties at the same time as replacing the roofs.

e) The Applicant's decision to replace the roofs and undertake repairs to the exterior of 96 and 146 Rothesay Gardens produced a reasonable outcome.

f) The costs of £7,965.60 for the roofs and exterior works for each of the properties at 96 and 146 Rothesay Gardens were reasonably incurred.

g) The Respondent is liable to pay the sum of £7,965.60 and demanded on 15 October 2019 in respect of the works at 96 Rothesay Gardens, Plymouth PL5 3TA

h) The Respondent is liable to pay the sum of £7,965.60 and demanded on 15 October 2019 in respect of the works at 146 Rothesay Gardens, Plymouth PL5 3TA

The Decisions (County Court)

92. Judge Tildesley OBE sitting as a judge of the County Court exercising the jurisdiction of a District Judge and having heard the representations of parties Orders as follows:

i. The decision of the Tribunal is confirmed

ii. The Defendant to pay the Claimant the sum of £16,396.67 due in service charges.

iii. The parties agreed that interest should be awarded at the rate of 2 per cent until 1 October 2022, and thereafter at 4 per cent. The parties to agree the calculation of interest due.

iv. The Claimant accepted that it had no contractual right to recover costs under the lease, and that as the Claims had been allocated to the Small Claims track the order for costs was limited to Court fees of £455 for each of the Claim Number H6QZ4Y3M, H6QZ3Y5M and £115 for Claim Number H6QZ3Y1M making a total of £1,025.

93. The Judgment of the Court together with the Order will be handed down on 17 May 2023 at 10.00am by BT Meet Me. The parties are expected to call **0800 917 1956 followed by 17377539# at 9.55am if they wish to attend. The parties to agree the calculations for interest and provide them to Judge Tildesley by 10 May 2023.**

94. **The Parties must note that the 28 days in with to apply for permission to appeal the Tribunal decision, and to apply for unreasonable costs in respect of Tribunal proceedings pursuant to rule 13(1)(b) of the Tribunal Procedure Rules 2013 STARTS from the date of this decision 12 April 2023.**

Right of appeal

Appeals in respect of decisions made by the Tribunal

A written application for permission must be made to the First-tier Tribunal at the regional office which has been dealing with the case. The application must be made as an attachment to an email addressed to rpsouthern@justice.gov.uk .

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.

If the application is not made within the 28-day time limit, such application must include a request for 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.

The application for permission to appeal must identify the decision of the Tribunal to which it relates (i.e. 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.

If the Tribunal refuses to grant permission to appeal, a further application for permission may be made to the Upper Tribunal (Lands Chamber).

Appeals in respect of decisions made by the Tribunal Judge in his capacity as a Judge of the County Court

An application for permission to appeal may be made to the Judge when the Judgment is handed down.

The right to Appeal to an appeal judge in the County Court may be stayed pending an Appeal against the decision of the Tribunal.

Appeals in respect of decisions made by the Tribunal Judge in his capacity as a Judge of the County Court and in respect the decisions made by the FTT

You must follow **both** routes of appeal indicated above raising the FTT issues with the Tribunal Judge and County Court issues by proceeding directly to the County Court.