FIRST-TIER TRIBUNAL
BUILDING CHAMBER
(RESIDENTIAL BUILDING)

Case reference	**:**	**LON/00AH/LAM/2020/0025**
HMCTS code	**:**	**V: CVPREMOTE**
Building	**:**	**5 St Peters Road, Croydon, Surrey, CR0 1 HL**
Applicant to both application	**:**	**Claire Stradling (Flat D)**
Representative	**:**	**In person**
2nd Applicant to 1st application. Interested Party to 2nd application.	**:**	**Ehousebook Limited (Flat C)**
Representative	**:**	**Faizah Iqbal (Director)**
Respondents	**:**	**Colin and Coral Weinberg**
Representative	**:**	**Simon Sinnatt (Counsel)**
Type of applications	**:**	**1. Liability to pay service charges under section 27A of the Landlord and Tenant Act 1985.** **2. Appointment of a manager under section 22 of the Landlord and Tenant Act 1987.**
Tribunal members	**:**	**Judge Robert Latham** **Stephen Mason FRICS**
Date and Venue of hearing	**:**	**7, 8 and 9 March 2022 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**23 May 2022**
Date of amended decision	**:**	**3 August 2023**

The Tribunal is exercising our powers under Rule 50 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 to correct an accidental error at [23] of our decision. We are amending the decision to replace "by" with "via". The amendment is highlighted in bold. On 30 July 2023, Mr Cobrin pointed out this error. His introduction to Ms Stradling came "via" the National Leasehold Campaign Facebook page, and had not been made "by" the NLC as stated in our decision.

AMENDED DECISION

Covid-19 pandemic: description of hearing

This has been a remote hearing which has not been objected to by the parties. The form of remote hearing was CVP REMOTE. A face-to-face hearing was not held because it was not practicable and no-one requested the same. The hearing was held remotes using the HMCTS Video Hearing Service. There were a number of connectivity problems and we lost two hours on the afternoon of the second day. The tribunal reverted to the Cloud Video Platform for the remainder of the hearing. We sat late to make up for the time lost.

The Tribunal has had regard to the following documents:

(i) Applicant's Service Charge Bundle (697 pages), reference to which will be prefixed by "A1.__". The Index is to be found at the end of the bundle.

(ii) Applicant's Appointment of Manager Bundle (416 pages), reference to which will be prefixed by "A2.__". Again, the Index is to be found at the end of the bundle.

(iii) Respondents' Bundle (416 pages), reference to which will be prefixed by "R.__". There is no proper index to this bundle. The page numbering does not correspond to the electronic numbering.

(iv) Various documents which were provided at the hearing or after the hearing, to which there will be no page reference.

(v) Skeleton Arguments produced by the Applicant (14 pages) and Respondents (4 pages). The Applicant also provided a Closing Statement (3 pp);

(vi) Bundle of Authorities produced by the Respondents (58 pages).

Decisions of the tribunal

(1) Ms Stradling is liable for the following service charges (£1,223.90), namely:

(i) A credit of £992.65 in respect of the 2017 service charge year.

(ii) A credit of £2,869.25 in respect of the major works which were executed in 2018.

(iii) Service Charges for 2018: £1,448.55.

(iv) Service Charges for 2019: £1,291.25.

(v) Service Charges for 2020: £2,346.

(2) Ehousebook Limited is liable to pay £2,346 in respect of the service charges for 2020.

(3) The Tribunal makes the following findings in respect of two items of major works which will be included in the 2021 service charge accounts:

(i) The Applicants will be liable for the sums incurred in respect of the damp remedial works. The Tribunal understands that the sum charged by Reliance Contractors was £14,310 to which must be added VAT of 20% and a supervision fee of 15%.

(ii) The Applicants are not liable for the sums incurred in respect of the works proposed to the rear garden retaining wall. The Tribunal accepts that repairs are required to the rear wall and that such works would fall within the landlords' repairing covenants. However, the design proposed is over-engineered and that a structural engineer would find a cheaper solution. As a result of this conclusion, it would not be reasonable for the landlord to pass on any of the costs relating to the flawed consultation on this scheme.

(4) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the Respondents' costs of the tribunal proceedings may be passed to the Applicants through any service charge.

(5) The Tribunal determines that the Respondents shall pay Ms Stradling £150 within 28 days of this decision, in respect of the part reimbursement of the tribunal fees which she has paid.

(6) The Tribunal will now refer Claim No.CO1CR058 back to the County Court at Central London, having addressed the matters raised by the Respondents' Counterclaim in respect of arrears of service charges

The Applications

1. On 22 July 2020, the Applicant, Ms Claire Stradling, issued four applications:

(i) The application (at A1.1-19) seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the service charges payable for the years 2017, 2018, 2019, 2020 and 2021. There is an associated application (at A1.20-28) for an order under section 20C of the Act. Ehousebook Limited ("Ehousebook") is the Second Applicant to this application.

(ii) The application (at A2.1-10) also applies for the appointment of Ms Rose Collash as a manager pursuant to section 24 of the Landlord and Tenant Act 1987 ("the 1987 Act"). Again, there is an associated application (at A.2.11-19) for an order under section 20C of the Act. On 19 May 2020 (at A2.94), the Applicant served her preliminary notice pursuant to section 22 of the 1987 Act. She relies on the following grounds for the appointment of a manager: (a) the landlord is in breach of obligation owed to the tenants under the lease; (b) the landlord has made/proposed unreasonable service charges; (c) the landlord is in breach of the codes of management practice; and (d) other circumstances exist which make it just and convenient to appoint a manager. Ehousebook is an interested party to this application.

2. The Building at 5 St Peters Road, Croydon, is a Victorian Building on four floors which the Respondents converted to create four flats. In 1985, they granted leases which are now held by the following:

(i) Ms Stradling is the tenant of Flat D which is a one bedroom flat on the second floor. On 23 September 2003, she acquired the lease. Ms Stradling has not paid any service charges since October 2017.

(ii) Ehousebook is the tenant of Flat C which is a one bedroom flat on the first floor. On 9 December 2019, it acquired the lease; on 7 January 2020, its interest was registered at the Land Registry (R.262). It has not paid any service charges. On 11 January 2022, the Respondents contended that there were arrears of £12,302.05.

(iii) Vivid Solutions are the tenant of Flat B which is a two bedroom flat on the ground floor. They acquired the leasehold interest at an auction in 2019. They have paid their service charges. They are not a party to this application.

(iv) Flat A is a two bedroom flat on the lower ground floor. The tenant is Ms Sara Weinberg, the Respondents' daughter. She has been paying her service charges.

3. On 18 April 2016, Ms Stradling had issued proceedings in the County Court for disrepair against Mr and Mrs Weinberg (C01CR058). Both parties have instructed solicitors and have been represented by Counsel.

(i) The Amended Particulars of Claim, dated 26 October 2020, are at R.442-435. Ms Stradling claims damages for disrepair for the period from 12 February 2015 to November 2017.

(ii) The Defence to the Amended Particulars of Claim and Amended Counterclaim, dated 16 November 2020, is at R.436-453. The Defendants counterclaim for arrears of service charges of £9,532.75 and ground rent of £300 for the years 2018, 2019 and 2020. In November 2020, Ms Stradling cleared the arrears of ground rent. Mr and Mrs Weinberg do not plead the dates on which the demands for the service charges were made.

(iii) The Amended Reply to the Defence and the Amended Defence to Counterclaim, dated 21 December 20220, is at R.454-463. Ms Stradling admits that demands have been made for service charges, but pleads that they have not been demanded in accordance with the terms of her lease and disputes that they have been reasonable. She asks for the Counterclaim to be stayed pending the determination of this application.

(iv) On 27 May 2021, HHJ Lethem, sitting in the County Court at Central London, vacated a trial that had been fixed for 4 October 2021. The Counterclaim in respect of the claim for service charges was transferred to this tribunal. The remainder of the claim was stayed.

4. On 30 May 2017 (at R.464), Mr and Mrs Weinberg issued an application in this tribunal (LON/00AH/LSC/2017/0211) seeking a determination as to the payability and reasonableness of service charges. This was issued against Ms Stradling, Mr James Earley (then tenant of Flat B), Ms Eleanor Hodges (then tenant of Flat C), and Ms Dorothy Collins (the then tenant of Flat D). On 9 October 2017 (at A1.174-7), a consent order was reached in an application between Mr and Mrs Weinberg and three of the tenants, Ms Stradling, Mr Earley and Ms Hodges (see [45] below).

5. On 13 July 2021 (at A1.58), Judge Pittaway gave Directions in respect of the applications which are now before the tribunal. She directed the Respondents to provide the Applicant with copies of "all relevant service charge accounts and estimates for the year in dispute, together with all supporting invoices and demands for payment and details of any payments made to the Respondents (which may be in the form of a statement of account".

6. On 13 August (at R.335), the Respondents sent a number of documents to the Applicant. The Respondents have failed to provide a statement of account specifying when and what demands have been made, together with any payments made by the Applicant. Neither has the Respondents included in its bundle a set of service charge demands in chronological order. A number of these demands were provided at the hearing.

7. In the Service Charge application, the parties have produced two Scott Schedules for (i) 2018 (at A1.155-173); and (ii) 2019-2021 (at A1.386-400). Ms Stradling has based some of her entries on the budgets, rather than the final accounts, for the year. Thus, the Applicant challenges £200 for cleaning and £750 for gardening which had appeared in the 2019 budget. In the event, no such services were provided and no charge has been made for them in the final accounts.

8. The manner in which the landlord has maintained the accounts has been far from transparent. This is aggravated by two factors: (i) service charges have not been demanded in accordance with the terms of the lease; and (ii) there have been two sets of managing agents, namely Jacksons who resigned with effect from 31 December 2018 and Cure Building Management ("Cure") who have managed the Building since 1 February 2019.

9. Judge Pittaway identified the following issues that would need to be determined to the application to appoint a manager:

- Is the preliminary notice compliant with section 22 of the 1987 Act and/or, if the preliminary notice is wanting, should the tribunal still make an order in exercise of its powers under section 24(7) of the 1987 Act?
- Has the applicant satisfied the tribunal of any ground(s) for making an order, as specified in section 24(2) of the 1987 Act?
- Is it just and convenient to make a management order?
- Would the proposed manager be a suitable appointee and, if so, on the terms and for how long should the appointment be made?

10. The application had initially been on 8 and 9 December 2021. However, Mr Bruce Coppard, the Respondents' expert witness, was ill and the case was unable to proceed.

The Hearing

11. Ms Stradling appeared in person. She has had three firms of solicitors who have acted for her in the County Court proceedings. She is a director of PRP-Recruitment. She has provided two witnesses statements at A1.97-108 and A2.102-113. Ms Stradling gave evidence. Her bundles extended to over 1,110 pages. The documents are not in chronological order and a number of them are incomplete. We agree with Mr Weinberg's observation (at R.19) that her application for the

appointment of a manager "lacks focus and is prolix in the extreme". He goes on to criticise her for filing "so much irrelevant and incomprehensible paperwork" (at R.29). It was only too apparent that the position between Ms Stradling and Mr and Mrs Weinberg has become extremely entrenched. This does not bode well for the future management of the Building.

12. Ms Stradling adduced evidence from Mr Robert Horner, FRICS who has prepared a number of reports dated 2 October 2018 (at A1.195-217); 10 October 2019 (at A1.452-465); and 30 October 2019 (at A1.477-489). He is retired and gave evidence from Kenya. We were not provided with his initial report, dated 21 July 2017 which had been prepared for LON/00AH/LSC/2017/0211 and the service charge years for 2015, 2016 and 2017. He was critical of the quality of the works which has been executed pursuant to the Consent Order. The Tribunal felt that he was over critical. However, the Tribunal does accept his evidence in respect of the guttering. In 2015, new aluminium guttering had been installed. This was removed in 2018, to permit lead flashings to be installed. When the aluminium guttering was replaced, it leaked. It was subsequently agreed that the best solution was to replace it with plastic guttering. We agree that the Applicants should not be required to pay for this second set of guttering. Mr Horner's report has been prepared largely for the County Court proceedings. His most recent inspection was on 29 October 2019. He was therefore unable to comment on the current condition of the Building. Neither has he prepared a planned maintenance programme which would offer a manager some indication as to how the outstanding disrepair should be prioritised.

13. Ms Stradling also adduced evidence from Ms Rose Collash, her proposed manager. Neither party was aware of the Practice Statement issued by the Chamber President, dated December 2021. This was understandable given the limited publicity that has been given to it. Tribunals only make some 30 appointments of managers each year. It is a last resort where there are no other solutions to management problems that have arisen. A tribunal needs to be satisfied as to what outcomes are sought to be achieved through an appointment and that the proposed manager has the experience to deliver the desired outcomes. At the beginning of the hearing, the Tribunal asked the parties to consider the implications of the Practice Statement. The Tribunal was concerned that Ms Collash was unaware of the management problems that had arisen and the arrears of service charges. She had not inspected the Building or produced a management plan and budget. She seemed inexperienced to deal with the deeply entrenched problems of managing this Building. The Tribunal was also concerned whether she had the appropriate insurance. After the hearing, Ms Collash withdrew her offer to act as a manager.

14. Ms Faizah Iqbal appeared on behalf of Ehousebook which is a party to the Section 27A application and an interested party to the application to appoint a manager. She is a director. She adopted the statement of Parveen Iqbal, her father, which is at A1.490. On 9 December 2019,

Ehousebook purchased Flat C at auction for £238k. The Iqbals intended to convert it into a two bedroom flat and sell it. They have been unable to do so and blame this on the intransigence of the Respondents. In March 2020, they put the Building on the market in its current condition but have been unable to sell it. Ehousebook have complained about the standard of management and the size of the service charge demands. They complain that the estimates obtained for the remedial works to the front entrance steps (£18,232) and the rear garden wall (£21,256) are excessive and have obtained alternative quotes from M.S. Building Services in the sums of £6,000 (at A1.521) and £7,600 (A1.522). Ms Faizah stated that the company had recently paid £1,000 toward the arears of £12,304.05.

15. Mr Simon Sinnatt (Counsel) appeared for the Respondents instructed by Mr Paul Barnes of ODT Solicitors. He adduced evidence from Mr Weinberg, Mr Bruce Coppard, FRICS and Ms Diane Fraser, the Director of Cure Building Management ("Cure").

16. Mr Weinberg has provided two short witness statements relating to the service charge dispute (at R.94-99) and the appointment of manager (at R.17-29). We are satisfied that he has adopted the approach that this is his property and he is entitled to manage it as he chooses. His approach was trenchant and he was not willing to accept that there was any justified criticism to the manner in which he has managed the Building and maintained the service charge accounts.

17. Mr Bruce Coppard FRICS inspected the Building on 8 October 2021. His report, dated 18 October 2021, is at R.341-395. This is a careful and detailed report. It covers three topics:

(i) The Major Works carried out in 2018 pursuant to the Consent Order in LON/00AH/LSC/2017/0211: Ross Pocock MRICS had drawn up the Schedule of Works (at R.47-53) and had supervised the works. On 29 June 2018, Mr Pocock had issued a Practical Completion Certificate (at R.291). This had identified 8 snagging items which would have been addressed. Mr Coppard was inspecting the works more than 3 years later. He would have expected there to have been some deterioration in the external decorations. He considered the quality of the works to be reasonable. He did not consider Mr Horner's report to give a balanced view. Mr Horner had focused on issues which were often comparatively minor or localised (at R.367). We accept this assessment.

(ii) The works to the front steps which were carried out in 2021. These works had only been completed on 20 September 2021, and Collier Stevens who were supervising the works, had not completed their final inspection. He was generally satisfied with the works. He had initially thought that the tendered price of £13,110 (enc VAT), appeared to be slightly high. However, having reviewed the detailed cost breakdown in the Schedule of Works, he gained a better understanding of the scope of

the works and considered the tendered price to be reasonable. Mr Horner has not inspected or commented on these works. Ms Stradling's challenge is rather one of "historic neglect". The scope of these works was greater because of the landlord's failure to carry out works at an earlier date.

(iii) The proposed works to the rear retaining wall: Mr Coppard concluded (at R.375) that the Specification of Works which had been prepared by Collier Stevens was over-engineered for this small and short section of wall (some 7.5 metres long) which was only 600 mm high. He also considered that the specification lacked some critical design details which would create uncertainty for any contractor pricing the work. He rather advised that a structural engineer be instructed to devise a cheaper solution.

18. The Respondents adduced evidence from Ms Diane Fraser who is the sole director of Cure Building Management ("Cure"). On 31 December 2018, Jacksons, the previous managing agents terminated their contract with the landlord. We were told that Cure took over on 1 February 2019. Ms Stradling only learnt of the transfer when she raised an item of disrepair with Jacksons on 11 March 2019.

19. Ms Fraser only manages a small number of properties and delegates specific tasks to a number of agents. The Tribunal have been provided a copy of her management agreement with the Respondents which is at R.63-76. Whilst signed by Mr Weinberg, it is undated. At R.63, the commencement date is stated to be 1 February 2021. However, at R.65, the term is stated to be 364 days from 1 September 2020. By clause 5.1, the managing agent agrees to comply with the terms of the leases, "in so far as the client permits". The Building has not been managed in accordance with the terms of the lease. Some of the charges seem excessive. Ms Fraser sought to charge Ms Stradling 40p per page for copying A4 invoices. This cannot be considered to be reasonable.

20. Ms Fraser has not prepared a planned maintenance programme for the Building. However, a considerable number of Section 20 Notices of Intention have been served. A charge has been made for these, even if no works were executed. She has not found Ms Stradling easy to deal with. She has been required to respond to a large number of queries which she describes as "constant and repetitive". These have proved challenging and time consuming.

Events After the Hearing

21. On 14 March, Ms Collash withdrew her offer to act as a manager. Her stated reason was that Crawford's insurance would not cover her as a tribunal appointed manager. However, she also had significant concerns about acting as a tribunal appointed manager for this Building. She stated that she had not been provided with the bundles and had therefore

not been able to provide a proposed budget or instruct a surveyor to carry out a full condition report. In her professional judgement, in order to provide the level of support that the Building requires, she would need to raise her fees to a level which would make it unviable for leaseholders. She would also require (i) all service charge arrears to be paid in full within 14 days of her appointment; (ii) full accounting records certified by a qualified accountant; and (iii) sufficient funds in the reserve fund and/or service charge account to undertake necessary repairs and to deal with other relevant matters such as insuring the building.

22. Both Ms Stradling and Ms Iqbal had stated in their evidence that they would clear their arrears were a tribunal to appoint a manager. However, it is significant that they had not alerted Ms Collash to the existence of the arrears. Neither had Ms Stradling stated this in her Statement of Case. In a witness statement dated 15 March 2022, Ms Stradling asserts that she had provided Ms Collash with the relevant information and refers to some 20 emails in which she communicated information to Ms Collash. The reality may be that Ms Stradling sent too much, rather than too little, information to Ms Collash. Ms Collash was unable to digest all this material. This is no criticism of Ms Collash. It rather reflects Ms Stradling's inability to identify clearly and focus on the outcomes that she seeks to achieve through the appointment of a manager.

23. On 15 March, Ms Stradling requested a stay of 21 days in which to be able to nominate a further manager. On 16 March, Mr Peter Cobrin, of Westbury Residential, emailed the tribunal on behalf of Ms Stradling, seeking a 28 day stay so that he could submit a management plan with a view to his appointment as a manager. He stated that the introduction had been made ~~by~~ **via** the National Leasehold Campaign.

24. On 22 March, the Tribunal notified the parties that we were not willing to grant any stay. The hearing had concluded and we would proceed to issue our decision. We stated that we would consider the further material which had been submitted. Were we to conclude on the basis of the extensive evidence adduced at the hearing that it was just and convenient to appoint a manager, we would consider what further directions would be appropriate.

The Lease

25. Ms Stradling occupies Flat D pursuant to a lease dated 24 November 1986 (at A1.33-53). The lease is for a term of 125 years from 29 September 1986. The lease was granted by Mr and Mrs Weinberg. It is apparent that they have not managed the Building in accordance with the terms of the lease. In the Directions (at A1.63), the Respondents were directed to set out the relevant terms of the lease in their Statement of Case. It is a matter of regret that they have failed to do so. The copy of the lease that the Applicant has provided omits page 15 of the lease and

does not include the lease plan. The Respondents have provided the lease for Flat A, the basement flat.

26. Flat D is a one bedroom flat on the second (top) floor of the Building. The demise is described in the First Schedule. There is a communal hall and staircase leading to the Flat. The tenant's rights are set out in the Second Schedule. This includes the right to use the front and rear gardens. The rent currently payable is £100 pa, to be paid in equal instalments on 24 June and 25 December.

27. By Clause 4, the landlords covenant

(i) to keep in good and substantial repair and condition the main structure and exterior of the building, the common parts and front boundary walls and fences (Clause 4(a));

(ii) to decorate the exterior of the building every five years (Clause 4(c)); and

(iii) to insure the building (Clause 4(d)).

28. The lease permits the landlords to establish a reserve fund. By Clause 4(k), the landlord covenants to set aside such sums "as the landlords shall reasonably require to meet such future costs as the landlords shall reasonably expect to incur" of replacing, maintaining and renewing those items which the landlords have covenanted to replace, maintain, or renew.

29. By Clause 2(16), the tenant covenants to pay the interim service charge and the service charge. The service charge provisions are set out in the Fifth Schedule:

(i) Each tenant pays 25% of the landlords' expenses in carrying out their obligations under Clause 4. The landlords are permitted to employ managing agents.

(ii) The accounting period is 1 January to 31 December.

(iii) The interim service charges are payable on 25 December and 24 June. The interim service charge is such sum as the landlords certify to be fair and reasonable in respect of the accounting period. This may include a contribution towards a reserve fund

(iv) As soon as practical after the expiration of the accounting period, the landlords shall serve on the tenant a certificate signed by the landlord or their agents with the following information: (a) the total amount of the expenditure for the accounting period; (b) the amount of the interim

service charge paid by the tenant together with any surplus accumulated from previous accounting periods; (c) the amount of the service charge in respect of that accounting period and of any excess or deficiency of the service charge over the interim charge; and (d) the amount of the surplus accumulated under Clause 4(k), namely the reserve fund.

(v) If the interim service charge paid by the tenant in respect of any accounting period exceeds the interim service charges paid for that period, the surplus shall be accumulated by the landlords and credited to the tenant's service charge account in computing the service charges payable in succeeding accounting periods. Such surplus is not to include any sums collected for the reserve fund under Clause 4(k).

(vi) If the service charge in any account period exceeds the interim charge paid by the tenant in respect of that accounting period together with any surplus from previous years, the tenant shall pay the excess to the landlords within 28 days of service on the tenant of the certificate.

30. The lease contemplates the following:

(i) The landlords will provide a budget for the year, which may include a contribution towards a reserve fund. This requires some degree of financial planning on behalf of the landlord, both for the current year and the years ahead. A planned maintenance programme would enable the landlord to anticipate what expenditure will be required over the years ahead and to build up a reserve fund to cover this. The lease does not permit the landlord to submit additional bills for unexpected expenditure halfway through a financial year.

(ii) The landlord will prepare accounts for the year setting out the actual expenditure as against the expenditure contemplated in the budget. All the service charge expenditure for the year should be specified in the service charge accounts. In so far as any such expenditure is funded from reserves, this should be clearly recorded.

(iii) If there is a surplus in any year, it is to be credited to the tenant's account. The lease does not permit the landlord to add the surplus to the reserve fund. Any reserve fund must rather be planned and included in the budget.

(iv) The landlords are required to provide a certificate to the tenant, so that she knows her financial position. She should be told whether there has been a surplus or a deficit for the year. She is entitled to know how much the landlord is holding on her behalf in the reserve fund.

31. Tribunal asked Mr Sinnatt to produce a statement of account for Ms Stradling indicating the dates upon which any demands had been issued

and the date on which any payments had been made. It seems that no such statement exists.

The Background

32. In the 1980s, Mr and Mrs Weinberg acquired the freehold in the Building at 5 St Peters Road. They converted it to create four flats and granted the following leases, each tenant paying 25% of the service charge:

(i) Flat A is a two bedroom flat on the lower ground floor. The lease is dated 19 January 1987 and was granted to Mrs Dorothy Collins. Mrs Collins is Mrs Weinberg's mother. Mrs Collins died in 2017. The leasehold interest is now held by Ms Sara Weinberg, the Respondents' daughter.

(ii) Flat B is a two bedroom flat on the ground floor. In 1998, Mr James Earley acquired the leasehold interest. In 2019, Mr Earley put his flat up for sale at auction. Vivid Solutions acquired the leasehold interest. They have played no part in these proceedings.

(iii) Flat C is a one bedroom flat on the first floor. The lease, dated 21 November 1986, was granted to Mrs Hodges. On 9 December 2019, Ehousebook acquired the leasehold interest at auction for £238k. At the date of the auction, Mrs Hodges was aged 76. Ehousebook acquired the flat as an investment intending to convert it into a two bedroom unit. It has been unable to secure the necessary consents to do this.

(iv) Flat D is a one bedroom flat on the second floor. The lease is dated 24 November 1986. On 23 September 2003, Ms Stradling acquired the leasehold interest for £135k.

33. In the early days, the Respondents made no attempt to manage the Building in accordance with the terms of the leases that they had granted. It seems that Mr Weinberg was working abroad. Mrs Collings managed the Building. She collected the ground rent and arranged for insurance. The tenants contributed to any bills. The Respondents have contended that the tenants agreed to manage the three upper floors. The tenants do not accept this.

34. On 26 August 2007 (at R2.216), Ms Stradling wrote to the Respondents complaining of the disrepair. On 17 September 2007 (at R2.217), Mr Weinberg responded. He stated that he expected the leaseholders to maintain the fabric of the Building. He warned Ms Stradling of the financial consequences were a service charge to be levied: "As I am sure you are aware agents' fees would be in the region of 20% over the annual maintenance, in addition I would be obliged to recover the cost of my time and any legal cost as an additional expense on top of this". On 17

November 2010 (A2.224), Ms Stradling sent a detailed letter setting out her complaints of disrepair.

35. In January 2014, water started to penetrate into Ms Stradling's flat. There are photos at A2.121—123. In February 2014, V.T.B. Building Contractor ("Valley") executed works. These failed to remedy the problems. It seems that these were poorly executed and were no more than holding repairs.

36. On 22 June 2015, the Respondents obtained a report from Hughes, Jay and Panter Limited ("HJP") at A2.244-255. Mr Thorpe, the surveyor, attributed the cause of the dampness to (i) lack of under-felting; (ii) movement within the roof frame; (iii) isolated repointing to the hip tiles, (iv) poor apron flashings; (v) pointing defects. He noted that a new roof would be needed within 10 years.

37. On 27 July 2015 (at A2.254), Leasehold Law LLP ("Leasehold Law") wrote to the Respondents urging them to appoint a qualified managing agent. On 17 August 2015 (at p.255), Leasehold Law sent a pre-action letter alerting them to their obligations under the lease. This included the need to collect and maintain a service charge fund and to establish a reserve fund. Their obligation to repair and maintain the building was not dependent upon the landlords securing payment in advance. The Respondents were required to commence the remedial works identified by HJP. The tenants were minded to institute the formal process for the appointment of a manager. The Respondents were urged to seek legal advice.

38. The Respondents instructed Street Marshall Solicitors who responded to Leasehold Law on 2 September 2015 (A2.258). In November 2015, further works were executed to the roof at a cost of some £10,440 (A2.269). This included the installation of new metal guttering. These works did not abate the mater penetration.

39. In April 2016, the Respondents appointed Jacksons, a firm based in Hove, to manage the Building. Mr Gary Pickard was the staff member with responsibility for the Building.

40. In April 2016, Ms Stradling issued proceedings for disrepair in the County Court. This claim is now restricted to the period 12 February 2015 to 1 November 2017. In due course, the County Court will need to determine this claim (see [3] above).

41. In May 2016, Mr Ross Peacock, a surveyor with Infinity Surveying Ltd, prepared a Schedule of Works for the Respondents (at R.47-53). On 9 May, ODT Solicitors, who were now acting for the Respondents, wrote to Leasehold Law (at A2.320) to inform them that Jacksons had been appointed to manage the Building. A budget had been prepared in the

provisional sum of £104,670. Ms Stradling's share would be £13,083. Service charge demands had not been issued as the works were subject to the statutory consultation procedures.

42. The Tribunal has not been referred to the service charge demands that were issued at this period. However, on 18 January 2017, Mr Pickard wrote to Ms Stradling in these terms:

> "Insofar as the service charge demands for last year are concerned, I am not sure why you have recently been sent a service charge bill in excess of £22,000 since the service charge invoices for the second half year were cancelled in accordance with my instructions. Your service charge demand for the year was in fact £2,421.25 and you are currently in credit in the sum of £1,038.75."

Mr Pickard requested a meeting with the tenants and concluded:

> "The freeholder has effectively given me until the 27th January to resolve the issues after which the matter will be taken to the First Tier Tribunal".

43. Thereafter, there was a discussion about the scope of the works. There was no agreement. On 30 May 2017, Mr and Mrs Weinberg issued proceedings before this tribunal (LON/00AH/LSC/2017/0211) against Ms Stradling, Mr Earley Mrs Hodges and Mrs Collins. Mrs Hodges made a witness statement (at R2.205). She was aged 77. She describes how she attended a meeting with Mr and Mrs Weinberg and the other tenants in April 2015. Mr Weinberg had been extremely intimidating. She felt bullied. His response to the suggestion that he should manage the Building was that "it would cost us dear". She subsequently granted a power of attorney to her son.

44. Mr Earley also made a witness statement, part of which appears at A2.208-212. When he purchased Flat B in 1998, his solicitor advised him that despite the service charge provisions in the lease, it appeared that maintenance was carried out as and when necessary, with each tenant contributing to the cost. He spoke to Mrs Collins and understood that she was in charge of managing the Building and that she arranged the insurance. However, when he wished to install double glazed units, Ms Collings informed him that the landlords would not allow this. He denied that there was any agreement that the tenants would be responsible for the repairs. He refers to a meeting with Mr Weinberg on 11 April 2015, when Mr Weinberg had stated that "maintenance was not his problem" and that the tenants had to resolve it.

45. On 9 October 2017 (at A1.174-7), a Consent Order was reached in respect of this application. The agreement was between Mrs Weinberg and three

of the tenants, Ms Stradling, Mr Earley and Ms Hodges. Mrs Collins was not a party to the agreement. The following was agreed:

(i) The total service charges recoverable in 2015 was £3,250 and in 2016 was £8,771. Each tenant was liable to pay 25% of the service charge, namely £3,005.25.

(ii) It would be reasonable for the landlord to carry out the "major works" which had been specified in a Schedule of Works (at A1.178-184) prepared by Ross Pocock MRICS, dated May 2016, subject to agreed amendments.

(iii) The price tendered by JMR Building Maintenance (at A1.186) would, if incurred, be reasonable and payable. The price tendered was £59,650 (+ VAT). However, it had been agreed that a number of the items which had been priced should be removed. The most significant item to be removed was work to replace the roof with new natural slates (at a cost of £16,600). There were also a number of contingencies. The schedule included modest works to the front entrance staps, namely £500 namely to remove the defective sand cement render and inspect with a surveyor to identify what further works may be required.

(iv) The proposed contract and administration fee of 15% was reasonable for the major works

(v) Subject to any unforeseen circumstances, the works would start within 6 weeks.

46. On 11 October 2017 (at A1.153), Jacksons invoiced Ms Stradling for £5,502. This represented £3,005.25 for the actual expenditure in 2015 and 2016 and £2,496.75 for an interim service charge for 2017. Jacksons were holding £3,560 in an escrow account. On 14 October 2017 (at A1.154), Ms Stradling paid the balance of £1,942.01. It is common ground that on this date, her service charge account was in balance. She had no credit in the reserve account.

47. Since the application in LON/00AH/LSC/2017/0211 was compromised, the following changes have occurred:

(i) In late 2019, the tenants of Flats B and C put their flats up for auction. Ms Stradling states that they did so because they were concerned that the landlords would come back with further demands for money and they were anxious "to get out". On 9 December 2019, Ehousebook Ltd acquired Flat C for £238k (R.262). It has not paid any service charges since it acquired the lease. Vivid Solutions acquired the leasehold interest in Flat B. They have paid their service charges and played no part in these proceedings.

(ii) On 12 March 2019 (at A1.344), Jacksons informed Ms Stradling that they had terminated their management agreement with the landlords on 31 December 2018. Cure took over the management of the Building in February 2019. Mr Weinberg stated that Jacksons had found the management arrangement not to be profitable, particularly given that they were based in Brighton. The Tribunal can well understand why Jacksons no longer wished to manage the Building. Mr Weinberg stated that Jacksons had given two months' notice. It is surprising that it took over four months for the landlords to give notice to Ms Stradling that there was to be a change of managing agent.

The Service Charges Issues in Dispute

48. This is not a case where the Tribunal can merely work through the Scott Schedule which has been prepared by the parties. Thus, the first issue raised by Ms Stradling in respect of the 2018 Service Charge Accounts is why a budget was constructed on the basis of estimated expenditure of £21,196 when the actual expenditure for the year was only £5,794.20. The budget, which records estimated expenditure of £21,196, is at R2.352. The service charge accounts for 2018 (at R.160) record expenditure of £5,794.20.

49. There is no entry for any expenditure on the major works. The only service charge demand with which the tribunal has been provided, is one dated 19 September 2018, which records that two interim service charges of £2,649.50 became payable on 25 December 2017 and 24 June 2018. Thus, a total of £21,196 was demanded from the four tenants. On the basis of the terms of the lease, this surplus in the accounts of £15,436.25 (£3,859 per tenant) should have been credited to the service charge account of each tenant. It was rather transferred to reserves. In fact, this seems to have been a notional figure as Ms Stradling did not pay any service charge for the year.

50. The Respondents' response in the Scott Schedule states: "This is a false statement of fact. The costs of the major works carried out in 2018 was agreed. That agreement is contained in [the Consent Order]". The Respondents go on to state that the major works were rather financed from the reserves. That is not correct. Pursuant to the Consent Order, on 13 October 2017, Jacksons had demanded, and Ms Stradling had paid, an interim service charge of £13,866.25 towards the major works.

51. At the hearing, the Respondents provided an "Application for Payment" which was issued to Ms Stradling on 11 January 2022. This lists the sums which the Respondents contend have been payable since 25 December 2017. This does not specify the dates on which the sums were demanded. Neither does it include any reconciliation between the actual and the budgeted expenditure, when the service charge accounts became available. This should either have resulted in a credit to the tenant's

account or a demand for an additional payment. No certificate has been provided as required by paragraph 6 of the Fifth Schedule of the lease.

52. It is common ground that Ms Stradling had a zero balance on 24 December 2017 and has made no contribution towards her service charges since that date. Neither has the landlord held any sums paid by Ms Stradling in a reserve account.

53. The Tribunal notes, however, when the 2017 service charge accounts were prepared, there was a surplus of £3,970.54 (see R.160). The Respondents gave each of the tenants a credit of £750, transferring the remaining sum of £970.54 to reserves. The Tribunal is satisfied that all the sum should have been credited to the lessees and that the credit to each tenant should have been £992.65.

54. The Tribunal therefore considers the service charge accounts for 2018, 2019, and 2020 and the interim service charges which have been demanded for 2021. However, it is first necessary to consider the expenditure on the major works which were executed in 2018.

The Major Works

55. The major works were not included in the service charge budgets for either 2017 or 2018 (see A2.352). Neither do they appear in the service charge accounts for 2018 at R.158. They are rather tucked away in the balance sheet at R.159.

56. Our starting point is the Consent Order in LON/00AH/LSC/2017/0211. It was agreed that it would be reasonable for the landlord to carry out the "major works" which had been specified in a Schedule of Works (at A1.178-184) prepared by Ross Pocock MRICS, dated May 2016, subject to agreed amendments. These amendments were significant. It had been proposed to re-roof the Building with new natural slate. Roofing works, totalling some £16,600, were removed from the schedule. The Tribunal notes that Ms Stadling's main complaint had been of water penetrating into her flat. On 22 June 2015, Mr Thorpe had concluded that a new roof would be needed within 10 years (see [36] above). The Tribunal suspects that the removal of this item from the schedule may prove to have been a false economy.

57. The parties had agreed that the price tendered by JMR Building Maintenance (£59,650 + VAT) would, if incurred, be reasonable and payable. However, it was also agreed that a number of the items which had been priced should be removed. There were a number of contingencies. It was further agreed that the proposed contract and administration fee of 15% was reasonable.

58. On 13 October 2017 (at A1.189), Jacksons demanded payment from Ms Stradling of £13,886.25 in respect of these works. A statement (at A1.191) explains how this had been computed. As a result of the amendments to the schedule, the tender price had been reduced to £40,250. To this, VAT of 20% was added together with a further 15% for the administration fee. Ms Stradling was liable for 25% of the total of £55,545. She paid this sum. This was the last sum that she paid towards her service charges.

59. In December 2017, the builders erected scaffolding. On 8 January 2018 (at A1.279), Mr Earley complained that the scaffolding had been up for over a month, but works had not commenced. Mr Weinberg stated that the works had been delayed because of inclement weather. Works commenced later that month. On 29 June 2018, Mr Pocock signed a certificate of practical completion (see R.291).

60. We are satisfied that the total cost of the works (inc VAT) was £40,824 (see the Balance Sheet at R.159). This is confirmed by the Contract Administrators Instruction, dated 25 May 2018, which was provided to us at the hearing. To this sum, the Respondents were entitled to add 15%, namely £6,123.60, giving a total contract price of £46,948.

61. We have indicated that we prefer the evidence of Mr Coppard to that of Mr Horner. We are satisfied that the works were executed to a reasonable standard. We are further satisfied that appropriate works were executed to the chimney stacks.

62. However, there is one issue of concern. In 2015, new aluminium guttering had been installed. This was removed in 2018, to permit lead flashings to be installed. When the aluminium guttering was replaced, it leaked. This was noted by Mr Horner when he inspected on 30 January 2018. In his email dated, 11 February 2018 (at A1.278-280), he noted that the aluminium gutters had been poorly re-installed. Screws which penetrate to the inside of the gutters had been used intermittently to fasten the gutters to the brackets. At least one joint was leaking. It was subsequently agreed that the best solution was to replace it with plastic guttering. We are satisfied that the Applicants should not be required to pay for this second set of guttering. This would not have been necessary, had the works been properly executed. The cost of replacing the guttering was £2,400 + VAT, namely £2,880.

63. The total cost of the major works was £46,948. We have disallowed £2,880. The total cost that was reasonably incurred was £44,068, namely £11,017 for each tenant. Ms Stradling paid an interim service charge of £13,886.25. She is therefore entitled to a credit of £2,869.25 towards her service charge account.

The Service Charge Year 2018

64. The budget, which records estimated expenditure of £21,196, is at R2.352. The only service charge demand with which the tribunal has been provided (at R.176), dated 19 September 2018, records that two interim service charges of £2,649.50 became payable on 25 December 2017 and 24 June 2018. Ms Stradling made no payment.

65. The accounts for 2018, which records expenditure of £5,794.20, are at R.160. Ms Stradling challenges the management fee charged by Jacksons of £1,560. She contends that it was unreasonably high. She further contends that the quality of the service was not of a reasonable standard. Jacksons' fee, excluding VAT, was £325 per flat. This is at the lower end of the scale. A single building with four flats is more difficult to manage than a larger block. The Tribunal is satisfied that the management fee is reasonable and payable.

66. Ms Stradling also challenges a number of items which appear in the "Balance Sheet" (at R.159), rather than the service charge accounts (at R.160). The Tribunal has addressed the professional fees of £2,415 under the major works. This is part of the 15% administration fee which was agreed in the Consent Order. The entry of £3,665 for unpaid invoices is not an item of service charge expenditure in these accounts. The items of £450 for fire alarm testing, appeared in the budget, but not the final accounts, as the expense was not incurred. The same applies for gardening (£750); Cleaning (£200), and a contingency for general repairs (£12,540). Mr Weinberg described a number of these entries as "embarrassing". We have more sympathy for Ms Stradling. The service charges have not been demanded in accordance with the terms of the leases. There is a distinct lack of transparency in the manner in which the accounts have been maintained. The service charge accounts show that there was a surplus of £21,230.45 for the year which was transferred to reserves. This should have been credited to the service charge accounts of the tenants. It would have been open to the landlords to have included a contribution towards reserves in the budget for the year. They did not do so. The lease required the landlords to provide the tenants with a certificate confirming any surplus or shortfall when the service charge accounts became available.

67. The service charge expenditure for 2018 (excluding the major works) was £5,794.20. We are satisfied that this was reasonable and payable. Ms Stradling's 25% liability was £1,448.55.

The Service Charge Year 2019

68. On 31 December 2018, Jacksons ceased to manage the Building. On 1 February 2019, Cure took over as manager. The budget which was prepared by Ms Fraser, records estimated expenditure of £9,245 (at R1.411). There was no demand for any contribution towards a reserve fund. Ms Stradling's 25% liability for this was £2,311.25, which was

payable by two interim payments of £2,311.25 on 25 December 2018 and 24 June 2019.

69. On 21 May 2019 (at R.193), Cure issued a service charge demand which records that two interim service charges of £1,155.63 ("25-Dec-18 to 23/06/19") and £1,155.62 ("24-Jun-19 to 24/12/19"). The demand states that the first interim charge had become payable on 25 December 2018. It did not state that the second payment only became payable on 24 June 2019. Strictly, the service charge year is 1 January to 31 December and the service charge accounts have been prepared on this basis. Ms Stradling made no payment.

70. The accounts for 2019 (at R.183) record expenditure of £6,403 (adjusting for the major works provision of £2,851). Ms Stradling challenges legal fees of £3,164.40. This sum does not appear in either the budget or the accounts. She further challenges Cleaning (£200), Gardening (£750) and General Repairs and Maintenance). Whilst these items are included in the budget, none of these are included in the accounts. The proposed services were not provided.

71. Ms Stradling challenges two items relating to fees charged by Cure. A sum of £1,210 is charged for the basic management fee. The invoice is at R.190. This is £302.50 per flat. No VAT is charged. This is manifestly reasonable.

72. Cure also charge £1,665 for additional management services. The invoice, dated 31 October 2019, is at R.191. £560 is charged for preparing four Section 20 Notices of Intent in respect of (i) external entrance steps; (ii) fire alarm and emergency lighting; (iii) basement joist repairs and (iv) compartmentation. These Notices are at A1.439-444, and are dated 12 September, 12 September, 20 September, 20 September. It is unclear why four separate notices were required. Ms Stradling states that these works were not executed. This seems to be correct as the only item of repair included in the service charge accounts is fencing repairs of £936. The lease requires the landlord to prepare a budget for the year. This should identify any major works that a landlord intends to execute during the year. It is desirable for a landlord to issue a single Notice of Intention in respect of any works that the landlord intends to execute during any accounting period. None of these were emergency items that could not have been anticipated. In 2019, the budget seems to have been finalised well into the financial year. The demand for the interim service charge was not made until 21 May 2019. A further £140 is claimed for the service of a "H&S Notice". £150 is claimed for arranging (i) an asbestos survey and (ii) a FHSRA. The Tribunal is satisfied that these expenses should be included in the basic management fee. A further £117 is claimed for the review of letters and sending out letters. Again, this should be covered by the basic management charge. The Tribunal is willing to allow £400 which is sufficient to cover the issuing of one Section 20 Notice of Intent.

73. The Tribunal reduces the service charge which the landlord is entitled to charge Ms Stradling of £6,430 by £1,265. Ms Stradling's' 25% liability for the net sum of £5,165 is £1,291.25.

The Service Charge Year 2020

74. The budget, which records estimated expenditure of £11,090 is at R.225. Each tenant would be liable to pay £2,772.50 by two equal instalments. The budget includes two items, "major works" and contribution to reserves" against which "TBA" is added. This is not an acceptable manner in which to prepare a budget. The managing agents, in consultation with the landlords, should have included appropriate estimates in the budget. The problem seems to be that Mrs Fraser has never prepared a planned maintenance programme for the Building. This is a building which has been neglected for many years. A planned maintenance programme is essential to ensure that the most urgent works are prioritised.

75. On 22 July 2020 (at R.196), Cure sent Ms Stradling a service charge demand for the period "25/12/19 to 24/12/20" in the sum of £2,772.50. Cure apologised for the late issue of the demand and stated that the sum had become payable on 25 December 2019 and 24 June 2020 by two equal instalments. The Respondents did not offer any explanation for the late service of this demand.

76. The service charge accounts for 2020 are at R.202. The total expenditure was £13,089. We have included expenditure of £2,952 for the installation of the emergency lighting and fire alarm which the accounts suggest were funded from "reserves". However, the balance sheet (at R.203) records that arrears of £11,755 were owed by tenants and the freehold had loaned £875 to the service charge fund. Ms Stradling had made no contribution to reserves.

77. Ms Stradling challenges the sum of £94 charged for cleaning. We are satisfied that this was reasonable.

78. Ms Stradling challenges the three items charged by Cure which total £6,074. A sum of £1,369 is charged for the basic management fee. The invoice is at R.215, albeit in the sum of £1,372.80. This is £342.25 per flat. No VAT is charged. This is manifestly reasonable.

79. Two further invoices charged by Cure are more problematic. The accounts include a sum of £1,625 for "other managing agents services". However, the invoice, dated 31 May 2021 (at R.218) is only for £625.10. No explanation has been provided as to why an extra £1,000 has been added to the accounts. This invoice includes £280 for the service of a Statement of Estimate in respect of the installation of a fire alarm. £209 is included for dealing with an insurance claim. We are not persuaded

that this should not be included as part of the service covered by the basic management fee.

80. The second invoice, dated 20 February 2020 (at R.219) is for £3,080. This relates to further works in respect of the four Notices of Intention which were served in September 2019 and the time spent in responding to the representations made by the tenants. Three different individuals charge for their time (see R.220). Ms Fraser is the sole employee of Cure. She contracts out the work which she cannot handle herself. All this work is said to have been executed between 11 December 2019 and 20 February 2020. There seems to have been an undue amount of duplication.

81. The only item included in the budget was £900 for the provision of emergency lighting and a fire and smoke alarm. The only items of expenditure included in the 2019 service charge accounts are £2,952 for the installation of emergency lighting and fire alarm and £1,210 for drainage clearance. The works to the entrance steps and joists were not executed until 2021. A further Notice of Intention was served on 8 September 2020. This postdates the date of this invoice. Section 20 fees for these works are included in the draft 2021 accounts.

82. A total of £4,705 is charged for additional services by Cure. This is manifestly excessive. We accept that Ms Stradling raised a large number of queries. However, the statutory consultation procedures must be operated in a proportionate manner. The landlord is required to consult and to have due regard to any representations made by the tenants. A managing agent is not given an open cheque to charge for every minute engaged in communicating with tenants. One of the problems in this case is the failure of Ms Fraser to engage with the tenants when she was appointed in February 2021. Had she prepared a planned maintenance programme, she could have discussed this with the tenants outside the formal structure of the Section 20 consultation procedures. We reduce these two charges to £1,000.

83. Ms Stradling challenges a charge of £720 in respect of an inspection by Collier Stevens (at R.209). Ms Stradling complains that the inspection related to the basement flat and the expense should be borne by the tenant. The Tribunal is satisfied that the dampness was caused by defects to the front entrance steps and that this is a proper item of service charge expenditure.

84. Ms Stradling challenges two further items. The first item is £1,000 for general repairs. This was included in the budget. It did not appear in the service charge accounts. She further challenges a charge of £85.97 for a fire notice. We are satisfied that it was appropriate to put up the notice and that the charge is reasonable.

85. The Tribunal have disallowed items totalling £3,705. The total expenditure for the year was £13,089. We allow £9,384. Ms Stradling's' 25% share is £2,346.

The Service Charge Year 2021

86. The budget, which records estimated expenditure of £11,090 is at A1.578. Each tenant would be liable to pay £2,772.50 by two equal instalments. The budget includes a contribution to reserves of £1,350.

87. On 26 February 2021 (at A1.579), Cure sent Ms Stradling a service charge demand. A covering letter again apologised for the late issue of the demand and stated that the first sum of £1,386.25 had become payable on 25 December 2020 and that the further sum would become payable on 24 June 2021. Ms Stradling has not paid these sums. The Tribunal is satisfied that these sums are payable and reasonable as interim service charges.

88. The issue rather relates to two items of major works described as "Entrance Damp Remedials" and "Rear Retaining Wall". No estimated expenditure for these items is included in budget. The only entry is "TBA". The Tribunal is satisfied that these items should have been included in the budget for the year. The lease does not permit the landlords to recover additional interim payments during the course of the year. If any additional works are to be executed, these must either be funded from reserves or by the landlords. If funded by the landlords, these may still be proper items of expenditure to include in the service charge accounts when these are prepared.

89. On 1 April 2021, Cure issued two additional service charge demands to Ms Stradling (at A1.613 and A1.670):

(i) £2,147.95 (at A1.613) is demanded in respect of the "damp remedial works". The total cost, including fees and a contingency was £20,591.80. However, the landlord intended to fund £12,000 from reserves. Ms Stradling was required to pay 25% of the net sum of £8,591.80.

(ii) £3,017.35 (at A1.613) is demanded in respect of "works to the rear garden retaining wall". The total cost, including fees and a contingency was £24,069.40. However, the landlord intended to fund £12,000 from reserves. Ms Stradling was required to pay 25% of the net sum of £12,069.40.

90. At the hearing, the Tribunal was provided with the draft service charge accounts for 2021. These record expenditure of £31,298. However, the actual expenditure is £26,635 if the transfers to and from the reserve fund are excluded. This includes sums charged by Cure in respect of the statutory consultation notices. The balance sheet records that service

charge arears of £29,317 are owed by tenants. The landlords have loaned £16,275 to the service charge account.

91. It is not for this Tribunal on this application to determine the payability and reasonableness of the sums included in the 2021 Service Charge Accounts. However, the Tribunal has been asked to consider the payability and reasonableness of the sums demanded in respect of the two sets of major works. As stated, we are satisfied that it was not open to the landlords to demand these as interim service charges. They should have been included in the budget for the year. However, the Tribunal is willing to determine whether they would be reasonable if included in the final service charge accounts. This is permitted by section 27A(3) of the 1985 Act.

The Damp Remedial Works

92. On 8 September 2020 (at R.297-9), Cure served a Section 20 Notice of Intention in respect of works to the front entrance steps. It is apparent that water was leaking causing the ceiling joists to the basement flat to rot. The tenants were invited to make any representations by 12 October 2020. The tenants were also invited to nominate a contractor from whom an estimate should be obtained. The Notice was not sent by Ms Fraser, but rather by Mr Dyer, a duly authorised agent.

93. On 5 March 2021, Cure served the Notice of Estimates (at R.305-8). Four builders had been invited to tender. Two tenders were returned. Reliance Contractors provided the lowest quote which was £13,110.00. This increased to £18,232, if both VAT and a contingency of £2,500 were added. The landlords were minded to accept this estimate. Mr Dyer also addressed the representation which had been made by the tenants. Ms Weinberg had made a number of detailed submissions in response to the Notice of Intention. Many of these related how the finances of the building were being managed.

94. The works to the steps were completed on 20 September 2021. On 8 October, Mr Coppard inspected the works (at R.367). At this stage, Collier Stevens had not carried out their final inspection. Mr Coppard was satisfied that the works fell within the landlord's covenant to repair and had been executed to a reasonable standard. He was further satisfied that an increase from £13,110 to £14,310 was reasonable as a result of material cost increases. Mr Horner has not inspected these works. Mr Coppard's expert evidence is therefore uncontradicted. We have no hesitation in accepting his evidence.

95. In the Scott Schedule, Ms Stradling raises a number of technical points. She complains that the landlord failed to respond to her representations in response to the Notice of Intention within 21 days. There was no obligation on the landlords to do so. The landlords were rather required to address these in their Notice of Estimates. She complains that the

tenants were not afforded 21 days to respond to the Notice of Estimates as Cure had issued their demand for payment on 1 April 2021. This demand for payment was quite separate from the statutory consultation process. The Tribunal is satisfied that the landlords complied with their statutory duties to consult.

96. Ms Stradling also raised an argument of historic neglect. She contends that the costs would have been less had the works been executed at an earlier stage. She has not established this. The rotted joists were above the ceiling in basement. The disrepair would not have been immediately apparent.

The Proposed Works to the Rear Garden Retaining Wall

97. On 8 September 2020 (at R.309-310) Cure serve a Section 20 Notice of Intention in respect of the proposed works to the rear garden retaining wall. This stated that the works had been recommended by Collier Stevens. The tenants were invited to make any representations by 12 October 2020. The tenants were also invited to nominate a contractor from whom an estimate should be obtained. The Notice was again sent by Mr Dyer, a duly authorised agent for Cure.

98. On 5 March 2021, Cure served the Notice of Estimates (at R.311-314). Three of the four contractors who had been asked to quote for the works to the front entrance staps were also asked to tender for these works. Again, only Reliance Contractors and CCBS returned tenders. Reliance Contractors again provided the lowest quote which was £15,630. This increased to £21,256, if both VAT and a contingency of £2,500 were added. The landlords were minded to accept this estimate. Mr Dyer also addressed the representation which had been made by the tenants.

99. These works have not been executed. The landlords state that they have not had the resources to do so. In his report (at R.372), Mr Coppard was asked to comment on whether these works fell within the landlords' repairing covenants and whether it was reasonable for them to proceed with these works. By this stage, Reliance Contractors had increased their tender from £15,630 to £17,310 because of cost increases. Mr Coppard concluded that the design for the retaining wall is over-engineered resulting in excessive quotes from contractors. The design is also missing some critical design details/information which may also have created some uncertainty with the contractors when pricing these works.

100. The Tribunal accepts that repairs are required to the rear wall and that such works would fall within the landlords' repairing covenants. However, we agree with Mr Coppard that the design is over-engineered for this small and short section of wall (some 7.5 metres long) which was only 600 mm high. He also considered that the specification lacked some critical design details which would create uncertainty for any contractor pricing the work. He rather advised that a structural engineer be

instructed to devise a cheaper solution. As a result of this conclusion, it would not be reasonable for the landlord to pass on any of the costs incurred to date relating to the consultation on this flawed scheme.

101. The Tribunal reaches this decision with no regret. The Respondents have neglected this building over many years. A planned maintenance plan is required to identify what repairs are required and the period of time over which these should be executed. Regard should be had to the means of the tenants who will be required to pay for them.

Conclusions on the Service Charge Issues

102. We are satisfied that Ms Stradling is liable for the following service charges:

(i) A credit of £992.65 in respect of the 2017 service charge year (see [53] above).

(ii) A credit of £2,869.25 in respect of the major works which were executed in 2018.

(iii) Service Charges for 2018: £1,448.55.

(iv) Service Charges for 2019: £1,291.25.

(v) Service Charges for 2020: £2,346.

Ms Stradling therefore owes £1,223.90 in respect of arrears of service charges. The Respondents are not holding any sums on her behalf in the reserve fund. The Tribunal is satisfied that any contribution towards a reserve fund should have been included in the annual budget and collected with any interim service charge. Thus, there is no reserve for any future works which may be required.

103. Ehousebook Limited acquired the leasehold interest in Flat C on 7 February 2020. They are liable to pay £2,346 in respect of the service charges for 2020. The Respondents are not holding any sums on its behalf in the reserve fund.

104. The Tribunal also makes the following findings in respect of two items of major works which will be included in the 2021 service charge accounts:

(i) The Applicants will be liable for the sums incurred in respect of the damp remedial works. The Tribunal understands that the sum charged by Reliance Contractors was £14,310 to which must be added VAT of 20% and a supervision fee of 15%.

(ii) The Applicants are not liable for the sums incurred in respect of the works proposed to the rear garden retaining wall. The Tribunal accepts that repairs are required to the rear wall and that such works would fall within the landlords' repairing covenants. However, the design proposed is over-engineered and that a structural engineer would find a cheaper solution. As a result of this conclusion, it would not be reasonable for the landlord to pass on any of the costs relating to the flawed consultation on this scheme.

The Application for the Appointment of a Manager

105. On 19 May 2020 (at A2.94-101), Ms Stradling served on the Respondents her Preliminary Notice for the Appointment of a Manager pursuant to section 22 of the 1987 Act. The Notice is confused, lacks focus and is prolix. Many of the complaints pre-date 1 February 2019, when Cure were appointed to manage the Building. Ms Stradling complains that the Respondents have (i) failed to comply with their obligations under her lease; (ii) charged unreasonable service charges; and (iii) failed to comply with the RICS Service Charge Residential Management Code. She further contends that there are other circumstances that make it just and convenient to appoint a manager. Much of the content of the notice relates to the failure of the Respondents to provide the information and documents that she has requested. She requires the landlords to repair the front entrance steps and address the wood rot. She further requires the landlords to bring the common parts up to an acceptable standard. She requires the landlords to remedy the matters of which she complains within 60 days.

106. The Respondents have provided a response to the matters raised in the Fourth Schedule of her Notice at R.312-33. This has been prepared by Cure. The Respondents accept that the Notice complies with the statutory requirement of section 22, save that it is contended that 60 days is a wholly unrealistic timescale within which to address the issues raised by Ms Stradling. In his first witness statement (at R.17), Mr Weinberg describes how to repair the front entrance steps since 2019. The 1st Notice of Intention was served on 11 September 2019 (at A1.446). Ms Stradling has refused to pay her contribution towards the costs that are required. Cure undertook to comply with the RICS Management Code.

107. Ms Collash's Management Plan is at A2.148-151. She conceded in her evidence that she had not inspected the Building and had not produced either a management plan or a budget. She was unaware that Ms Stradling had not paid any service charges since October 2017. She had no answer when the Tribunal asked what she would do were Mr Weinberg to withdraw the sum of £16,275 which he has loaned to the service charge account.

108. Before the substantive hearing, the Tribunal would have expected the proposed manager to have (a) inspected the Building; (b) had a good understanding of the problems that she would be required to address; (c) familiarised herself the leases; (d) produced a management plan; (e) read the Tribunal's template for a draft Management Order.

109. The Tribunal would expect the management plan to include: (a) a timetable and plan for handover from the current manager; (b) details of accounts into which service charge funds are to be transferred; (c) details of a plan to implement all Health and Safety and fire safety measures, including procurement of all relevant records and documentation; (d) a description of resource that will be allocated to management (number and qualifications of staff and time to be spent on property); (e) a description of tasks for day to day running of property; (f) a prioritisation of remedial tasks; (g) proposals for collection of arrears; (h) an assessment of what additional might be required to put the Building in a proper state of repair and proposals for collecting those funds; (i) details of professional contacts: lawyers, accountants, surveyors; (j) proposals for communications with leaseholders and landlords; and (k) details of proposed remuneration. A Tribunal only appoints a manager in the last resort where the management problems that have arisen make it just and convenient to do so. A manager is entitled to remuneration that fairly reflects the management problems that they need to address.

110. On 15 January 2021 (at R.85), ODT Solicitors wrote to Ms Collash to explore whether she might be appointed by the landlords to manage the Building. Ms Collash parked this pending this Tribunal's determination. Ms Stradling told the Tribunal that this would not be appropriate as Ms Collash would take instructions from the landlords. A Tribunal appointed manager is a neutral party. In the current case, any manager would need to demonstrate how they would relate not only to the landlord and the two tenants who are parties to this application, but also the two tenants who have played no part in these proceedings.

111. In this determination, the Tribunal has been critical of all the parties:

(i) Mr and Mrs Weinberg converted the Building and granted the leases in respect of the four flats. Despite this, they have failed to manage it in accordance with the terms of the leases that they granted. Significant sums are now required to put the Building in a proper state of repair. The tenants are particularly concerned about the state of the common parts. There seems to be no clarity as to the gardening and cleaning services that are appropriate. There has been a lack of clarity relating to the service charge accounts. The Tribunal highlights the certificate with which the landlord has been required to serve on the tenant "as soon as practical" after 31 December, namely the end of the accounting period. If the landlords desire to levy an interim service charge on 25 December for the subsequent financial year, they must prepare a budget which encompasses any major works that are planned and make adequate

provision for a reserve fund. If a budget includes provision for services such as cleaning and gardening, the tenants will have a reasonable expectation that these services will be provided.

(ii) Ms Stradling has become obsessed by the problems of the past. She has rather needed to look to the future to establish a better relationship with her landlords. This Tribunal has been required to consider a mass of material much of which is irrelevant, incomplete and confused. Despite her concern about the state of the Building, she has not paid any service charges since October 2017. The County Court has still to determine her claim for disrepair over the period 2015 and 2017. This will be litigated at considerable cost to both parties. Preoccupied by the problems of the past, she has failed to focus on the outcomes that she would seek to achieve through the appointment of a manager. The mere desire to take the management out of the control of her landlords is not a sufficient reason for the Tribunal to appoint a manager.

(iii) Since 1 February 2019, Cure have been managing the Building. Ms Stradling has seen Ms Fraser as a threat to what she wants to achieve, rather than an opportunity for a new start. It is a matter of regret that the Respondents did to engage with the tenants on the appointment of the new managing agents. It is also surprising that Ms Stradling only learnt of the appointment six weeks after it had commenced, and only then from Jacksons. Ms Fraser has not provided a planned management programme. This could permit the landlords and tenants to share a common vision for the future management of the Building. Neither has Ms Fraser managed the Building in accordance with the terms of the lease. It is unclear whether this is her fault or that of the landlords who have failed to afford her the opportunity to manage the Building in accordance with the terms of the lease and the RICS Service Charge Residential Management Code. We accept that Ms Fraser has not found Ms Stradling easy to deal with. Ms Fraser has been required to deal with constant and repetitive queries. A managing agent should be expected to deal with their communications with tenants through the standard management fee. This fee is likely to be higher when a Building such as this has a "history". We have found a number of the additional fees charged by Cure to be unreasonable.

112. Against this background, we conclude that it would not be just and convenient to appoint a manger. Had we concluded that it was just and convenient to make such an appointment we would have given further directions to determine whether Mr Cobrin would be an appropriate person to appoint. We are satisfied that were we to appoint a manager, we would be setting him up to fail. Ms Stradling has brought this application. There has been no clarity as to what she seeks to achieve through this appointment. It is Ms Stradling who has failed to adduce the evidence which we would require before appointing a manager (see [108] to [109] above.

113. The Tribunal would urge the parties to look to the future, rather than dwell on the problems of the past. This application will have proved expensive for both parties. Both have lessons to learn. One option would be for the parties to consider whether the Respondents should appoint Mr Cobrin to manage the Building. This would provide an opportunity for a fresh start. However, the tenants must recognise that given the problems of managing this Building, the basic management charge is likely to be higher than they are currently paying. Were the Respondents to deny Mr Cobrin the discretion that he requires to manage the Building in a satisfactory manner, it would be open to the tenants to make a fresh application for him to be appointed by the Tribunal.

Application under s.20C and refund of fees

114. The Applicants seek an order under section 20C of the 1985 Act. The Tribunal is satisfied that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondents may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge charged to the Applicants. The Respondents have not managed the Building in accordance with the terms of the Applicants' lease. They must accept the consequences of their failure to do so. Even though the Tribunal has dismissed the application for the appointment of a manager, we have found significant failures in the manner in which the Respondents have managed the Building.

115. Ms Stradling also seeks an order for a refund of the tribunal fees of £300 which she has paid pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Building Chamber) Rules 2013. The Tribunal orders the Respondents to reimburse £150. Ms Stradling has secured significant reduction in the service charges which have been demanded. However, we are satisfied that the application for a management order was bound to fail given her failure to provide an adequate management plan outlining the outcomes that she seeks to secure through the appointment of a manager.

The Next Steps

116. The Tribunal will now refer Claim No.CO1CR058 back to the County Court at Central London having addressed the matters raised by the Respondents' Counterclaim in respect of arrears of service charges.

Judge Robert Latham
23 May 2022

Amended by Judge Robert Latham
3 August 2023

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Building Chamber) Rules 2013, the tribunal is required to notify the parties about any right of appeal they may have.

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 Tribunal at the regional office which has been dealing with the case.

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 Building 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).