FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AH/HYI/2022/0012**
Property	**:**	**Centrillion Point, 2 Masons Avenue, Croydon CRO 9WX**
Applicants	**:**	**(1) SUNITA RAMESHBAI MISTRY** **(2) ALBA CONDE DEL RIO** **(3) RISHI PATEL** **(4) MARIOS GEORGIOU** **(5) MR SHAUKET AND MRS MEMOONA BOBAT** **(6) CHARULATA PATEL** **(7) JASMINE HEARNE** **(8) OLUWATOBILOBA DAIRO** **(9) CHUN CHUA** **(10) JILL WANT AND ROBERT WORBY** **(11) KPR INVESTMENTS LIMITED** **(12) DEBORAH ADAMS** **(13) DANIEL MORAN** **(14) GEORGE PANTHER**
Representative	**:**	**Sunita Rameshbai Mistry**
Respondent	**:**	**WALLACE ESTATES LIMITED**
Representative	**:**	**Mills & Reeve** **Mr David Sawtell, counsel**
Type of application	**:**	**For a remediation order under section 123 of the Building Safety Act 2022**
Tribunal	**:**	**Judge Sheftel** **Judge N Carr** **Ms H C Bowers BSc MSc MRICS**
Date of Decision	**:**	**4 January 2024**

DECISION

Summary of Decision

(1) The tribunal makes a remediation order as set out in the annex to this Decision.

(2) The tribunal refuses the Applicants' application for costs under Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.

(3) The tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that the costs incurred by the landlord in these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Background

1. This is an application dated 26 April 2023 for a remediation order under section 123 of the Building Safety Act 2022 (the "2022 Act"). The application was made by Ms Sunita Rameshbai Mistry, the leaseholder of Flat 128 Centrillion Point, 2 Masons Avenue, Croydon CRO 9WX.

2. The Respondent is the freehold owner of Centrillion Point, registered at His Majesty's Land Registry under title number SGL8916. The Respondent acquired the freehold title on 1 May 2014.

3. The property at Centrillion Point is a 12-storey building containing 189 flats (including 5 adjoining mews houses). The tribunal understands that it was formerly an office building: the development of the building as a residential block of flats was completed around December 2008 by Durkan Limited.

4. We were informed that external remediation works to remove combustible cladding were carried out in the past two years. The purpose of this application is to seek an order from the Tribunal requiring the remediation of specified *internal* defects, principally relating to lack of fire compartmentation.

5. A case management hearing was held on 17 July 2023 giving directions through to the final hearing, following which thirteen other leaseholders applied to be and were joined as applicants to the proceedings.

The law

6. Section 123 of the 2022 Act provides:

> **123 Remediation orders**
>
> (1) The Secretary of State may by regulations make provision for and in connection with remediation orders.
>
> (2) A "remediation order" is an order, made by the First-tier Tribunal on the application of an interested person, requiring a relevant landlord to remedy specified relevant defects in a specified relevant building by a specified time.
>
> (3) In this section "relevant landlord", in relation to a relevant defect in a relevant building, means a landlord under a lease of the building or any part of it who is required, under the lease or by virtue of an enactment, to repair or maintain anything relating to the relevant defect.
>
> (4) In subsection (3) the reference to a landlord under a lease includes any person who is party to the lease otherwise than as landlord or tenant.
>
> (5) In this section "interested person", in relation to a relevant building, means—
>
> (a) the regulator (as defined by section 2),
>
> (b) a local authority (as defined by section 30) for the area in which the relevant building is situated,
>
> (c) a fire and rescue authority (as defined by section 30) for the area in which the relevant building is situated,
>
> (d) a person with a legal or equitable interest in the relevant building or any part of it, or
>
> (e) any other person prescribed by the regulations.
>
> (6) In this section "specified" means specified in the order.
>
> (7) A decision of the First-tier Tribunal or Upper Tribunal made under or in connection with this section (other than one ordering the payment of a sum) is enforceable with the permission of the county court in the same way as an order of that court.

7. For the purposes of sections 119 to 125 of the 2022 Act, "relevant building" is defined in section 117 (so far as is material in this case) as a self-contained building, in England, that contains at least two dwellings and is

at least 11 metres high or has at least five storeys. A building is "self-contained" if it is structurally detached.

8. Section 120 defines "relevant defect" for the purposes of sections 122 to 125 and Schedule 8 to the Act as follows:

> **120 Meaning of "relevant defect"**
>
> […]
>
> (2) "Relevant defect", in relation to a building, means a defect as regards the building that—
>
> (a) arises as a result of anything done (or not done), or anything used (or not used), in connection with relevant works, and
>
> (b) causes a building safety risk.
>
> (3) In subsection (2) "relevant works" means any of the following—
>
> (a) works relating to the construction or conversion of the building, if the construction or conversion was completed in the relevant period;
>
> (b) works undertaken or commissioned by or on behalf of a relevant landlord or management company, if the works were completed in the relevant period;
>
> (c) works undertaken after the end of the relevant period to remedy a relevant defect (including a defect that is a relevant defect by virtue of this paragraph).
>
> "The relevant period" here means the period of 30 years ending with the time this section comes into force.
>
> (4) In subsection (2) the reference to anything done (or not done) in connection with relevant works includes anything done (or not done) in the provision of professional services in connection with such works.
>
> (5) For the purposes of this section—
>
> "building safety risk", in relation to a building, means a risk to the safety of people in or about the building arising from—
>
> (a) the spread of fire, or
>
> (b) the collapse of the building or any part of it;
>
> "conversion" means the conversion of the building for use (wholly or partly) for residential purposes;

> "relevant landlord or management company" means a landlord under a lease of the building or any part of it or any person who is party to such a lease otherwise than as landlord or tenant."

The issues in the present case

9. There is no dispute between the parties that:

   (1) The lead Applicant holds a "qualifying lease" under section 119(2) and that she is a relevant tenant within the meaning of section 119(4). Although the tribunal was not provided with evidence as to whether the other lessee applicants also hold qualifying leases for the purposes of s.119, nothing turns on that for the purposes of the remediation order application;

   (2) The Applicants are 'interested persons' for the purposes of s.123(5) of the 2022 Act and entitled to bring this application;

   (3) the Respondent is a "relevant landlord" within the meaning of section 123(3);

   (4) Centrillion Point is a "relevant building" as defined by section 117.

10. The application listed a substantial number of alleged defects said to amount to relevant defects within s.120 of the 2022 Act because they create a fire safety risk. These included:

   (1) Flat entrance doors;

   (2) Internal doors;

   (3) Protected entrance hall;

   (4) Compartment walls between flats;

   (5) Compartment walls between flat and common parts;

   (6) Compartment floor;

   (7) Smoke shaft;

   (8) Structural fire protection.

11. Ms Mistry subsequently sought to rely on the expert report of Gwen Brewer, a fire engineer, dated 4 July 2023 to substantiate the above allegations and set out the significant dangers at Centrillion Point. A report was also produced by Ms Mistry's husband, Mr Pangli, and while it similarly highlights the extensive problems with the building, it was accepted that he could not be an independent expert witness.

12. The Respondent's initial position statement served on 29 June 2023 in advance of the Case Management Hearing (by which date it was asserted that it had been provided with a summary of Ms Breer's report but not yet the full report) stated that it reserved its position as to what works were required and whether all of the matters raised amounted to relevant defects for the purposes of s.120 of the 2022 Act. The Respondent did, however, accept in principle that although the application and Ms Mistry's evidence related to her flat, flat 128, it would make sense that any works that were required should be carried out to the building as a whole. We were told at that CMH that the Respondent also had available to it (said to still be in draft form dated 16 June 2023) its own fire compartmentation survey in relation to the common parts, which showed that some remedial work would be required that would likely affect the compartmentation between flats. It stated that it also intended to commission a further such survey in relation to the fire compartmentation between flats.

13. By the time of its statement of case, filed on 20 October 2023, the Respondent's position was that save for in respect of the flat entrance door, it was not admitted that the alleged defects were 'relevant defects' for the purposes of the 2022 Act and the Applicants were required to prove the same. The Respondent also indicated that it relied on the expert report of Dr Martin Woods dated 27 September 2023 and the inspection reports of Paul Williams of GB Compliance dated 5 June 2023 and 14 September 2023. It should be noted that Dr Woods is a Chartered Building Surveyor, although did not purport to be a fire safety expert. His report contested the Applicant's case, suggesting that the defects noted in the reports by GB Compliance "cannot all be considered 'Relevant Defects'" for the purposes of the 2022 Act.

14. Approximately 3 weeks before the hearing, the Respondent abruptly changed its approach. By letter dated 10 November 2023, the Respondent advised that:

> "*Dr Woods has identified issues in acting in this matter connected with his professional indemnity insurance.*
>
> …
>
> *In view of the results of the GB Compliance Surveys (attached to Dr Woods' expert report) and the Applicant's own evidence, the Respondent does not intend to contest the Applicant's expert evidence or to seek to call its own expert. It therefore considers that the focus of the Tribunal hearing should be the form and timings of the remediation order.*"

15. Accordingly, by the time of the hearing, there was effectively no dispute that (i) a remediation order should be made; or (ii) as to the defects, in broad terms, which should be the subject matter of the remediation order. The only remaining issues were principally as to the precise terms of the remediation order and the time limit that should be specified for the relevant defects to be remediated.

Inspection and hearing

16. The tribunal inspected the Property at 10am on 29 November 2023. In attendance were: Ms Mistry and her husband, Mr Harry Pangli; Mr David Sawtell, counsel for the Respondent, and Mr Sam Gumble of Simarc (the property management company of the Respondent's parent company) and Mr Yarden Sharon of Premier Block Management Limited, the managing agents for Centrillion Point.

17. The hearing commenced at 1.30pm following the tribunal's inspection and was attended by Ms Mistry and Mr Pangli on behalf of the applicants, Mr Sawtell, as well as Mr James Hordern (solicitor) and Ms Natalie Chambers, director of the Respondent. A representative of Durkan Limited was also in attendance, although not party to the proceedings.

Wording of the remediation order

18. Although both parties produced separate draft remediation orders, by the morning of the second day of the hearing the differences between them

had become quite small. As set out above, by the time of the hearing, there was agreement between the parties as to the categories of relevant defects. There was also agreement in principle on issues such as supervision of the works and the need for inclusion in the order of a provision to allow the parties to make an application for variation of the order, should circumstances change (as this is a case where the precise scope of the works cannot be known from the outset). While much of the parties' submissions went to matters of drafting, there was also points of substance.

19. The most significant area of difference was as to the level of specificity to be contained in the remediation order. The Applicants argued for a greater level of detail, in part due to concern that the landlord would not necessarily take the right and full steps. The Applicants' position was that they had had lost faith in the landlord's ability or willingness to carry out surveys or works with due professionalism or skill, given that Ms Mistry and Mr Pangli had been attempting to get the landlord to engage with the compartmentation issue for a number of years (it was said that this had been brought to the Respondent's attention as early as 2018; in any event email correspondence in the bundle demonstrated that Ms Mistry and Mr Pangli had raised the issues on at least 28 July 2021, during the currency of the cladding remediation work. Ms Mistry asserted the absence of any basic understanding of the urgency or the significance of the issue on the landlord's part. In contrast, the Respondent contended that the order should be in more general terms, its primary contention being that it is not a function of the tribunal to fetter *how* the landlord should carry out the necessary work.

20. S.123 of the 2022 Act simply refers to an order requiring 'a relevant landlord to remedy specified relevant defects in a specified relevant building by a specified time'. Accordingly, there would appear to be some force in the contention that an order need do no more than list the specified defects that are required to be remediated. Moreover, in our view, it would not necessarily be in the tenants' interest for the order to be in granular detail. If an order specifies a relevant defect in general terms,

the landlord must remedy that defect even if on starting work, it transpires that there are further or additional elements to that particular defect, which are required to be remedied. However if, instead, an order were to specify that the landlord must remedy elements A & B, if it were subsequently discovered that there were further matters, C and D that required remediation, absent careful drafting there is the possibility of a landlord concluding that the additional matters would be construed as falling outside of the remediation order, and thus it has no obligation to do them, regardless of how necessary they are.

21. In summary, therefore, we agree with the submission that a remediation order should be sufficiently precise so that the Respondent can know what it must do to remedy the relevant defects and for enforcement purposes before the county court. The 2022 Act is not, however, prescriptive as to what works are necessary to remedy the relevant defect or defects, and the extent of precision will vary from case to case. In this regard, the decision in *Blue Manchester Ltd v North West Ground Rents Ltd* [2019] EWHC 142 (TCC), although not a case under the 2022 Act, provides a useful illustration. In that case, a general order was made requiring works to be carried out but providing protection for the landlord against any unwarranted application for contempt for non-compliance, by allowing the landlord to make an application for variation of the order. This was also the approach adopted by this tribunal in the previous case of *Waite v Kedai Ltd* (2023) LON/00AY/HYI/2022/0005 & 0016, and we agree that it provides a useful template on the facts and in the circumstances of the present case.

22. In any event, we consider that the Applicants' concerns can be overcome by listing the specified defects in general terms but stipulating that this 'includes where appropriate' certain specific matters. The tribunal therefore adopts this course.

23. A further point of difference between the parties related to the Applicants' proposal that the remediation order include provision requiring the Respondent "*To remediate all other relevant defects that are identified in the Building during the course of remedial works…*". However, as pointed

out by Mr Sawtell, s.123(2) of the 2022 Act provides that a remediation order must refer to '*specified defects*', and we therefore do not include such language in our order.

24. A final point of difference in relation to the scope of the order is whether, as the Applicants contends, the remediation order should contain reference to Approved Document B and/or the building fire strategy for Centrillion Point. As the Respondent submits, the legislation does not require the works to be carried out to a certain statutory standard. What it requires is that the specified defects are remediated so that they are no longer relevant defects. Nevertheless, we agree with the Applicants that it is vital to ensure that the works are completed to a proper standard. In our view this is achieved by providing that (i) the works must be compliant with the prevailing Building Regulations at the time that the relevant works are carried out, and (ii) must be approved by the regulator. We do not consider that such protection is negated by not also including reference to Approved Document B. Aside from the fact that this is guidance, it might change over time, particularly in the current legislative landscape. If Approved Document B is specified, and then changes, or is renamed, that could lead a landlord to argue that an order that specifies it requires remediation to a standard no longer applicable. Any such order potentially therefore leads to uncertainty and confusion. We are satisfied that it is our task to provide an order that, so far as possible, contains no loopholes that might lead to later argument.

25. Similarly, with regard to the building fire strategy, we do not accept that there is a jurisdictional basis for benchmarking the works against this. Again, it is also possible that the strategy might change over time, particularly if significant structural remediation works are carried out to, for example, the smoke stack, which could result in uncertainty and potentially weaken the protection for leaseholders.

Time for remedying the specified defects

26. The Respondent proposed a time frame of 2 years for completion of the works, as compared to 1 year suggested by the Applicants.

27. The only direct evidence on the point was provided by Ms Chambers on behalf of the Respondent. In arriving at an overall time frame of 2 years, Ms Chambers set out the following estimates:

    (1) A project manager and design consultants to be appointed (4 – 6 weeks);
    (2) The design and specification for the project to be developed by the design team and project manager, typically to RIBA 3-4, to allow for contractors to consider the project (4 weeks);
    (3) The project manager to carry out early market engagement in parallel;
    (4) The section 20 consultation process to begin before the tender is issued, with a 30-day period for responses following service, plus extra time for collating and reviewing responses;
    (5) The tender issued to contractors (10 weeks);
    (6) The tender submissions are reviewed (4 weeks);
    (7) The second stage of the section 20 consultation process carried out (30 days);
    (8) Tenderers notified and contract documents finalised (4 weeks);
    (9) Potential lead time of 4-6 weeks for the contractor to mobilise.

28. In the Respondent's submission, the pre-construction phase would come to a total of 44 weeks – although taking the lower range of the estimated figures above would suggest a period of 39 weeks - although it was noted that in addition to the matters above, regulatory approval would be needed for the works. It was also suggested that more than 10 weeks will be required for the consultation process, although it would, of course, be open to the Respondent to carry out the works on an urgent basis and make an application for dispensation either in advance or retrospectively. According to Dr Woods' report, the works themselves are expected to take 7-9 months.

29. As such, on the Respondent's own evidence, it can be said that the total period would be in the region of 18 months. Further:

(1) In cross examination, Ms Chambers accepted Mr Pangli's suggestion that the time for the works themselves could potentially be reduced if multiple contractors were employed, given that the works would be similar throughout the building;

(2) In answering questions from the tribunal, Ms Chambers, readily accepted that some of the time limits could be reduced, although equally on re-examination, stressed that matters could also take longer than expected.

(3) While it was asserted that there are not a surplus of competent contractors to carry out fire safety remediation work, Ms Chambers also confirmed that the Respondent had already been in contact with the firm that had carried out the cladding remediation works (Thomasons) who had indicated a willingness in principle to carry out in the interior works.

30. We accept that a time limit for carrying out specified works imposed by a tribunal should not be unrealistic or unachievable. However, we also consider that there should not be any further or undue delay, particularly given the seriousness, extensivity and volume of the relevant defects that have been identified and agreed. It is vital that the works are completed as soon as possible in a realistic timescale. In our determination, and having regard to the matters set out above, we consider that a period of 18 months is appropriate.

31. Finally, as we stressed to the parties at the conclusion of the hearing, given that: (i) the Respondent did not oppose the making of a remediation order; (ii) the list of relevant defects was not in dispute by the time of the hearing; and (iii) the Respondent's evidence was that they also wanted to get on with the works, the time period determined would be calculated to run from the date of the hearing rather than the date of our written Decision, so as to remove any further or unnecessary delay.

32. Therefore, the works must be completed by 31 May 2025.

The remediation order

33. The tribunal's remediation order is at the annex to this Decision and is drafted having regard to the matters set out above. For the avoidance of doubt, the tribunal retains jurisdiction for so long as the relevant defects remain at Centrillion Point, and there is a possibility of a variation of the remediation order, either as to scope or as to timing.

Rule 13 costs

34. The Applicants sought a rule 13 costs order against the Respondent. So far as is relevant to the present application, pursuant to rule 13(1)(b) of the Tribunal Procedure (First-tier Tribunal)(Property Chamber) Rules 2013, the tribunal may make an order in respect of costs only "*if a person has acted unreasonably in bringing, defending or conducting proceedings"*.

35. The Applicant's skeleton sets out various grounds on which both the rule 13 order (and section 20C order as referred to below) is sought and these were expanded upon at the hearing. In particular, it is alleged that the Respondent has acted in a disruptive way throughout the proceedings. It is said that the Respondent "*has made no real attempt to work collaboratively with the Tribunal and the Applicants in getting to heart of the relevant defects that exist at Centrillion Point*". Reference was also made to the fact that the Respondent maintained a largely 'non-admission' defence until late in the proceedings. Further, the Applicants asserted that costs had been wasted by the Respondent instructing an unqualified expert to opine on the matters in issue. As evidence of the Respondent's conduct more generally, the Applicants referred to the fact that the Secretary of State for Levelling Up, Housing and Communities had stated on 11 May 2023 that he would be *"taking legal action against Wallace Estates for their failure to fix unsafe buildings"* – although it must be stressed that this does not relate to the Respondent's conduct in these proceedings and so is not something we take into account in determining whether to make a rule 13 costs order.

36. In response, as set out in the Respondent's skeleton, the leading case on rule 13 costs applications is the Upper Tribunal decision in *Willow Court Management Company (1985) Ltd v Alexander; Sinclair v 231 Sussex Gardens Right to Manage Ltd* [2016] UKUT 290 (LC), in which it was stated at para.20, by reference to *Ridehalgh v Horsefield* [1994] Ch 205, that 'unreasonable' included conduct which was "*vexatious, designed to harass the other side rather than advance the resolution of the case, and it makes no difference that the conduct is the product of excessive zeal and not improper motive … The acid test is whether the conduct permits of a reasonable explanation*."

37. The Upper Tribunal in *Willow Court* set out a three-stage approach:

    (1) Whether a person had acted unreasonably. This does not involve an exercise of discretion but rather the application of an objective standard of conduct to the facts of the case. If there is no reasonable explanation for the conduct complained of, the behaviour will properly be adjudged to be unreasonable, and the threshold for the making of an order will have been crossed;

    (2) The tribunal should consider whether, in the light of the unreasonable conduct it has found to have been demonstrated, it ought to make an order for costs or not;

    (3) What form of order should the tribunal make.

38. The threshold for making a rule 13 costs order is a high one. In essence, the tribunal must consider whether there is a reasonable explanation for the conduct complained of.

39. In the Respondent's submission, on the facts of the present case, the Respondent's conduct was reasonable and could be explained. In particular, it was said that the Respondent was already in the process of carrying out its investigations into fire stopping and compartmentation fire safety issues when this application was commenced (at which time Ms Brewer's full report had yet to be provided). Further, the Respondent's position from the outset was that it would not be wise to remediate one flat in isolation, and consequently, it should be allowed to conclude its

investigations. By the time of its statement of case, the Respondent admitted that there were some relevant defects, but it was still not possible to identify precisely what works needed to be carried out to Centrillion Point. In summary, Mr Sawtell submitted that it was reasonable for the Respondent to consider how to respond to the application and to obtain evidence. He also noted that an additional factor was the Respondent was considering whether it would seek redress against Durkan and therefore needed to be careful with regard to any concessions it made.

40. In our view, legitimate questions can be raised in relation to the Respondent's approach to the proceedings, both in respect of the evidence it put forward and the very late concessions that were ultimately made. However, we also accept that it is conduct which is capable of reasonable explanation for the reasons put forward by Mr Sawtell as set out above. Having regard to the high threshold for rule 13 costs orders as set out in *Willow Court*, we do not consider that the threshold has been reached in the present case.

41. We therefore decline to make an order for costs under rule 13 of the 2013 Rules.

Section 20C

42. The Applicants also made an application under section 20C of the Landlord and Tenant Act 1985.

43. An initial point was raised by the Respondent as to who the application was on behalf of. As pointed out by the Respondent the issue has been considered by the Upper Tribunal in both *Plantation Wharf Management Ltd v Fairman* [2019] UKUT 236 (LC) and *Re Scmlla (Freehold) Ltd* [2014] UKUT 0058 (LC). It is established that the scope of the order which may be made under section 20C of the 1985 Act is constrained by the terms of the application, and that the tribunal does not have jurisdiction to make an order in favour of any person who has neither made an application of their own under section 20C or been specified in an application made by someone else. In the *Plantation Wharf Management*

Ltd case, it was made clear that an application may not be made on another lessee's behalf unless that person has notified the tribunal that they wish to be represented by the applicant. For a person to be validly "specified" under section 20C, that person must have given their consent or authority to the applicant in whose application the person is specified.

44. As at the date of the hearing, Ms Mistry had provided consents from various leaseholders. At the conclusion of the hearing (and confirmed by email to the parties), the tribunal directed that any further consents provided to the Applicant by the leaseholders on whose behalf the section 20C application is pursued must be provided to the Tribunal by email, copied to the Respondent, by no later than 4pm 14 December 2023. Ms Mistry duly sent an updated application accompanied by email consents of leaseholders on whose behalf the application is also made: flats 8, 74, 86, 98, 99, 105, 105, 110, 114, 117, 122, 126, 132, 134, 135, 136, 142, 144, 156, 157, 167, 169 & 178, 172, 173, 174, 177, 185, 188, 100 & 181, 160, 79 & 130, 91, 101, 108, 112, 120, 139, 143, 159, 184, 186, as well as shared ownership flats 9-70 and 72.

45. Section 20C provides that:

> "A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before" … the First-tier Tribunal… are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application."

46. Although the tribunal has declined to make a Rule 13 costs order for the reasons set out above, the test for a s.20C order is different: the tribunal must determine whether it is just and equitable in the circumstances to make such an order. This can include the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise, as well as consideration of the practical and financial consequences for all of those who will be affected.

47. The grounds relied upon by the Applicants in support of the section 20C application are the same as those relied on in respect of the rule 13 costs application.

48. The application for a s.20C order was opposed by the Respondent, broadly on two grounds. The first was in relation to the general approach to section 20C in the context of applications for a remediation order. The second related to the circumstances of the present case.

49. Before considering these submissions, it should be noted in passing that the tribunal was not referred to any provisions of the lease and so is not in a position to determine whether costs would otherwise be recoverable through the service charge provisions, absent a section 20C order. However, this does not prevent the tribunal from considering whether to make an order under section 20C.

50. Returning to the Respondent's submissions, reference was made to Schedule 8 to the 2022 Act, which provides various leaseholder protections against the costs associated with relevant defects. Mr Sawtell submitted that Schedule 8 of the 2022 Act should be taken as the starting point in respect of whether or not the costs of a remediation order application are recoverable through the service charge. In his submission, it represents a significant intervention into the costs-recoverability situation and there is no reason to consider that the position created by Schedule 8 would be either unjust or inequitable. Further, Schedule 8 includes detailed provisions such that qualifying leaseholders are protected from the remediation and legal costs of relevant defects, while the import of paragraph 11 of Schedule 8 is that non-qualifying leaseholders will still be expected to pay such sums in service charges that represent these costs which are reasonably incurred and reasonable in their amount.

51. While this provides an overview as to the operation of Schedule 8 to the 2022 Act, it is not accepted that the introduction of Schedule 8 should materially alter the exercise of the tribunal's discretion under section 20C of the 1985 Act. Section 20C is a freestanding jurisdiction and there is nothing in Schedule 8 or the 2022 Act to suggest that it should be disapplied or of different effect in remediation order cases. The fact that some leaseholders might not be liable for costs as a result of Schedule 8 does not mean that a different or more restrictive approach should be

applied under section 20C to those leaseholders that fall outside of the protections of Schedule 8.

52. As to the circumstances of the present case, the Respondent conceded during submissions that it should not be able to recover the costs of the report of Dr Woods. However, that aside, the application for a s.20C order was resisted. It was submitted that the Respondent had acted reasonably and expeditiously throughout: it was already in the process of investigating the building with a view to carrying out remediation work before the application was made; it had sought appropriate expert investigations and acted on the same; it had consented to the application being enlarged in scope from one flat to the whole building, and for additional defects to be included; it has not taken technical or procedural points.

53. In our view, notwithstanding the concession as to the costs of Dr Woods' report, the above characterisation is overly generous and we have some misgivings about the Respondent's approach to these proceedings and whether the Respondent's response to internal fire safety matters has been as expeditious as it appears to suggest it has been, or indeed ought to have been. First, we note that the Respondent has been aware of internal issues for some time – concerns about fire related defects had been raised by Ms Mistry and Mr Pangli with the managing agents as early as July 2021. Even after the application was made, its own reports, some of which preceded the CMH, demonstrated that compartmentation remediation would be required, and yet over five months later still no action had been taken. Despite those reports, as late as the Respondent's statement of case on 20 October 2023, the Respondent's position was essentially to put the Applicants to proof. Although the Respondent ultimately conceded that remediation order should be made, this was done very late in proceedings, only a matter of some three weeks before the hearing. Indeed, even as late as the start of the hearing itself, the Respondent's position was not that it no longer relied on the report of Dr Woods, but that it was no longer contesting the Applicants' evidence,

despite that on its face, as noted above, the report was not one from a fire engineer as permitted by the Directions.

54. While the tribunal accepts that the Respondent might have been conscious to exercise caution so as not to prejudice the seeking of a contribution from Durkan, the fact that the Respondent might ultimately seek redress from Durkan should not prevent the making of progress in carrying out the necessary remediation works. In any event, the Respondent wrote to Durkan on 31 July 2023, stating in terms in that correspondence that there **were** relevant defects. There does not appear to have been any resolution as between the Respondent and Durkan. Similarly, although it was said that the Respondent has been in discussion with Thomasons with a view to appointing them to carry out the works, no contract had been entered into by the date of the hearing, and any such enquiries appear to have been made relatively late in the litigation.

55. While we do not consider that these matters are sufficient to justify the making of a rule 13 costs order for the reasons set out above, when considered collectively alongside the fact that the Applicants have been successful in obtaining a remediation order, we consider that it is just and equitable to make an order under section 20C of the 1985 Act.

56. Finally, it was said on behalf of the Respondent that it would be unfair to make an order under section 20C. The effect of such an order would be that a section 20C order would be made in almost every remediation order case, unless the application was wholly unsuccessful. This submission is not accepted. Every case will depend on its own circumstances and facts. While it is of course correct that the Applicants have been successful in these proceedings in obtaining a remediation order, the tribunal's finding that it would be just and equitable to make a section 20C order goes beyond this as set out above.

57. In the circumstances, we determine that the costs incurred by the landlord in these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

Name: Judge Sheftel **Date:** 4 January 2024

Rights of appeal

By rule 36(2) of the Tribunal Procedure (First-tier Tribunal) (Property 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 should be made on Form RP PTA available at https://www.gov.uk/government/publications/form-rp-pta-application-for-permission-to-appeal-a-decision-to-the-upper-tribunal-lands-chamber

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).

Annex – Remediation Order

IN THE FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)
Case reference: LON/00AH/HYI/2022/0012

IN THE MATTER OF THE BUILDING SAFETY ACT 2022

B E T W E E N : -

(15) SUNITA RAMESHBAI MISTRY
(16) ALBA CONDE DEL RIO
(17) RISHI PATEL
(18) MARIOS GEORGIOU
(19) MR SHAUKET AND MRS MEMOONA BOBAT
(20) CHARULATA PATEL
(21) JASMINE HEARNE
(22) OLUWATOBILOBA DAIRO
(23) CHUN CHUA
(24) JILL WANT AND ROBERT WORBY
(25) KPR INVESTMENTS LIMITED
(26) DEBORAH ADAMS
(27) DANIEL MORAN
(28) GEORGE PANTHER

Applicants

-and-

WALLACE ESTATES LIMITED

Respondent

REMEDIATION ORDER
In respect of Centrillion Point,
2 Mason's Avenue, Croydon CR0 9WX

Upon considering the applications, evidence and submissions in this matter, and upon considering the provisions of the Building Safety Act 2022, and for the reasons set out in its decision of 4 January 2024, the Tribunal orders that:

1. Wallace Estates Limited (the relevant landlord) shall remedy the relevant defects specified by and in accordance with the attached Schedule ('the **Works'**) in Centrillion Point, 2 Mason's Avenue, Croydon CR0 9WX (the specified relevant building) ('the **Building**') by the time specified in paragraph 2 below.

2. Wallace Estates Limited shall complete the Works by no later than **31 May 2025**.

3. The parties have permission to apply in relation to paragraphs 1 and 2 and the attached Schedule. In particular, Wallace Estates Limited has permission to apply:
   (1) to be permitted to undertake different Works to those specified by this Order, if it is revealed by investigation and analysis by a suitably qualified consultant that reasonable alternative works will remedy the relevant defects; and
   (2) to extend the time for compliance with this Order.

4. Any such application must be made using the Tribunal's Form "Order 1". The application must be supported by detailed evidence explaining the reason for the application and a proposed draft order setting out the variation sought. There is permission to the parties to rely on relevant expert evidence in support of the application. The application must also include a realistic time estimate for the application to be heard.

5. Wallace Estates Limited must notify the Tribunal and the Applicants that it has complied with this Order, within one month of the certified date of practical completion of the Works.

6. Wallace Estates Limited shall ensure that the level of fire-safety risk arising from those parts of the Building specified in paragraph 2 of the Schedule is such that the Works achieve approval by the Building Safety Regulator (or such other Building Control body is competent to provide such approval at the time of completion of the Works).

7. Wallace Estates Limited shall file the completion certificate issued under Regulation 44 of the Building (Higher-Risk Buildings Procedures) (England) Regulations 2023 (or such other Building Control approval as is appropriate at the time of completion of the Works) with the Tribunal and serve the same on the Applicants within 1 month of receipt.

8. By section 123(7) of the Building Safety Act 2022, this Order is enforceable with the permission of the county court in the same way as an order of that court.

Tribunal: Judge Sheftel **Date**: 4 January 2024

Attached: Schedule

Schedule of Specified Relevant Defects and the Works Required to Remedy Them

In respect of Centrillion Point, 2 Mason's Avenue, Croydon CR0 9WX

1. Wallace Estates Limited is required to remedy the relevant defects in Centrillion Point, 2 Mason's Avenue, Croydon CR0 9WX (the '**Building**') as specified below.

2. The fire stopping and internal compartmentation are to be remediated in the following locations so that the Building is compliant with the Building Regulations current at the time that the works are carried out.

    (1) Flat entrance doors between the door frames and construction of compartment wall, including where appropriate:
        i. to remediate the construction between door frames and the compartment wall; and
        ii. to remediate the defects in the ironmongery and door assembly.

    (2) Internal doors between the door frames and construction of the protected entrance hall partitions.

    (3) Flat entrance halls:
        i. in the internal partition;
        ii. in the service penetrations.

    (4) Compartment walls between flats:
        i. in the construction of the walls themselves;
        ii. at service penetrations.

    (5) Compartment walls between flats and common parts:
        i. in the construction of the walls themselves;
        ii. at service penetrations.

(6) Compartment floors.

(7) Smoke shaft walls.

(8) Structural fire protection to:

i. the structural elements supporting new sections of floors installed in the conversion of the Building to residential apartments;
ii. around the opening to the smoke shaft;
iii. structural steelwork.

(9) Common parts doors, including where appropriate:

i. to remediate the construction between door frames and the compartment wall; and
ii. to remediate the defects in the ironmongery and door assembly.

(10) Service penetrations

3. Wallace Estates Limited must carry out the Works and remedy the specified relevant defects in compliance with the Building Regulations applicable at the time the remedial work is carried out, so that the relevant defects no longer exist.

4. Wallace Estates Limited must make good any damage caused to the Building on account of the Works.

Tribunal: Judge Sheftel **Date**: 4 January 2024