FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	**MAN/30UH/LSC/2022/0032**
Property	:	**54 Mearsbeck Apartments, Sefton Road, Morecambe LA3 1DZ**
Applicants	:	**Mr and Mrs Tyson**
Applicants' representative	:	**Mrs K.Tyson**
Respondent	:	**Places for People**
Respondent's representative	:	**Residential Management Group Ltd**
Type of Application	:	**Landlord and Tenant Act 1985 – s 27A** **Landlord and Tenant Act 1985 – s 20C** **Commonhold and Leasehold Reform Act 2002-Schedule 11 Paragraph 5A**
Tribunal Members	:	**Judge J.M.Going** **J.Gallagher MRICS**
Date of Hearing	:	**23 January 2024**
Date of decision	:	**3 February 2024**

DECISION

THE DECISION

The Tribunal found, and as confirmed during the hearing that: –

(1) the Applicants are precluded from making an application under Section 27A in respect of those service charges agreed by their predecessors in title and predating their purchase of the property on 18 September 2020, which include all those contained in the 2019/2020 service charge accounts (particularly those which referred to in paragraphs 1,2,3,4 and 5 in the Schedule hereto) and

(2) the Respondent, as was admitted, did not comply with the consultation requirements and had not made any application to the Tribunal to dispense with those requirements in respect of the roof repair works undertaken in 2020.

The Tribunal has further found that,

(3) consequently, the relevant contribution due from the Applicants in respect of the total of the costs referred in paragraphs 6,7 and 8 of the Schedule is reduced to and capped at £250,

(4) the relevant contribution due in respect of the costs referred to in paragraph 9 is payable in full,

(5) the costs referred to in paragraph 10 are outside the jurisdiction of this Application,

(6) the Respondent should be, and is hereby, precluded from including the costs of the present proceedings within the service charges or as an administration charge, and

(7) there be no further order for costs.

Preliminary and background matters

1. The Applicant applied on to the First-Tier Tribunal Property Chamber (Residential Property) "the Tribunal" under Section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") initially for a determination as to whether what was referred to as a maintenance reserve charge of £34,632 incorporated within the 2022/2023 service charge year was payable and/or reasonable.

2. The Application also included separate applications for orders under Section 20C of the 1985 Act to prevent the costs incurred in connection with these proceedings from being recovered as part of the service charge, and under Paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") to reduce or extinguish an administration charge in respect of litigation costs.

3. It was not clear from the Application or initial correspondence as to whether other leaseholders within the development were to be included within the

Application. Written authorities were provided by various other leaseholders for Mrs Tyson to act as their representative. The Tribunal confirmed that it would be possible for her to act as the lead and as a representative of the others, albeit that any of the other leaseholders requiring a determination for their own property wishing to be joined in would need to provide both an appropriate authority and a separate application fee. In the event none did so, and the Application proceeded in the Applicants' sole names.

4. The Tribunal issued Directions on 18 November 2022.

5. Residential Management Group Limited ("RMG") confirmed that it was the Respondent ("PFP)'s representative acting on its behalf and, later, that the development was under its management from 1 April 2014 to 5 January 2023.

6. Mrs Tyson professed difficulties in complying with the Directions and in particular providing a Schedule of disputed charges a ("Scott Schedule"). RMG maintained that the case was no longer valid because the charge referred to in the Application referred to a loan which in the event had not been taken up or incurred any cost to the leaseholders.

7. A video case management conference was held before Regional Judge Bennett on 23 May 2023 whereby he ordered a stay allowing Mrs Tyson to amend the Application so that it should proceed in respect of service charge years commencing on 1 April 2019,2020 and 2021 and roof -related expenditure only. It was confirmed that she should provide a full Schedule and statement case with PFP being allowed 28 days to respond, whereafter the matter would be determined following an inspection and a hearing.

8. The Tribunal was supplied with various papers, most of which were brought together in a final bundle submitted by RMG extending to 265 pages. These included the statements of case, the Lease, service charge accounts and statements for 2021-2022, Scott Schedules, a service charge budget for 2022 – 2023, various emails, letters, minutes of meetings, reports, and tender documents. References to particular page numbers within the bundle are contained in square brackets [ ]

Chronology and relevant matters confirmed within the papers.

9. The following matters are taken from the papers, and none have been questioned or disputed, except where specifically referred to.

15 March 1996	A lease ("the Lease") of the property, described as a 5th floor flat, was completed between PFP's predecessors in title, the North British Housing Association Limited and Kathleen Norma Green ("Mrs Green") for a term of 99 years. [3-18]
29 January 2019	An email from Mr Bickerstaffe of Thomasons to RMG's property manager Ms Perrin, made following complaints of continuing leaks, reported on past repairs having been "crudely applied" and "water ponding occurs adjacent to the parapet which is likely to bypass any attempts to seal any gaps with expandable

	foam in this area. Failure will occur between the expandable foam which incidentally looks atrocious and the lead cover flashing especially in the summer months…". He then recommended various necessary works. [174]. It is noted from Thomasons' notepaper that Mr Bickerstaffe is a building surveyor and a member of the RICS, that Thomasons have offices in Glasgow, Liverpool and Manchester and that he works out of the Manchester office.
6 February 2019	Minutes of a Committee meeting with RMG when referring to the roof stated "Has been surveyed by a 3rd party specialist and tenders have gone out for repairs. There is also an investigation into past repairs (which have been many and expensive) to see if they were completed properly and recoup costs where necessary. The very fact that repairs have had to be repeated and repeated would imply that they weren't done to a satisfactory standard. If the flues had been fitted properly in the first place when new boilers ware fitted we would not be having these problems so PFP have a responsibility to see the ongoing repair costs do not fall on residents as it was their idea not to scaffold up to the top floor so that flues could come out horizontally and no damage would have been done to the roof in the first place!" [53]
26 April 2019	Maxeva's invoice in respect of roof repairs affecting Apartment 53 detailed in paragraph 1 of the Schedule hereto. [92]
26 April 2019	Maxeva's invoice in respect of roof repairs affecting Apartment 54 detailed in paragraph 2 of the Schedule. [93]
3 December 2019	Thomasons' tender appraisal form referred to initial tenders from KE Hornby at £33,440, Buildzone at £29,470 and GAP roofing at £34,620, all plus VAT, and all including a PC provisional sum of £8000 "for further necessary works confirmed by Thomasons and/or the replacement of materials unavoidably damaged".[103]
10 December 2019	Thomasons issue its invoice in respect of fees detailed in paragraph 3 of the Schedule.[95]
12 December 2019	Thomasons issue its invoice in respect of fees detailed in paragraph 4 of the Schedule.[94]
18 December 2019	Minutes of a Committee meeting with RMG when referring to the roof survey stated "The survey has been done, tenders have been received and we are waiting for a start date. This job is being completed through a project manager and a Section 20 has been raised due to possible cost of the roof repair so residents can then suggest another company if it is more than £6000. Local roofing companies might be able to do the job more cheaply. The work completed by Maxeva is being discussed and we may be able to claim back money for shoddy workmanship. Emily is to find out the cost of all the previous attempts to cure the leaks on the roof to give us an idea of how much it has cost in total". [73]

21 January 2020	RMG wrote to the leaseholders stating, inter alia, "the roof works are due to commence on Wednesday 29 January".[149]
12 February 2020	RMG wrote to Mrs Green's executors confirming, inter alia, "we are writing to all residents to advise that due to the current weather conditions, the works to the roof have been postponed… and… will recommence once the weather improves". [150]
5 March 2020	An email from Thomasons to Buildzone copied into RMG refers to the roof having been opened up, allowing further assessment, and a more detailed specification. It concludes referring to specifically to Ms Lloyd, RMG's Regional Manager, "Melissa, please note that these issues discussed above are the most likely cause of the water ingress issues into flats 53 and 54 at this time and the work suggested will hopefully address these matters. However cracking to the fillet detail was noted about all the roof areas and the cover flashings to the parapet are incorrectly fitted. Repairs carried out can therefore not be guaranteed, unless all issues are considered which is presently beyond the scope of works." [189]
30 March 2020	Buildzone issues its invoice for scaffolding etc detailed in paragraph 5 of the Schedule. [96]
17 July 2020	A report with photographs was provided by Thomasons to RMG as regards water tests to the works recently completed by Buildzone. That noted "we have been informed that water ingress has occurred in both apartments *(53 and 54)* since completion of the repairs". The report concludes with a summary where it is stated "the roof areas are in poor condition and we would recommend that you consider full replacement. The works carried out to the 2 areas of concern have been successful. 4 additional areas of concern to the two apartments are now evident and these will require further consideration." *(Mrs Tyson disputed the works to the two areas of concern being successful)* and an addendum to the report referred to Thomasons receiving further reports and photographs on 20 July "showing water ingress into Apartment 53 at the exact position to that which we have been attempting to address…"
30 July 2020	Ms Perrin of RMG emails Mr Bickerstaffe stating "Mr Harris has reported that the water was pouring through the ceiling last night. I really need to make sure that this is jumped on as a matter of urgency. Please can you confirm the plan of action ASAP".[181]
5 August 2020	Thomasons issue its invoice in respect of fees detailed in paragraph 6 of the Schedule.[97]. The invoice refers to "site inspections, investigations, reports and advices up to 2 August 2020".
18 August 2020	Buildzone issues its invoice for roof works detailed in paragraph 7 of the Schedule, and which refers to a retention.[99]

21 August 2020	RMG wrote to Mrs Green's executors saying they were writing to all leaseholders to provide an update stating inter alia "As you will be aware from previous correspondence, we have employed a surveyor to oversee more extensive works so that we can move away from temporary repairs. As part of this, there was included in the works done a water test carried out on the roof to ensure that the repair completed had been successful. Upon the test of this, as with water leaks, the repair done has been successful but in turn another area near the repair has caused further ingress. Unfortunately, faults arising such as this are common as there is no guarantee unless a full replacement of the roof was done which is why a water test is done before removing all access equipment. These further works are currently being organised and scaffolding will remain until we are satisfied that the works are complete… We have mentioned previously that with the above roof works we will be applying for dispensation that is a Section 20ZA of the Landlord and Tenant Act…".[151-152]
17 September 2020	Buildzone issues its invoice for additional roof works detailed in paragraph 8 of the Schedule.[100]
2020	A copy was provided of an undated unsigned draft lease relating to the property ("the proposed replacement lease") intended to be completed between PFP and Mrs Green's executors for a revised term of 125 years in consideration of the surrender of the Lease.
18 September 2020	The Applicants became the owners of the property – Apartment 54
3 November 2020	Mrs Tyson sent a photograph to RMG showing a large amount of flashing having been dislodged and hanging perilously over the roof parapet.[57]
18 March 2021	Buildzone issues its invoice for further roof works detailed in paragraph 9 of the Schedule.[101]
13 April 2021	Thomasons issue its invoice in respect of fees detailed in paragraph 10 of the Schedule.
12 May 2021	A further letter was written by RMG to leaseholders stating, inter alia, "We have again received queries as to whether Tenants should be consulted regarding the recent roof works which have taken place. Although the development is such that the Landlord has the legal right on decisions pertaining to the development, the Landlord and Tenant Act 1985 still applies, within which there are various elements which ensure Tenants are treated fairly, one such item is Section 20. Under Section 20 it states that if costs are to be incurred in which would cost any one leaseholder £250 or more for one item of work, a formal consultation is required. However, as we have mentioned previously that with the roof works, we shall be applying for dispensation from Section 20 under Section 20ZA of

	the Landlord and Tenant act. The reason we shall be applying for dispensation is that the costs of the roof repairs are above the £250 referenced cost, however due to the urgency, the time lost in completing a Section 20 application could have led to further damage in the roof repairs and therefore more costs…" [154]
21 February 2022	In RMG's notes to the service charge invoice for 2022 it was said "The budget has been updated to include the estimated cost needed on top of the amount already held in the reserve and sinking funds, of replacing the roof to the building as there has been significant water ingress over previous years. We have conducted many repairs, and unfortunately the only option now is to proceed with a full roof replacement. The contractor and surveyor have attended to the site on numerous occasions completing significant localised works, and the immediate areas over the affected apartments have been overlaid with a SIKA liquid membrane. As the water ingress has continued in to one of the apartments, and the roof overall is in a poor condition, the surveyor has advised that the full replacement is now necessary as we have exhausted the alternative options. The full replacement was decided against originally so that the cost for residents would not be as great, and as the surveyor and contractor were hopeful that the localised works would be sufficient enough to stop the ingress, however this has unfortunately not been the case.[248]
30 May 2022	RMG issue a Notice of Intent being the first stage of statutory consultation in respect of "replacement roof".[198]
15 June 2022	An incident report by Lancashire Fire and rescue notes "1 x lead flashing fallen prior to arrival… 2x lead flashing removed by LFRS… RMG… to carry out remedial work to make roof safe".[72]
26 October 2022	Mrs Tyson in an email to PFP states "Back in August Justin Herbert said a dispensation had been applied for to cover previous roof works that should have been covered with a Section 20 back in 2019. What is occurring now is the result of no Section 20 because we would have had input into the process. We don't accept the reasoning being it was urgent because 5 years down the line we are in a worse position with large amounts of money having been spent. A Section 20 at the time would probably have flagged up different opinions, different surveys and residents being included would have made them more responsible to decisions taken. The fact that only Thomasons and their contact Buildzone were involved and have been ever since with no guarantee on the work they keep doing has led to this breakdown and an application to tribunal. Someone has to start seeing this from another side and we will not be excluded anymore from important decisions involving our money. I'm sure the company Mearsbeck Ltd can work with

	RMG but surely it can be recognised that we are struggling with the relationship over the roof repairs that have cost 52,000 so far to one company and we still have leaks. This is fact and no amount of excuses about leaks being notoriously difficult to sort will wash.No other buildings around us has suffered in this way. Could you please provide a copy of the dispensation as promised. [69]
21 November 2022	An email from Thomasons to RMG refers to 3 contractors quotes for the full roof replacement. Central Group- £125,188 (flat board insulation) or £140,105 (tapered insulation) BBR (built-up felt)- £197,454, Permacoat (liquid SIKA decothern)- £105,340. All net of VAT.[160-161]
5 January 2023	The leaseholders establish a Right to Manage company

The Lease

10. The Lease specifies in clause 4.1 that the tenant is

4.1 "To pay the service charge in the manner and on the dates herein mentioned and in accordance with the provisions of the Schedule hereto"

Clause 5 contains covenants by the landlord: –

"(1) .... to keep in good and substantial repair and to repair re-decorate renew amend and clean when and as necessary and appropriate:

(a) the structure of the building or buildings comprised in the Property and in particular roofs foundations external walls and external wood and woodwork ironwork and load bearing walls window frames excluding the internal surface thereof and timbers..."

The Schedule provides for the following:

"(1) The amount of the service charge shall be certified by the Landlord's accountants at the end of each financial year and if such charge shall be greater than the sum paid in advance in any year of the term by the Tenant as previously provided in this Lease the balance of the said sum shall be a debt due and owing to the Landlord and payable with the service charge for the ensuing year.

(2) The said certificate shall contain a summary of the Landlord's expenses and the service charge shall (inter alia) make provision of the following expenditure in respect of the Property:-

.....

(b) The cost and expense of maintenance of the structure exterior and common parts of the Property and reasonable provision for a reserve against expenditure on maintenance and repairs (and replacement);

.....

(h) The cost of management which shall not exceed the sheltered management allowance permitted from time to time by the Department of the Environment.

11. Comparable provisions are found in the proposed replacement lease, which are either identical to, or materially the same as, those contained in the Lease as referred to above. The landlord is obliged to "keep in good and substantial repair and to repair…the roofs" and the leaseholders to contribute to the costs via the service charges.

The Applicants' written submissions

12. Mrs Tyson stated (inter-alia) in her statement of case that: –

"I moved into 54 Mearsbeck Apartments which is an over 55s affordable development in September 2020 having being reassured that a ceiling leak had been fixed. The scaffolding had come down by the time I moved in.

Within a month, when it rained it poured through the ceiling.

I became aware at this point that the roof problems had been apparent since 2018.

Patch repairs have been carried out and patch repairs over patch repairs have continued.

A contract to survey the roof and sort out problems in 2020 amounted to £21,498 plus scaffolding at £10,963 being spent and this did nothing to stop the roof leaks.

No Section 20 was entered into, therefore residents had no say in any of the decisions taken or contractors used.

No inspection took place by the managing agents or guarantee given by the contractors on any of the roof repairs and despite 4 charges on consultancy fees amounting to £13,673 no indication was ever given that the roof needed the money spent on a full replacement until after the money had been spent and wasted which took 3 years of repairs and consultancy fees before that decision was reached and £66,000 spent.

The roof was left in a dangerous substandard condition after repair work. Fire brigade twice had to remove dangerous loose lead flashing from the roof. This hadn't happened before the repair work. And happened in the same place after they repaired the first time".

She referred to various documents noted in the timeline, together with her own comments. She particularly noted the "evidence of no guarantee on the work and that no Section 20 was carried out"… "that one surveyor in 2019 had stated full roof replacement not required but by July 2020 another saying it was recommended. This wasn't acted on until 2022 after further considerable sums had been spent"… and reports " from Fire Dept as evidence to dangerous state".. "a committee meeting from 2019 acknowledging shoddy work being carried out by a previous contractor which was never followed up or money back obtained".

She also noted that "A right to manage company took over the management on Jan 5 2023…".

13. Her comments on the Scott Schedules reinforced the points previously made.

PFP's Reply

14. The response to the Applicants' statement of case was provided by RMG.

It "denied that the residents did not have the opportunity in providing their observations against the works carried out. The residents were made aware of the works and updates provided on many occasions. For instance, letters were sent to the residents 21 January 2020, 21 August 2020, 12 May 2021, 21 February 2022 and more"… "The evidence demonstrates a degree of avoiding burden and prejudice to the Leaseholders"…. "The degree of a flat roof life span is expected between 15 to 20 years. During such period, research indicates that repairs are very likely to be expected and if not, a replacement is required"… "Mathematically, the roof lasted beyond the expected life span. It is evident that; a) major repairs are to be expected and b) a consideration of a whole roof replacement is to be expected"…. "The Respondent has provided a clear timeline of the issues and how its conduct was within a reasonable spectrum and of which the cost incurred is fair and reasonable. It is anticipated that the Tribunal acknowledges the difficulties faced by the Respondent and it is imperative that the Tribunal recognizes the full context of the issues"…" During the year 2020, Covid-19 was introduced".

In relation to Thomason's consultancy charges it was submitted "Evidently, the Respondent has acted in a sensible manner for the purpose of identifying the actual cause of issues. Such appointment is for the avoidance of incurring unnecessary costs and time".

In respect of the various builder's invoices it was stated that "It is important for the Applicant to acknowledge that it, the Applicant remains of the burden of proof to elucidate the degree of the challenge. In this case, the Respondent identifies that the Applicant has not lifted the burden of proof"… that when "the Applicant suggest "repairs of a previous repair and still left substandard". the Applicant has not provided photographs or reports to demonstrate the accuracy of such claim"…."the Respondent directs the Tribunal attention due to the Applicant not producing a legitimate claim". It was said "Thomasons has tested the market and of which Buildzone was the appointed contractor, on the basis it sustained the cheapest quote"… " Both Thomasons and PFP liaised with Buildzone in negotiating on a fair price".

Inspection

15. The Tribunal inspected the development ("Mearsbeck Apartments") on the morning of 23 January 2024. The Tribunal members were met at the entrance by Mr Chenery (of Northwood of Lancaster), the managing agent for the Right to Manage company set up by the residents in January 2023. They then met with Mrs Tyson outside her front door on the top floor, before going on up to and on the roof with Mr Chenery. The Tribunal members were also later allowed access to Apartment 53 by its owner, Mr Harris.

16. Mearsbeck Apartments is a 6-storey block of 24 flats next to and overlooking the Morecambe seafront. It is thought to have been built in the mid-1990s, and has a mansard slated roof with recessed dormer windows. The main walls

are clad with brickwork. It has uPVC framed doubleglazed casement windows with french doors opening onto to concrete framed cantilevered balconies at first to fourth levels which overlook the seafront. To the landward side of the building is the communal entrance to the flats contained in a single storey brick structure adjacent to which is a bin store. This entrance overlooks a tarmacadam car park area enclosed within timber fencing. The remaining boundaries are defined by brick walls.

17. The roof is accessed via the top floor landing, and a fixed steel ladder going up into a hut-like structure, which opens onto the flat roof. There is some safety scaffolding around parts of the perimeter and evidence of relatively recent past patching in 2 main areas at the edges extending over a small percentage of the whole. The remainder has clearly weathered and aged over the years and could be as originally constructed. Various pipes and vents protrude through the surface. Some are part of the original construction including a drainage hole and ventilation pipes, but is understood that others have been subsequently installed to vent central heating boilers below.

18. It was raining and readily apparent that there is a vulnerability to water ponding on the roof, and ingress through some of the vent pipes from anything other than vertical rain. The roof construction did not appear to be unusual, but as with all flat roofs great care would need to be paid when attempting to source leaks and carry out any patch repairs to ensure that the works themselves do not cause further damage to the adjoining parts.

19. The Tribunal members were subsequently allowed access to apartment 53 where there is staining on the kitchen ceiling and Mr Harris has set out a series of buckets to try and collect the water which is still leaking into his flat.

The Hearing

20. The hearing took place later in the afternoon at Barrow-in- Furness Courthouse. Mrs Tyson represented herself and her husband. Mr Jamalkhan represented PFP. He is employed by RMG in their property services department and confirmed that he has a law degree and is experienced in applications before the Tribunal. Also in attendance were RMG's Ms Perrin and Ms Lloyd. It was confirmed that both are based in Cheshire.

21. The parties were thanked for the written submissions. It was noted how the case had moved on from the initial application, what had been decided that the case management conference, and the matters that the Tribunal would wish to focus on.

22. It was explained that there was first a need to deal with the potential jurisdictional point, prompted by the Tribunal's analysis of the papers, which appeared to confirm that the Applicants did not own the property before 18 September 2020. (It was noted that there had been a reference in one of RMG's responses to the property having been inherited, but Mrs Tyson confirmed that that was not correct). She confirmed that she and her husband had purchased the property, following an arm's length transaction with the executors of the previous owner with whom they had had no previous

connection. She also confirmed that the service charges due and payable prior to their purchase had been agreed and fully settled by the previous owners as part of the conveyancing process. None of those charges, so far as she was aware, had been disputed before the completion of the purchase. Not by she and her husband, and not by the previous owners.

23. Following these confirmations, the Tribunal explained that, because of the provisions contained in Section 27A(4) it would, in this instance, not have any jurisdiction as regards service charges which had been agreed prior to Mr and Mrs Tyson's purchase, being those contained in the service charge accounts for the year ending on 31 March 2020 and any earlier years. It was noted that this finding is specific to this Application, the Applicants and the property.

24. The invoices which had been included in the 2019/2020 accounts were later confirmed when each of the invoices on the Scott Schedules were discussed individually.

25. The Tribunal then noted that 2 lease documents had been put before it; the Lease and the proposed replacement lease. It was confirmed that both had come from Mrs Tyson, who explained that there had been ongoing problems with registration of title, and she had submitted copies of what she had been able to obtain. It was noted that there were no material differences between the 2 documents regarding the issues in dispute, and agreed no practical purpose would be served by delaying matters to try and clarify which of the two documents might now be operative. Both documents made it quite clear, and it is not in dispute, that the landlord is obliged to keep the roof of the Mearsbeck Apartments in repair and it is for the leaseholders to pay for the costs of the same through the service charges, with each of the 24 flat owners due to pay an equal share.

26. It was agreed that the landlord had accepted the Applicants as the true owners of the property and that they had been in receipt of and paying service charges. Mr Jamalkhan confirmed that he was content for the hearing to proceed on that basis. (It is noted in passing that PFP's title has also not been put on proof).

27. Ms Perrin, Ms Lloyd, and Mr Jamalkhan were asked to confirm the Tribunal's assumption, from the papers and its own records, that neither had the statutory consultation requirements been met in respect of the works undertaken in 2020, and nor had there been any subsequent application made to the Tribunal for an order to dispense with those requirements. All 3 readily stated that to be the case.

28. It was thereafter confirmed that that fact must inevitably lead to the Applicants' contribution to relevant sets of works being capped at £250.

29. Mr Jamalkhan expressed surprise and was not persuaded that the finding was correct. He did not agree that it was a correct interpretation of the law or an inevitable consequence. He was asked if his submission was that the steps that RMG had taken, and as referred to in its exhibited letters, were sufficiently compliant with the Regulations. He confirmed that was not his submission,

rather that there was no specified time limit for submitting a dispensation application. He referred to having made such an application elsewhere some 4 years after the event, and repeatedly stated that a dispensation application would now be made forthwith, and that the Tribunal should not make, or should defer making, a Section 27A order incorporating the £250 cap.

30. It was confirmed both that the Tribunal would continue to make its decision based on the evidence before it, but that its decision would not preclude further applications from PFP and/or possibly other leaseholders. It was noted that any such applications would inevitably be separate matters, possibly covering different time periods, albeit potentially dealing with common or related issues, and that any dispensation application would clearly need to engage with all the leaseholders and consequently could not be dealt with at this hearing.

31. Ms Perrin and Ms Lloyd later said that the reason for the delay in the dispensation application was due to not knowing what the figures might turn out to be but offered no further explanation.

32. The hearing moved to a discussion of which of the individual invoices on the Scott Schedules should properly be regarded as being linked as part of a set of works, or as separate. Mr Jamalkhan agreed that Buildzone's separate invoices for scaffolding and roof works were linked but that Thomasons' fees relating to the specification and tendering for the 2020 works were for a separate service. He referred to a first-tier Tribunal case confirming that consultant's fees were a payment for services as opposed to part of works that followed. The Tribunal commented that each case must be specific to its own particular facts, and that helpful advice as to how its decision should be made had been set out in the well publicised Court of Appeal case of *Phillips v Francis*.

33. Each of the disputed invoices was then discussed individually.

34. Ms Perrin and Ms Lloyd confirmed that when scaffolding was erected by Buildzone, there was a single tower rather than the whole building being clothed.

35. Mrs Tyson was clearly of the view that not all of the works had been reasonably incurred or undertaken to a reasonable standard. She acknowledged that obviously she had only a very limited personal knowledge of what had predated her purchase, but was able to attest to continuing leaks, the fire brigade needing to be called twice and on the first occasion within weeks of roof works having ostensibly being completed.

36. Mr Jamalkhan submitted that the onus must remained on Mrs Tyson to show and provide evidence that when the flashing was dislodged from the roof that was as a consequence of the previous works being substandard, which he maintained was not the case, and that the previous works were distinct and restricted to different problems. He defended Thomasons' costs as having been reasonably incurred, emphasising Thomasons' qualifications and experience, and saying that he had asked another market leader, as a desktop

exercise, to peer review their work, and this confirmed RMG's assessment that appropriate steps and procedures had been adopted.

37. Before the conclusion of the hearing Mrs Tyson was asked as to what steps the residents' Right to Manage company had taken about the roof. She reaffirmed that the company had been constituted in January 2023, and had subsequently worked through the various steps in the consultation requirements as regards the full replacement of the roof. Her recollection was that 3 quotes had been obtained, 2 at all-inclusive figures at or around £90,000 including VAT, and the third at approximately 125,000. She confirmed that an appropriate contract had been let and that it was hoped that works would be started very shortly.

The Law

38. Section 27A of the 1985 Act provides that:-

"(1) An application may be made to the appropriate Tribunal for a determination whether a service charge is payable and, if it is, as to:-

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

(d) the date at or by which it is payable, and

(e) the manner in which it is payable.

(2) Subsection (1) applies whether or not any payment has been made.....

(4) No application under subsection (1)... may be made in respect of a matter which –

(a) has been agreed or admitted by the tenant,

.....

(5) But the tenant is not to be taken to have agreed or admitted any matter by reason only of having made any payment.

....."

39. Section 18 states that: –

"(1) In the following provisions of this Act "service charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent –

(a) which is payable, directly or indirectly for services, repairs, maintenance, improvements or insurance or the landlord's costs of management, and

(b) the whole or part of which varies or may vary according to the relevant costs.

(2) The relevant costs are the costs or estimated costs incurred or to be incurred by or on behalf of the landlord, or a superior landlord, in connection with the matters for which the service charge is payable.

(3) For this purpose –

(a) "costs" includes overheads, and

(b) costs are relevant costs in relation to the service charge whether they are incurred, or to be incurred, in the period for which the service charge is payable or an earlier or later period."

40. Section 19 of the 1985 Act confirms that :-

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

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

(b) where they are incurred on the provision of services or the carrying out of works, only if the services or works are of a reasonable standard;

and the amount payable shall be limited accordingly.
…."

41. Section 20 confirms: –

"(1) Where this Section applies to any qualifying works… the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either –

(a) complied with in relation to the works…, or

(b) dispensed with in relation to the works… by (or on appeal from) the appropriate Tribunal
…"

42. The Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") set out the detailed consultation requirements ("the consultation requirements"). Regulation 6 sets the cap on the relevant contributions, if the consultation requirements are not complied with by a landlord or dispensed with by the Tribunal, at £250.

43. Reference must be made to the Regulations themselves for full details of the applicable consultation requirements. In outline, however, they require a landlord (or management company) to go through a 4 stage process: –

- Stage 1: Notice of intention to do the works

  Written notice of its intention to carry out qualifying works must be given to each Flat Owner and any tenants association, describing the works in general terms, or saying where and when a description may be inspected, stating the reasons for the works, inviting Flat Owners to make observations and to nominate contractors from whom an estimate for carrying out the works should be sought, allowing at least 30 days. The Landlord must have regard to those observations.

- Stage 2: Estimates

  The Landlord must seek estimates for the works, including from a nominee identified by any Flat Owners or the association.

- Stage 3: Notices about estimates

  The Landlord must supply Flat Owners with a statement setting out, as regards at least 2 of those estimates, the amounts specified as the estimated cost of the proposed works, together with a summary of any individual observations made by Flat Owners and its responses. Any nominee's estimate must be included. The Landlord must make all the estimates available for inspection. The statement must say where and when estimates may be inspected, and where and when observations can be sent, allowing at least 30 days. The Landlord must then have regard to such observations.

- Stage 4: Notification of reasons

  The Landlord must give written notice to the Flat Owners within 21 days of entering into a contract for the works explaining why the contract was awarded to the preferred bidder, unless, either the chosen contractor submitted the lowest estimate, or is the Flat Owners' nominee.

44. Section 20ZA(1) states that: –

> "Where an application is made to the appropriate Tribunal for a determination to dispense with all or any of the consultation requirements in relation to any qualifying works… the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

45. Section 20C states that: –

> "(1) 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.
>
> … (3) the court or Tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances."

46. Paragraph 5A of Schedule 11 to the 2002 Act states that: –

> "(1) A tenant of a dwelling in England may apply to the relevant court or Tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.
>
> (2) the relevant court or Tribunal may make whatever order on the application it considers just and equitable."

The Tribunal's Reasons and Conclusions

47. The Tribunal has determined the Application having regard to all the evidence, including the valuable insights gained from the inspection.

48. The documentation which has been provided provides clear and obvious evidence of its contents. It was carefully considered by the Tribunal - before, during and after the hearing. Except where referred to, it has not been challenged and the Tribunal finds no reason to doubt the detail contained within the papers.

49. The oral evidence was also carefully considered. The Tribunal is grateful for the assistance of all those participating in the hearing, all of whom were found to be credible.

50. As was explained at the hearing, the Tribunal's task was firstly to settle on its jurisdiction, next to satisfy itself, which was not found to be at issue, that the charges in dispute were payable under the lease, before deciding whether there were any statutory limitations on the recoverability of those costs, whether as a consequence of Sections 19 or 20 of the 1985 Act, or otherwise.

The question of jurisdiction

51. The Tribunal gave its decision on this matter orally at the hearing, explaining its reasoning at the same time.

52. Section 27A(4) states no application can be made "in respect of a matter which…. has been agreed or admitted by the tenant".

53. The evidence is (and it is not disputed) that all the service charges attaching to the property for the years up to and ending on 31 March 2020 had been agreed by the Applicants' predecessors in title. There was no intimation of any ongoing dispute by the previous owners of the property. The Applicants have, and had, no liability for those charges which had already been agreed and paid prior to the completion of their purchase.

54. Consequently, the Tribunal found that the Applicants are precluded from making a 27A application in respect of all such charges as were agreed in respect of the property before their purchase on 18 September 2020.

55. Such charges included all those contained in the 2019/2020 service charge accounts (and particularly those which referred to under reference numbers 1,2,3,4 and 5 in the Schedule hereto). It was clarified at the hearing that the relevant charges had all been included in those accounts. It is also clear from references in RMG's letter of 21 August 2020 [152] that those accounts by then been completed and sent out to the leaseholders, and that they included the invoice for scaffolding costs.

56. It probably goes without saying that this part of the decision is clearly specific to the Applicants and this particular Application. Other leaseholders whose ownership predates that of the Applicants would not necessarily be similarly

disbarred. Section 27A(5) states that a "tenant is not taken to have agreed or admitted any matter by reason only of having made any payment".

57. Having been satisfied that the material terms of the lease were not in dispute, the Tribunal next turned to a consideration of the statutory limitations on the amounts of those disputed service charges remaining within the Application, being those identified paragraphs 6,7,8, and 9 of the Schedule.

The limitation imposed by Section 20 relating to the consultation requirements

58. Mrs Tyson has in her statement of case, and consistently throughout, referred to the lack of consultation in relation to the various works undertaken in 2020. RMG confirmed that the statutory consultation requirements relating to those works had not been met both in their exhibited letters of 21 August 2020 [151-152] and 12 May 2021 [154-155].

59. Significantly, it was also apparent from the papers, and acknowledged without demur by each of Ms Perrin, Ms Lloyd, and Mr Jamalkhan that there had not been any subsequent application to, nor yet any order made by, the Tribunal to dispense with the consultation requirements.

60. In its written responses RMG made the assertion: –

"The Applicant makes concerns regarding s20 consultation. To the PFP's understanding, the Applicant has filed an Application under Landlord and Tenant Act 1985 – s27A. The Tribunal has no jurisdiction in making a determination under the requirements for s20 consultation".

This statement appears to confuse the limitations on service charges imposed by Section 20 (which, where relevant, must be considered within any Section 27A application) and the separate provisions contained in Section 20ZA, which are supplementary to the consultation requirements.

61. The point made by the Tribunal at the hearing is that the provisions of Section 20, coupled with the Regulations, are clear; if the detailed consultation requirements are not complied with or dispensed with by the Tribunal, the landlord cannot recover more than £250 from an individual tenant in respect of a set of qualifying works.

62. Judge Elizabeth Cooke has stated in the Upper Tribunal case of *Collingwood v Carillon House [2021] UKUT 246 (LC)* that the consultation requirements are "both strict and sequential. There is no room in the clear wording of the provisions for flexibility in their interpretation, and no legal precedent for a flexible interpretation. They are anything but woolly". There is no doctrine of "substantial compliance" and it is not open for the Tribunal to find the landlord has "done its best". The law is clear that in the absence of an application for dispensation the Tribunal cannot give one.

The question of dispensation

63. It is also obvious that consultation is a group process whereby the landlord must engage with the tenants generally. As was confirmed it would inappropriate to try and determine as part of these proceedings whether dispensation should be granted, without first giving all the leaseholders the opportunity to participate.

64. The Tribunal readily agreed with Mr Jamalkhan's submission that it is possible for a dispensation application to follow a Section 27A determination. It did however have concerns, from some of his comments, that it might be assumed that dispensation must automatically follow an application and that ultimately all costs are fully recoverable in all instances.

65. In determining any dispensation application that may be made, the Tribunal would undoubtedly wish to pay close regard to the detailed guidance set out by the Supreme Court in *Daejan Investments Ltd v. Benson and others (2013) UK SC 14* and the need to focus on whether the leaseholders have suffered and can identify some relevant prejudice by the failure to comply with the consultation requirements; and where it was said (inter alia); the more egregious the landlord's failure, the more readily a Tribunal would be likely to accept that tenants had suffered prejudice; that once the tenants have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the tenants' case; the Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the tenants' reasonable costs incurred in connection with the dispensation application; and that insofar as tenants will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require a landlord to reduce the amount claimed to compensate the tenants fully for that prejudice.

The operation of the cap

66. Having determined that the cap imposed by Section 20 must apply, the Tribunal next had to consider which of the disputed invoices were subject to that cap. It was agreed that because each of the 24 leaseholders bears an equal share of the service charges the threshold figure for any particular invoice would be £6000 (24 x £250). But, it was also important to determine which, if any, of the disputed invoices were a part of the same set of works.

67. The Tribunal has been assisted by the comments made in *Phillips v Francis [2014] EWCA Civ 1395* where it was said: –

"It is not in issue that the question of what a single set of qualifying works comprises is one of fact. It is a multi-factorial question the answer to which should be determined in a commonsense way taking into account all relevant circumstances. Relevant factors are likely to include (i) where the items of work are to be carried out (whether they are contiguous to or physically far removed from each other); (ii) whether they are the subject of the same contract; (iii) whether they are to be done at more or less the same time or at different times; and (iv) whether the items of work are different in character

from, or have no connection with, each other. I emphasise that this is not intended to be an exhaustive list of factors which are likely to be relevant. Ultimately, it will be a question of fact and degree."

68. The same case makes it clear that a single set of works might span different service charge years.

69. After taking time to carefully revisit all of the evidence, viewing that in a commonsense way, and by asking itself whether individual invoices were part of a single set of works, or as might be expressed in in more colloquial terms "part of the same job", the Tribunal found that those invoices referred to in paragraphs 3, 5, 6, 7, and 8 of the Schedule were for a single set of works and therefore together subject to a cap of £250 per leaseholder. The Tribunal did not accept Mr Jamalkhan's submission that in this case Thomasons' particular invoices were outside or properly to be viewed as being separate from the job that had been specified by RMG, being to patch repair the roof and cure the leaks. Thomasons played a part, as did Buildzone in what the Tribunal found was a single connected set of works. Thomasons both specified the physical works and played an ongoing part in monitoring and the review of those works.

The remaining invoices

70. The Tribunal also found that the 2 invoices referred to in paragraphs 9 and 10 of the Schedule were linked and part of another set, albeit one where the combined costs did not exceed the capping threshold.

71. Mr Jamalkhan correctly pointed out that Thomasons' April 2021 invoice referred to in paragraph 10, having been rendered after the end of the 2020/2021 service charge year had been agreed by Mrs Tyson as being outside the scope of the Application, as set down in the case management conference. This was confirmed in their email exchanges on 20 June 2023[194-195]. That being so, such costs fall outside the jurisdiction of the present Application.

72. This then led Tribunal to consider whether the costs referred to in paragraph 9 of the Schedule, for the further roof works undertaken by Buildzone in March 2021 were limited by Section 19, which imposes a ceiling if it is found that costs are unreasonably incurred, unreasonable in their amount, or the works to which they relate are not of a reasonable standard.

73. The Tribunal first had to decide whether these further roof works had been reasonably incurred within the meaning of Section 19. The Tribunal has concluded that they were, notwithstanding all that had gone before.

74. In Section 19 what is under scrutiny is whether the actual incurring of the cost was reasonable and that must depend on whether the landlord's response, at the point in time when the decision was made to act, was a reasonable one. The question of reasonableness must be considered by reference to the circumstances when the costs are incurred and not by reference to how the need for such costs arose. Accordingly, the fact that repair works may only be necessary because of neglect or breach of a landlord's repairing covenant does

not prevent the cost of such works from being reasonably incurred. *Continental Property Ventures v. White (2006) 1 E.G.L.R. 85.*

75. Having found that further roof works were required in March 2021, the Tribunal next considered whether there was evidence that those particular works were either not of a reasonable standard or had been provided at other than a reasonable cost. Absent of any such evidence the Tribunal concluded that the costs referred to in paragraph 9 of the schedule hereto were fully payable.

General comments

76. Because of the particular circumstances of this case, the Tribunal has not needed to decide (other than in regard to Buildzone's March 2021 invoice) how far, if at all, any of the other disputed costs may be limited by reference to Section 19 and their reasonableness. It should not be inferred, or in any way assumed, that this means the Tribunal has found that those remaining costs were both reasonably incurred and that the works to which they refer were of a reasonable standard. Legitimate questions remain in the Tribunal's mind as to whether the leaseholders have been protected from paying for inappropriate works or paying more than would be appropriate. What cannot be denied is that substantial sums have been spent without the desired aim being achieved. The evidence is that Mr Harris was suffering leaks from before 2019 and that he is still suffering them now.

The Section 20C and Paragraph 5A Applications and costs

77. The Tribunal went on to consider the Applicants' separate applications, that the Tribunal make orders both under Section 20C of the 1985 Act so that PFP be precluded from including within the service charges the costs incurred by PFP in connection with the present proceedings, and under Paragraph 5A of Schedule 11 of the 2002 Act to reduce or extinguish any that it might have in respect of any contractual costs in the Lease relating to the same matter.

78. The Tribunal, having regard as to what is just and equitable in all the circumstances, decided that the applications as regards Section 20C and paragraph 5A should both be granted and, therefore orders that PFP be precluded from including any part of the costs of the present proceedings within future service charges or as an administration charge.

79. The Tribunal also, in pursuance of its powers under Rule 13 of The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013 and having found that neither party had acted unreasonably in bringing, defending or conducting the proceedings, decided that there should be no order for costs under that Rule.

The Schedule hereinbefore referred to:-

Roof repair works where the costs are disputed by the Applicant

Para No.	Date of invoice	General heading	Detailed specification/comments provided by RMG	Invoiced cost
1.	26/04/2019	Roof repairs affecting Apartment 53 (by Maxeva)	1. Supply 6 lift scaffold and edge protection 2. Remove lead cover flashing so as to inspect the roof areas adjacent to the parapet wall and carry out all necessary repairs. Replace lead cover flashing and redress 3. Remove the flue from the boiler horizontally and close the existing hole created by the vertical positioned flue pipe. carry out all necessary repairs. 4. Supply & install vertical flue and weather as required. 5. Test and commission boiler 6. Remove all water damaged plaster/ plasterboard ceiling and carry out all necessary plastering repairs. 7. Redecorate kitchen to match existing. 8. Test roof repairs as requested by Surveyor. 9. Remove all waste from site.	£5,638.75
2.	26/04/2019	Roof repairs above apartment 54 (by Maxeva)	Install edge protection Remove 2 no vents Remove any rotten & debris from previous roof repair Patch up vent holes and recoat area Remove internal vent holes and recoat area Remove internal vent and make good and decorate Make good around boiler flue from poor previous repair	£1,887.00
3.	10/12/2019	Thomasons' consultancy fees	Thomasons' fee- tender to completion. Including produce a Schedule of Works for competitive tender, this includes their fee in this respect for the tender process, assessment and report. The fee estmate allows for the preparation of the tender/contract documentation for works so as to open up the areas of concern, assess the tenders and report. It also allows for 1 site visit so as to assess what "lies beneath" and provide recommendations. Input after this stage has not been allowed for at this time.	£2,448.00
4.	12/12/2019	Consultancy fees	Thomasons' Fee following leak return following repair in May 2019 - This was to attend and inspect the area further.	£948.00
5.	30/03/2020	Scaffolding (by Buildzone)	Works carried out as per Thomasons' Tender and Analysis report. Paid in two installments due to length of works. Costs faced changes which the surveyor approved due to changes in the programme once works commenced and COVID19.	£10,963.38
6.	05/08/2020	Consultancy fees	Thomasons' fee for visits to site and inspections conducted during tendering-the invoice refers to "site inspections, investigations, reports and advices up to 2 August 2020".	£4,888.85
7.	18/08/2020	Roof works	Works carried out as per Thomasons' Tender and	£21,498.12

		(by Buildzone)	Analysis report. Paid in two installments due to length of works. Costs faced changes which the surveyor approved due to changes in the programme once works commenced and COVID19.	
8.	17/09/2020	Additional roof repairs (by Buildzone)	Invoice for works carried out following inspection on water test. As shown in report 1 - The cost for the additional waterproofing works recommended in the report from the water test would be as follows: Remove and dispose of existing lead and timber from parapet and replace with new above apartment 54 bathroom area (highlighted as area F in report) - £675.00 Supply and install leadwork to additional area above apartment 54 (highlighted as area F in report) - £1058.00 Additional SIKA repairs (highlighted as areas D, E & F in report) - £415.00	£2,577.60
9.	18/03/2021	Further roof repairs (by Buildzone)	Supply and install scaffold edge protection to allow safe access to the area. We have allowed an 8 week hire period (weekly inspections to be charged at £168 per week). Attend site to open up the roof area above, stop up and seal the core and build up in insulation. Carry out SIKA repair above to weatherproof the area Water test on completion	£3,816.00
10.	13/04/2021	Thomasons' Consultancy fees	in connection with the above since previous invoice including: further input and project management including site inspections up to 04 April 2021.	£1,562.28