FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	:	CHI/43UB/LDC/2024/0049
Property	:	Hanover Court (Flats 1-12, 14-17), Haymeads Drive, Esher, Surrey, KT10 9BJ
Applicant	:	Southern Housing
Representative	:	
Respondent	:	Dr Joanna Begley (Flat 17) Mr Darren Green (Flat 14) Ms Danielle Peacock (Flat 16)
Representative	:	
Type of Application	:	To dispense with the requirement to consult lessees about major works section 20ZA of the Landlord and Tenant Act 1985
Tribunal Member	:	Judge J Dobson Mrs A Clist MRICS
Date of Hearing	:	8th May 2024
Date of Decision	:	25th June 2024

DECISION

Summary of the Decision

1. **The Applicant is granted dispensation under Section 20ZA of the Landlord and Tenant Act 1985 from the consultation requirements imposed on the landlord by Section 20 of the 1985 Act in respect of major works, being works to the roof of the Property condition on the following:**

   i) The Applicant shall facilitate and pay towards the cost of the Respondents obtaining a survey report if the Respondents wish to do so. That report would provide an opinion on the nature of the problem with the roof, the appropriate work to resolve it and the cost. The contribution which the Tribunal considers to be appropriate is £1800.00 plus VAT in respect of the report itself.

   ii) As the surveyor will plainly require access to the roof in a safe and appropriate manner, which the Applicant must facilitate. The condition therefore includes the Applicant providing and meeting the cost of access, whether that may be by cherry- picker, scaffolding or otherwise if a ladder and harness are not acceptable, and that the surveyor shall indicate to be considered appropriate.

   iii) The Applicant provides to the Respondents the report which has been obtained and to which Ms Claydon sought to refer plus the quote/ estimate for the cost of the works. (If the Applicant has already done so in respect of any item, it shall nevertheless do so again for the avoidance of doubt).

2. **The Tribunal has made no determination on whether the costs of the works are reasonable or payable.**

The application and the history of the case

3. The Applicant applied by application received on 5 March 2024 for dispensation under Section 20ZA of the Landlord and Tenant Act 1985 ("the Act") from the consultation requirements imposed by Section 20 of the Act.

4. The property was described as:

   "3-storey purpose built block of 16 Flats built 2010. Part flat roof.
   The property consists of
   -8 1 Bedroom 2 person flats
   -6 2 Bedroom 4 person flats
   -2 3 Bedroom 5 person flats

There are 6 Leaseholders/shared owners and 10 general needs tenants."

5. The basis for the application was said to be as follows (quoted without amendment or correction):

> "The roof is leaking and there is water ingress into the flats on the top floor of the building. We have instructed the work and are waiting for a date for the scaffolding to go up.
> The roof is leaking into the top floor flats. Following assessments by Southern Housing Maintenance Surveyor and contractors repairs have been quoted for as well as roof replacement. It has been decided due to the condition of the roof that entire roof replacement would be the best result for the tenants, leaseholders and shared owners. The works will be carried out as soon as possible.
> Delaying the commncement of the works by completing a Section 20 consultation would result in further damage, distress and cost to the residents. The leak would continue to get worse. Due to the leak there has been occurences of damp and mold in Flat 14. There are also a leaks in Flat 16 and 17 which have been reported and the situation is deteriorating rapidly."

6. The cost of the works was said to be £23,220.00 including VAT, which the Tribunal understands to be a total sum, to be apportioned between the flats in the Property. The cost per lessee on the basis of that quote is said to be £1451.25.

7. The Tribunal gave Directions on 18th March 2024, explaining that the only issue for the Tribunal is whether, or not, it is reasonable to dispense with the statutory consultation requirements and is not the question of whether any service charge costs are reasonable or payable. The Directions Order listed the steps to be taken by the parties in preparation for the determination of the dispute, if any. The Directions stated that the Tribunal would determine the application on the papers received unless a party objected in writing to the Tribunal within 7 days of the date of receipt of the directions.

8. Replies were received from 3 lessees objecting to the application. Issues were raised that the problems with the roof leaking were reported some 17 months ago (first by Mr Green) with no response and that there was ample time to consult and no need for any emergency, such that the reasons why consultation is said not to be practicable are of the Applicant's own making. It was further said by Dr Begley that "Southern Housing have left the leaseholders in a position where only one company has been asked to quote for the work and will be given the contract regardless of what estimate they provide. This has a major impact on leaseholders such as myself, as we will be forced to pay for work that no other contractor has had a chance to bid for and therefore there is a higher likelihood that the work will be more expensive." That in particular identified potential prejudice requiring appropriate consideration.

9. The Applicant responded to those objections individually, including identifying previous works having been unsuccessful and asserting the roof to be deteriorating rapidly (although without supporting evidence).

10. In light of the nature of the objections, the Tribunal considered that the case could not be determined on the papers alone and required a hearing.

11. The parties were not requested to provide a document bundle for the hearing. There are consequently no page numbers of specific documents referred to in this Decision. The Tribunal does make clear that that it has read the documents but nevertheless, the Tribunal does not refer to all of the documents in detail in this Decision, it being impractical and unnecessary to do so. Where the Tribunal does not refer to documents in this Decision, it should not be mistakenly assumed that the Tribunal has ignored or left them out of account.

The Law

12. Section 20 of the Landlord and Tenant Act 1985 ("the Act") and the related Regulations provide that where the lessor undertakes qualifying works with a cost of more than £250 per lease the relevant contribution of each lessee (jointly where more than one under any given lease) will be limited to that sum unless the required consultations have been undertaken or the requirement has been dispensed with by the Tribunal. An application may be made retrospectively.

13. Section 20ZA provides that on an application to dispense with any or all of the consultation requirements, the Tribunal may make a determination granting such dispensation "if satisfied that it is reasonable to dispense with the requirements".

14. The appropriate approach to be taken by the Tribunal in the exercise of its discretion was considered by the Supreme Court in the case of *Daejan Investment Limited v Benson et al* [2013] UKSC 14.

15. The leading judgment of Lord Neuberger explained that a tribunal should focus on the question of whether the lessee will be or had been prejudiced if unconditional dispensation is granted in either paying where that was not appropriate or in paying more than appropriate because the failure of the lessor to comply with the regulations. The requirements were held to give practical effect to those two objectives and were "a means to an end, not an end in themselves".

16. The factual burden of demonstrating prejudice falls on the lessee. The lessee must identify what would have been said if able to engage in a consultation process. If the lessee advances a credible case for having been prejudiced, the lessor must rebut it. The Tribunal should be sympathetic to the lessee(s).

17. Where the extent, quality and cost of the works were in no way affected by the lessor's failure to comply, Lord Neuberger said as follows:

> "I find it hard to see why the dispensation should not be granted (at least in the absence of some very good reason): in such a case the tenants would be in

precisely the position that the legislation intended them to be- i.e. as if the requirements had been complied with."

18. The "main, indeed normally, the sole question", as described by Lord Neuberger, for the Tribunal to determine is therefore whether, or not, the lessee will be or has been caused relevant prejudice by a failure of the Applicant to undertake the consultation prior to the major works and so whether dispensation in respect of that should be granted.

19. The question is one of the reasonableness of dispensing with the process of consultation provided for in the Act, not one of the reasonableness of the charges of works arising or which have arisen.

20. If dispensation is granted, that may be on terms. That is to say that dispensation is granted but only if the landlord accepts- and fulfils- appropriate conditions. Specific reference was made to costs incurred by the lessees, including legal advice about the application made.

21. There have been subsequent decisions of the higher courts and tribunals of assistance in the application of the decision in *Daejan*, including the decision of the Court of Appeal in *Aster Communities v Chapman* [2021] EWCA Civ 660.

22. In *Aster*, dispensation was granted originally by Judge Morrison of this region of the First Tier Tribunal on condition that the applicant in that paid the costs of the lessees obtaining an expert report about the works. The Court of Appeal upheld that. Newey LJ identified no issue with Aster being required to bear costs to be incurred after the dispensation application had been determined and identified that any future application about the service charges being payable in the amount demanded would provide a forum for the investigation which might otherwise have been undertaken in the dispensation application. The condition was one which the Tribunal was entitled to impose in the circumstances of the case.

23. More generally, the Tribunal considers that the case authorities demonstrate that the Tribunal has a very wide discretion to, if it considers it appropriate, impose whatever terms and conditions are required to meet the justice of the particular case- in Daejan it was said "on such terms as it thinks fit- provided, of course, that any such terms are appropriate in their nature and their effect".

The Hearing

24. The hearing was conducted remotely by video.

25. Four employees of the Applicant attended the hearing- Ms Mercer, Mr Jolly, Ms Claydon and Ms Barnett- Wardon. Ms Mercer represented. Of the lessees, there was attendance by Dr Begley, Ms Peacock and Mr Green, all three of whom asked questions of the witnesses, as they were entitled to.

26. There was no single hearing bundle. The Tribunal identified the documents seen, including the objections received by lessees. The Tribunal did not receive a photograph of the Property or any plan of it. However, the Tribunal had viewed the Property via the internet and so records what it saw. Whilst the spreadsheet mentioned above contained an entry referring to a survey report, the Applicant had not provided that.

27. The images showed a building constructed to resemble Georgian- style with a central columned entrance porch with windows to each side and a further wing set back to one side. There is shown a mansard roof above the first floor enabling a second floor with dormer windows.

28. The Tribunal received oral evidence from the following:

    Ms Emma Barnett- Wardon
    Ms Pippa Claydon
    Dr Joanna Begley
    Mr Darren Green
    Ms Danielle Peacock

29. In the event, there were no questions which any other participant wished to put to Ms Mercer or Mr Jolly and so no evidence was taken from them.

30. Ms Claydon mentioned in her oral evidence a report about the scope of the proposed work and that referred to bubbling felt and suggested replacement of the roof. However, that report had not been provided to the Tribunal and the Respondents did not have access to it for the hearing either. The Tribunal therefore did not permit the Applicant to rely on anything said in that report and put out of its mind the matters briefly mentioned by Ms Claydon when reaching this decision.

31. Following the oral evidence, there were brief closing comments from Ms Peacock and Ms Mercer. Ms Peacock expressed concern about the timeline and that work to address a problem which had been going on for so long was rushed through after previous failed attempt(s) to fix. She was unhappy with the reasons provided. Ms Mercer said the relevant information was in the email dated 13th March 2024 sent by the Applicant. Concerns had been raised on 6th March 2024 but the order had been placed on 5th March 2024.

32. The Tribunal specifically asked the parties whether they wished to make any comments about the possibility of the grant of dispensation with conditions, identifying the case authority of *Aster Communities v Chapman* mentioned above, the Tribunal having explained that the outcome were grant of dispensation unconditionally, grant with conditions or refusal.

33. Mr Green supported the reasonableness of a condition similar to that in *Aster* being imposed. Ms Peacock sought that an independent party review the works, including the quote and the appropriateness of the works. She queried whether there was a need for the whole roof to be covered with

liquid plastic or whether a different solution was appropriate at a different cost. Ms Begley said that in a residents' meeting there had been the question of a post- inspection and it was said that as the Applicant's surveyors were not ladder- trained, an independent company was to be instructed. Implicitly she was not aware whether that had happened. Ms Mercer had nothing to add. It was identified that there is a mansafe system, with points to which a harness could be attached. A ladder would be needed for access through the skylight. The person accessing would need to be suitably trained.

34. This Decision seeks to focus on the key issues. The omission to therefore refer to or make findings about every statement or document is not a tacit acknowledgement of the accuracy or truth of statements made or documents received. Not all of the various matters mentioned in the documents or at the hearing require findings to be made for the purpose of deciding the relevant issues in this application.

The Lease

35. The Leases of each leased flat been provided, of which the Tribunal refers to the lowest numbered of the flats of the Respondents, that of Flat 14 ("the Lease"). The Tribunal understands that the leases of the other Flats are in the same or substantively the same terms. In the absence of any indication that the terms of any other of the leases differ in any material manner, the Tribunal has considered the Lease.

36. The Applicant has various obligations under the Lease, principally set out in clause 5, including maintenance and repair of the structure of the Property (5.3), and with relevant definitions in Schedule 9. The lessee is required to contribute to the costs and expenses of the Applicant complying with its obligations pursuant to clause 3.1 and 7.1.

37. The works appear at first blush to fall within the responsibility of the Applicant and may be chargeable as service charges.

Evidence received

38. The first oral evidence was received from Ms Claydon. The Tribunal accepted the accuracy of her evidence where she was able to state matters. Ms Claydon was candid about limits to her knowledge.

39. Ms Claydon initially explained about the Property. That has 3 floors, the top one containing four flats and the lower floors the remainder. It was built in or about 2010 and has a flat roof (the Tribunal understands above the mansard roof, which the Tribunal noted stops above the second floor and above which no other roof slope is visible on the images). The work was to the whole of the roof, approximately 215 square metres.

40. Ms Claydon understood that the repairs history indicated leaks from November 2022- and indeed a spreadsheet of roofing jobs to the Property provided by the Applicants in response to objections shows that as the date

of the first entry. However, the document was not the Applicant's but rather that of a contractor, United Living. She explained that repairs and similar are reported directly to a call centre operated by the contractor or can be reported online or by email and that there is an interface between its system and the Applicant's system. Additional information about the interface and system was given in response to questions.

41. United Living has a contract for properties in Surrey and Berkshire, which Ms Claydon understood commenced in December 2022. The Applicant monitors that, checks compliance with KPIs and is involved if there are issues or complaints by tenants or lessees. Ms Claydon's knowledge otherwise came from a conversation with the contract manager at United Living but they had only started the role in February 2024 and so their first hand knowledge was limited.

42. A repair history had been requested and the contractor had provided the spreadsheet. The same approach was taken for tenants and for lessees. Communal repairs can be seen online by tenants and lessees, although not repairs to individual properties. Ms Peacock queried why no bigger problem was identified where 3 lessees had reported problems prior to 2024. Ms Claydon said that the Applicant could look up and run a report if it knew there to be an issue but did not check individual entries.

43. Ms Claydon also said that the previous works had been undertaken by Minster Roofing, who were sub- contractors to United Living but the two businesses do not work together any more. Minster have told the Applicant that they do not have records of the work undertaken. (It should be identified that the spreadsheet says the roof was "aquapoled where required" but no more than that.) Hence, the Applicant knows that some work was undertaken but she could not say more than that. She added that she assumed that United Living had believed the problem to have been resolved but it was also unable to provide more information. Ms Claydon expressed a view in response to a question from Dr Begley that the Applicant could probably have done better in 2022.

44. The current quote for work is from Ashton Roofing at £19,000 or so plus VAT with the United Living uplift. Ms Claydon explained that it United Living engage specialist contractors, it can, pursuant to the contract with the Applicant, charge a 20% uplift for sourcing the specialist and managing the contract. Ms Claydon could not say why that related to the whole roof, in response to Mr Green's query arising from the effects being in one place throughout.

45. Ms Claydon explained that if the consultation process had been followed, the work could not have been undertaken before June, whereas in the event the work could be undertaken in April and whether there remained leaking to one flat, clarified to be that of Mr Green, i.e., number 14. She understood leaks had always been to Flat 14 but did not know if there had been other locations. She did not know from her own knowledge the extent of the leaks or how many there had been. Ms Claydon's evidence about concern as to delay was consistent with correspondence from the Applicant

to the lessees, which the Tribunal read, about why it was said the consultation process was not suitable.

46. United Living had only been asked to obtain one quote. The section 20 team would decide whether the work should go ahead or not and had said that it should.

47. Ms Claydon said that the Applicant could usually identify whether a price was reasonable given that a lot of works are undertaken to its various properties. The fixed price contract with United Living includes works up to £2000.00 per property, which is why there are other jobs with no identifiable charge- they are within the £2000.00. The operatives at United Living deal with plumbing, carpentry and the like but not specialist roofers.

48. The next evidence was given by Ms Barnett- Wardon. She deals with home ownership and not specifically with repairs. The Tribunal also accepted her evidence.

49. Ms Bennett- Wardon said that she was made aware of a severe leak in or around January by Ms Claydon and on the "customer's diagnostic system". She was not aware previously. Whilst she was a member of the team in 2022, no issue with the roof in 2022 had been brought to her attention, although Ms Bennett- Wardon said that if the roof had been patched then it should have been raised with her. She identified contact from Mr Green in early 2024 but that there were 3 areas affecting 3 flats. There was extremely heavy rain and it was considered that the longer work was left, the more damage would be caused.

50. It was said by Ms Bennett- Wardon in response to questions from Mr Green that she was unaware of any earlier contact by him and she noted anything would have been assigned to a different team to her because of the repairs. As the majority of flats are tenanted, the Property is managed by that team. Mr Green put to her that given the number of teams involved, matters were very confusing and it seemed that no-one was accountable. Miss Bennett- Wardon expressed understanding with that frustration.

51. Ms Bennett- Wardon could not say what would normally happen in relation to one or more than one quote but understood more than one would be obtained if it was not thought the price was appropriate, in which case the Applicant would obtain 2. She accepted obtaining 2 quotes to be good practice. In this instance, she ran the matter by her head of department. Given the weather was bad, given the damage and upset and as a quote had been received, the decision made was to get on with the works and to seek dispensation. A temporary cover was considered but not regarded as a suitable approach.

52. As that completed the Applicant's oral evidence, the Tribunal next heard from Dr Begley, who's flat is on the 2nd floor. That is next door to Ms

Peacock and diagonally across from Mr Green, there being a hallway in the middle of the second floor and between the two pairs of flats to the floor.

53. She said that she had reported a leak on two occasions, at the end of 2022 and in Spring 2023. That was to the hallway ceiling, just inside the front door. A plumber had been sent out but had identified a roofer was required and nothing had progressed until 2024.

54. Dr Begley said that if there had been a consultation, she would have engaged with that and she would have hoped for more quotes. She had not sought an alternative quote and had not thought about trying to obtain one. Dr Begley could not add more as to what she would have done if consulted which might have altered the outcome. She did not believe that she had seen the report mentioned by Ms Claydon.

55. Ms Peacock next gave oral evidence. She also experienced leaks by her front door. That door and Dr Begley's door were side by side. Water started dripping and caused a damp patch and then when rain was heavier there was more of a steady stream. There had been no indication of leaks since the undertaking of the works.

56. Ms Peacock said that if the consultation process had gone ahead, she would have looked for her own quote. She said that she had asked the Applicant to obtain a second quote because there was time to obtain one by the time the Tribunal considered the case but was told by the Applicant that because of the urgency of works there was not enough time. Ms Peacock said that she thought about obtaining another quote herself but the works were completed by 4 weeks from the beginning and it all happened so quickly.

57. The final evidence was given by Mr Green. He said that his flat suffered from one single place of leak from October 2022, more specifically to his bedroom. He thought the leak to the other Respondent's flats was separate and water had got in by a skylight.

58. Mr Green described a damp patch forming towards the back wall, followed by bumps to the paintwork and the area spreading out. He perceived there to be a beam by the wall and said the damp spread to the wall. The wall was angled. By 5 months in, he said mould had formed. Mr Green said that he moved out of the flat for a year. Photographs had been taken and provided. The situation did not improve following the works previously said to have been undertaken.

59. Mr Green was unhappy that any consultation, or lack of it, was 18 months after he considered it ought to have been. Mr Green said that he had asked the Applicant to get other quotes and said that he would get a couple. However, he had not sought any quote himself, he did not recall receipt of a survey report, although he had received something from the Applicant about a quote.

Consideration

60. The Tribunal noted that this application was only relevant in relation to the 6 lessees and indeed more specifically to the 3 who had objected and are the Respondents. In relation to the 10 tenants, the proportion of the cost of the works would be borne by the Applicant and paid for from general rent receipts unless there was any entitlement in the tenancy agreements to make any charge. The Tribunal did not know but found that unlikely.

61. The Tribunal determined that the relevant questions for the purpose of the application related to the works in 2024 and not those in 2022. As to whether the works in 2022 may or may not have any bearing on the service charges was a separate issue and not part of this case. Nothing said by the Tribunal should be taken to suggest any view one way or the other.

62. The Tribunal found that there had been reports prior to January 2024. The evidence of the Respondents was accepted and additionally supported by the spreadsheet. The Tribunal did not seek to determine whether any defects may have increased since then and whether the cost of the works in 2024 might have been relatively lower.

63. The Tribunal accepts that it is a matter for the Applicant as to how it organises its teams and notes that any service issues are not directly the concern of this Decision. That said, the sense of frustration from the Respondents was apparent and the Tribunal considered genuine, so methods of achieving better co-ordination and/ or communication merit consideration by the Applicant, including to ensure that works which may be required are actioned and do not fall between any cracks.

64. The Tribunal also noted the oft- identified fact that the place of water ingress and the place at which water exists and is visible may be quite different, given that water will track and in places there will be weak spots. Nevertheless, at first blush the evidence indicates 2 separate issues, the distance between the 2 areas of leaks being relatively great and the Tribunal perceiving the problem in Flat 14 to be located close to the pitch of the mansard roof which would at least be consistent with Mr Green's reference to a beam.

65. The Tribunal considered the flat roof area to be of relatively modest size, given the size and design of the Building. The Tribunal also considered in its experience of works to properties and the pricing, the price quoted of £23,220.00 including VAT, (£88 per square metre) to be relatively inexpensive if it were a price for roof replacement, the work referred to in the application. The Tribunal as a specialist one involved in cases related to service charges for works and various related jurisdictions is well used to seeing pricing. At first blush, the cost indeed appeared very unlikely to be the cost of replacement of the roof as a whole- and the Property was not of an age at which there should be a need for that- and hence seemed more likely to be a membrane or coating or similar to be applied to the existing

roof surface. That is notwithstanding that the application referred to roof replacement.

66. The evidence which would have enabled identification of the exact works was notably lacking. It may have been especially helpful to receive the survey report and the quote received for the works. The Tribunal in particular lacked detail of the work being undertaken and whether that was simply the replacement of a membrane, application of a coating or more extensive work. There was no evidence from anyone at United Living who could have assisted with explaining the work undertaken by it. The Tribunal received very little beyond the reference in closing by Ms Peacock of the work being the whole roof being covered with liquid plastic. The Tribunal found that rather more limited work then replace of a roof was entirely plausible and was at least consistent with the quoted price.

67. However, the Tribunal exercised some caution, both because the reasonableness of the service charges was not the matter for determination and because little had been said about it by the parties. The Tribunal notably lacked detail of the work being undertaken and whether that was simply the replacement of a membrane, application of a coating or more extensive work. There was no evidence from anyone at United Living who could have assisted with explaining the work undertaken by it.

68. The Tribunal accepted that the works were those considered by the Applicant appropriate to address the leaks and noted that, insofar as there was evidence about the matter, that appeared to have been successful. However, whilst there is therefore some evidence before the Tribunal, it is not beyond the scope of challenge.

69. More significantly, the Respondents have not provided any evidence that if there had been a consultation, there would have been any reduced work undertaken or otherwise any lower cost incurred. There is, for example, no evidence that limited patch repairs may have been appropriate, both in terms of it being identifiable where the patching ought to occur or that patching would then have been an appropriate solution in terms of addressing that, avoiding further issues and in terms of overall cost-effectiveness. There is no demonstrated prejudice in terms of cost.

70. The Tribunal accepted that it may have been difficult for the Respondents to have obtained an alternative quote from a contractor where there was no consultation process in which the Applicant was even required to consider that quote and so there was a chance the contractor might be awarded the job. In the absence of that a contractor would have been taking the time to provide a quote for a party which could not award any contract to it, the task therefore having little appeal.

71. It is not a simple task for the Tribunal to seek to reconstruct what might have happened. However, there is some evidence that the Respondents would have engaged in a consultation process and would have sought to obtain a quote for works in addition to the two which the Applicant would have been obliged to provide. The Respondents' position is credible and on

balance the Tribunal finds that the Respondents would have taken such steps if consultation had been carried out.

72. Hence, in part the Respondents' lack of identification of inappropriate work or that it could have been undertaken at lower cost is in consequence of the lack of a consultation process and the short timescale before a contract was entered into. The Tribunal considers in this instance there to have been prejudice in that the Respondents have effectively been prevented from having a realistic opportunity to obtain contrary evidence, much as theoretically they could be said to have had an opportunity.

73. The Tribunal did not accept the contention in the application that the situation was deteriorating rapidly. That ran contrary to the oral evidence of the Respondents, by which the Tribunal was persuaded. To the extent that urgency may have been relevant to grant of dispensation, such urgency was not demonstrated.

74. There is no different test to apply in urgent cases as opposed to non-urgent cases. The urgency with which work was undertaken, particularly if that was not necessary, may have bearing in consideration of whether the Respondents would have been likely to take any steps and so were prejudiced to any extent by being unable to do so.

75. The Tribunal also did not accept the contention in the application that distress was being caused to the Respondents, the occupiers of the 3 flats cited by the Applicant, at least beyond the distress of a problem which had existed for a significant time and where the mould was, accepting Mr Green's evidence, longstanding. The Tribunal noted that any distress was plainly outweighed in the minds of the 3 specific lessees by being satisfied as to appropriate works at appropriate cost. The Tribunal finds it a little odd to refer to the flats of the 3 Respondents and not establish better the approach those lessees wished for. It would not of course be their decision as to what the Applicant did but their position could not be irrelevant.

76. The Tribunal was therefore mindful that no specific prejudice was demonstrated in terms of the extent of work or cost but that there was some, and the Tribunal determined avoidable, credible prejudice to the Respondent more generally.

77. The Tribunal did not consider there to be nearly sufficient basis to refuse dispensation. The Respondents would thereby receive what on the current evidence would be something of a windfall. The question is whether the element of prejudice can be remedied by imposing any appropriate terms or conditions upon the grant of dispensation.

78. The Tribunal determines that in all the circumstances it is appropriate to grant dispensation but conditional on terms which the Tribunal considers will remove possible prejudice.

79. The conditions are as follows:

i) The Applicant shall facilitate and pay towards the cost of the Respondents obtaining a survey report if the Respondents wish to do so. That report would provide an opinion on the nature of the problem with the roof, the appropriate work to resolve it and the cost. The contribution which the Tribunal considers to be appropriate is £1800.00 plus VAT in respect of the report itself.

ii) As the surveyor will plainly require access to the roof in a safe and appropriate manner, which the Applicant must facilitate. The condition therefore includes the Applicant providing and meeting the cost of access, whether that may be by cherry- picker, scaffolding or otherwise if a ladder and harness are not acceptable, and that the surveyor shall indicate to be considered appropriate.

iii) The Applicant provides to the Respondents the report which has been obtained and to which Ms Claydon sought to refer plus the quote/ estimate for the cost of the works. (If the Applicant has already done so in respect of any item, it shall nevertheless do so again for the avoidance of doubt).

80. The Tribunal acknowledges that it has no information as to the actual cost of a report and that it may be that the cost will prove to be greater than the contribution provided for in the above conditions. It is difficult to identify exactly what the report will disclose and the time which will be taken in preparing it. However, the Tribunal considers the above sum is the appropriate one taking matters in the round. If the Respondents wish to obtain a report and the overall cost is greater than £1800.00 plus VAT, it will be for the Respondents to consider whether they wish to obtain a report and pay the extra.

81. The report will enable the Respondents to consider whether to challenge the reasonableness of any service charges demanded by the Applicant in respect of the costs of the works. The provision of the report obtained by the Applicant and the quote/ estimate will enable the surveyor to, it is hoped, understand the basis for the approach which has been adopted by the Applicant and thereby assist in the provision of an opinion about that.

82. The Applicant shall write to the Tribunal to inform it of the point at which it contends it has complied with the above conditions and provide a copy to the Respondents. The Tribunal anticipates that if the Respondents disagree, one or other party can make an application to the Tribunal for the determination of any issue which arises.

83. The Tribunal is, for the avoidance of doubt, mindful that the survey report obtained by or on behalf of the Applicant may assist the Respondents at least in understanding a basis for the approach adopted by the Applicant but it will be understood that the Tribunal does not consider that to be sufficient in this instance.

Decision

84. The Tribunal grants dispensation from consultation on the fulfilment of the above conditions by the Applicant.

85. This decision is confined to determination of the issue of dispensation from the consultation requirements in respect of the major works. The Tribunal has made no determination on whether the costs are payable or reasonable. If a Lessee wishes to challenge the service charges arising, then a separate application under section 27A of the Landlord and Tenant Act 1985 would have to be made.

RIGHTS OF APPEAL

1. A person wishing to appeal this decision to the Upper Tribunal (Lands Chamber) must seek permission to do so by making written application to the First-tier Tribunal at the Regional office which has been dealing with the case by email at rpsouthern@justice.gov.uk

2. The application must arrive at the Tribunal within 28 days after the Tribunal sends to the person making the application written reasons for the decision.

3. If the person wishing to appeal does not comply with the 28- day time limit, the person shall include with the application for permission to appeal a request for an extension of time and the reason for not complying with the 28- day time limit; the Tribunal will then decide whether to extend time or not to allow the application for permission to appeal to proceed.

4. The application for permission to appeal must identify the decision of the Tribunal to which it relates, state the grounds of appeal, and state the result the party making the application is seeking.