FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/00AL/LSC/2024/0226** **LON/00AL/LDC/2024/0148**
HMCTS code	**:**	**V: CVPCOURT**
Property	**:**	**157 Victoria Way, London, SE7 7NZ**
Applicant	**:**	**Tilechief Limited**
Representative	**:**	**Helen Matthews (director)**
Respondents	**:**	**Lori Fox (Flat 4)** **Eleanour Shantila (Flat 5)** **Sandra Kantorska (Flat 6)** **Anneliese Mesilati (Flat 7)** **Liza Gonzi (Flat 8)**
Representative	**:**	**In Person**
Type of applications	**:**	**Reasonableness of Service Charges and Dispensation with Consultation (sections 27A and 20ZA Landlord and Tenant Act 1985)**
Tribunal member	**:**	**Judge Robert Latham** **Appollo Fonka FCIEH**
Date and Venue of Hearing	**:**	**12 and 13 December 2024 at 10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**30 January 2025**

DECISION

Summary of Decision

LON/00AL/LDC/2024/0148

1. The Tribunal grants retrospective dispensation without condition in respect of the roofing works carried out by Aviva (see [54] – [58] of the decision).

LON/00AL/LSC/2024/0226

2. The Tribunal makes the following reductions in respect of the service charges demanded for the years 2022/23 and 2023/34 (a reduction of 1/8 for each tenant):

(i) Roof Works: £13,505.57 (£9,872.57 + £3,000 + £633) – see [65].
(ii) Management Costs: £1,259.19 – see [74].
(iii) Tribunal Fees: £300 – see [75].

3. The Tribunal makes the following reductions in respect of the interim service charges demanded for the years 2024/25 (a reduction of 1/8 for each tenant) – see [80]:

(i) Company House costs: £1,572;
(ii) Tribunal Fees: £330
(iii) Gardening: £2,440.

4. The Tribunal makes a reduction of £5,250 in respect of the sums funded from the Unincorporated Maintenance Fund (a reduction of 1/8 for each tenant) – see [84].

5. The Tribunal finds that Ms Mesilati has an equitable set-off against the service charges that she owes arising from the Applicant's breach of covenant in failing to keep the roof and dormer windows in a proper state of repair (see [85] to [88] below). The effect of this finding is that as at 13 December 2024 (the date of the hearing) there is was a zero balance on her service charge account.

General

6. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 so that none of the landlord's costs of the tribunal proceedings may be passed to the lessees through any service charge.

7. The Tribunal makes no order for the refund of the tribunal fees paid by the Applicant.

The Application

1. The Tribunal is required to determine two application which were issued by the Applicant, landlord, on 29 May 2024 pursuant to the Landlord and Tenant Act 1985 ("the Act"):

   (i) LON/00AL/LDC/2024/0148: dispensation from the statutory duty to consult in respect of roof repairs to a flat roof to prevent a roof leak. On 7 February 2024, Aviva had quotes £1,700. However further works were found to be necessary. On 14 February, Aviva submitted a bill in the sum of £15,700.

   (ii) LON/00AL/LSC/2024/0226: the payability and reasonableness of the service charges payable for 2022/23 and 2023/24 and the interim service charges demanded for 2024/25.

2. These applications relate to 157 Victoria Way, London, SE7 7NX ("The Property"). This is a semi-detached house in Charlton which was built in 1881. The Property has an unfortunate history. In November 2022, the Applicant instructed MJS Renovations Limited ("MJSR") to remedy a leak to Flat 7. MJRS provided an estimate of £5,250 for this work. However, by 17 March 2023, MJSR had submitted invoices totalling a staggering £93,735. MJSR had persuaded the Applicant that the slate roof needed to be replaced by a new tiled roof and that the two flat roofs need to be recovered. On 22 November 2022, the Applicant issued an application (LON/00AL/LDC/2022/0236) for dispensation. On 17 March 2023, a First Tier-Tribunal ("FTT") (Judge Dutton and John Naylor FRICS) refused to grant dispensation (see decision at p.248-254). The FTT noted that only Ms Gonzi had opposed the dispensation application. The main roof had been replaced in 2008. It considered that Ms Matthews had been panicked into accepting all that MJSR advised her was necessary, without seeking alternative quotes or seeking professional advice on what was required. When it became apparent that additional works were required, she should have adequately reviewed all the options. The tenants had therefore been prejudiced. The FTT accepted that Ms Matthews' intentions were honest; her actions were misguided.

3. On 16 July 2024, the Tribunal held a Case Management Hearing and issued Directions on 19 July:

   (i) The Tribunal directed that these two applications should be consolidated and heard together.

   (ii) The Tribunal suggested that the case might be suitable for mediation. No party took up this proposal. This is unfortunate. This Tribunal can only determine the reasonableness and payability of service charges which have been demanded. A mediator would have had a wider remit

to discuss the future management of the Property. All the parties have a common interest in ensuring that the Property is well managed and kept in a proper state of repair.

(iii) By 9 August, the Applicant was directed to disclose the relevant service charge accounts and the estimates for the years in dispute. The Applicant did not understand what was meant by service charge accounts. Rather than breaking down the expenditure under various heads (i.e. insurance, management costs, repair and maintenance, gardening, and electricity) she disclosed schedules itemising each item of expenditure, including a number of items which were not charged to the service charge account. These covered the following periods:

> (a) 1.4.22-30.9.22 (p.72-78): Total: £6,550.42 - £818.80 per tenant;
> (b) 1.10.22-31.3.23 (p.79-81): Total: £18.627.56 - £2,328.45 per tenant;
> (c) 1.4.23-30.9.232 (p.82-84): Total: £36,403.54 - £4,550.44 per tenant;
> (d) 1.10.23-31.3.24 (p.85-87): Total: £40,328.90 - £5,041.11 per tenant;
> (e) Budget for 2024/25 (p.88-92): Total: £25,313.51 – £3,164.19 per tenant;

(iv) The Applicant was also required to disclose the relevant service charge demands. The parties agreed that the leases make provision for an interim service charge based on a budget, payable by two instalments on 25 March and 29 September, with a reconciliation at the end of the financial year (1 April to 30 March). The Applicant rather issued the following demands:

> (a) On 9 December 2022, the Applicant demanded £2,397.85 (at p.990-992 for Flat 4), namely (i) service charge expenditure for 1.4.22-30.9.22: £818.80 and (ii) interim service charge for 1.10.22-31.3.23: £1,579.05;
>
> (b) On 31 October 2023 (revised on 29 November 2023) the Applicant demanded £9,576.14 (at p.1017-1022), namely (i) service charge expenditure for 1.4.23-30.9.23: £4,5550.44; and (ii) interim service charge for 1.10.23-31.3.24: £5,025.70 based on the budget at p.1404-5;
>
> (c) On 29 May 2024, the Applicant demanded £1,597.50 (p.1138-1156), namely (i) Reconciliation of Expenditure for 1.10.23-31.3.24: £15.41; and (ii) interim service charge for 1.4.24-30.9.24: £1,582.09.

(v) By 30 August 2024, the Respondents were directed to file a composite Scott Schedule setting the service charges in dispute and the grounds of challenge. The Respondents did not comply with this Direction. Rather,

they each filed separate Scott Schedules: (a) Flat 4: Scott Schedule (p.1248-1274); (b) Flat 5 (p.1275-1281); (c) Flat 6 (at p.1282-1286): (d) Flat 7 (p.1287-1314); and (e) Flat 8 (p.1315-1341). The Respondents have also filed a Statement of Case (at p.243-246, with exhibits at p.247-295). Ms Gonzi (Flat 8) has filed an additional Statement of Case (p.220-222, with exhibits at 223-282). Ms Mesilati (Flat 7) has filed a Statement of Case relating to the disrepair which has affected her flat (p.283-295).

(vi) By 27 September, the Applicant was directed to respond to the Scott Schedule. Ms Matthews has helpfully completed a composite Scott Schedule (at p.148-218) which incorporates her responses. Her Statement of Case is at p.297-303, with documents at 306-504. She has also filed a Statement in respect of the roof issues (at p.505-521, with further documents at p.522-572).

4. The Applicant has provided a Bundle of Documents extending to 1575 pages. Ms Matthews has clearly spent a vast amount of time preparing it. She has drafted a number of documents introducing the various sections of the Bundle. However, there is no comprehensive index identifying all the relevant documents. It is therefore difficult to navigate. It has been for the parties to highlight any documents on which they seek to rely. Further, it seems that a number of relevant documents have been excluded, for example the tenants' responses to the Notice of Intention which was served on 5 April 2023.

The Hearing

5. This was a hybrid hearing. Mr Fonka FCIEH, the professional member, joined by video. The other parties were present in person.

6. Ms Helen Matthews appeared on behalf of the Applicant. She is the sole director. She has worked as a compliance officer for an oil and gas company. On 15 January 1991 (p.1459), the Applicant acquired the freehold interest in the Property. At that time, her husband, Mr Peter Gore, was also a director. In August 2012, the directors converted Flats 1 to 3 to create a single unit. The Applicant now contributes 3/8 of the service charge costs. Mr Gore died in March 2016.

7. Four of the five tenants attended the hearing. Ms Fox was unable to attend. She is an actress and was appearing as the wicked witch at the Colchester pantomime. She informed the Tribunal that she was happy for her colleagues to represent her. She offered to join the hearing remotely. However, the Tribunal did not consider it appropriate for her to appear in her witch's attire.

8. Ms Liza Gonzi (Flat 8) was the lead representative for the Respondent tenants. She has taken a somewhat more entrenched position than the other tenants and sought to require the Applicant to justify every invoice which has been included in the service charge accounts. The Tribunal

informed her that it was not the role of the Tribunal to carry out an audit of the service charge accounts. It is rather for the tenants to establish a prima facie case that the service charge was not payable pursuant to the terms of their leases or was unreasonable having regard to the quality of the work and/or the cost. The big ticket item is the sums expended on the main roof and the two flat roofs. The other tenants also added points of detail.

9. Ms Mesilati sublets her flat. However, she has been unable to do so for the past two years, This is addressed in her Statement of Case. On 12 December 2022, her tenants asked to be released from their tenancy, because two roof leaks had rendered the flat uninhabitable. She assesses her loss of rent at £22,320. Ms Mesilati confirmed to the Tribunal that she wished to set off these arrears against her outstanding liability for service charge. The Tribunal informed Ms Mesilati that any equitable set off could only be used as shield and not a sword. It could extinguish her arears, but the Tribunal has no jurisdiction to award damages for disrepair. This is rather a matter for the County Court.

10. Ms Gonzi, in her Statement of Case, has raised the issue of the Unincorporated Maintenance Fund. The leases make no provision for a reserve fund. However, for a number of years, the tenants agreed to pay £50 per month into this Fund. A total of £23,393.34 was accumulated. Ms Matthews sought to argue that this was a separate fund which fell outside the service charge provisions in the 1985 Act. We disagree. We are satisfied that this was a voluntary reserve fund which the landlord held on trust for the tenants who had contributed to it pursuant to section 42 of the Landlord and Tenant Act 1987.

11. We endorse the view of Judge Dutton that Ms Matthews' intentions have been honest. She owns Flat 1 and pays 3/8 of the service charge expenditure. She has therefore had an interest in keeping the service charges low. The Respondent Company has no assets, apart from this Property. Significant arrears of service charges have accrued. Ms Matthews has been willing to fund this shortfall from her personal assets. However, she has made a number of significant errors in the manner in which she has managed the Property. We hope that Ms Matthews will heed the criticisms that we make. We would urge all the parties to look to the future and to consider the best options for the future.

Issues to be Determined

12. The Tribunal has identified the following issues that we are required to determine.

(i) Issue 1: whether to grant dispensation in respect of the Aviva roofing works. The Applicant has not yet passed on this cost to the tenants. Normally on a dispensation application, the Tribunal would not consider

the reasonableness of the service charge. However, we are satisfied that this is a case where we can and should address this issue.

(ii) Issue 2: The reasonableness and the payability of the service charges demanded for 2022/23 and 2023/24. We have the final accounts, so there is no need for us to consider the reasonableness of the interim charges. The tenants challenge a number of specific invoices relating to the roofing works. However, Ms Gonzi challenges three additional items: insurance; gardening and management expenses.

(iii) Issue 3: The reasonableness and the payability of the interim service charge for 2023/24. In this case, we are merely required to consider the landlord's estimates for the year. It is only when the service charge accounts have been prepared, that a tribunal will be able to consider the reasonableness and payability of the sums that have been expended.

(iv) Issue 4: The expenditure funded from the Unincorporated Maintenance Fund.

(v) Whether Ms Mesilati (Flat 7) has an equitable set-off in respect of the disrepair which has prevented her from subletting the flat.

(vi) Issue 6: Whether any order should be made under section 20C of the Act in respect of the costs incurred by the Applicant in bringing this application. All the Respondents asked the Tribunal to determine this issue.

The Law

The Reasonableness of Service Charges

13. Section 18 of the Landlord and Tenant Act 1985 ("the Act") defines the concepts of "service charge" and "relevant costs":

> "(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 estimate costs incurred or to be incurred by or on behalf of the landlord, or a superior

landlord, in connection with matters for which the service charge is payable."

14. Section 19 gives this Tribunal the jurisdiction to determine the reasonableness of any service charge:

> "(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."

15. The Supreme Court has recently reviewed the approach that should be adopted by tribunals in considering the reasonableness of service charges in *Williams v Aviva Investors Ground Rent GP Ltd* [2023] UKSC 6; [2023] 2 WLR 484. Lord Briggs JSC (at [14]) recognised that the making of a demand for payment of a service charge will have required the landlord first to have made a number of discretionary management decisions. These will include what works to carry out or services to perform, with whom to contract for their provision and at what price, and how to apportion the aggregate costs among the tenants benefited by the works or services. To some extent the answers to those questions may be prescribed in the lease, for example by way of a covenant by the landlord to provide a list of specified services, or by a fixed apportionment regime. But even the most rigid and detailed contractual regime is likely to leave important decisions to the discretion of the landlord. In the current case, the Applicant has a wide discretion as to how the Property is managed. A landlord is contractually obliged to act reasonably. This is subject to this Tribunal's jurisdiction under the Act to determine whether the landlord has acted reasonably (see [33]).

16. The Tribunal highlights the following passage from the judgment of Martin Rodger KC, the Deputy President, in *Enterprise Home Developments LLP v Adam* [2020] UKUT 151 (LC);

> "28. Much has changed since the Court of Appeal's decision in *Yorkbrook v Batten* but one important principle remains applicable, namely that it is for the party disputing the reasonableness of sums claimed to establish a prima facie case. Where, as in this case, the sums claimed do not appear unreasonable and there is only very limited evidence that the same services could have been provided more cheaply, the FTT is

not required to adopt a sceptical approach. In this case it might quite reasonably have taken the view that Mr Adam had failed to establish any ground for thinking the sums claimed had not been incurred or were not reasonable, which would have left only the question whether any item of expenditure was outside the charging provisions."

17. The Tribunal has jurisdiction to determine a claim by a tenant for damages for breaches of covenant by the landlord where such damages amount to a set-off and constitute a partial or complete defence to a service charge claim (see HHJ Rich KC in *Continental Property Ventures Inc v White* [2007 L & TR 2 at [15]). Typically, this will entail a claim for breach of repairing covenants. Accordingly, the consideration of any defence of set off will form the final stage of any consideration of an application under section 27A of the Act. This is a jurisdiction which any Tribunal should exercise sparingly. Any claim for damages should normally be brought in the County Court.

18. Section 20C of the Act permits a tenant to seek an order that all or any costs incurred by a landlord in proceedings before the 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. The tribunal may make such order on the application as it considers just and equitable in the circumstances.

The Statutory Duty to Consult

19. Section 20 of the Act requires a landlord to consult in respect of "qualifying works" where the relevant contribution of any lessee will exceed £250. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. A summary of these is set out in the speech of Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

> Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, 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 any nominee identified by any tenants or the association.
>
> Stage 3: Notice about Estimates: The landlord must issue a statement to tenants and the association, with two or more

estimates, a summary of the observations, and its responses. Any nominee's estimate must be included. The statement must say where and when estimates may be inspected, and where and by when observations can be sent, allowing at least 30 days. The landlord must have regard to such observations.

Stage 4: Notification of reasons: Unless the chosen contractor is a nominee or submitted the lowest estimate, the landlord must, within 21 days of contracting, give a statement to each tenant and the association of its reasons, or specifying where and when such a statement may be inspected.

20. Section 20ZA (1) of the Act provides:

> "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 or qualifying long term agreement, the tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

21. The Tribunal highlights the following passages from the speech of Lord Neuberger in *Daejan*:

> (i) Sections 19 to 20ZA of the Act are directed towards ensuring that tenants are not required to (a) pay for unnecessary services or services which are provided to a defective standard (section 19(1)(b)) and (b) pay more than they should for services which are necessary and are provided to an acceptable standard (section 19(1)(b). Sections 20 and 20ZA are intended to reinforce and give practical effect to these two purposes (at [42]).
>
> (ii) A tribunal should focus on the extent, if any, to which the tenants have been prejudiced in either respect by the failure of the landlord to comply with the Requirements (at [44]). The only question that the tribunal will normally need to ask is whether the tenants have suffered "real prejudice" (at [50]).
>
> (iii) Dispensation should not be refused because the landlord has seriously breached, or departed from, the statutory requirements. The adherence to these requirements is not an end in itself. Neither is dispensation a punitive or exemplary exercise. The requirements are a means to an end; the end to which tribunals are directed is the protection of tenants in relation to unreasonable service charges. The requirements leave untouched the facts that it is the landlord who decides what works need to be done, when they are to be done, who they are to be done by, and what amount is to be paid for them (at [46]).

(iv) If tenants show that, because of the landlord's non-compliance with the requirements, they were unable to make a reasonable point which, if adopted, would have been likely to have reduced the costs of the works or to have resulted in some other advantage, the tribunal would be likely to proceed on the assumption that the point would have been accepted by the landlord. Further, the more egregious the landlord's failure, the more readily a tribunal would be likely to accept that the tenants have suffered prejudice (at [67]).

(v) The tenants' complaint will normally be that they were not given the requisite opportunity to make representations about proposed works to the landlord. Accordingly, the tenants have an obligation to identify what they would have said, given that their complaint is that they have been deprived of the opportunity to say it. Indeed, in most cases, they will be better off, as, knowing how the works have progressed, they will have the added benefit of wisdom of hindsight to assist them before the tribunal (at [69]).

(vi) If prejudice is established, a tribunal can impose conditions on the grant of dispensation under section 20(1)(b). It is permissible to make a condition that the landlord pays the costs incurred by the tenant in resisting the application including the costs of investigating or seeking to establish prejudice. Save where the expenditure is self-evidently unreasonable, it would be for the landlord to show that any costs incurred by the tenants were unreasonably incurred before it could avoid being required to repay as a term of dispensing with the Requirements (at [58] - [59], [68]).

(vii) Where the extent, quality and cost of the works are unaffected by the landlord's failure to consult, unconditional dispensation should normally be granted (at [45]).

22. In *Phillips v Francis* [2014] EWCA Civ 1395; [2015] 1 WLR 741, the Court of Appeal considered what constitutes a single set of "qualifying works" for the purposes of section 20 of the Act. Lord Dyson, MR, held at [36] that this is a question of fact having regard to the relevant factors including: (i) where the works were carried out (i.e., whether they are contiguous or physically far removed); (ii) whether they were all the subject of one contract; (iii) whether they were done at more or less the same time; and, (iv) their nature and character. Lord Dyson stressed that this is not to be considered to be an exhaustive list.

The Leases

23. The Applicant has provided a copy of all the relevant leases, including the various surrenders and regrants. The leases are in a similar, but not

identical form. However, none of the parties have suggested that the differences are significant.

24. The original lease for Flat 4, dated 27 March 1975, is at p.1478-1487. The Tribunal highlights the following provisions:

(i) By Clause 3(5), the Tenant agrees to pay 1/8 of the landlord's service charge costs which are specified in Schedule 4 in the manner specified in Schedule 5.

(ii) The Landlord's covenants are in Clause 4. The Landlord covenants to insure the Property (4(4)) and to keep in good and substantial repair the main structure, external walls and roof (4(4)).

(iii) The Landlord's expenses are specified in Schedule 4. This extends not only to complying with its covenants in Clause 5, but also doing such further works of repair, renewal, maintenance and decoration to the Property as the Landlord may think fit" (paragraph 2). This also includes the Landlord's reasonable administrative expenses in connection with the management and running of the Property.

(iv) Schedule 5, the Tenant covenants to pay an interim service charge on 25 March and 29 September.

The Background

25. The Property at 157 Victoria Way is a semi-detached house in Charlton which was built in 1881. It is included on the local heritage list as a buidling of local architectural or historic importance. In the 1970s and 1980s, it was converted into flats (orginally two on each floor). Flats 1, 2 and 3 were on the lower ground floor and half of the ground floor. On 25 January 1991, the Applicant acquired the freehold. In August 2012, these three flats were combined to create a single flat which is now known as Flat 1. It has a separate entrance at the rear of the Property. It is occupied by Ms Matthews.

26. Flat 4 is on one half of the ground floor. The original lease is dated 27 March 1975 and grants a term of 99 years from 27 March 1975 (at p.1478-1487). On 18 August 2009, there was a surrender and re-grant upon the lease being extended by 90 years (p.1472-1477). On 18 December 2023, there was a lease variation (p.1457-1471). The balcony was included as part of the demise. There were also changes to the service charge provisions. Her lease was the first to be granted, and the changes were intended to bring it in line with the other leases. Each flat is required to contribute 1/8 towards the service charge expenses. In 1997, Ms Fox Lori acquired the flat which she occupies. There are currently arrears of £1,363.25 (p.919).

27. Flat 5 is at the front of the first floor. The original lease is dated 12 October 1976 and grants a term of 99 years from 12 October 1976 (at p.1495-1505). On 15 January 2009, there was a surrender and re-grant upon the lease being extended by 90 years (p.1488-1494). On 10 January 2023, Ms Eleanour Shantila acquired the flat which she occupies. There are currently arrears of £2,929.57 (p.921).

28. Flat 6 is at the rear of the first floor. The original lease is dated 29 June 1981 and grants a term of 99 years from 25 December 1980 (at p.1507-1512). On 26 June 2014, there was a surrender and re-grant upon the lease being extended by 90 years (p.1507-1512). In 2018, Ms Sandra Kantorska acquired the flat which she sublets. There are currently arrears of £2,929.59 (p.923).

29. Flat 7 is at the rear of the second floor. It has two attics in the roof space. The original lease is dated 20 December 1985 and grants a term of 99 years from 25 March 1985 (at p.1534-1553). On 19 February 1999, there was a lease variation to clarify the extent of her demise (p.1554-1557). There has been no statutory lease extension. On 3 December 2015, Ms Mesilati acquired the flat which she has sought to sublet. She has been unable to do so for the past two years because of the disrepair which affects her flat. On 24 October 2024, there were arrears of £10,416.42 (p.925). On 28 October 2024, she reduced the arrears to £8,266.55. She asserts that she has an equitable set-off in respect of the disrepair which has prevented her from subletting the flat.

30. Flat 8 is at the rear of the second floor. The original lease is dated 8 October 1975 and grants a term of 99 years from 25 December 1975 (at p.1565-1574). On 17 October 2016, there was a surrender and re-grant upon the lease being extended by 90 years (p.235-241). On 17 October 2016, Ms Gonzi acquired the lease which she sublets. There are currently arrears of £15,937.98 (p.927).

31. On 25 January 1991, the Applicant company acquired the freehold interest (p.1459). The directors were initially Ms Matthews and her husband, Peter Gore. In March 2016, Mr Gore died. Since then, Ms Matthews has been the sole director. Ms Matthews states that when the Applicant acquired the property, the Property was in a state of significant disrepair with minimal maintenance. To keep the service charges to a minimum, the Applicant has not engaged managing agents. The directors have charged for their expenses, but not for their time. Their initial priorities were (i) to treat and eradicate dry rot which was affecting two flats; (ii) repair the outside stonework and brick work; (iii) decorate the communal areas; and (iv) cultivate the garden which was in a neglected condition.

32. In October 2008, the main roof was replaced at a cost of £17,390. At this date, there was a slate roof. There is a breakdown of the expenditure at

p.521. Ms Matthews makes reference to a 20 year guarantee. However, no copy has been found in the Applicant company's records.

33. The current dispute dates back to 2022. On 2 November 2022, the tenant of Flat 7 complained of water penetration. Ms Matthews found MJSR on the internet. MJRS provided an estimate of £5,250 to remedy this leak. Over the subsequent months, MJSR advised Ms Matthews that the roof needed to be replaced with Redland tiles, additional works were required to the joists and that the two new flat roofs needed to be replaced. In February 2023, MJSR had submitted a bill of £93,735. Ms Matthews only agreed to pay some £60,000. On 22 November 2022, the Applicant issued its first application for dispensation. On 17 March 2023, the FTT refused this application (see [2] above).

34. Acting on the advice of the FTT that she should have sought professional advice, Ms Matthews obtained a report from Neil Ward ICIOB MPTS MFPWS of S&R Surveyors (at p.255-269). It is to be noted that he is not a surveyor. Mr Ward did not note that the Property now had a tiled roof, whilst the property to which it is attached had a slate roof. He did not consider whether a Redland tiled roof was suitable for the Property. He rather considered the quality of the tiled roof that was now in situ. He concluded that the roof works were incomplete with final snagging to be carried out to clear gutters, tidy up, remove any debris, and fix repairable defects. He suggested that these snagging items would take five days to complete. However, he noted that the biggest item was cracks to the lower tile interlock. He noted that it was not entirely clear whether these needed to be replaced while the tiles were in situ, or whether substantial areas of the roof tiling needed to be re-laid.

35. Ms Matthews tried to get MJSR to return to complete their work. They refused to do so. The initial excuse was that the managing director was in hospital. It became apparent that the foreman had been sacked during the course of the works. Ms Matthews stated that MJSR were extremely aggressive to her, citing the unpaid bills. On 14 December 2021, MJSR had been incorporated. On 10 November 2023, Mr Myles Smith, the sole director, applied for the company to be struck off. On 6 February 2024, the company was dissolved.

36. Given the refusal of MJSR to return to complete the snagging items, Ms Matthews had no option but to look for another builder to complete the outstanding works. However, rather than instruct a surveyor to draw up a schedule of works, go out to tender and supervise the works, she decided to do this herself.

37. On 24 March 2023 (at p.977-983), Ms Matthews obtained an estimate from D Long Roofing Ltd ("D Long") in the sum of £33,000 (inc VAT). This estimate was for much more than 5 days of snagging works. The builder noted that the roof structure may have been compromised by the removal of the slates and the replacement with the Redland tiles. The

proposal was to remove the tiles and replace with artificial slate. Further, the Dorma roofs were not replaced, but had simply been painted with roofing paint. The lead work to the party walls had been wrongly installed. A new roof was proposed at a cost of £16,600 (exc VAT). Scaffolding was costed at £12,000 (exc VAT). The Tribunal notes that the landlord is now seeking to charge the tenants a total of £58,254.24 for the roofing works (see p.562).

38. On 5 April 2023 (at p.270), Ms Matthews served the Stage 1 Notice of Intention on the tenants. The Notice described the proposed works in the terms of the snagging items identified by Mr Ward. There was no reference to the estimate provided by D Long or the proposal to replace the tiled roof with slate. The deadline for responses was 6 May.

39. Three of the tenants responded to the Notice. However, the Tribunal was not provided with a copy of these responses. It seems (see p.968) that two tenants nominated builders from whom estimates should be sought. Ms Matthews sought estimates from these builders: (i) No.1 Contractor London Limited ("No.1 Contractor") provided an estimate; (ii) R & P Short Roofing Limited could not start until October and failed to provide an estimate. The third tenant requested a copy of Mr Ward's report. This was provided.

40. On 9 May 2023 (see p.525), Ms Matthews contacted the Building Control Section of the Royal Borough of Greenwich ("Greenwich"). It had become apparent that MJSR had not sought building control approval. She was told that she would need to apply for a Certificate of Regularisation and a Building Notice. Ms Matthews notified Greenwich that the Redland tiles were to be replaced with slate. She was also asking for the insulation installed by MJSR to be checked to ascertain whether it complies with modern building regulations. On 21 June (p.524), Greenwich responded stating that the Applicant would need to apply for a regularisation certificate. Whilst visiting the new roof works, the officer would be able to advise on whether any further consents would be required.

41. On 25 June 2023 (at p.974-976), No.1 Contractor provided an estimate in the sum of £41,583.60, namely (i) Scaffolding: £12,000, (ii) Roof: £24,653.00 and (iii) VAT: £4,930.60. The Applicant did not provide the Tribunal with a copy of the schedule of works for which the builder had been asked to estimate. There is reference to a document "Roof Works Invitation to Provide and Estimate" and the report provided by Mr Ward. However, the builder was not quoting for the snagging works, The estimate rather provided for (i) the provision of a new roof with natural slate; (ii) lead work to the two dormers; and (iii) structural timber work. It is far from clear that No.1 Contractor was tendering for the same schedule of works as D Long.

42. On 28 June 2023 (at p.972-3), Ms Matthews served the Stage 3 Notice of Estimates which referred to the estimates provided by (i) No.1 Contractor: £41,583.60 and (ii) D Long: £33,000. Both estimates were available for inspection. Responses were invited by 29 July.

43. On 21 July 2023, Ms Mathews applied to Greenwich for a Certificate of Regularisation (p.528) and a Building Notice (p.530). Ms Matthews informed Greenwich that she proposed to install a new man-made slate roof and new ridge tiles, render the party wall, coat the dormer tops with lead flashings, and also apply lead flashing to the party wall.

44. On 25 July 2023 (p.530), Ms Fox responded to the Notice and questioned whether instructing a new builder was the best way forward. On 7 August, Ms Matthews held a zoom meeting with the tenants. She explained why the Redland tiles needed to be replaced with slate. On 21 July, Ms Mesilati had reported a leak to Flat 7. It was therefore important to proceed with the works.

45. On 19 September 2023 (p.984-87), Ms Matthews served the Applicant served the Stage 4 Notification of Reasons for awarding the contract to D Long. The contract was being awarded to D Long as they had submitted the lower tender. In her written evidence (p.511), she added that D Long offered an insurance-backed guarantee. Despite requests, this had not be included by No.1 Construction. In her covering email, she caused some disquiet by suggesting that she was considering a sale of the freehold. She was also considering the appointment of managing agents or a leaseholder Management Company.

46. On the same day (p.282), Ms Matthews notified the tenants that the works had started. Next day (20 September), there was heavy rainfall which caused damage to the communal hallway and to Flats 7 and 8. This was a week before Storm Agnes. On 21 September (p.547), Ms Mattews sent an email to the tenants explaining the situation. The builder had stripped the roof of the Redland tiles. Building Control were present and were happy with the temporary roof covering. The landlord would make good the damage that had been caused. The Tribunal is satisfied that there had been no negligence on the part of the builder.

47. On 20 October 2023 (p.548), Ms Matthews notified the tenants of additional costs which would be incurred. Seven additional items were identified. The existing timber beams were too long and needed to be replaced. The roof insulation was insufficient and did not meet current standard. The existing framework supporting the two Velox windows in Flat 7 were inadequate and needed to be replaced. The two dormer windows also needed to be replaced. The cost of the additional works (excluding the new dormer windows) was £16,508.40 (inc VAT) for items 1, 2 and 5, and £11,936.16 for items 3, 6 and 7.

48. On 31 October 2023 (at p.96-98), Ms Matthews issued the first set of service charge demands which are subject to this application:

> (i) Service charge expenditure for 1.4.23-30.9.23: £4,550.44 per tenant; and
>
> (ii) interim service charge for 1.10.23-31.3.24: £5,025.70 based on the budget at p.1404-5 per tenant.

49. On 10 November 2023, D Long completed the works to the main roof. On 17 November (p.557-563), Ms Matthews sent the tenants a report on the works, including a table of the sums paid, which totalled £58,254.24. The outstanding works included payment for the two dormer windows for Flat 7 and making good damage to Flat 7. D Long (p.564-569) have provided a 10 year insurance backed guarantee for the works to the main roof. On 2 April 2024 (p.570-1), Greenwich issued a Certificate of Regularisation and a Certificate of Completion).

50. The D Long works only related to the main roof. On 6 February 2024, Ms Shantila reported a leak to Flat 5. There are photographs of the damage at p.572. The leak was into the bathroom which was directly below the flat roof at the side of the Property. Ms Matthews contacted D Long, but they were not available for urgent work. She obtained details of two builders from the Bark website: Aviva Roofing quoted £1,700, whilst Pinewood Roofing and Drainage Ltd quoted £2,900. She instructed Aviva Roofing to proceed. The works were urgent as the bathroom in Flat 5 was unusable. At this stage, there was no need for any statutory consultation as no tenant would be required to pay more than £250.

51. On 8 February 2024, works commenced. When the old covering was removed, it revealed a layer of wet plywood and concrete. Below these were layers of old rotten timbers. Ms Matthews (at p.514) stated that this damage predated any work by MJSR. As a result of this additional work, Aviva Roofing's bill increased from £1,700 to £15,700. The extra work involved the replacement of the main timber rafters, the wooden frame and the concrete layers. This work is the subject of the Applicant's Section 20ZA application.

52. On 29 May 2024 (at p.99-101), Ms Matthews issued the second set of service charge demands which are subject to this application:

> (i) Reconciliation of Expenditure for 1.10.23-31.3.24: £15.41 per tenant
>
> (ii) interim service charge for 1.4.24-30.9.24: £1,582.09 per tenant.

53. On the same day, the Applicant issued the two applications which this Tribunal is required to determine.

The Tribunal's Determination

Issue 1: The Application for dispensation

54. The application for dispensation relates to the Aviva work. On 7 February 2024 (at p.275), Aviva Roofing had provided an estimate in the sum of £1,700, a sum which would not have required the landlord to consult. On 14 February 2024 (at p.279), Aviva Roofing submitted their final bill for £15,700. The Applicant has only billed each tenant for £250, pending the determination of this Tribunal.

55. Aviva Roofing has provided a guarantee (at p.281). The tenants complain that this is not backed by insurance.

56. The issue for this Tribunal is whether the tenants have been prejudiced by the landlord's failure to consult. The Tribunal is satisfied that they have not been prejudiced. The works were required as a matter of urgency. On 6 February 2024, Ms Shantila report the leak. The roofing works were completed on 14 February. The landlord obtained two estimates and accepted the lowest. When works commenced, it became apparent that additional works were required. This would not have been known until the old covering was removed. Ms Matthews states that this damage predated any work by MJSR. There is no evidence to contradict this. The Tribunal is satisfied that the guarantee provided by Aviva Roofing is sufficient.

57. This is a clear case in which the Tribunal should grant retrospective dispensation without condition. To have halted the works whilst the statutory consultation procedures were followed, would have delayed the completion of the works by at least three months. They are not intended to apply in situations of emergency. A landlord is expected to follow the spirit of the regulations. Ms Matthews did this by testing the market and obtaining estimates from two competent builders.

58. The landlord intends to charge this sum of £15,700 in the 2024/25 financial year. Currently only £2,000 (namely £250 per tenant) is included in the budget (Item EO15 at p.88). We are satisfied that the final bill of £15,700 is reasonable and payable. This work would have been required to the flat roof, regardless of the input of MJSR. The rotten timbers which were found, predated any work by MJSR.

Issue 2: The reasonableness and payability of the service charges demanded for 2022/23 and 2023/24

The Roof Works

59. We first consider the works executed by MJSR. The previous FTT considered that Ms Matthews had been panicked into accepting all that

MJSR advised her was necessary, without seeking alternative quotes or seeking professional advice on what was required. When it became apparent that additional works were required, she should have adequately reviewed all the options. The tenants had therefore been prejudiced.

60. This Tribunal has heard fuller evidence including what has happened since the FTT issued their decision on 17 March 2023. This fully endorses their finding. Indeed, it has been necessary to redo all the work that they had done. MJSR should not have replaced the slate roof with Redland tiles. MJSR should have sought the requisite building regulation consents. D Long have now re-slated the main roof at a total cost of £58,254.24. One flat roof has been replaced (see Issue 1). The second flat roof still needs to be replaced.

61. Our starting point is that it would not be reasonable for the tenants to pay any service charges relating to the work executed by MJSR or associated to that work. The "associated work" extends to the scaffolding and the need to apply for a Certificate of Regularisation from Greenwich. We note that the scaffolding provided by Sitti Scaffolding remained in situ after MJSR left site. However, it only needed to remain in situ because of MJSR's negligence.

62. This Tribunal must also consider the implications of MJSR replacing the slated roof with Redland tiles. Ms Matthews should not have authorised this. The roof was not strong enough to support tiles. Tiles were not appropriate for this property of local architectural and historic importance. Greenwich Building Control would not have approved this work, had the appropriate consents been sought.

63. The Tribunal notes that the main slate roof was replaced in October 2008 at a cost of £17,390. It is a matter of regret that Ms Matthews was unable to locate the guarantee. However, the Tribunal is satisfied that by November 2022, significant works were required to the main roof. Current building regulations would have required the timber beams to be strengthened and for the insulation to be improved. However, we are satisfied that a significant quantity of the slate could have been reused had it not been removed by MJSR. Doing the best that we can, we conclude that the costs incurred by D Long are 20% higher than had they been instructed in November 2022 when the slate roof was still in place.

64. D Long Roofing started work on 19 September 2023 and completed them on 10 November 2023. We note that their original estimate included £12,000 (exc VAT) for scaffolding which they did not provide. Their original estimate (at p.973) was for £16,600 for works to the roof and £1,080 for two skips (both exc of VAT).

65. The landlord is seeking to charge the tenants £58,254.24 for the roofing works, all inclusive of VAT (see breakdown at p.562):

(i) Payments to D Long (Invoices P701, P703, P704, P708, P710 and P714): Total £49,362.84. The tenants argue that they should not be liable for the cost of making good the negligent work executed by MJSR. We agree. However, we are satisfied that substantial repairs were required to the roof in any event. We make a reduction of **20% (£9,872.57)**, because we are satisfied that some additional cost was incurred because the original slate was removed. We also have some concerns about the consultation process: (a) the landlord failed to draw up a proper schedule of works; (b) we are not satisfied that the two quotes were on a like-for-like basis; (c) we are surprised that an estimate was obtained from D Long before the Stage 1 Notice of Intention was served.

(ii) Scaffolding Costs paid to Sitti Scaffolding (Invoices P686: £3,000 for the period 8.7.23-7.9.23; P700: £3,500 for 8.9.23-7.10.23 and P709: £1,200 for the period 8.10.23-7.11.23): Total: £7,700. We allow P700 and P709 as this scaffolding was required by D Long. **We disallow P686 (£3,000)** as this scaffolding was only kept in place because of the negligent work executed by MJSR.

(iii) Payments to Greenwich (Invoice P695: £663 for Regularisation Notice; P696: £530.40 for Building Control approval): Total £1,193.40. We allow P696 as building control approval would have been required in any event. We disallow **P695 (£633)** as this was only required because MJSR had failed to apply for building control approval.

Insurance

66. The landlord has charged the following invoices for insurance: (i) 2021/22: £4,033; (ii) 2022/23: £9,524.20; (iii) 2023/24: £8,818.66; and (iv) 2024/25 (budget): £8,820. The tenants challenge the cost which increased by 136% in 2023/24. They have not provided any alternative quotes. On 28 January 2013 (p.308), Ms Matthews explained to Ms Gonzi the reason for the increase. In 2023/24, the charge was £1,100 per flat.

67. The Applicant has provided the Covea documents for the period 1 December 2021 to 30 November 2022 at p.491-495. Ms Matthews explained that the policy was revised as she was told that the property was underinsured. The revised Covea Policy for the period 16 December 2021 to 30 November 2022 is at p.496-500. The landlord has provided particulars of Covea Policy at p.319-348. The Allied World policy for the period 1 December 2023 to 30 November 2024 is at p.486-490. The particulars of the policy are at p.352-482.

68. Ms Matthews stated that the landlord uses brokers to test the market. The question for the Tribunal is why was there such a substantial increase between 2021/22 and 2022/23? The answer is that there were

two substantial claims. Ms Matthews explained this in an email, dated 23 July 2024 (at p.483):

(i) Storm damage caused by Storm Eunice (18 February 2022) when a tree smashed the railings at the front of the house (see photo at p.497): £2,525 on works to remove the tree and £1,300 to make good the damage.

(ii) A flooding on 19 July 2022 when the stop valve broke in the cold water tank. All the flats were damaged. It is understood that the insurers paid out some £100k to £150k to make good the damage.

69. The Tribunal accepts this explanation and accepts that the sums demanded, whilst high, are reasonable for the reasons stated. The sum included in the 2024/25 budget is a reasonable estimate.

Gardening

70. The landlord has charged the following sums for gardening: (i) 2022/23: £401.34 + £1,330.78: £1,732.12; and (ii) 2023/24: £308.95 + £1,009.28: £1,318.23.

71. There is an extensive garden at the rear of the property. All tenants have a right to use the garden. Ms Matthews mows the lawn fortnightly during the summer. She collects the leaves in the winter, some 30 sack loads. Her flat has French windows. She does not charge for the flower boxes and other items which largely benefit her flat. At p.300 she lists expenditure of £909 which she did not pass on through the service charge.

72. The Accounts include two significant entries: (i) on 14 November 2022, Gardens Angels charged £450 for reducing the height of a lime tree at the front of the house (Item P631 at p.79); and (ii) on 18 November 2022, Garden Angels charged £250 for pruning climbers at the rear of the Property (P633 at p.79). The landlord has only charged for invoices that have been incurred. Ms Matthews has made no time for her work in the garden. The Tribunal is satisfied that the sums charged have been reasonable and are payable.

Management Costs

73. The landlord has charged the following sums for management costs: (i) 2022/23: £597.40 + £194.43: £791.83; and (ii) 2023/24: £308.95 + £1,009.28: £1,318.23.

74. Ms Matthews has managed the Property herself. Were she to employ managing agents, the charge would be likely to be in the range of £2,400

to £3,200 per year + VAT. There is only one item which has caused the Tribunal concern. On 13 December 2023, Ms Matthews charged £1,259.19 for a new laptop (Item P721 at p.86). We do not accept Ms Matthews' explanation that she requires a separate computer for the management of the Property. **We disallow this charge of £1,259.19.**

Further Items 2022/23

75. The Statement of Accounts for the period 1 April 2022 to 31 March 2023 is at p.72-81. The combined Scott Schedule is at p.150-172. The tenants challenge the following invoices:

(i) Tribunal Fees (Invoices P637: £100; P654: £200): Total £300. These are the tribunal fees in relation to the previous application in LON/00AL/LDC/2022/0236. This application failed. The FTT made no order for the tenants to refund the fees to the landlord. We are satisfied that this sum is not payable by the tenant. **We disallow £300 (£37.50 each).**

(ii) Sums charged to the tenants for the MJSR works (Invoices P647 and P648): £250 was charged to each tenant. Ms Matthews informed the Tribunal that this has been refunded to the tenants.

(iii) On 7 March 2023, Koelington Ltd charged £1,200 for making good the damage to the decorations to Flat 7 due to roof leaks (Invoice P656). Ms Matthews states that this was caused by water penetration arising before MJSR came on site. If this was an Act of God, and not due to any disrepair. This could have been an insurance claim. However, the landlord decided to execute the works and charge it to the service charge account. The landlord argues that Schedule 4 of Clause 2 permits the landlord to execute such works of repair as it thinks fit. We are satisfied that this work falls this and allows this item.

(iv) On 16 March 2023, S&R Surveyors charged £4,322 for their report (Invoice P661). The Tribunal is satisfied that this report was justified and that the cost is reasonable. It was a report which the landlord should have obtained before any works were executed by MJSR. It would have been required regardless of the involvement of MJSR.

Further Items 2023/24

76. The Statement of Accounts for the period 1 April 2023 to 31 March 2023 is at p.82-87. The combined Scott Schedule is at p.173-195. Most of the items challenged relate to the works to the roof which we have already considered.

77. There is one additional item that the tenants challenge, namely Invoice P717. On 30 November 2023, Koelington Ltd charged £3,600 for making

good the damage to the decorations to Flats 7, 8 and the top landing due to roof leaks in Julut 2023 and September 2023. The most significant damage was caused on 20 September after D Long had started the building works (see [46] above). We are satisfied that there was no negligence by the landlord and that this was an Act of God. We are satisfied that the cost of the works was reasonable and that this was a proper service charge item. Whilst this damage might have been avoided had the builder installed an artificial roof whilst the works were executed, this would have increased the cost of the works by substantially more than the sum of £3,600.

Issue 3: The reasonableness and the payability for the interim service charge for 2024/25

78. The budget is at p.88-92 and the combined Scott Schedule at p.196-217. The Tribunal is required to consider the reasonableness and payability of an interim service charge for 2024/25. This is no more than a budget. The issue is whether the landlord acted reasonably in including these items in the budget. We are not concerned with the reasonableness of any sums that have been incurred. These will only fall for consideration when the final accounts for the year have been prepared. Thus, £96 per month (E052-E063) has been included as an estimate for communal cleaning. It will only be at the end of the year that it will be possible to assess whether the service has been provided and the quality of the service. The final accounts will reflect the sum actually expended on cleaning.

79. In this case, we are merely required to consider the landlord's estimates for the year. It is only when the service charge accounts have been prepared, that a tribunal will be able to consider the reasonableness and payability of the sums that have been expended.

80. We are satisfied that it is only appropriate to consider the following items at this stage:

(i) E003 (£1,572) relates to the cost of preparing financial statements for Companies House and corporation tax. These are not service charge items. They rather relate to the servicing of the landlord company. **We disallow this estimate of £1,572.**

(ii) E012 relates to tribunal fees of £330 which relate to the current application. This are only payable if ordered by this tribunal. **We disallow this charge of £330.**

(iii) E013 is an estimate of £2,500 to supply and fix dormer windows to Flat 7. The tenants suggest that this relates to windows installed by D Long which were found to be unsuitable The landlady responds that the tenants have not been charged for these. It is apparent that new dormer

windows were required, regardless of the involvement of MJSR. The reasonableness of the cost of any new windows can only be assessed when the final accounts for the year are available. The estimate is not unreasonable.

(iv) E016-E027 relate to an estimate of bank charges of £3.70 per month. The reasonable cost of operating the service charge account would be payable. However, the actual costs can only be assessed when the final accounts for the year are available. The estimate is not unreasonable.

(vi) A total of £3,840 (E041-E051) has been included for gardening. In 2023/24, it had been £1,368. A reasonable estimate for 2024/25 would be no more than £1,400. **We disallow £2,440**.

81. The Tribunal is satisfied that it is not necessary for us to consider the other items included in the budget at this stage. The payability and reasonableness of these sums will only fall to be determined when the service charge accounts for the year have been prepared.

Issue 4: The Unincorporated Maintenance Fund

82. The leases do not make provision for a reserve fund. For some years, the tenants contributed some £50 per month towards this fund. In January 2023, the tenants stopped paying their contributions. Ms Matthews sought to argue that this fund fell outside the statutory provisions of the 1985 Act. The Tribunal does not accept this. This was a voluntary reserve fund. Any expenditure met from this fund must be payable pursuant to the terms of the tenants' leases and must be reasonable.

83. On 31 March 2022, there was £19,793.34 in this fund; £9,033.10 was in a current account £10,760.24 deposit account (see p.220). Payments were made for a further nine months (£450 per tenant), increasing the fund by £3,600. Thus the total fund was £23,393.34. In March 2024, £1,050.25 was refunded to each tenant, a total of £8,402.

84. The issue for this Tribunal is what has happened to the remaining £14,991.34. We were told that this included the following payments:

(i) £3,390 for repairs to the communal chimney stack between Nos. 155 and 157. The total cost was £6,780 (see p.233). This was split between the two properties. We accept that this was a service charge that was reasonable and payable.

(ii) £6,800 for works to the boundary walls in the garden. Ms Matthews stated that the tenants, apart from Ms Gonzi, had agreed to this. Again, we accept that this was a service charge that was reasonable and payable.

(iii) £5,250 paid to MJSR, namely a deposit of £2,250 and the initial payment of £5,250. The earlier FTT has refused to grant dispensation in respect of the MJSR works. The evidence that we have heard merely reinforces their finding that the tenants should not have to pay for these works. Ms Matthews accepted that the tenants should not be charged for these works. **This sum of £5,250 should not have come out of this reserve fund and should be credited to the tenants.**

(iv) A sum for communal electricity. This was a justified service charge expense.

Issue 5: Does Ms Mesilati have an equitable set-off?

85. Ms Mesilati (Flat 7) claims an equitable set-off in respect of the disrepair which has prevented her from subletting the flat. In *Continental Property Ventures Inc v White* held that a tenant is entitled to set-off any damages flowing from a breach of a landlord's covenant to repair against any liability to pay service charges. Such a set-off can only be used as a shield and not as a sword. Thus, it can reduce or extinguish any existing liability for service charges. However, this Tribunal has no jurisdiction to award any additional damages for disrepair. That is the jurisdiction of the County Court. A tribunal should only allow a set-off in a clear case.

86. The Tribunal is satisfied that this is an appropriate case to allow a set-off. Ms Mesilati's Statement of Case is at p.283-295. She has provided a number of photographs of the damage to her flat. She assesses the loss of rent due to disrepair at £22,320 as at 31 October 2024. The flat was first affected by water penetration on 1 November 2022. On 12 December 2022, her tenants asked to be released from their contract because the flat was uninhabitable.

87. The Tribunal is satisfied that the landlord is in breach of contract in that it has failed to keep the roof in Flat 7 in a proper state of repair. She assesses her loss as follows:

(i) Loss of rent between December 2022 to March 2023 when Koelington Ltd made good the damage to her decorations: Three months at £1,395 pm: £4,185.

(ii) There was further water penetration in September 2023. Further problems arose when the dormer windows were removed. The dormer windows installed by D Long were defective and could not be opened. These need to be replaced. They had not been replaced at the date of the hearing. The flat was not in a fit state to be let. The tenant assesses the loss of rent at £18,135 over the 13 month period September 2023 to October 2024: £12,555.

(iii) The flat was still not in a state fit to be let at the date of the hearing. An additional two months rent would have been £2,790, which would increase the loss of rent to £25,090.

88. At the date of the hearing, Ms Mesilati owed service charges of £8,266.55. Against this, there would be some adjustment in respect of the service charge items which we have disallowed. We are satisfied that the tenant's set-off for disrepair is sufficient to extinguish any outstanding liability. The effect of this finding is that at the date of the hearing, there was a zero balance on Ms Mesilati's service charge account.

Issue 6: Should the Tribunal make any order under section 20C of the Act?

89. All the tenants have made applications for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the landlord may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. Ms Matthews has acted for the Applicant Company and it seems unlikely that she would have passed on any significant costs in any event.

90. The Applicant has paid tribunal fees of £330. The Tribunal does not make any order for the Respondents to refund these costs to the Applicant. The Tribunal is satisfied that these applications have only been necessary because of the negligent work executed by MJSR. Ms Matthews should not have appointed MJSR. She should rather have tested the market and appointed a competent builder.

The Next Steps

91. The Tribunal is not without sympathy for Ms Matthews. Her intentions have been honest. However, her actions have been misguided. She has sought to keep the service charges to a minimum by managing the Property herself. However, she has not had the skills to do so. After the problems with MJSR, she should have appointed a surveyor to draw up a schedule of works, seek estimates from competent builders and supervise the works. A fee of some 15% would have been charged for carrying out these duties. However, the works would have provided to a proper standard.

92. We would urge all the parties to look to the future. One option would be for the parties to agree that the landlord should appoint managing agents. An alternative would be to give all the tenants a share in the landlord company. They would then all share the responsibility to ensure that the Property is properly managed.

Judge Robert Latham
30 January 2025

Rights of appeal

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

If a party wishes to appeal this decision to the Upper Tribunal (Lands Chamber), then a written application for permission must be made **by e-mail** to the First-tier Tribunal at the regional office which has been dealing with the case.

The application for permission to appeal must arrive at the regional office within 28 days after the tribunal sends written reasons for the decision to the person making the application.

If the application is not made within the 28 day time limit, such application must include a request for an extension of time and the reason for not complying with the 28 day time limit; the tribunal will then look at such reason(s) and decide whether to allow the application for permission to appeal to proceed, despite not being within the time limit.

The application for permission to appeal must identify the decision of the tribunal to which it relates (i.e. give the date, the property and the case number), state the grounds of appeal and state the result the party making the application is seeking.

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