FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/30UH/LDC/2024/0048**
Property	**:**	**Mearsbeck Apartments, Sefton Road, Morecambe LA3 1DZ**
Applicant	**:**	**Places for People Homes Ltd**
Applicant's Representative	**:**	**Residential Management Group Ltd**
Respondents	**:**	**The residential long leaseholders at the property**
Type of Application	**:**	**Landlord and Tenant Act 1985 – s 20ZA**
Tribunal Members	**:**	**Judge J.M.Going** **J.Gallagher MRICS**
Date of decision	**:**	**8 May 2025**

DECISION

The Decision

The Tribunal has determined that the statutory consultation requirements relating to the works more particularly described in the 5 invoices referred to in paragraphs 3,5,6,7 and 8 of the Schedule to the 2024 Decision can now be dispensed with but, only and strictly, subject to the condition that PFP pay the flat owners £37,375.95 within 28 days of when this Decision is sent to the parties in order to reimburse and compensate them for monies previously wrongly paid out their service charge account to settle those invoices. The dispensation cannot be effective unless and until the condition has been satisfactorily complied with.

Preliminary

1. By an Application dated 4 July 2024 ("this Application" or " the Dispensation application") the Applicant ("PFP") applied to the First-Tier Tribunal Property Chamber (Residential Property) ("the Tribunal") under section 20ZA of the Landlord and Tenant Act 1985 ("the 1985 Act") for the dispensation of the consultation requirements provided for by section 20 of the 1985 Act in respect of repairs already undertaken to parts of the property's roof.

2. The Respondents ("the flat owners") are the owners of the 24 apartments within the property ("Mearsbeck Apartments").

3. The Application follows a decision ("the 2024 Decision") made by the Tribunal on 4 February 2024 under case reference number MAN/30UH/LS/2022/0032 in response to an application under section 27A of the 1985 Act ("the section 27A application") made by the owners of one of the apartments, Mr and Mrs Tyson.

4. The Tribunal issued Directions on 25 January 2025 setting out the timetable for documents to be supplied by PFP, allowing for responses and a reply.

5. PFP's representatives ("RMG") submitted its statement of case together with copies of various documents, including many which had formed part of the section 27A application.

6. Mrs Tyson was the sole Respondent to reply to the Directions.

7. Judge Goodall issued a case management note on 18 March 2025 stating inter alia "In my view, this response must be regarded as an allegation that the Application is an abuse of process. The Tribunal therefore has to determine whether there is any merit in the allegation. If so, one option would be for the Tribunal to dismiss the Application

under Rule 9(3)(d) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013.
When considering a dispensation application, the Tribunal must concentrate its enquiry on the extent of any prejudice that may have been suffered by Respondents. It is clear to me that were dispensation granted some five years after the invoices were paid, it is entirely possible that some Respondents may have suffered prejudice arising from the delay in bringing the Application.
For the reasons set out in the above two paragraphs, I am not of the view that this application is in fact not suitable for determination on the basis of written representations. I therefore direct that there must be a hearing of the Application".

8. Having allowed time for further submissions from all the parties, the date for the hearing was set down.

Relevant facts which are apparent from the papers

9. PFP is the freehold owner of Mearsbeck Apartments and a successor in title to The North British Housing Association Ltd. Under what are understood to be a series of long- leases with comparable provisions PFP is obliged to "keep in good and substantial repair and to repair…the roofs" and the flat owners are obliged to contribute to the costs via the service charges. The Leases impose an age restriction on the flat owners, to those aged 55 or over.

10. For ease of reference the Tribunal has reproduced the following extracts from the 2024 Decision which are pertinent to the present application. References in square brackets [ ] are to particular page numbers within the final bundle submitted by RMG in relation to the section 27A application.

"Chronology and relevant matters confirmed within the papers.
……

29 January 2019	An email from Mr Bickerstaffe of Thomasons to RMG's property manager Ms Perrin, made following complaints of continuing leaks, reported on past repairs having been "crudely applied" and "water ponding occurs adjacent to the parapet which is likely to bypass any attempts to seal any gaps with expandable foam in this area. Failure will occur between the expandable foam which incidentally looks atrocious and the lead cover flashing especially in the summer months…". He then recommended various necessary works. [174]. It is noted from Thomasons' notepaper that Mr Bickerstaffe is a building surveyor and a member of the RICS, that Thomasons have offices in Glasgow, Liverpool and Manchester and that he works out of the Manchester office.
6 February	Minutes of a Committee meeting with RMG when referring

2019	to the roof stated "Has been surveyed by a 3rd party specialist and tenders have gone out for repairs. There is also an investigation into past repairs (which have been many and expensive) to see if they were completed properly and recoup costs where necessary. The very fact that repairs have had to be repeated and repeated would imply that they weren't done to a satisfactory standard. If the flues had been fitted properly in the first place when new boilers ware fitted we would not be having these problems so PFP have a responsibility to see the ongoing repair costs do not fall on residents as it was their idea not to scaffold up to the top floor so that flues could come out horizontally and no damage would have been done to the roof in the first place!" [53]
26 April 2019	Maxeva's invoice in respect of roof repairs affecting Apartment 53 detailed in paragraph 1 of the Schedule hereto. [92]
26 April 2019	Maxeva's invoice in respect of roof repairs affecting Apartment 54 detailed in paragraph 2 of the Schedule. [93]
3 December 2019	Thomasons' tender appraisal form referred to initial tenders from KE Hornby at £33,440, Buildzone at £29,470 and GAP roofing at £34,620, all plus VAT, and all including a PC provisional sum of £8000 "for further necessary works confirmed by Thomasons and/or the replacement of materials unavoidably damaged".[103]
10 December 2019	Thomasons issue its invoice in respect of fees detailed in paragraph 3 of the Schedule.[95]
12 December 2019	Thomasons issue its invoice in respect of fees detailed in paragraph 4 of the Schedule.[94]
18 December 2019	Minutes of a Committee meeting with RMG when referring to the roof survey stated "The survey has been done, tenders have been received and we are waiting for a start date. This job is being completed through a project manager and a Section 20 has been raised due to possible cost of the roof repair so residents can then suggest another company if it is more than £6000. Local roofing companies might be able to do the job more cheaply. The work completed by Maxeva is being discussed and we may be able to claim back money for shoddy workmanship. Emily is to find out the cost of all the previous attempts to cure the leaks on the roof to give us an idea of how much it has cost in total". [73]
21 January 2020	RMG wrote to the leaseholders stating, inter alia, "the roof works are due to commence on Wednesday 29 January".[149]
12 February 2020	RMG wrote to (*the flatowners)* confirming, inter alia, "we are writing to all residents to advise that due to the current weather conditions, the works to the roof have been postponed… and… will recommence once the weather improves". [150]
5 March 2020	An email from Thomasons to Buildzone copied into RMG

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

	successful but in turn another area near the repair has caused further ingress. Unfortunately, faults arising such as this are common as there is no guarantee unless a full replacement of the roof was done which is why a water test is done before removing all access equipment. These further works are currently being organised and scaffolding will remain until we are satisfied that the works are complete… We have mentioned previously that with the above roof works we will be applying for dispensation that is a Section 20ZA of the Landlord and Tenant Act…".[151-152]
17 September 2020	Buildzone issues its invoice for additional roof works detailed in paragraph 8 of the Schedule.[100]
….	
3 November 2020	Mrs Tyson sent a photograph to RMG showing a large amount of flashing having been dislodged and hanging perilously over the roof parapet.[57]
….	
12 May 2021	A further letter was written by RMG to leaseholders stating, inter alia, "We have again received queries as to whether Tenants should be consulted regarding the recent roof works which have taken place. Although the development is such that the Landlord has the legal right on decisions pertaining to the development, the Landlord and Tenant Act 1985 still applies, within which there are various elements which ensure Tenants are treated fairly, one such item is Section 20. Under Section 20 it states that if costs are to be incurred in which would cost any one leaseholder £250 or more for one item of work, a formal consultation is required. However, as we have mentioned previously that with the roof works, we shall be applying for dispensation from Section 20 under Section 20ZA of the Landlord and Tenant act. The reason we shall be applying for dispensation is that the costs of the roof repairs are above the £250 referenced cost, however due to the urgency, the time lost in completing a Section 20 application could have led to further damage in the roof repairs and therefore more costs…" [154]
21 February 2022	In RMG's notes to the service charge invoice for 2022 it was said "The budget has been updated to include the estimated cost needed on top of the amount already held in the reserve and sinking funds, of replacing the roof to the building as there has been significant water ingress over previous years. We have conducted many repairs, and unfortunately the only option now is to proceed with a full roof replacement. The contractor and surveyor have attended to the site on numerous occasions completing significant localised works, and the immediate areas over the affected apartments have been overlaid with a SIKA liquid membrane. As the water ingress has continued in to one of the apartments, and the roof overall is in a poor condition, the surveyor has advised

	that the full replacement is now necessary as we have exhausted the alternative options. The full replacement was decided against originally so that the cost for residents would not be as great, and as the surveyor and contractor were hopeful that the localised works would be sufficient enough to stop the ingress, however this has unfortunately not been the case.[248]
30 May 2022	RMG issue a Notice of Intent being the first stage of statutory consultation in respect of "replacement roof".[198]
15 June 2022	An incident report by Lancashire Fire and rescue notes "1 x lead flashing fallen prior to arrival… 2x lead flashing removed by LFRS… RMG… to carry out remedial work to make roof safe".[72]
26 October 2022	Mrs Tyson in an email to PFP states "Back in August Justin Herbert said a dispensation had been applied for to cover previous roof works that should have been covered with a Section 20 back in 2019. What is occurring now is the result of no Section 20 because we would have had input into the process. We don't accept the reasoning being it was urgent because 5 years down the line we are in a worse position with large amounts of money having been spent. A Section 20 at the time would probably have flagged up different opinions, different surveys and residents being included would have made them more responsible to decisions taken. The fact that only Thomasons and their contact Buildzone were involved and have been ever since with no guarantee on the work they keep doing has led to this breakdown and an application to tribunal. Someone has to start seeing this from another side and we will not be excluded anymore from important decisions involving our money. I'm sure the company Mearsbeck Ltd can work with RMG but surely it can be recognised that we are struggling with the relationship over the roof repairs that have cost 52,000 so far to one company and we still have leaks. This is fact and no amount of excuses about leaks being notoriously difficult to sort will wash. No other buildings around us has suffered in this way. Could you please provide a copy of the dispensation as promised. [69]
21 November 2022	An email from Thomasons to RMG refers to 3 contractors quotes for the full roof replacement. Central Group- £125,188 (flat board insulation) or £140,105 (tapered insulation) BBR (built-up felt)- £197,454, Permacoat (liquid SIKA decothern)- £105,340. All net of VAT.[160-161]
5 January 2023	The leaseholders establish a Right to Manage company

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15. The Tribunal inspected the development ("Mearsbeck Apartments") on the morning of 23 January 2024. The Tribunal

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

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

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

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

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

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

……..

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

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

29. Mr Jamalkhan expressed surprise and was not persuaded that the finding was correct. He did not agree that it was a correct interpretation of the law or an inevitable consequence. He was asked if his submission was that the steps that RMG had taken, and as referred to in its exhibited letters, were sufficiently compliant with the Regulations. He confirmed that was not his submission, rather that there was no specified time limit for submitting a dispensation application. He referred to having made such an application elsewhere some 4 years after the event, and repeatedly stated that a dispensation application would now be made forthwith, and that the Tribunal should not make, or should defer making, a Section 27A order incorporating the £250 cap.

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

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

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

59. Significantly, it was also apparent from the papers, and acknowledged without demur by each of Ms Perrin, Ms Lloyd, and Mr Jamalkhan that there had not been any subsequent application to, nor yet any order made by, the Tribunal to dispense with the consultation requirements.
.....
61. The point made by the Tribunal at the hearing is that the provisions of Section 20, coupled with the Regulations, are clear; if the detailed consultation requirements are not complied with or dispensed

with by the Tribunal, the landlord cannot recover more than £250 from an individual tenant in respect of a set of qualifying works.
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The question of dispensation

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

65. In determining any dispensation application that may be made, the Tribunal would undoubtedly wish to pay close regard to the detailed guidance set out by the Supreme Court in *Daejan Investments Ltd v. Benson and others (2013) UK SC 14 ....*

The operation of the cap

66. Having determined that the cap imposed by Section 20 must apply, the Tribunal next had to consider which of the disputed invoices were subject to that cap. It was agreed that because each of the 24 leaseholders bears an equal share of the service charges the threshold figure for any particular invoice would be £6000 (24 x £250). But, it was also important to determine which, if any, of the disputed invoices were a part of the same set of works.
.....
69. After taking time to carefully revisit all of the evidence, viewing that in a commonsense way, and by asking itself whether individual invoices were part of a single set of works, or as might be expressed in in more colloquial terms "part of the same job", the Tribunal found that those invoices referred to in paragraphs 3, 5, 6, 7, and 8 of the Schedule were for a single set of works and therefore together subject to a cap of £250 per leaseholder. The Tribunal did not accept Mr Jamalkhan's submission that in this case Thomasons' particular invoices were outside or properly to be viewed as being separate from the job that had been specified by RMG, being to patch repair the roof and cure the leaks. Thomasons played a part, as did Buildzone in what the Tribunal found was a single connected set of works. Thomasons both specified the physical works and played an ongoing part in monitoring and the review of those works.
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General comments

76. Because of the particular circumstances of this case, the Tribunal has not needed to decide (other than in regard to Buildzone's March 2021 invoice) how far, if at all, any of the other disputed costs may be limited by reference to Section 19 and their reasonableness. It should not be inferred, or in any way assumed, that this means the Tribunal

has found that those remaining costs were both reasonably incurred and that the works to which they refer were of a reasonable standard. Legitimate questions remain in the Tribunal's mind as to whether the leaseholders have been protected from paying for inappropriate works or paying more than would be appropriate. What cannot be denied is that substantial sums have been spent without the desired aim being achieved. The evidence is that Mr Harris was suffering leaks from before 2019 and that he is still suffering them now.
.....

The Schedule hereinbefore referred to:-

Roof repair works where the costs are disputed by the Applicant

Para No.	Date of invoice	General heading	Detailed specification/comments provided by RMG	Invoiced cost
.....				
3.	10/12/2019	Thomasons' consultancy fees	Thomasons' fee- tender to completion. Including produce a Schedule of Works for competitive tender, this includes their fee in this respect for the tender process, assessment and report. The fee estmate allows for the preparation of the tender/contract documentation for works so as to open up the areas of concern, assess the tenders and report. It also allows for 1 site visit so as to assess what "lies beneath" and provide recommendations. Input after this stage has not been allowed for at this time.	£2,448.00
4.	.....			
5.	30/03/2020	Scaffolding (by Buildzone)	Works carried out as per Thomasons' Tender and Analysis report. Paid in two installments due to length of works. Costs faced changes which the surveyor approved due to changes in the programme once works commenced and COVID19.	£10,963.38
6.	05/08/2020	Consultancy fees	Thomasons' fee for visits to site and inspections	£4,888.85

			conducted during tendering- the invoice refers to "site inspections, investigations, reports and advices up to 2 August 2020".	
7.	18/08/2020	Roof works (by Buildzone)	Works carried out as per Thomasons' Tender and Analysis report. Paid in two installments due to length of works. Costs faced changes which the surveyor approved due to changes in the programme once works commenced and COVID19.	£21,498.12
8.	17/09/2020	Additional roof repairs (by Buildzone)	Invoice for works carried out following inspection on water test. As shown in report 1 - The cost for the additional waterproofing works recommended in the report from the water test would be as follows: Remove and dispose of existing lead and timber from parapet and replace with new above apartment 54 bathroom area (highlighted as area F in report) - £675.00 Supply and install leadwork to additional area above apartment 54 (highlighted as area F in report) - £1058.00 Additional SIKA repairs (highlighted as areas D, E & F in report) - £415.00	£2,577.60

……"

The parties' written submissions relating to this application

11. PFP's statement of case, prepared by RMG, extends to 14 pages and is on record.

12. In essence, beginning its narrative in 2019 and having rehearsed many of the events referred to in the section 27A application, it asked for dispensation from the consultation requirements for costs totalling £28,964.57 which been charged to and paid for out of the service charge accounts for the 3 invoices identified in paragraph numbers 6,7, and 8 of the Schedule to the 2024 Decision.

13. It was stated "…. the methodologies employed by both Thomasons and Buildzone were not unreasonable. This assertion is made in the light of the prevailing circumstances and the information available at the time of the execution of the work"….. "the Applicant engaged a reputable firm specialising in this field…. Thomasons conducted a tendering process. This process was based on market testing to prevent financial prejudice to the leaseholders. It is averred that a reasonable person would have acted in the same manner"….. " the Applicant has engaged in a degree of successful consultation with the leaseholders. A letter, dated 21 January 2020, was issued to notify the leaseholders of Thomasons' appointment and the planned works. This correspondence also extended an invitation to the leaseholders to voice any concerns or observations they may have."… "Subsequently, a letter dated 12 February 2020 was dispatched to keep the leaseholders informed about the progress of the works. This letter reiterated the invitation for leaseholders to express any concerns or observations. The Applicant did not receive any feedback or alternative suggestions regarding the roof's remediation. The leaseholders remained silent, leading the Applicant to infer that the leaseholders were content with the proposed solution."…." the Applicant has judiciously adopted a trusted approach by engaging Thomasons, asserting that the incurred costs are reasonable. The Applicant comprehends that the Tribunal possesses the authority to impose conditions where deemed necessary. In this context, it is emphatically asserted that no substantial prejudice has been inflicted upon the leaseholders, and any intention to impose a condition should be categorically dismissed"…" The Applicant was confronted with the unprecedented challenges posed by the Covid-19 pandemic, which complicated the process due to stringent lockdown measures and a scarcity of materials. Despite these formidable obstacles, the Applicant ensured that the costs would not impose an undue burden on the leaseholders, but instead contribute to a robust resolution of the repairs. The Applicant deems it appropriate for the entire sum to be dispensed within the consultation requirements, unconditionally and without reservation. This assertion underscores the Applicant's commitment to acting in the best interests of the leaseholders."…."in the initial proceedings, Mrs Tyson expressed concerns, as per her statement of case, implying that funds have been squandered and that a comprehensive roof replacement should have been the initial consideration. The Applicant disputes this assertion on the grounds that undertaking a complete roof replacement without a thorough diagnosis of the issue would have undoubtedly led to unnecessary expenditure. The Applicant's approach was to focus on the problematic areas first, and only consider a full roof replacement if further failures occurred….. The need for the works was identified by Thomasons. The Applicant is confident that the pricing of such works…. were reasonable".

14. Included within PFP's bundle of supporting documents were copies of emails sent to RMG from Mr Thompson, a chartered surveyor at Trevaskis Consulting, dated 15 January 2024 responding to a request to review certain of the paperwork ("Trevaskis' email"); and from Mr

Brown, a Director of Thomasons, dated 16 January 2024 following a request for a detailed chronology of its involvement ("Mr Brown's email").

15. Mrs Tyson's response to the present application was as follows: – "The case has already been determined by the judge at the time in an after the horse has bolted scenario over dispensation of a section 20 that had still not been applied for 3 years after the event. This recent challenge to change the tribunal's decision is a complete waste of time and money seeing as the leaseholders never received money back from RMG due to a right to manage company being formed and is therefore questionable as to who is footing the bill for a supposedly not for profit organisation. It's not us as we escaped and are now our own management company so it must be being taken from other leaseholders accounts as it certainly won't be coming out of their directors pockets. Reams of paperwork have been sent to 24 properties and this amounts to abuse."

16. Following further Directions made after Judge Goddall's Case Management note, RMG made written submissions as to why the Dispensation application should not be struck out. Its submissions included referencing distinctions between the section 27A application and the Dispensation application, proportionality, and in particular paragraph 30 of the 2024 Decision. It also revisited various of its earlier submissions, stating that the flat owners had "not discharged their evidential burden of demonstrating relevant prejudice under the *Daejan* test".

The Hearing

17. The hearing took place on 22 April 2025 using CVP (the common video platform). Mr Khan, Ms Lloyd, and Ms Perrin attended from separate locations, and the Tribunal is grateful for their assistance. Mr Khan confirmed that RMG had been instructed by PFP to represent them in the application.

18. It was explained that the decision to appoint the tribunal members who had heard the 2024 case to this Application had been taken by a Regional Judge, knowing that they had already inspected the property and because of the overlap between the 2 matters.

19. Mr Jamalkhan was thanked for his written submissions in response to the question of whether the proceedings should be struck out. He was asked if he wanted to add to those submissions but was content that they were sufficient. The Tribunal confirmed that it would defer its decision on this question until after it had heard all the evidence.

20. The Tribunal referred in general terms to the nature of a dispensation application under section 20ZA, the legal principles which had been established by case law and the matters to be addressed.

21. Mr Jamalkhan confirmed the Tribunal's understanding that the 2024 Decision had not been appealed. He was asked what steps PFP had taken in response to that part of the decision which confirmed that the invoices referred to in paragraphs 3,5,6,7, and 8 of the Schedule to the 2024 decision (the "5 invoices"), totalling £42,375.95, paid for from the reserves within the flat owners' service charge accounts should have been capped at £250 per flat owner i.e. £6,000. Mr Jamalkhan confirmed that no steps had been taken to reimburse the service charge accounts, beyond the making of this Application.

22. The Tribunal Judge expressed surprise that this Application had been restricted to the works referred to in but 3 of the 5 invoices. Mr Jamalkhan was asked whether he might wish to extend it to embrace the works referred to in all 5 invoices which had been found to be parts of the same set of works. A short adjournment was allowed for instructions to be taken, and Mr Jamalkhan then confirmed a request that the application should include the works referred to in all 5 invoices.

23. The events set out in the timeline were then discussed and enlarged upon.

24. It was confirmed that RMG had been appointed by PFP in 2014 and Ms Lloyd and Ms Perrin both first became actively involved in the management of the property in approximately 2018. Ms Lloyd confirmed that she was aware that there had been previous repairs to the roof. She was not sure how many but believed that they had not individually involved any great expenditure.

25. Ms Perrin said that she had never inspected the roof. Ms Lloyd said that she had inspected it once in or about October 2019.

26. It was agreed that due to complaints of continuing leaks following previous repairs Thomasons' advice was sought. Mr Bickerstaffe reported on previous poor workmanship in January 2019, recommending various necessary works. To the Tribunal's surprise, Ms Lloyd said that, whilst Mr Bickerstaffe had been tasked with specifying the works subsequently undertaken by Maxeva, his brief did not include supervising or overseeing their completion. Maxeva had been chosen by RMG because of having worked with them before in different contexts. Ms Lloyd confirmed that, after Mr Bickerstaffe had later found Maxeva's work wanting, RMG had ceased to employ them.

27. Ms Lloyd said that she had asked Mr Bickerstaffe for indications of the likely overall costs when, later in 2019 with the roof still leaking, Thomasons were tasked with preparing a schedule of further works to go out to tender.However he had deflected the enquiry saying it would need to await the result of the tenders, and she had not pursued the matter. She confirmed that she was aware that Thomasons' own costs for this task would be in the region of £2500.

28. It was acknowledged that 2 residents in particular had repeatedly and stridently voiced ongoing concerns about leaks from the roof not being adequately addressed.

29. Ms Perrin said that habitually she visited the property quarterly and had meetings with residents representing an informal Residents Association, usually taking place in one of the corridors. She took no part in writing or approving the minutes of those meetings and believed that they were probably subsequently posted on a noticeboard.

30. She did not recall any figures for the costs of the ongoing roof repairs being discussed at her meeting with residents on 18 December 2019, stating that she had no knowledge of the figures confirmed in Thomasons' tender report until the subsequent March.

31. Ms Lloyd, after having the opportunity to refer to her files, confirmed that she had received the tender report (containing the 3 tender figures) on 4 December 2019, with Thomasons' account.

32. There was no further explanation proffered by either Ms Lloyd or Ms Perrin as to the reasons for delaying and deferring the Dispensation application beyond what was said in the 2024 hearing and as referred to in paragraph 31 of the 2024 Decision. Ms Lloyd said the matter had not been forgotten about.

33. There was discussion of the legal principles established in the cases of *Daejan* and *Aster Communities v Chapman [2021] EWCA Civ 660*.

34. Ms Lloyd repeatedly stated that RMG had placed its trust and relied on Thomasons and Mr Bickerstaffe, with whom she and RMG had enjoyed good working relationships.

35. Mr Jamalkhan said that the flat owners had not nominated any alternative contractor, nor established that the works undertaken by Buildzone were defective, and that parts of the roof being blown off were not evidence of defective works and due instead to exceptional winds.

36. When summing up, he said that the leaseholders had not established having suffered relevant prejudice because of the lack of formal consultation, that RMG had consulted the residents who were aware of the steps being taken, which were appropriate in the circumstances, and included having to deal with the consequences of the Covid pandemic in 2020. The residents had not put forward an alternative contractor. Water tests showed that works undertaken by Buildzone were successful, and that the sequential approach followed by Thomasons was reasonable. He said that he was confident that "overall RMG had done a good job". He had been asked by the Tribunal before the lunch break as to what, if any, conditions he might suggest if

the Tribunal was minded to grant dispensation subject to conditions. Mr Jamalkhan declined to make any suggestion, submitting that dispensation should be granted unconditionally.

The Law

37. Section 20 of the 1985 Act and the Service Charges (Consultation requirements) (England) Regulations 2003 (SI 2003/1987) ("the Regulations") specify detailed consultation requirements ("the consultation requirements") which if not complied with by a landlord, or dispensed with by the Tribunal, mean that a landlord cannot recover more than £250 from an individual leaseholder in respect of a set of qualifying works.

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

- Stage 1: Notice of intention to do the works

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

- Stage 2: Estimates

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

- Stage 3: Notices about estimates

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

- Stage 4: Notification of reasons

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

39. Section 20ZA(1) states that: –

"Where an application is made to the appropriate Tribunal for a determination to dispense with all or any of the consultation

requirements in relation to any qualifying works… the Tribunal may make the determination if satisfied that it is reasonable to dispense with the requirements."

40. The Supreme Court in *Daejan* set out its detailed guidance as to the correct approach to the grant or refusal of dispensation of the consultation requirements, including confirming that: –

- The requirements are not a freestanding right or an end in themselves, but a means to the end of protecting leaseholders in relation to service charges;
- The purpose of the consultation requirements which are part and parcel of a network of provisions, is to give practical support is to ensure the leaseholders are protected from paying for inappropriate works or paying more than would be appropriate;
- In considering dispensation requests, the Tribunal should therefore focus on whether the leaseholders have been prejudiced in either respect by the failure of the landlord to comply with the requirements;
- The financial consequences to the landlord of not granting of dispensation is not a relevant factor, and neither is the nature of the landlord;
- The legal burden of proof in relation to dispensation applications is on the landlord throughout, but the factual burden of identifying some relevant prejudice is on the leaseholders;
- The more egregious the landlord's failure, the more readily a Tribunal would be likely to accept that leaseholders had suffered prejudice;
- Once the leaseholders have shown a credible case for prejudice the Tribunal should look to the landlord to rebut it and should be sympathetic to the leaseholders' case;
- The Tribunal has power to grant dispensation on appropriate terms, including a condition that the landlord pays the leaseholder's reasonable costs incurred in connection with the dispensation application;
- Insofar as leaseholders will suffer relevant prejudice, the Tribunal should, in the absence of some good reason to the contrary, effectively require a landlord to reduce the amount claimed to compensate the leaseholders fully for that prejudice.

41. In *Aster* the Court of Appeal confirmed that consultation is a group process, and that a landlord seeking dispensation does so against the leaseholders generally. If all the leaseholders suffer prejudice because of a defect in the consultation process there is no reason why the Tribunal should be unable to make dispensation conditional on every leaseholder being compensated.

The Tribunal's reasons and conclusions

42. The Tribunal began its deliberations by revisiting the question of whether the dispensation application should be struck out as an abuse of process under Rule 9(3)(d) of its Procedural Rules.

43. It decided, on balance, that it should not.

44. As Mr Jamalkan has rightly identified, the 2024 Decision relating to the section 27A application did not decide the question of dispensation and clearly referenced the possibility of a subsequent dispensation application. The two applications are separate matters.

45. The Tribunal did however have reservations about the motivation for the Dispensation application when told that PFP regarded it as justifying postponing the reimbursement of service charges which 2024 Decision had made clear it had not been entitled to. If PFP had wished to challenge the 2024 Decision, the correct process was to seek an appeal, and it had not done so.

46. Having decided that it should proceed, the Tribunal turned to a detailed analysis of the evidence.

47. Drawing together the evidence from the papers with that confirmed at the hearing, and using its own general knowledge and experience, the Tribunal made the following findings: –

- PFP's responsibility for maintaining and repairing the roof of Mearsbeck Apartments dates back to before the appointment of RMG as its managing agents in 2014;
- parts the flat roof have been intermittently leaking for an indeterminate number of years. The minutes of the committee meeting with RMG on 6 February 2019 referenced "past repairs (which had been many and expensive)…". Mr Bickerstaffe's email to Ms Perrin on 29 January 2019 reported on past repairs having been "crudely applied" and "water ponding" predicting that "failure will occur….".
- there was no evidence of anyone checking whether the 2 sets of repairs undertaken by Maxeva invoiced in April 2019 were of a reasonable standard before the invoices were paid from the service charge account.
- Ms Perrin confirmed that she has never been on the roof. Ms Lloyd said that it was not part of Thomasons' retainer, and that her single viewing of the roof took place some months later;
- the leaks returned in May 2019, as referred to Thomasons' invoice of 12 December 2019. It found Maxeva's work wanting. The minutes of the meeting on 19 December 2019 referenced "shoddy workmanship";
- it was obvious to Thomasons as soon as they were tasked with producing a Schedule of Works for competitive tender that the costs of the required works would exceed £6000 by a considerable margin. Its tender appraisal form specifically included reference to the inclusion of a PC, provisional sum, for contingencies of £8000;
- £6000 (being 24 x £250) is the threshold figure whereby the section 20 consultation requirements would become a legal imperative;

• as soon as RMG sanctioned Thomasons' tendering exercise, knowing that Thomasons' own fees would be £2500, RMG should have immediately realised, unless it was entirely confident that the costs of the specified works would not exceed £3500, that it needed to begin working through the consultation requirements or, if it considered that might take too long, to apply to the Tribunal for dispensation;
• it did neither for over 5 years;
• there was ample time for RMG, acting on behalf of PFP, to have properly worked through the consultation requirements before Buildzone started work at the end of February 2020;
• Ms Lloyd received Thomasons' tender report (with estimates, including VAT, ranging from £35,364 to £41,544) on 4 December 2019;
• the minutes of the committee meeting on 18 December 2019, written by a flat owner, stated "a section 20 has been raised due to possible cost of the roof repair so residents can then suggest another company if it is more than £6000..". Ms Perrin was present at that meeting, but somewhat inexplicably was, and remained, oblivious to the estimated costs of the works for months;
• it can only be presumed that whilst Ms Perrin remained ignorant of the prospective costs so did the flat owners;
• no evidence has been produced to suggest that the flat owners were appraised of the estimated costs, nor yet given the opportunity to make observations on estimates or the scope of what was proposed;
• Mr Bickerstaffe confirmed to Ms Lloyd on 5 March 2020 "cracking to the fillet detail was noted about all roof areas" concluding… Repairs carried out can therefore not be guaranteed, unless all issues are considered which is presently beyond the scope of the works".
• the Tribunal found that conclusion, being that patch repairs to parts of the roof brought no guarantee that its problems would be cured, should have been obvious from the outset;
• it also found, from its own inspection, that the roof was relatively uncomplicated and, with no great difficulty, estimated that to renew the whole would cost approximately £100,000. That estimate was very much in line with the figures referred to at the subsequent section 27A hearing;
• the Tribunal also found it difficult to imagine that Mr Bickerstaffe, with his expertise, would not have as a matter of course made a very similar assessment when first visiting the roof in January 2019;
• the first UK-wide coronavirus lockdown was not announced until 23 March 2020;
• despite incurring costs of over £42000 connected with patch repair works in 2020, paid for from the service charge account, the roof continued to leak. In November the Fire brigade had to be called to remove lead flashing hanging perilously over the parapet;
• PFP is a substantial provider of sheltered housing. It must be aware of the consultation requirements;
• it appointed RMG to be the managing agent for the property paying for RMG's services from the service charge account and monies collected from the flat owners;

• RMG is one of the country's largest property management companies. Its website refers to providing a full range of property management services to over 130,000 homeowners and being a proud member of the Places for People Group. RMG was aware of, and should have been entirely conversant with the detail and each step in the consultation requirements as well as the operation of the cap on relevant contributions to qualifying works imposed by section 20 of the 1985 Act;
• the same cannot be safely assumed of all the flat owners. Understandably, due to age, and sometimes infirmity, they are much more reliant on others**;**
• somewhat extraordinarily, the minutes of the December 2019 committee meeting appear to indicate that the flat owner writing those minutes had a better understanding of how the consultation requirements should have then been operating than RMG;
• to describe (as in PFP's statement of case) the letters sent to the flat owners in January and February 2020 as "consultation" is, at best, a misuse of the word. Such letters did not consult the flat owners, and did little more than inform them of actions already decided upon;
• the works began and were completed without proper consultation, or any real time allowed for the flat owners to seek independent advice, explore alternative options, or nominate alternative contractors;
• RMG wrote to the leaseholders in August 2020 saying.. "We have mentioned previously that with the above roof works we will be applying for dispensation….";
• RMG's wrote to leaseholders again in May 2021 saying that it would be applying for dispensation;
• but, the Dispensation application was not made until July 2024;
• whilst not directly relevant to the present application, the covering letter issued by RMG on 30 May 2022 with the notice of intent to replace the roof stated that it was a prerequisite that any contractor nominated by a flat owner satisfy 6 stated criteria. Such criteria are not referred to in the consultation requirements, and seeking to restrict the flat owners' choice makes the validity of the notice extremely doubtful;
• the Tribunal found many of the RMG's submissions to be largely self-serving, justifying particular actions as being part of a sequential process, and attempting to point the finger of responsibility at others;
• submissions (such as in paragraphs 53, 54, 77, and 78 of its statement of case) of "shortcomings" by the leaseholders in the top floor flats were found to be both extraordinary and outrageous;
• actions cannot be judged by reasonable simply by whether a process has been followed. Whether something can be judged as being reasonable must also have regard to, and cannot be entirely divorced from, the outcome;
• a landlord's duty to repair becomes a duty to replace when it is unreasonable to waste money on repairs;
• the Tribunal did not agree with the submissions made within Mr Brown's email that "any reasonable surveyor" or "reasonably competent surveyor" would have acted as Mr Bickerstaffe did; and

• Trevaskis' email makes it clear that it could not necessarily endorse that Thomasons' findings and recommendations were correct, and that "forming a view 3-4 years after the events would also not be possible".

48. Applying the principles set out in *Daejan* the Tribunal has particularly focused on the question of whether the flat owners have been prejudiced by not being protected against having to pay for inappropriate works or having to pay more than is appropriate due to the failure to comply with the consultation requirements. The Tribunal is quite clear that they have been prejudiced by the failure to comply with the consultation requirements.

49. As the Upper Tribunal has made clear in the case of *Wynne v Yates [2021] UKUT 278 (LC) 2021* there must be some prejudice to the flat owners beyond the obvious facts of not having been formally consulted, or of having to contribute towards the costs of works.

50. Nevertheless, as Lord Neuberger explained in *Daejan* (at paragraph 68 and when referring to the Tribunal to by its former name, the LVT,) "the LVT should be sympathetic to the tenants not merely because the landlord is in default of its statutory duty to the tenants, and the LVT is deciding whether to grant the landlord a dispensation. Such an approach is also justified because the LVT is having to undertake the exercise of reconstructing what would have happened, and it is because of the landlord's failure to comply with its duty to the tenants that it is having to do so."

51. The Tribunal had no difficulty finding that if the consultation requirements have been properly operated in a timely fashion, the flat owners would have been made aware, of what was known to Thomasons and to RMG, being that it was proposed to spend upwards of £42,000 of their monies, held on trust, on works which might, but only might, and carried no guarantees that they would, make the roof watertight. And this was in the context of many previous costly attempts to patch up an ageing flat roof at the end of its predictable life span and where the cost of a new roof, presumably with some sort of guarantee, was likely to be about £100,000, or even less.

52. The Tribunal has no doubt that if the flat owners had been properly consulted and the relevant information made known to them, that observations would have been forthcoming because it was their money which was to be used in pursuing what was predictably, and which subsequently, but almost immediately, was proved to be, a very expensive and fruitless exercise.

53. The Tribunal has little or no doubt that had the flat owners been put on proper and due notice of works which were going in total to cost over £42,000 they would have sought the opportunity to challenge them, taken alternative advice as to whether they were necessary, sought estimates from their own nominees (as they had minuted was their intention in December 2019) and very seriously considered the

available options, and in particular the alternative of a new roof (which is what they decided upon when they had acquired the right to manage). They were not given those opportunities. Instead, they were faced with a fait accompli, the scaffolding was in place and the contract let before they were given any proper intimation that this was a major works project.

54. PFP and RMG have not rebutted what is a compelling case of relevant prejudice.

55. It is difficult to better Mrs Tyson's explanation of that prejudice as set out in her email to PFP on 26 October 2022.

56. As demonstrated and confirmed in *Aster*, it is not incumbent on each leaseholder who has suffered prejudice to have to demonstrate that they would have acted differently had they been properly consulted.

57. The failures relating to consultation were egregious. Promises and assurances were given which were not met. The delay of over 5 years after the payment of the invoices before making the dispensation application, for which there can be no reasonable excuse, is of itself prejudicial.

58. RMG by its actions and in the conduct of the applications seems to have treated the consultation requirements as "an optional extra" which could be ignored for years, or indefinitely, and that however late it might be in applying for dispensation, that should be granted unconditionally.

59. The Tribunal could not escape the finding that, but for Mrs Tyson's laudable tenacity in bringing the section 27A application, RMG and PFP would have been content to allow the matter to remain dormant, forever.

60. Nevertheless, the Tribunal accepts, and without reservation, that during 2019 and 2020 Ms Perrin, Ms Lloyd and Mr Bickerstaffe each believed that they were individually doing their best to discharge particular tasks in trying to tackle a problem that just kept coming back. However, their efforts were not joined up in the way that they should have been. Nor did they engage properly with the flat owners, as they should have done. This blinkered approach missed the main point, and that the reason that the problems kept coming back was because the roof had gone beyond being able to be satisfactorily patch repaired.

61. Having found that the flat owners had suffered relevant prejudice due to the avoidance of the consultation requirements, the Tribunal's next task was to consider was how that should now be addressed. The answer given in paragraph [71] of *Daejan* is that the Tribunal should "in the absence of some good reason to the contrary,

effectively require a landlord to reduce the amount claimed to compensate the leaseholders fully for that prejudice".

62. In light of its previous findings, the Tribunal found that the flat owners should not have had to pay for any of Buildzone's works (referred to in its invoices detailed in paragraphs 5,7, and 8 of the Schedule to the 2024 Decision), and nor should they have had to pay the full amount of Thomasons' fees.

63. The Tribunal accepts, as apparently all the parties did at the time, both that works were required in 2019, and that engaging a surveyor to advise and to obtain costings was reasonable. Consequently, it was not unreasonable to expect the flat owners to have had to pay for the fees referred to in paragraph 3. Nevertheless, and because Mr Bickerstaffe's email of 5 March 2020 provided a clear red light signaling that to continue with the works which had been scoped did not address all the issues that need to be addressed, and had no guarantee of success, the Tribunal found that the flat owners should not have had to the pay for Thomasons' work after that date. Applying a reasonable apportionment, as best as it could with information available, the Tribunal decided that the flat owners' contribution to Thomason's fees (as detailed in both paragraphs 3 and 6) should have been capped at £5000, and consequently that PFP should have claimed no than £5000 from the service charge accounts for the works referred to in the 5 invoices.

64. The Tribunal also found that because of the passage of time it is not now feasible to try and complete the consultation requirements and that no useful purpose could be served by trying to do so.

65. The Tribunal has therefore determined that whilst dispensation should be granted that must subject to the condition that PFP reimburse the flat owners' service charge account with £37,375.95 (being £42,375.95 less the £5000 referred to above).

Concluding comments

66. It follows from the 2024 Decision and this decision that PFP has never been entitled to seek a contribution of more than £250 from each of the 24 leaseholders for the works referred to in the 5 invoices. It, and its agents or representatives, should always have been aware of what is and has been long established as the law.

67. Monies collected for service charges are trust monies to held in accordance with the provisions set out in section 42 the Landlord and Tenant Act 1987. When trust monies are wrongly spent, even if inadvertently, the misappropriated monies must be accounted for and reimbursed in full.

68. Whilst the Tribunal does not have the power to enforce its decisions, the County Court does have enforcement powers.