FIRST - TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**CAM/26UE/LSC/2023/0045**
Property	**:**	**Flat 6, Herons Court, Radlett, Herts WD7 7FA**
Applicants	**:**	**(1) Mr Jeffrey Cooper (2) Mrs Candy Cooper**
Represented by	**:**	**In person**
Respondent	**:**	**Herons Court (Radlett) Management Ltd**
Represented by	**:**	**Miss Nyasha Weinberg of Counsel**
Type of Application	**:**	**(1) Application for the determination of the reasonableness and payability of service charges**
Date of application	**:**	**(1) 22 December 2023** **(2) 23 October 2024**
Tribunal Members	**:**	**Tribunal Judge Stephen Evans** **Ms Sarah Redmond MRICS**
Date and venue of Hearing	**:**	**25 and 26 March 2025, Hertford County Court (day 1) and remote video (day 2).**
Date of Decision	**:**	**2 June 2025**

DECISION

DECISION

1. **The Tribunal determines that all the costs challenged by the Applicant at the hearing were reasonably incurred and reasonable in amount, save for the following:**

   (1) The Applicants' proportion in relation to item 14 (carpets) on the Scott Schedule is limited to £250, for want of statutory consultation by the Respondent;
   (2) The Applicants' proportion in relation to item 14 (redecoration) is reduced to £144.72;
   (3) The Applicants' proportion in relation to items 4, 16 and 27 (management fees) is reduced by 5% to £274.97, £206.23 and £381.90 respectively;
   (4) Items 6 (ABC reading leases) and 33 are disallowed.

2. **The Tribunal declines to grant a s.20C and a paragraph 5A CLARA order in favour of the Applicants.**

3. **The Tribunal declines to make an order as to costs of the application and hearing fees in favour of the Applicants.**

Introduction

1. The Tribunal is asked to determine the payability and reasonableness of relevant costs incurred by way of service charges pursuant to an Application made under s.27A of the Landlord and Tenant Act 1985.

2. The Application challenges service charge years 2020 to 2024.

Relevant law

3. The relevant statutory provisions are set out in Appendix 1 to this decision.

Parties

4. Herons Court consists of 1 block of 12 flats built in 2012 and first occupied in 2013.

5. The Applicants are the joint Leaseholders of the Property, one of the flats.

6. The Respondent is the Management Company under their Lease.

7. Trent Park Properties are the current Managing Agents appointed by the Respondent to manage the block. There have been several agents since October 2019.

Background

8. Relevant facts for the purposes of this application are as follows:

9. On 20 December 2019 settlement was reached by the Leaseholders in the block with the builder of the block in relation to various defects therein.

10. On 23 September 2020, a stage 1 section 20 notice was served in relation to works (carpeting/ tiling) in the common parts, followed by a stage 2 notice on 27 November 2020 which indicated that the Respondent's choice of carpet contractor was LJ Carpets Ltd, out of the 3 named therein.

11. On 11 December 2020 the Respondent wrote to Leaseholders to say they had obtained yet another estimate for works.

12. In May 2021 the Respondent wrote to Leaseholders with a different figure for costs for the carpeting, indicating a different choice of contractor (now Flooring Kingdom).

13. On 21 May 2021 the managing agents at that time, Aldermartin Baines & Cuthbert (ABC) wrote to the Leaseholders purporting to comply with stage 3 of the consultation requirements.

14. On 16 July 2021 the Applicants wrote a long e-mail to the Respondent complaining about ABC, raising various questions to do with service charge issues.

15. In October 2021 Collinson Hall was appointed as managing agent. There followed a period of stability between December 2021 and August 2022, during which time another section 20 notice was served, in relation to major works including gutter cleaning.

16. On 25 May 2022 the Applicants wrote to the Respondent complaining of a lack of consultation over the redecoration of the common parts, especially regarding the choice of contractor. They contended the painting had been executed poorly with poor quality materials. They complained of wasted costs in the sum of over £12,600.

17. On 18 July 2022 Collinson Hall gave notice of termination of their management agreement, but it seems they were persuaded to stay for as long as it took to appoint another managing agent.

18. On 22 January 2023 lift works in the cost of £6782 were undertaken, and on the following day an application was made for dispensation with consultation requirements.

19. On 1 March 2023 the Applicants gave notice under section 22 of the Landlord and Tenant Act 1987 to the Respondent, which was a preliminary notice with a view to the appointment of a manager by the Tribunal.

20. On 13 March 2023 the Respondent appointed Trent Park Properties (TPP) pursuant to the terms of written management agreement which appears in our bundle.

21. By 22 March 2023 the Applicants were writing to TPP expressing their ongoing concerns about management of the block.

22. The accounts for the year ending 2022 were sent out to Leaseholders on 22 August 2023, having been finalised on the 14 August 2023.

23. On 6 September 2023, a section 20B notice was served by TPP on the Leaseholders.

24. On 2 October 2023 the Applicants made an application to the Tribunal for the appointment of a manager pursuant to section 24 of the Landlord and Tenant Act 1987 (case reference CAM/26UE/LAM/2023/0006).

25. On 23 October 2023 the Applicants made the instant application under section 27A of the Landlord and Tenant Act 1985.

26. On 22 August 2024 directions were made on this application by Judge Wayte.

27. On 23 September 2024 the Second Applicant made a witness statement in support of the s.27A application.

28. On 6 December 2024 Judge Wayte gave further directions which included an extension of time to previous directions.

29. On 18 December 2024 Mr Graham made a witness statement in opposition to this application. At the same time the Respondent filed its statement of case.

30. On 6 January 2025 the Applicants filed a Reply to the Respondent's statement of case.

The Lease

31. The Lease is between Heronslea (Radlett) Limited and the Applicants. The Respondent is named as the Management Company.

32. The Building is defined as the land and building known as flats 1 to 12 Herons Court, Shenley Hill, Radlett, Herts WD7 7FA registered at the Land Registry with title number HD1689 and shown edged in red on plan A.

33. Plan A appears to show an area which includes woodland on the west side.

34. Plan B shows this woodland in more detail, and the legend on the Plan states the area is "maintained under a woodland management scheme."

35. The Service Costs under the Lease are defined as “the Costs listed in Part 2 of Schedule 8”.

36. The Service Charge is defined as “The Tenant’s Proportion of the Service Costs”.

37. The Service Charge Year is defined as the calendar year.

38. The Retained Parts are defined as all parts of the Building other than the Property and the Flats.

39. Schedule 1 defines the Property as Flat 6, and identifies that the “Property shall not include any of the Retained Parts”.

40. Schedule 7 contains the Management Company's covenants, including at paragraph 2.1 to provide the Services.

41. The Services are listed in Part 1 of Schedule 8. These include:

> “(a) cleaning, maintaining, decorating, repairing and replacing the Retained Parts
> ...
> (l) any other service or amenity that the management company may in its reasonable discretion (acting in accordance with the principles of good estate management) provide for the benefit of the tenants and occupiers of the Building.”

42. The Service Costs are detailed in Part 2 of Schedule 8.

43. Schedule 8, Section 1, Part D refers to maintaining the common parts.

44. The Applicants’ due proportion under the Lease is 8.04%; other Leaseholders have different percentages.

The Inspection

45. An inspection was held on the morning of the first day of the hearing.

46. The Tribunal indicated to the Applicants at the inspection that it was unlikely that the Tribunal would be able to decide all the matters in the Scott Schedule in the time available, such that the Applicants should select their challenges wisely.

The Hearing

47. This was conducted in person. The Applicants represented themselves.

48. Miss Weinberg of Counsel represented the Respondents.

49. The Tribunal had been provided a full bundle of 590 pages, read in advance.

50. The Applicants were given further time to consider which items they wished to challenge in the time available. The Applicants were prepared to proceed on this basis, given that their primary aim was to garner enough findings to support their application for the appointment of a manager (brought on grounds which include that there has been a breach of obligation in the Lease and that unreasonable service charges have been made).

51. The Applicants and Respondent produced further documents (several scans) during the course of the hearing which were not admitted in evidence, given their size and lateness, save for section 20 notices dated 23 September 2020 and 21 May 2021. The Respondent produced a signed copy of a settlement agreement in the bundle at the request of the Tribunal.

Discussion and Determination: s.27A Application

52. The Applicants did not challenge items 7, 20 (decorating of areas not carried out in 2020), 21 (new porcelain path to front) and 45 (flood).

53. The parties made their representations on the items advanced by the Applicants, item by item, followed by submissions on s.20C/para 5A.

Item 1 (Gutters £879.20)

54. The Applicants contended that instead of having an annual gutter clean and repair, the Respondent had wasted costs in undertaking ad hoc repairs.

55. The Respondents contended that the gutters at the building are high and prone to blockage by leaves and detritus from nearby woodland; that they needed to be regularly cleared, and on occasions repaired. Repairs were generally minor, such as reconnecting detached parts. The sums expended were reactive repairs to defects in the Retained Parts and recoverable under the Lease.

56. The Tribunal had noted a large number of separate gutter sections at height on its inspection.

57. We are mindful that in *Waaler v Hounslow LBC* [2017] EWCA Civ 45,the Court of Appeal held that whether costs were reasonably incurred within the meaning of section 19(1)(a) of the Landlord and Tenant Act 1985 was to be determined by reference to an objective standard of reasonableness, not by the lower standard of rationality; that, where a landlord had chosen a course of action which led to a reasonable outcome, the costs of pursuing that course of action would have been reasonably incurred even if there were a cheaper outcome which was also reasonable.

58. The Tribunal determines that these costs were reasonably incurred and reasonable in amount. The Respondent had indeed chosen a course of action which led to a reasonable outcome. To have carried out reactive repairs and to

have decided not to wait until an annual clean and repair was not an unreasonable decision, we determine.

59. As to the cost of these repairs, the Applicants had no evidence that an annual clean and repair would have been cheaper in amount. We bear in mind the Upper Tribunal's words in *Enterprise Developments Ltd v Adam* [2020] UKUT 151 (LC), which provides:

"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."

60. The Applicants had no quotation of their own for the works involved, and we do not consider the sums to be unreasonable for the work provided.

Item 33 (Trent Park Properties administration charge £1500)

61. The Applicants seek a full refund of a £1500 charge placed on them on 25 October 2023, which the Respondents contend was a cost incurred in relation to work caused by the Applicants' excessive correspondence, over and above what might be considered reasonable. The Applicants contend that the Lease does not allow administration charges to be levied.

62. The Applicants contend that the managing agents, instructed by the Respondent, agreed with the directors that this sum could be put into the service charge account for 2023 pending the outcome of this hearing.

63. The Respondent by its counsel contended that this sum was permitted as a service charge pursuant to Schedule 8 Part 1 paragraph (l) of the Lease.

64. The Tribunal determines that this sum is not a service charge item, and is not capable of falling Schedule 8 Part 1 paragraph (l) of the Lease because it is not for the benefit of the leaseholders and occupiers, but is an unlawful administration charge. Accordingly, the sum should be removed from the service charge accounts.

Item 14 (Carpets and redecorating £7899.79)

65. The Applicants contend that these costs were incurred without a compliant section 20 consultation having taken place. The Respondent denies this.

66. The Applicants' position is that the maximum which should be permitted under this heading is £2400 (elsewhere they have alleged £3000, i.e. 12 x £250).

67. The Respondents admit that the floor coverings had been in a state of deterioration before the stage 1 notice; this led to discussions whether there should be tiling or carpet. The Respondents further contend that there was discussion about carpeting the exit to the lift, sometime in between Stages 2 and 3 of the consultation - but they could not give a precise date. The Respondents contended that there were general discussions on a regular basis with the Applicants, the implication being the Applicants were kept abreast of developments.

68. We note the chronology was as follows:

69. On 23 September 2020 a stage 1 notice and covering letter had been sent by ABC to the Applicants. This indicated proposed works of replacement of existing communal hallways, entrance lobbies and staircase floor coverings with replacement new floor coverings. The reasons given were: to comply with repairing covenants in the Lease it is necessary to keep the internal communal areas of the property in a good state of repair at all times.

70. The Leaseholders were given until 28 October 2020 to make observations.

71. The Stage 2 notice of 27 November 2020 followed. It also stated that the works proposed were "the replacement of the existing communal hallways, entrance lobbies and staircases floorcoverings with replacement new floor coverings."

72. Reasons are then given in the Notice for the works, followed by details of 3 contractors who had been asked to submit estimates for carpeting:

Contractor	Estimate (£)	VAT	Total
LJ Carpets Ltd	2170	n/a	2170
Finest flooring of Bushey Ltd	6349	1269.80	7618.80
Flooring Kingdom Ltd	2470	494	2964

73. There are then details concerning tiling works, none of which are of relevance to the Applicants' particular challenge, and do not need to be set out.

74. The managing agents' fees of 10% plus VAT are then quoted, followed by details of where leaseholders might view all quotations.

75. The covering letter to the s.20 notice indicated it was the Respondent's intention to appoint LJ Carpets Ltd to do the carpeting works.

76. The Stage 2 section 20 notice was also accompanied by an email which stated:

"It is proposed to tile the ground floor entrance hallway and the entire ground floor area, including the landings outside flats 5, 6, 7 and 8 with ceramic tiles. All other communal areas of the block will be fully carpeted including all staircases. This Part 2 section 20 notice will expire on 02/01/21. If you have any questions or queries please contact Mark Reed… it is hoped, subject to any further observations received and funds being in place, to proceed with these works some time very shortly after 02/01/21."

77. That date came and went. On 21 May 2021 ABC wrote to the Applicant in accordance with Stage 3 (notice of reasons for awarding the contract). The notice indicated that Flooring Kingdom Ltd would be awarded the contract, not LJ Carpets Ltd. The notice continued:

"Our reasons for doing so are: The lowest priced contractors LJ Carpets Limited were a very small company and we did not feel that they could do a high quality job at this property. We therefore chose the next lowest quote, which was Flooring Kingdom Limited whom we had successfully used on several occasions previously."

78. We have been taken to Flooring Kingdom's invoice dated 12 April 2021, in a total sum of £5029.80 inc VAT.

79. In our determination, the cost of the works obviously exceeded the s.20 threshold, and it is not necessary for us to determine whether that threshold was £2400 or £3000. We note that the Applicants' 8.04% of the carpeting cost of £5029.80 alone was over £250, and that is enough.

80. The Tribunal finds that the Stage 1 notice dated 23 September 2020 complied with Schedule 4, Part 2 of the Service Charges (Consultation etc) (England) Regs 2003. It described in general terms the works and the reasoning for them. It invited observations within at least 30 days, and gave the contact details for doing so. It invited the Applicants to nominate a contractor.

81. As for Stage 2, the Respondent did obtain estimates for the work and sent a stage 2/ paragraph (b) statement setting out the costs of at least 2 estimates. It did make the estimates available for viewing at ABC's offices by prior appointment during normal business hours. It did give a name and address for further observations/ objections. In relation to any observations received under stage 1, but that because "none received."

82. The Tribunal therefore considers that Stage 2 was complied with, at least at that stage. There is nothing in the Regulations which requires the Respondent to have stated (or not stated) which of the contractors was its preferred contractor.

83. Stage 3, however, was not complied with, this Tribunal determines. The letter of 21 May 2021 did not set out a summary of observations received under Stage 2. Moreover, the Respondent never sent the Applicants Flooring Kingdom's revised quotation and never invited observations thereon. Stage 2 of the procedure could and arguably should have been repeated, by including the Flooring Kingdom revised quotation, but it was not. Informal discussions cannot plug the statutory gap created, we find.

84. We therefore determine that the Applicants' contribution to the works which consisted of the carpeting should be capped at £250.

Item 29 (Aerial £2985)

85. This item relates to the cost of repair of the communal satellite television system.

86. The Applicants contend that the works were not reasonably incurred because lots of residents do not have Sky, and no professional evidence had been provided on the necessity for these works. The Applicants also contend that the works were carried out without consultation under section 20.

87. The Respondent averred that there were two sets of works involved here. The first involved Sky being called out to do temporary repairs. There was no charge for that work made to any Leaseholder. The Sky engineer advised that an upgrade was necessary.

88. The second set of works was the upgrade, and resulted in 2 invoices dated 21 June 2023. The first was subsumed with the second invoice, we were told. That second invoice totals £2985 inc VAT, and has the following description:

"Full upgrade
Mew quattro LNB, 30 decibel launch amplifier, 2X8 way DSCR switch (Sky Q), Four way DSCR switch, 2 X 2.5 power supply units, earth cable and earth block. (Inclusive of labour). Priced at £3225 + VAT originally price shown is discounted rate accepted within two weeks."

89. The Applicants' position was that there had been an agreement for the lower sum in order to avoid what the Respondent believed was a £3000 threshold over which it would need to consult for works pursuant to section 20.

90. The Respondent contended that there is at least 1 disabled resident in the building who uses Sky. That person was named during the hearing. The Applicants' response was to say the disabled person could have installed Sky Glass (a 4K streaming TV).

91. In the Tribunal's determination, the cost of an upgrade in full was a cost which was reasonably incurred, bearing in mind the needs of the disabled tenant, and because an engineer (whom the Respondent believed to be competent)

advised that the upgrade was needed. We have no evidence that the disabled tenant's needs could have been met by Sky Glass.

92. As to whether the cost was reasonable in amount:

93. We were informed, and it was not disputed, that there are 2 Leaseholders whose service charge proportions are 10.7% of relevant costs, and 1 Leaseholder at 9.9% of relevant costs. The higher percentage Leaseholder would be required to pay £319.35 of this aerial invoice cost.

94. Accordingly, this work should have been the subject of s.20 consultation, we determine. It is common ground it was not in fact made subject to consultation.

95. The Applicants were themselves required to pay £239.99 (8.04% of £2985). In the circumstances, there is no credit due. There being no other challenge, we determine that the amount payable by the Applicants is reasonable.

Items 31 & 44 (Fence, unknown cost but more than £1925)

96. The Applicants case was that there were two sets of works in relation to the fence, which had been known to have been in a poor condition for a couple of years previously, and the two sets of works are to be treated as 1 set of works which should have attracted consultation under section 20 of the Landlord and Tenant act 1985.

97. Put another way, the Applicants contended that the first 10 panels fell over in about May 2023, and about a year later 11 panels fell over; that they should all have been repaired at the same time, following due consultation.

98. They contended that they had written to the Mr Graham on this subject on 13 March 2023, without response.

99. A cost should have been reasonably incurred, the Applicants accepted. It was rather an issue as to what the Applicants should pay.

100. The Respondent's case was that early in 2023, following high winds, part of the rear garden fence collapsed. The Respondent assessed the damage and decided that only part of the fence needed immediate replacement. The Respondents got 3 quotations from reputable contractors. The cheapest quotation came from Silva Landscaping, the company which carries out gardening at the property, and who are were known to be reliable and efficient.

101. The Respondents further contended that a section 20 consultation was not necessary for these works.

102. In oral representations, the Respondent clarified that on 8 January 2024 only 3 panels fell over, but it was considered reasonable to replace 11. The Respondent then took us to photographs of the collapsed panels in 2023, taken by Mr Graham.

103. The Applicants disputed this was reasonable.

104. The Respondent explained that in January 2024 there were insufficient funds to undertake the works at that time.

105. The Tribunal has seen 2 quotations from Silva Landscaping:

- Dated 23 March 2023 in relation to 10 close board panels, 11 concrete posts, 11 concrete gravel boards, and associated equipment; parts and labour £1890

- Dated 8 January 2024 in relation to 10 close board panels, 11 concrete posts, 10 concrete gravel boards an associated equipment; parts and labour £1990.

106. The Respondent relied on *Phillips v Francis* [2014] EWCA Civ 1395, in which the Court of Appeal confirmed the statutory obligation on landlords to consult their tenants under Part 2 to Schedule 4 of the Service Charges (Consultation) (England) Regulations 2003 is limited to where they propose to carry out discrete sets of "qualifying works" under the LTA 1985. The Respondents submitted that, in holding that the correct approach is the 'sets' approach, the Master of the Rolls gave guidance on the factors that decide what a single set of qualifying works comprise [36] including:
    - where the items of work are to be carried out;
    - whether they are the subject of the same contract;
    - whether they are to be done at more or less the same or different times; and
    - whether the items of work are different in character from, or have no connection with, each other [36]. In any given case, it will be a question of fact and degree.

107. The Tribunal agrees that *Phillips v Francis* is authority for the proposition (at paras 33, 36, 38, 63, 89) that, when determining what constitutes qualifying works for the purposes of section 20 of the Landlord and Tenant Act 1985, it is incorrect to aggregate all works in any given year into one set of qualifying works; that, rather, what constituted a set of qualifying works was a question of fact and degree, to be determined objectively in a common sense way, taking into account many relevant factors, including:
    - where the items of work were to be carried out,

- whether they were the subject of the same contract,
- whether they were to be done at more or less the same time or at different times, and
- whether the items of work were different in character from or had no connection with each other.

108. Applying the above dicta to the instant case, we can see that all the fence works were in the rear garden along the same boundary, and that the same contractor carried them out. The 2 quotations were, we note, only 10 months apart. However, the works were not carried out under 1 contract, but following 2 separate quotations. We have no independent evidence that the fence ought to have been replaced in one go, and it is unclear what saving in cost there might have been (if any) had Silva Landscaping conducted the whole fence replacement in one go. Finally, we note the second quotation was obtained on the day on which the 3 further panels collapsed; accordingly both quotations were obtained in different service charge years.

109. For all these reasons, we prefer the Respondent's argument that it would be inappropriate to aggregate the works so as to treat them as qualifying works for s.20 purposes.

110. There being no other challenge, we therefore determine that the Respondent's costs were reasonable in amount in the sums stated in the 2 quotations from Silva Landscaping.

<u>Item 13 (Works to prevent water ingress into car park; £4025).</u>

111. The Applicants contended that this work should have been referred back to the developer / builder who had agreed to rectify the problem, and in any event there should have been a section 20 consultation. It was not reasonable for the lessees to have to foot this bill, and they relied on *Avon Ground Rents v Cowley* [2020] 1 WLR 1337.

112. The Applicants further complained that:

- The company which organised the repairs, ADK, were business consultants known to the Respondent.
- Water penetration continued to this day.

113. The Respondent's contention were:

- That these costs were incurred when waterlogged land in the grounds of the property leached water into the back of store room 5, due to a building

defect which is the subject of unsuccessful litigation with the freeholder / developer. As such, there was no further recourse to that person for funding.

- The contractor was ADK, a trusted known contractor, with whom the Respondent had worked before. ADK were experienced in damp-proofing works, the Respondent contended.

- The works consisted of an initial investigation into the source of the leak, followed by works in accordance with a quotation by Wilkinsons contractors. This included works to the outside wall, removal of earth on perimeter, replacing with concrete, sloping the concrete and channel away, 2 weepholes, waterproof liming before concrete, and side wall waterproofed to eliminate lateral water penetration. In all, 2 operatives were required, taking 1 week.

- The Respondent contended that there were two separate invoices; one in the sum of £850+ VAT (£1020) for initial investigation; and another in the sum of £2825 inc VAT for repairs. Other quotations had been obtained, such as Johnson & Ellis Ltd at £4750.

114. The Applicants conceded this did not amount to one set of works, because it was reasonable to have investigations carried out before it was known whether there would be further works required or not.

115. On the matter of third party recovery, we observe that in *Oliver v Sheffield CC* [2017] 1 WLR 4473, CA, the landlord was required to give credit for government grant funding when deciding a fair proportion of service charge. The CA held that a Lease should not be interpreted so as to produce a result that the parties intended the landlord to make double recovery: per Briggs LJ at paras 42 to 46, and Lewison LJ at para 60 (such findings on this point were not overruled in the recent case of *Williams and others v Aviva Investors Ground Rent GP Ltd and another* [2023] UKSC 6, [2023] 2 WLR 484).

116. Similarly, in *Avon Ground Rents v Cowley* [2020] 1 WLR 1337, CA, on account service charge demands had been made before a building's insurer accepted liability; the CA held that the question whether the possibility of third party payments could be taken into account in determining whether the amount of a service charge was "reasonable" would depend on the facts of the individual case. Third party recovery does not have to be a certainty: per Nicola Davies LJ at paras 19, 32-37, with whom the other CA judges agreed. But it must have some realistic prospect of success, we consider.

117. In the instant case, we have analysed the settlement agreement reached in December 2019. We note that it was drawn up by solicitors, and involved as parties the following: the lessees and the management company of Herons Court, Heronslea Limited, TNV Construction Limited, the NHBC, and named Part 20 defendants in a claim brought in the High Court. Appendix 1 contains a list of Applicants, which include the Applicants. The agreement was signed by all parties, including the Applicants. The agreement has a schedule of works attached at Appendix 3. These specific certain works in relation to the basement car park.

118. The Applicants contended that they were rushed into signing the settlement agreement, and did not have professional advice. Nonethless, they are bound by it. It is clear to the Tribunal that the developer did not, by the settlement agreement, agree to carry out any or all works necessary to remedy water penetration into the basement area, for all time; it only agreed to do certain specific works, and there is no evidence before us that those works were not executed in time and with reasonable care and skill. The fact that there is water penetration continuing to some extent today does not lead to a conclusion (without more) that the works by ADK were ineffective or poorly done. Finally, we do not consider the mere fact that ADK was known to the Respondent before these works were organised should lead to any adverse finding.

119. Accordingly, we cannot find for the Applicants on this item on grounds that the costs were not reasonably incurred because the developer should have been pursued for the cost incurred in this service charge year, and on the further grounds that the works were not done to a satisfactory standard. We agree with the Respondents that there does not appear to have been any realistic possibility of pursuing any third party, given the Agreement terms in 2019, which were in full and final settlement, and constituted a full release of the developer.

120. However, we do agree with the Applicants that the cost was such that there should have been s.20 consultation in relation to the repairs costs (not the inspection costs). The mere fact that there was at least 1 Leaseholder paying 10.7% of £2825 should have triggered the consultation exercise.

121. Nevertheless, as the Applicants' 8.04% share of the relevant cost is £227.13, it comes below the service charge threshold of £250, and they have not overpaid.

122. There being no other challenge, we determine the costs were reasonably incurred, and the amount payable by the Applicants of £237.30 is reasonable.

Item 14 (redecoration works £2870)

123. This was separate to the carpet cost under item 14.

124. The Respondent's Scott Schedule is silent as to these decorating costs, but counsel explained that the cost consisted of £1100 from 1 decorator and £1770 from another. The first contractor was RB Davies Painting and Decoration, which gave a quotation of £1800 for decoration of the internal areas to the staircases and halls of the building, more particularly:

- preparation by filling of cracks holes etc and rubbing down to level;
- rubbing down all woodwork to a smooth finish to include all skirtings, door frames, and window sills;
- applying 2 coats of emulsion to ceilings and walls;
- applying 2 coats of eggshell finish to the woodwork above;
- all areas to be covered with dust sheets during paint application;
- wet paint and caution slip hazard notices to be displayed;
- all tools and materials to removed each day upon finishing work;
- all materials to be supplied including Dulux trade vinyl matt and Dulux trade eggshell.

125. It was explained to us that the £1100 was part payment of a sum of £1800 quoted, but the first contractor never finished the job, despite being 9 days on site.

126. The Respondent's Mr Graham explained he then got a quotation from a decorator called House Doctor @ Large Ltd, the proprietor of whom was a director of Mr Graham's previous firm. This quotation was for the preparation of wall and wood in common areas of the building, and painting and decorating of the entire common parts, in the sum of £1770. Mr Graham did not get a second quotation. The resulting invoice contains few details of what was actually done for the money.

127. We note that it was not in dispute between the parties that redecoration of the common areas was necessary, at least once. It seems to the Tribunal that the Applicants have established a prima facie case there was an unreasonable cost, given that the first quotation was in the sum of £1800, and the decorator had already conducted 9 days work on site.

128. The Respondents, however, were not able to explain adequately why the entire common parts needed to be redecorated by House Doctor, or why another quotation was not sought, aside from that from House Doctor.

129. In all these circumstances, we determine that a reasonable cost for the works is the original price of £1800.

130. It follows that a reasonable amount for the Applicants to pay is 8.04% of £1800, namely £144.72.

Item 6 (fallen tree in woodland area £2525)

131. The Applicants challenge was brought on the grounds that the costs were unnecessarily incurred.

132. The Applicants were able to identify the following costs only:

(1) £840 legal costs (for advice);
(2) £100 paid for a FTT dispensation application;
(3) £750 for repair of bin store outbuilding damaged by fallen tree;
(4) £485 for ABC managing agents to read the Lease.

133. The Applicants contended it was plain as a pikestaff that the freeholder was liable for all the damage, given it was in control of the area where the tree was situated; but instead of it paying for the roof of the bin store, the Leaseholders had to. The Applicants' argument was thus based once again on *Avon v Cowley*.

134. The Applicants further contended that the First Applicant, as a FRICS surveyor, had offered to give his advice on the issue of ownership of the land, but it had not been taken up.

135. The Respondents agreed that damage had been caused to the bin store by falling branches from a large tree in the woodland area; and that it had paid £750 for the repair of the bin store, so it was not left open to the elements. There was concern about the potential for more significant damage from the woodland, and it cut down the 2 trees. An application was made to the Tribunal for dispensation from section 20 consultation for works, on the grounds of urgency.

136. In addition, the Respondent sought legal advice to the ownership of the woodland and responsibility for any damage caused. It was advised that the land was the responsibility to the freeholder/developer, but it would not make commercial sense to pursue them for the cost of the repair to the bin store.

137. The Respondent informed us that the £485 incurred by ABC to read Leases was a separate item, and part of the costs referred to in their terms of their engagement.

138. In oral submissions, Respondent's counsel confirmed that the legal advice was obtained from Pittalis & Co LLP. There were two dead trees in the location, and there had been a risk of one of them falling into the road. The advice had been whether the woodland fell within the responsibility of the freeholder, or someone else. The advice was in writing and consisted of 2 pages, but it was not in the bundle. There was also a response to the landlord/ developer's letter, also not in the bundle. The total for this work was £700 + VAT.

139. The Respondent explained that the issue had still not been settled, i.e. under whose responsibility the land fell. There was also an issue about whether or not this area of land came within the definition of Retained Parts under the Lease. This was all primarily a case for legal advice, not for a surveyor such as the First Applicant.

140. It was explained that the Tribunal application had been withdrawn for 2 reasons: the legal advice obtained, and the fact that the tree had been cut down at the freeholder's cost, without any admission of liability.

141. It was further explained the Respondent had agreed to pay £750 towards the bin store repair, and the freeholder would pay for the cutting down of the 2 trees. This was a commercial settlement, effectively, given the ambiguity of ownership/liability.

142. The Tribunal must consider matters as they were known to the Respondent at the time, and not with benefit of hindsight. We consider the legal advice was reasonably incurred; we agree this was a matter of legal ownership and Lease interpretation, for a lawyer not a surveyor, however well-meaning the First Applicant's offer had been.

143. For a written solicitors' advice and response to the freeholder, we consider the amount of £700 + VAT was very reasonable.

144. We disallow the Applicants' contribution towards ABC's costs of £485 (£38.99). ABC were not lawyers. We consider paying for their interpretation of the Lease was not a cost reasonably incurred, and we have no evidence of what that interpretation was, in any event, nor how long it took.

145. We agree the Respondent acted reasonably in the *Waaler* sense by cutting a deal with the freeholder to share the overall costs. The £750 was reasonably incurred as regards the bin store, since the freeholder agreed to incur the cost of cutting the 2 trees down which posed a continuing hazard. The Tribunal, without determining the matter, can see an argument that the woodland does fall within the definition of Building under the terms of the

Lease in conjunction with Plan A, and is therefore a Retained Part. Pursuing the freeholder ran the risks of considerable further cost, which might not be recovered.

146. We consider the sum of £750 for the works undertaken to be reasonable in amount (it included both roof and joist damage).

147. Lastly, because of the hazard posed by the trees, we consider the cost of an application for dispensation on grounds of urgency to have been reasonably incurred at the time. The sum £100 is fixed by HMCTS, and must be taken to be reasonable in amount.

Item 3 (setup fee of ABC, £600)

148. The Applicants contended that this should have been part of the ABC contract, not an additional charge, such that the £600 should be refunded in full.

149. The Respondent's contention was that it was contractually obliged to pay the sum, so it was reasonably incurred, and reasonable in amount.

150. The Tribunal noted that the sum was not clearly visible in the Respondent's accounts.

151. The Tribunal prefers the Respondent's arguments that the sum was reasonably incurred and reasonable in amount. We can see from Appendix 5 to the ABC contract that Additional Charges include set-up fees of £500 + VAT, payable on "take on". This sum is expressed to cover the following services: establishing accounts, examining the Lease, and ongoing disputes, claims and arrears.

152. Accordingly, if this sum was recharged to the Leaseholders, we consider it a cost to have been reasonably incurred (as being contractually payable) and reasonable in amount.

Items 4, 16 and 27 (management fees, £3600 from October 2019/2020 and £2700 from October 2021; £5000 in 2023).

153. The Applicants contended that in relation to the first sum they deserve a 50% refund for not having an adequate service, and the managers were taking additional commissions. The Applicants accepted they had no documents from which the Tribunal might find evidence, or be able to draw an inference, of any kickbacks.

154. The Respondent contends that the allegation of taking additional commissions is unparticularised and unfounded. All managers' fees were reasonably incurred and reasonable in amount.

155. In relation to the second sum, the Applicants again contend there had been poor management, evidenced by the fact that the managers' contract was not renewed after a period of just 9 months. The Respondents accept that the services provided by ABC fell short of expectation / that they did not provide value for money; they say that the 2 directors in place at the time agreed to the Applicants' demands that they stand down, and the managing agent be replaced, in the hope that this would calm the aggressive approach of the Applicants. The Respondent notes that the Applicants have criticised all 3 managing agents used during the period challenged in these proceedings. They contend that the costs were reasonably incurred and reasonable in amount.

156. In relation to the third sum, the Applicants contend that Trent Park Properties have not provided an adequate service, as per the RICS code.

157. The Respondent rejects the suggestion that current managing agents have not been carrying out their duties properly from 2023, when they took over from Collinson Hall. TPP was chosen by the Respondent because of their experience with dealing with difficult lessees, which was considered an advantage, given what had been faced over the previous few years. Also, Eliot Esterson of that company had been appointed as a court appointed manager on several occasions. The Respondent has worked with TPP closely since their appointment, and is aware TPP have found dealing with the Applicants extremely difficult and time consuming, typically their excessive emailing, telephoning, and demands for meetings, which are disproportionate.

158. In the Tribunal's determination a fee for the managing agents was reasonably incurred. The issue is how much.

159. As to amount, where the quality of the services delivered by the agents themselves or others and/or the condition of the development is below normal expectations, the Upper Tribunal has accepted this as being indicative of the management function not being executed to a reasonable standard. In *Kullar and Prior Place Residents Association v Kingsoak Homes Ltd* [2013] UKUT (LC) the managing agent's fees were reduced by 10% on account of the moderately serious problems experienced in the block.

160. We are not satisfied that the Applicants have established on balance of probability that the managing agents, save for ABC, generally fell short of

expectation / did not provide value for money. In the case of ABC, their tenure was short-lived and terminated early, as the Applicants requested.

161. The Tribunal is, however, prepared to make a reduction on *Kullar* principles, on account of our earlier determination of repeated lack of compliance with section 20 consultation. We make a deduction of 5% from each of the sums challenged for management fees, and accordingly from the Applicants' 8.04% share of each of the 3 sums above. The Applicants' proportion in relation to items 4, 16 and 27 is reduced by 5% to £274.97, £206.23 and £381.90 respectively.

Discussion and Determination: Section 20C/paragraph 5A

162. The UT has held that the only principle is to have regard to what is just and equitable, including the conduct and circumstances of the parties, as well as the outcome of the proceedings. The purpose of s20C is to give an opportunity to ensure fair treatment as between Landlord and Tenant, in circumstances where although costs have been recently incurred by the landlord, it would be unjust that the tenant should have to pay them: *Tenants of Langford Court v Doren Ltd* (LRX/37/2000) per HHJ Rich.

163. Judge Rich QC further remarked in *Schilling v Canary Riverside Development PTE Limited*, LRX/26/2005:

"so far as an unsuccessful tenant is concerned, it requires some unusual circumstances to justify an order under s20C in his favour".

164. The Applicants contend that a lot of the Respondent's work is reactive, not proactive. They say there is no management plan for the long term. They contend that they have not been treated fairly, particularly that their communications are deleted without due consideration. Moreover their concerns are dismissed out of hand; for example, if they see bubbles coming out of the drains, it is only right that they should be entitled to report it. The Applicants say they should also be entitled to transparency, so that everyone knows what is to be done. The Respondents need to make sure that contractors are competent and their insurance is checked, not simply using people with ladders, because it is cheaper then a proper firm. Moreover, the Applicants are entitled to be consulted. The accounts are not clear, and do not have a covering letter to explain them. There was no need for a final hearing. There are two things that have contributed specifically to the matter getting to this stage: the fact that the Respondent does not know section 20 procedure properly; and the fact that the Respondent has acted in a vexatious, harassing and abusive manner towards the Applicants.

165. The Respondents contend:

i. The Applicants have conducted this litigation in a wholly disproportionate manner. The claim is improperly particularised, extremely lengthy and the files prepared, even following an order identifying the excessively lengthy submissions from the Applicants, contains some 16 different bundles. The additional bundles were not prepared in accordance with the annexed guidance required by order of 22 August 2024. The annexed guidance states that bundles should be numbered page-by-page and be provided in date order; this does not apply to the lengthy supplemental bundles prepared by the Applicants.

ii. The Schedules prepared by the Applicant do not clearly set out the items and amount in dispute, as was required by the order of 22 August 2024, at paragraph 5. They are not underpinned by legal submissions.

iii. Nor have the Applicants put together a full set of representations in relation to any Section 20C or paragraph 5A arguments;

iv. The Tribunal noted by its letter of 6 December 2024 "the enormous amount of information sent by Ms Cooper has overwhelmed the Tribunal's resources". The Applicants have failed in their duty to have regard to the resources of the Tribunal as part of the overriding objective. The Applicants have persisted in their approach of providing an overwhelming amount of information, and the Respondent asks that the Tribunal consider striking out the application in accordance with Rule 9 of the Tribunal Procedure Rules 2013

166. The Tribunal is not satisfied that it would be just and equitable to make an order in the Applicants' favour, preventing the Respondent putting the costs incurred in relation to these proceedings through the service charges or by way of administration charge. We are unable to determine, on this application whether or not the Applicants have been harassed or abused, save to say that we have not seen any written communication from the Respondents which might be categorised as such. We agree that the Applicants' documentation has been excessive and disproportionate, as the Procedural Judge has already found.

167. More than all this, however, is the fact that overall the Applicants have not been the successful party in this case, although they have rightly contended that s.20 procedure has not been followed by the Respondent; and any reductions in costs the Applicants have gained have been marginal.

Conclusions

168. For the reasons already given under the s.20C application, in our discretion we also decline to make an order for reimbursement of the Application and hearing fees for the s.27A application.

Judge:

S J Evans

Date:
2/6/25

ANNEX – RIGHTS OF APPEAL

1. If a Party wishes to appeal this decision to the Upper Tribunal (Lands Chamber) then a written Application for permission must be made to the First-Tier at the Regional Office which has been dealing with the case.
2. 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.
3. If the Application is not made within the 28-day time limit, such Application must include a request to 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.
4. 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.

Appendix 1

Landlord and Tenant Act 1985

Section 18

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

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

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

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

(3) For this purpose -

(a) "costs" includes overheads, and

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

Section 19

(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 provisions 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.

(2) Where a service charge is payable before the relevant costs are incurred, no greater amount than is reasonable is so payable, and after the relevant costs have been incurred any necessary adjustment shall be made by repayment, reduction or subsequent charges or otherwise.

20BLimitation of service charges: time limit on making demands.

(1)If any of the relevant costs taken into account in determining the amount of any service charge were incurred more than 18 months before a demand for payment of the service charge is served on the tenant, then (subject to subsection (2)), the tenant shall not be liable to pay so much of the service charge as reflects the costs so incurred.

(2)Subsection (1) shall not apply if, within the period of 18 months beginning with the date when the relevant costs in question were incurred, the tenant was notified in writing that those costs had been incurred and that he would subsequently be

required under the terms of his Lease to contribute to them by the payment of a service charge.

Section 27A

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

(a) the person by whom it is payable,

(b) the person to whom it is payable,

(c) the amount which is payable,

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

(e) the manner in which it is payable.

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

(3) An Application may also be made to the appropriate Tribunal for a determination whether, if costs were incurred for services, repairs, maintenance, improvements, insurance or management of any specified description, a service charge would be payable for the costs and, if it would, as to -

(a) the person by whom it would be payable,

(b) the person to whom it would be payable,

(c) the amount which would be payable,

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

(e) the manner in which it would be payable.

(4) No Application under subsection (1) or (3) may be made in respect of a matter which -

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

(b) has been, or is to be, referred to arbitration pursuant to a post-dispute arbitration agreement to which the tenant is a Party,

(c) has been the subject of determination by a court, or

(d) has been the subject of determination by an arbitral Tribunal pursuant to a post-dispute arbitration agreement.

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