FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case Reference	**:**	**MAN/00BR/LDC/2024/0185**
Properties	**:**	**80 Velour Close, Salford M3 6AP & Flat 49, Linen Court, Salford M3 6AP**
Applicants	**:**	**David Johnson (1)** **Stephen Robert Pettifer (2)**
Respondent	**:**	**Contour Property Services Limited**
Type of Application	**:**	**Determination of liability to pay and reasonableness of service charges - Landlord and Tenant Act 1985 – s 27A & s 20C**
Tribunal Members	**:**	**Judge J Stringer** **Ms J O'Hare**
Date of Decision	**:**	**29th April 2025**

DECISION

Decision

1. The sums paid or payable by the First Applicant in relation to service charges for 80 Velour Close, Salford, M3 6AP for the service charge year ending 31st March 2025 are reduced by £1,005.44.

2. The sums paid or payable by the Second Applicant in relation to service charges for Flat 49, Linen Court, Salford and Parking space M3 6JG for the service charge year ending 31st March 2025 are reduced by £1,179.31;

3. The costs incurred, by the landlord (Respondent) in connection with these proceedings are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the Applicants, pursuant to section 20C of the Landlord and Tenant Act 1985.

4. The Applicants' liability to pay an administration charge in respect of litigation costs with regard to these proceedings is extinguished pursuant to Paragraph 5A of schedule 11, of the Commonhold and Leasehold Reform Act 2002.

REASONS

Preliminary Matters

1. The Applicants acted in person. The Respondent was represented by Mr Waiting, Counsel.

2. Neither party filed any witness evidence. Subject to Issue 3, identified in paragraph 15 below, in respect of which Mr Waiting indicated that the Respondent may seek permission to rely upon witness evidence, the parties agreed at the hearing that the issues were capable of determination by the Tribunal on the basis of the parties' statements of case, the documents in the bundle, and oral submissions. In the event, no application was made by Mr Waiting for witness evidence in relation to Issue 3, and the Tribunal was satisfied the issue was capable of determination without witness evidence.

3. The Tribunal was provided by a 765 page, agreed, hearing bundle.

4. The Tribunal carried out an external inspection of the external door areas of the Applicants' respective blocks prior to the hearing.

The Law

5. The Tribunal had regard to sections 20 (consultation requirements) and sections 19 and 27A (reasonableness of, and liability to pay, service charges) of the Landlord and Tenant Act 1985 ("LTA") and the Service Charges (Consultation Requirements) (England) Regulations 2003/1987 ("the Consultation Regulation").

Background to the application

6. The Applicants hold long leases of properties - in the case of 80 Velour Close, Salford M3 6AP, between the First Applicant, Mr Johnson and the Respondent, Contour Housing Services ("Contour"), and in the case of Flat 49, Linen Court, Salford M3 6AP between the Second Applicant, Mr Pettifer (jointly with Jane Ann Ruby Plant) and Contour. Contour is identified in the leases referred to below as "the Association".

7. The relevant, agreed, provisions in the leases are as follows:

   a. Fifth Schedule, paragraph 3: *"To keep the main structure of the Buildings roof foundations external and loadbearing walls and external doors of the Buildings (save the windows and interior walls of the Property) in good and substantial repair."*

   b. *Buildings is defined as: "any buildings or other structures now or hereafter to be constructed on the Development and any structures incidental thereof and any Service Installations now or hereafter constructed on the Development."*

   c. Property is defined as [the specific house or flat demised].

   d. Common Parts means *"the main structure of the Buildings (including the windows and their frames not demised by the Leases as part of the Flat) and all parts of the Development other than those comprised in the Leases including the Parking Areas"*

   e. Flat is defined as: *"that part of the Buildings (the position and extent whereof is shown coloured red [and numbered 48] on the Plan) on and over the Development extending from one moiety of the structure beneath the floor thereof up to one moiety of the structure above the ceiling thereof (but not including the roof structures)·and including one moiety of all walls dividing it from the Development and the doors and windows in such walls and their frames including the glass therein but excluding all parts of the main structure of the said Buildings"*

   f. The Sixth Schedule to the leases state:

      "1. The Association shall as soon as reasonably practicable after the first day of January in every year of the said term prepare an estimate of the sums to be spent by it in such year on the matters specified in Part II of this Schedule and shall add thereto or deduct therefrom (as may be appropriate) any difference between:-

         i. the amount notified in accordance with paragraph 3 hereof and

         ii. the amount of the estimate prepared in respect of the previous year

      of the said term and shall serve on the Purchaser notice of the total amount so calculated and show how that is to be apportioned to and

recovered from the flats and houses then or to be comprised in the Development

2. *The Purchaser shall pay to the Association the sum specified in the notice as being apportioned to the Property (which shall be calculated upon the basis of the number of flats and houses then or to be comprised in the Development and the mix thereof) such payment to be made in monthly instalments on the 1st day of each month in the manner from time to time prescribed by the Association with the first such instalment or a proportionate part thereof from the date hereof to the 1st day of the month next following being payable from the date hereof*

3. *The Association shall keep an account of the sum spent by it in each year of the said term on the matters specified in Part II of this Schedule and shall as soon as practicable after the end of such year at the request of the Purchaser provide the Purchaser with an account of the total amount of the sum spent certified by an Accountant."*

g. In both sub-leases Part II (Expenditure to be recovered by means of the Maintenance Charge) includes:

"(1) The sums spent by the Association in and incidental to the observance and performance of the covenants on the part of the Association contained in the Fifth Schedule and Part I of this Schedule

(6) All sums paid by the Association in and about the repair maintenance decoration cleaning lighting and running of the Common Parts whether or not the Association was liable to incur the same under its covenants herein contained."

8. A previous decision of the Tribunal dated 7 August 2018, Case Reference MAN/00BN/LSC/2017/0089 was submitted by the parties. The parties to this application were also parties that application/decision and the decision concerned, amongst other leases/properties, the leases/properties which are the subject of this application.

9. That decision held:

"[63] The Parties will note that the Tribunal determines that common doors and windows in common areas can only be replaced where it is necessary to do so. This is an issue to be decided separately in regard to each door and window being considered, with the Applicant considering the question, "is it more cost effective to replace than repair?" As such this will prevent any wholesale scheme of replacement in common areas being commenced. Due to the requirement that wooden doors and windows be painted at least once in every four years, there should be a wholesale painting scheme, with repairs to common wooden doors and windows if needed, replacement only being possible if this is the most cost effective approach.

[73] Fifth question: "If the Applicant were to carry out works of repair or replacement (as the case may be) to the window frames in the common parts

of the buildings in which the respective demised premises are situated, then do the provisions of the respective leases allow the Applicant (in principle) to recover from the respective Respondents by way of service charge the cost of replacing the communal window frames with uPVC in lieu of the current wooden frames as an alternative to carrying out repairs to them?" Answer: Only when it is reasonable to do so in that it is cost effective to replace rather than repair."

10. The following surveyors' reports were obtained by Contour in relation to the condition of the blocks, and, with the exception of the report from Kershaw Surveyors, were included in the bundle:

    a. From Kershaw Surveyors dated 11 March 2019

    b. From Arcus Consulting in July 2019

        i. Linen Court
        ii. Velour Close

    c. From Arcus Consulting in May 2022

        i. Linen Court
        ii. Velour Close.

11. The Respondent made a decision to replace the communal doors and windows for the reasons set out in its Statement of Case, that is:

    "30. The Respondent is aware that the report highlighted that some of the communal doors were failing and in a poor condition however it was also highlighted that a number of communal doors did not need any repair.

    31. The Respondent carried out a further assessment of the communal doors post the Report being published and it was identified that a number of them had deteriorated further.

    32. The Respondent was also aware of a number of intercom systems in need of repair, as these are integral to the communal doors, it was difficult to replace these independently of the communal doors and windows.

    33. The Respondent was also aware of additional safety and security concerns with reference to the communal doors which had been brought to the attention of the Respondent by Leaseholders and the Police. In addition to this the Respondent was also made aware of the security of the letterboxes relating to the communal doors.

    34. The Respondent is of the belief that the repair and replacement of the communal windows and doors were necessary given their lifespan. Therefore, upon reviewing the previously provided reports and the conditioning worsening, it was evident that the renewal of the Windows, Communal Doors and Door Entry System would provide the greatest level of value for money for leaseholders and also increase the security to the properties."

12. Notices of Intention (pursuant to s.20 of the 1985 Act) were served dated 21 December 2021. The objections received and responses are summarised in the

Notice of Estimates dated 4 April 2023. No contractors were nominated by the tenants pursuant to paragraph 4 of Schedule 4 Part 2 of the Consultation Regulations.

13. On 1 May 2022, Contour issued tender documents for the works, inviting five parties to tender. On 15 July 2022, three parties made bids under the tender. Following a Value for Money Report from Arcus Surveyors on 7 December 2022, the Casey Group Limited (then P Casey & Co Ltd) were given preferred bidder status. On 4 April 2023 the Notice of Estimates (pursuant to s.20 of the 1985 Act) were served. The bundle contains a summary of the Observations, and the Response of Contour. After the Notice of Estimates was served, there was a meeting on 22 June 2023 for Leaseholders.

14. Works began on around 29 August 2023.

Issues

15. The following issues were identified by the Tribunal, and agreed by the parties, as the issues for determination by the Tribunal:

    a. The Applicants liability to pay the service charge relating to replacement of communal doors to the properties (Issue 1);

    b. Whether the Respondent complied with its section 20 LTA obligations in relation to all the works in the Notices of Estimates ("the wider works") (Issue 2);

    c. Whether the cost related to the replacement of the communal doors and windows should be reduced, or the Respondent contribute to that cost, by reason of a failure of the Respondent to decorate the communal doors and windows (Issue 3).

Evidence

16. The Tribunal has carefully considered all the written material contained in the hearing bundle.

17. In accordance with the 'Practice Direction from the Senior President of Tribunals: Reasons for decisions', this decision refers only to the main issues and evidence in dispute, and how those issues essential to the Tribunal's conclusions have been resolved.

Relevant Evidence and the Tribunal's Conclusions on the Issues
Issue 1

18. The Applicants contended that the service charge insofar as it related to replacement of the communal doors to the flat blocks was not recoverable because the work did not fall within the terms of the lease because the doors were not in disrepair, or the works were otherwise unreasonable because the necessity of *"wholesale"* replacement of the communal doors was not supported by evidence.

19. The Applicants confirmed that Issue 1 was expressly limited to the charges relating to the replacement of the communal doors, and not the wider works.

20. The Applicants relied upon the relevant terms of the leases, as set out above, the previous Tribunal decision and the evidence contained in the reports commissioned by the Respondent.

21. The position of the Respondents was that there was evidence that the doors were in disrepair, and that replacement was a reasonable response to the disrepair.

22. The Tribunal finds that the service charge relating to replacement of the communal doors are not recoverable from the Applicants because the works do not fall within the repairing covenants in the Fifth Schedule to the leases, specifically, the Tribunal find that the communal doors were not in disrepair (this being the agreed scope of the covenant and, in particular, there being no covenant for improvements). This is because, even on the evidence relied upon by the Respondent's does not support a finding of disrepair. The Respondent's explicit case is that the evidence of disrepair is contained in the 2022 Arcus Reports, which state (emphasis added):

"Linen Court: The external windows to the communal areas of the blocks are double glazed timber framed units, presumed to be installed when the blocks were originally constructed. The doors are also of timber framed construction and the side lights and transom are double glazed timber framed units. ***Redecoration is now required to the front entrance doors.*** *The communal windows were found to be in poor condition to multiple blocks and their replacement within the next 2 years is recommended. The remaining blocks, whilst not in as poor condition, were showing some signs of timber decay, and all communal windows required redecoration. All blocks contained a door entry intercom system. No tests were carried out to the system so comments regarding their serviceability cannot be made. Visually the system appeared to be aged with other blocks in the Trinity complex containing newer more modern systems.*

Velour Close: The external windows to the communal areas of the blocks are double glazed timber framed units, presumed to be installed when the blocks were originally constructed. The doors are also of timber framed construction and the side lights and transom are double glazed timber-framed units. ***Redecoration is now required to the front entrance doors.*** *The communal windows were found to be in fair to poor condition to virtually all blocks and their redecoration/replacement within the next few years is recommended. All blocks contained a door entry intercom system. No tests were carried out to the system so comments regarding their serviceability cannot be made. Visually the system appeared to be aged and will benefit from replacement within the next few years."*

23. The work required to the communal doors does not, on the Respondent's evidence, go beyond *"redecoration"*. The Tribunal find that, on any analysis of the definition, the work required to the doors did not amount to disrepair and,

accordingly, the repair covenant was not engaged, and the Tribunal is not required to consider whether replacement of the doors was a reasonable or common-sense response to disrepair (as referred to in *Tedworth North Management v Miller [2016] UKUT 522 (LC)*).

24. Even if the Tribunal had found the doors to be in disrepair requiring remedial work, the Tribunal would have rejected the submission that replacement was a reasonable response at the time because:

    a. It does not find the evidence that the doors were *"coming to the end of their lifespan"* reliable or credible, because it is based on an assertion of "industry standards" which are generic, and have no specific regard to the actual doors, the Respondent's own evidence as to the condition of the doors or lifespan as referred to in previous inspections/reports, nor the actual date of installation of the doors;

    b. the fact that the security of the doors had been *"raised as an issue"* by leaseholders and police would not, of itself and without further detailed evidence, justify replacement;

    c. the difficulty of replacing the intercoms independently of the doors would not, again, of itself and without further detailed evidence, justify replacement; and

    d. the justification for replacement in order to *"keep the building in a good state of repair and minimise the need for day-to-day maintenance; to maintain the value of the building; to comply with latest, fire, health and safety standards"* is a mere assertion, unsupported by evidence.

25. In the absence (as referred to above) of any reliable evidence that the doors were coming to the end of their lifespan, or of the likely lifespan of the doors subject to maintenance by way of redecoration, or of the cost of works to maintain the doors by way of redecoration, which costs might potentially be offset against the costs of replacement of the doors, the Tribunal finds the cost of the replacement of the communal doors was not reasonably incurred in its entirety and is not recoverable from the Applicants.

Issue 2

26. The Applicants were invited in the hearing to identify specific breaches of the statutory consultation requirements upon which they relied (and were given time to do so). They were unable to identify any breaches (accepting that the point made in the Statement of Case in relation to the tendering process not having been conducted correctly by reason of the Public Contracts Regulations 2015 was mistaken, relying as it did on provisions in Schedule 4, Part 2, to the Consultation Regulations, rather than the applicable Part to Schedule 4 in this case, Part 1).

27. The Applicants accordingly withdrew the application in relation to Issue 2 (and the application in respect of Issue 2 is dismissed).

28. For the avoidance of doubt, insofar as the Applicants referred in their statement of case to:

    a. Delay in the consultation process potentially affecting the validity of the notice – had this been relied upon at the hearing the Tribunal would not have found that the period of time between the notice of intention and the commencement of works did invalidate the notice, because the is no time limit specified in the Regulations and the period of time in the this case (20 months) is not, the Tribunal would have found, inappropriate in this case, given the nature of the works and the steps taken (including the Value for Money Report) within that period of time;

    b. Changes to the scope of the work affecting the validity of the notice, this also would have been rejected by the Tribunal had it been pursued, as the Tribunal would have found the notice did sufficiently describe in general terms the work to be carried out, in the context of the scope of the work and the design of the relevant doors.

    c. Any other issues, including *"that that the contract was effectively awarded prior to the Notice of Estimates being issued to leaseholders"*, *"no meaningful consultation has been carried out"*, and *"that the length of time taken has led to unreasonable additional costs"*, had they been pursued, would have been rejected by the Tribunal as either being unsupported by, or inconsistent with, the evidence, and/or not amounting to breaches of the statutory process, and, most significantly, because the Tribunal was not satisfied of any financial or other prejudice to the leaseholders.

Issue 3

29. The Tribunal accepted the submission on behalf of the Respondent, that allegations of historic neglect do not touch on the question posed by s.19(1)(a), because that is consistent with the decision in *Daejan Properties Limited v Mathew* [2014] UKUT 206 (LC) and the submission was not challenged by the Applicants – the Tribunal find that any failure on the part of the Respondent to maintain or repair the communal windows and doors historically does not prevent the costs of remedial works being recovered as service charges (subject to the terms of the lease and the statutory powers of the Tribunal).

30. It was conceded by Mr Waiting that there was a potential set-off for failure to adequately maintain (by redecoration in accordance with the contract), and that set-off potentially fell within the scope of the Tribunal's statutory powers under section 27A of the LTA by way of a defence to a service charge claim, but he submitted that any set-off would require the Applicants to prove a material breach of contract – in this case that the doors and windows had had a potentially indefinite lifespan with appropriate maintenance; but in this case the covenant in the lease was for 4 yearly redecoration; the only evidence of indefinite lifespan was a reference in the Kershaw Surveyors report and that was on the basis of a three yearly painting cycle; the failure to undertake a

three yearly painting cycle was not a breach of covenant; even if the Respondent had been complied with its contractual obligation the available evidence was that there would have been some need for repair; further, there was a lack of (expert) evidence of causation, that is, the extent to which the likely disrepair of the doors and window on a four yearly redecoration cycle would or would not have required replacement of the doors and windows. Mr Waiting relied in addition on any such claim being statute barred (that is, the cause of action, the breach of contract relied upon, accruing more than six years before commencement of this claim) as the doors and window had not been decorated since 2010, prior to replacement.

31. The Applicants confirmed that they had intended to pursue claim by way of set-off but accepted that they had no evidence in relation to causation.

32. The Tribunal finds that it would not be appropriate to set-off any sums due by the Applicants to the Respondent by way of service charges because:

    a. The Applicants are unable to specify any loss to be set-off;

    b. There is no evidence upon which the Tribunal is able to make any findings of fact, in particular, there is no expert evidence as to the likely lifespan of the doors and windows on a four year redecoration cycle;

    c. The Tribunal is accordingly unable to assess any potential loss;

    d. The potential claim is, in any event, statute barred.

Remedy

33. At the hearing the Tribunal gave directions for the parties to exchange emails in relation to calculations of the sums potentially to be refunded in relation to the service charge for works to the replacement communal doors to the relevant blocks. In consequence of this the parties agreed that costs per leaseholder of the replacement of the communal doors were as follows:

    Linen Court - £1,179.31;

    Velour Court - £1,005.44.

34. The Applicants, in their email response, invited the Tribunal "to consider the additional sum for the access control and intercom units, which are a consequence of the doors being replaced and part of the 'works for the replacement communal doors'", and the costs of the new letterboxes.

35. In accordance with the Tribunal's finding in relation to issue 1, the Tribunal orders that the Applicants' service charges should be reduced by, in the case of the First Applicant £1,179.31, and in the case of the Second Applicant, by £1,005.44. The Tribunal is, of course, aware that this amounts to a reduction of the respective service charges relating to the replacement of the communal doors in their entirety but finds this a reasonable and appropriate remedy in circumstances where the Respondent has provided (as referred to above) no "reliable evidence that the doors were coming to the end of their lifespan, or of

the likely lifespan of the doors subject to maintenance by way of redecoration, or of the cost of works to maintain the doors by way of redecoration, which costs might potentially be offset against the costs of replacement of the doors".

36. In relation to the invitation to the Tribunal from the Applicants to make findings and to reduce the relevant service charges by reason of replacement of the access control and intercom units, and the replacement letterboxes, the Tribunal makes no finding in relation to these matters, because the application is expressly limited in the Applicants' Summary of Case and Statement of Case, confirmed in the hearing, to the communal doors; it is not appropriate to make findings in relation to wider issues in circumstances were the application has been expressly limited in this way, the Respondent is not on notice of the issue, and it has not been addressed in evidence nor submissions.

Costs

37. The Applicants apply for orders pursuant to s 20C LTA and paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 in relation to themselves and all other leaseholders.

38. The Applicants have identified "Leaseholders consenting to application" by way of a list of names and property addresses, at Appendix L to the Statement of Case.

39. The Respondents' submission was to the effect that any such orders should be restricted only to the Applicants on the basis that: a. the Applicants have been successful only in part, that is in relation to Issue 1 and; b. on the basis that it would not be just and equitable to make such order as the basis for the inclusion of the leaseholders identified in Appendix L is not clear and making the order requested would leave the burden of costs on those leaseholders not specifically identified in Appendix L.

40. The Tribunal makes the relevant orders only in relation to the Applicants because: a. the claim has been successful only in part; b. there is no evidence as to the basis on which the leaseholders in Appendix L are included; c. the Tribunal is not satisfied that there is sufficient evidence that they have consented to the inclusion in the claim; d. it would not be just and equitable in the circumstances to permit the service charges and other costs to fall only on those leaseholders *not* identified in Appendix L.

J Stringer

Tribunal Judge 29th April 2025