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FIRST-TIER TRIBUNAL PROPERTY CHAMBER (RESIDENTIAL PROPERTY)

Case Reference	:	LON/00AHLSC/2014/0092
Property	:	37B Penge Road, London, SE25 4EJ
Applicant	:	David Cannon Properties Limited
Representative	:	Mr Richard Clarke (Counsel) instructed by Crabtree Law LLP
Respondent	:	Mr Howard Garfield Lemon
Representative	:	In person
Type of Application	:	Determination of the reasonableness of and the liability to pay a service charge
Tribunal Members	:	Judge Robert Latham Mrs Alison Flynn MA MRICS Mrs Rosemary Turner JP BA
Date and venue of Hearing	:	5 June 2014 (9 July Reconvene) at 10 Alfred Place, London WC1E 7LR
Date of Decision	:	4 August 2014

DECISION

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(1) The Tribunal determines that the sum of £702.40 is payable for the Respondent in respect of service charges and administration charges. The Tribunal reduces the sum claimed of £6,130.85 by £5,428.45.

(2) The Tribunal makes the following reductions in respect of the sums claimed:

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(i) The sum of £4.857.25 (25% of £19,429) is disallowed in respect of the major works. The Applicant will only be liable to contribute to the cost of the works when the Schedule of Works has been completed to a satisfactory standard (see [68] below);

(ii) The sums claimed for management charges are reduced from £311 to £146.50 for 2010/11 and £315 to £153.75 for 2011/12, a total reduction of £326 (£391.20 inc of VAT) (see [74]);

(iii) The sum claimed in respect of an administration charge is reduced from £360 to £180 (inc of VAT) (see [76]).

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

(4) Since the Tribunal has no jurisdiction over county court costs and fees, this matter should now be referred back to the Croydon County Court. This includes the claim for costs of £720 (see [68] below).

The Application

1. The Applicant seeks a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act") as to the amount of service charges and administration charges payable by the Applicant.

2. On 17 December 2013, the Applicant issued proceedings in the Northampton County Court under Claim No.3YU58103 (at 3.17 of the Hearing Bundle). It claimed arrears of service charges in the sum of £6,130.85 and costs of £720. Both sums are inclusive of VAT.

3. On 30 April, the Respondents filed a Defence (at 4.26). He complains that the sum of £23,613 claimed in respect of major works is excessive. No works were executed internally. The quality of the external works was poor. The front door was not renewed.

4. On 17 February 2014, District Judge Mills, sitting at Croydon County Court, transferred the case to this Tribunal (5.28).

5. On 14 March, the Tribunal gave Directions (at 6.29).

The Inspection

6. The Tribunal inspected the property on the morning of the hearing. The following were present: Andrew Milner, who is employed by

Crabtree Property Management LLP ("Crabtree") and Tracey Lemon, the Respondent's partner. We were unable to obtain access to the rear of the property. Access could only be obtained via the flat on the lower ground floor and this tenant was not available. We were able to look out into the rear garden and see part of the rear of the property from the first floor landing.

7. 37 Penge Road is a mid-terraced Victorian Property on semi-basement, raised ground floor and two upper floors. It is situated in a busy road with a high level of pollution. There is a railway track to the rear of the property. The property has been converted into four flats. The conversion is not entirely satisfactory. The front steps to the upper ground floor are extremely steep. The internal stairs are narrow and are also steep and have no handrail. The front and rear of the property has been rendered. This is painted at the front. To the rear, it is only painted up to the level of the lower ground floor. UPVC windows have been installed. One window to the lower ground floor flat was broken. This had been replaced. The roof at the front is of slate the rear elevation was unseen.

8. Mr Lemon is the tenant of the upper ground floor flat which has one bedroom. He occupies the flat with his wife and child. We did not inspect the flat. There are three other lessees at the property.

9. The internal hallway of the property was in a poor condition. Paper was peeling from the ceiling. Mrs Lemon had repainted the front hallway. The rear garden, which is demised to the tenant of the lower ground floor is overgrown. There was rubbish at the front of the property. The Respondent complained of a rat infestation. The local Environmental Health Department have been involved and put down poison. They advised Mr Lemon to carry out works to his floors so rats could not enter his flat. He carried out the recommended works, borrowing money from his mother to do so.

10. At the time of the inspection, the Tribunal had not been provided with a copy of the Schedule of Works to which the builders had worked. It was therefore difficult to identify what work had been done, what work had not been done, and what work had been done to a poor standard. Although the builder had quoted for and had been instructed to carry our internal decorations, no such work had been done. The landlord had instructed the builders to stop because of the escalating cost of the works. Neither had all the external works been executed. It was not entirely clear whether the cills to the windows at lower and upper ground floor level had been painted. There was rot to both windows and the paintwork was cracked and flaking revealing the rotted wood.

11. The work which had been done, such as asphalting the front steps, was no more than adequate. Weeds had already re-established themselves. Had this work been carried out to a proper standard, it would have a

life expectancy of at least ten years. Some work had been done to the render to either side of the steps. However, cracks were apparent and there were areas where the brickwork could be seen.

12. New doors had been fitted to the meter area and to the four bin cupboards. These were to a reasonable standard. The front door had been pained externally. Mrs Lemon had painted the interior of the door. There was some suggestion that the front door should have been replaced. However, the door itself seemed to be in a reasonable condition. We can now confirm that the replacement of the door was not included in the Schedule of Works.

13. Some render repairs had been executed to the front and rear of the property. Extensive areas of mastic had been applied around a window at the rear of the property, leaving an unsightly finish to the unpainted render. Some slates had been replaced to the front roof. We were unable to inspect the rear roof. Although there has been some suggestion that this was tiled, it was agreed that this was also slate. There were suggestions of continuing water penetration.

The Hearing

14. Mr Clarke appeared for the Applicant. He provided a Skeleton Argument, the Stage 1 Consultation letter and a number of invoices relating to the service charges in dispute. He was handicapped by his limited instructions. We are grateful for his assistance in presenting a difficult case against a litigant in person.

15. Mr Clarke adduced evidence from Andrew Milner, who has been employed by Crabtree since March 2014. Although he gave evidence, he had no direct knowledge of the matters in dispute. The Tribunal was handicapped in that the Applicant adduced no evidence from anyone who had direct knowledge of the major works and the other issues in dispute.

16. At the inspection, we had asked the Applicant to provide a copy of the Specification of Works and the three estimates which had been provided in October 2010. When the hearing commenced at 13.00, these documents were not available. We granted a short adjournment to enable the Applicant to obtain them. When we resumed at 14.00, the Applicant was only able to produce the Specification of Works and an undated Analysis of the three tenders.

17. Mr Lemon appeared and gave evidence. He was accompanied by Mr Barnaby, who has been the tenant of the lower ground floor flat since 2007.

18. At the end of the hearing, we required the Applicant to provide the Tribunal with the three estimates for the works and any additional documents relating to the assessment of the tenders. The landlord is now going through a further consultation process in respect of the works which the builder failed to complete. The reason for this is that the landlord took the builders off site before they had completed the works for which they had quoted. It would be quite wrong for the tenants to be penalised by this unilateral decision of the landlord. We asked for copies of all documents relating to this consultation.

19. On 18 June, the Applicant provided the Tribunal with some additional documentation relating to the estimates and the tenders. These were incomplete. We were not provided with any additional papers relating to the most recent consultation.

20. On 9 July, the Tribunal reconvened to consider this additional documentation and to reach our decision. We had not required the parties to attend.

The Lease

21. The lease is at Tab 2. It is dated 17 February 1987. The copy in the Bundle was incomplete. However, we obtained a full copy of the lease. We highlight the following provisions:

(i) The lease provides for the Respondent to contribute 25% of any service charge (Clause 4(ii)). However, the tenant is only obliged to pay two six monthly instalments of £50 in advance. At the end of the financial year, there is a reconciliation. Inevitably, the expenditure on the property is more than £400 per year and the tenants are required to pay the shortfall when the accounts for the year have been prepared. The financial year ends on 28 December. This arrangement is not entirely satisfactory for the landlord.

(ii) The lease permits the landlord to employ and charge for managing agents and other professional advisors (Clause 5(e) and paragraph 7 of the Fourth Schedule).

(iii) The lease also requires the tenant to pay all costs, charges and expenses (including solicitor's costs) incurred by the landlord for the purposes of or incidental to the preparation and service of any section 146 notice (Clause 3(d).

(iv) The landlord is obliged to carry out external decorations every four years (Clause 5(c)).

The Law

22. The Consultation procedures required by Section 20 of the Act are complex. In the current case, they are to be found in the Service Charges (Consultation Requirements) (England) Regulations 2003 (SI 2003 No.1987) ("the Regulations"). The relevant provisions are set out in Part 2 of Schedule 4 ("Consultation Requirements for Qualifying Works for which Public Notice is not Required").

23. The consultation requirements have been helpfully summarised by Lord Neuberger in *Daejan Investments Ltd v Benson* [2013] UKSC 14; [2013] 1 WLR 854 at [12]:

    Stage 1: Notice of intention to do the works

    Notice must be given to each tenant and any tenants' association, describing the works, or saying where and when a description may be inspected, stating the reasons for the works, specifying where and when observations and nominations for possible contractors should be sent, allowing at least 30 days. The landlord must have regard to those observations.

    Stage 2: Estimates

    The landlord must seek estimates for the works, including from any nominee identified by any tenants or the association.

    Stage 3: Notices about estimates

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

    Stage 4: Notification of reasons

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

24. In *Daejan Investments Ltd v Benson [2013] UKSC 14; [2013] 1 WLR 854*, the Supreme Court gave clear guidance on how the consultation provisions should be applied:

    (i) the purpose of a landlord's obligation to consult tenants in advance of qualifying works is to ensure that tenants are protected from paying

for inappropriate works or from paying more than would be appropriate;

(ii) adherence to those requirements was not an end in itself, nor are the dispensing jurisdiction under section 20ZA(1) a punitive or exemplary exercise;

(iii) on a landlord's application for dispensation, the question for the tribunal is the extent, if any, to which the tenants has been prejudiced in either of those respects by the landlord's failure to comply;

(iv) neither the gravity of the landlord's failure to comply nor the degree of its culpability nor its nature nor the financial consequences for the landlord of failure to obtain dispensation is a relevant consideration;

(v) the tribunal can grant a dispensation on such terms as it thinks fit, provided that they are appropriate in their nature and effect, including terms as to costs;

(vi) the factual burden lies on the tenant to identify any prejudice which she claimed she would not have suffered had the consultation requirements been fully complied with but would suffer if an unconditional dispensation were granted;

(vii) once a credible case for prejudice has been shown the tribunal must look to the landlord to rebut it, failing which it should, in the absence of good reason to the contrary, require the landlord to reduce the amount claimed as service charges to compensate the tenants fully for that prejudice;

(viii) where the extent, quality and cost of the works are unaffected by the landlord's failure to comply with the consultation requirements an unconditional dispensation should normally be granted.

25. The relevant legal provisions are set out in the Appendix to this decision.

The Facts

26. On 27 February 1987, the lease to the flat was granted by John Ryan. On 23 July 1987, the Applicant acquired the freehold interest (see 1.1). On 20 December 2005, the Respondent acquired the leasehold interest (see 1.3). The property was managed by Trust Property Management. On 1 August 2008, Crabtree were appointed as managing agent. Mr Lemon's complaint is that the management charges were increased without any apparent improvement in the management of the property.

27. Crabtree have a number of associated companies. Crabtree Law LLP provide their legal services and instructed Mr Clarke. Regents Property Consultants specialise in major works projects and building surveying.

28. In the 12 months to 28 December 2012 and 2013, Crabtree charged an annual management fee of £1,512 for managing the four flats (see 11.70). In 2010/11, they charged £1,492 (see 11.78). The charge of £1,512 includes VAT. The charge per flat, excluding VAT is £315. Mr Clark referred us to a decision of a Leasehold Valuation Tribunal ("LVT") in *LON/00QH/LSC/2011/0770*, dated 27 March 2012, involving Flat D which is on the second floor. A management fee of £280 per flat had been charged for 2009/10. The LVT reduced this to £185 per flat (+ VAT).

<u>The Major Works Contract</u>

29. On 6 January 2010, Crabtree served a Stage 1 Notice of Intention to Carry out Qualifying Works. We were provided with a copy of this notice at the hearing. The works were to be carried out in 2010 and were described in these terms: "general redecoration and repair to the roof and all external and internal parts of the property". No specification of the works had been prepared.

30. Neither the Respondent nor Mr Barnaby responded to this notice, whether by written observations on the scope of the works or by nominating a person from whom the landlord should obtain an estimate. It would seem that neither did the two other tenants.

31. Crabtree subsequently prepared a Schedule of Works. This extends to 25 pages. However, it was not drafted in such a manner as to allow the contractors to price in a consistent manner. It was divided into three sections:

(i) Section A: "General Conditions and Preliminaries" (p.2-13). This is an odd part of the specification. Section A consists of 37 paragraphs over 12 pages. A contractor is required to provide a quote in respect of the items on each of pages 2-11. Surprisingly a contractor is not required to quote for any of the items listed on p.12. This includes compliance with the Construction Design and Management Regulations. One contractor quoted £1,875 in respect of this; the others did not. Some of the pages were purely descriptive. For example, p.4 relates to "7. Contract Liability, 8. Limitation of the Site and 9. Contractors Supervision." Despite this, contractors were asked to price this page. Unsurprisingly, none did so.

(ii) Section B: "Summary of Works" (p14-19). This had two sub-sections: "Internals" and "Externals". This seems to have been no more that Crabtree's standard template for internal and external decorations. Thus reference is made to "metalwork" (at "k") and "cast iron rain water goods" (at "p"), albeit that these were irrelevant to this property.

(iii) "Summary of Repairs". This included 19 items of external and internal repairs. Provisional sums were allocated to a number of these items, namely 7, 12, 13, 14, 15 and 17.

32. Item 31 of Section A specified a contingency of £2,000 "to be used as directed or deducted in whole or in part if not required". Elsewhere, the Schedule required the contractor to quote for a number of provisional sums. It was clearly contemplated that any additional expenditure on these items would not exceed the £2,000 contingency.

33. A critical issue is the scope of the works contemplated in the Schedule. It appears to be a full programme for external and internal decoration and repair. However, surprisingly, the schedule specifies nothing in relation to the roof, save for some repairs to lead flashings (item 15). The Stage 1 Consultation Notice had advised the tenants that roof repair were to be included within the scope of the works.

The Estimates for the Major Works

34. At Stage 2, Crabtree sought estimates from four builders, three of whom provided estimates. These ranged from £16,730 to £46,562.50. This variation is extremely unusual. We are satisfied that the reason for this is the unsatisfactory manner in which the Specification of Works had been drawn up. The builders were uncertain as to the scope of the works for which they were being asked to quote.

35. At the end of the hearing, we required the Applicant to provide us with the three estimates and any additional documents relating to the assessment of the documents. We have been provided with the following tenders:

(i) Saxon Building Services ("Saxon") dated 3 May 2010 in the sum of £16,730 (£19,657.75 inc VAT of 17.5%). Pages 11-23 of this tender are missing. These pages are critical in order to ascertain the how the individual items had been priced. We can, however, ascertain that their quote broke down as follows:

(a) Section A: General Conditions and Preliminaries (including contingency of £2,000): £5,150;

(b) Section B: Summary of Works: Internals - £1,100; Externals: £3,430;

(c) Summary of Repairs: £7,050. We have no information relating to the provisional sums quoted for items 7, 12, 13, 14, 15 and 17.

(ii) ADL, dated 15 April, in the sum of £22,268 (£26,164.90 inc VAT). Page 7 of this tender is missing. We can, however, ascertain that their quote broke down as follows:

(a) Section A: General Conditions and Preliminaries (including contingency of £2,000): £9,000;

(b) Section B: Summary of Works: Internals - £2,351; Externals: £3,383;

(c) Summary of Repairs: £7,479.

At p.24 of their tender summary, ADL do not provide a separate quote for the Summary of Repairs. These are rather included in the total for "Externals" albeit the repairs extend to the interior of the property. It possible to compute the Summary of Repairs by adding the individual figures that have been quoted.

(iii) Taft Tech Limited ("Taft Tech"), dated 26 April 2010 in the sum of £46,562 (£54,710.94 inc VAT). Pages 19-25 of this tender are missing. We can, however, ascertain that their quote broke down as follows:

(a) Section A: General Conditions and Preliminaries (including contingency of £2,000): £16,112.50;

(b) We have not been provided with the relevant pages from which we could compute the breakdown between: Section B: Summary of Works: Internals and Externals or the Summary of Repairs. However, these must total £28,450.

Taff Tech correctly noted that no provision had been made for roof repair or renewal. They assumed that the roof would be inspected once the scaffolding was erected. It was also noted that the tender was "silent" on a number of internal items such as treads which required repair. We are satisfied that this again reflects the inadequacies of the tender documentation.

36. All these tenders were time limited. Thus the Crabtree tender remained open for acceptance until 1 June 2011.

37. Amongst the papers provided by the Applicant after the hearing is a second tender from Saxon, which also purports to be dated 3 May 2010 in the sum of £18,403 (£22,083.60 inc VAT of 20%). The date of this tender cannot be correct as VAT was not increased from 17.5% to 20% until 4 January 2011. This tender also remained open for acceptance until 1 June 2011. The tender purported to price the same Schedule of Works. The Tribunal have been provided with no explanation for this

document, albeit that it seems to be the document used in assessing the sums due to the builder.

38. We can, however, ascertain that their quote broke down as follows:

(a) Section A: General Conditions and Preliminaries (including contingency of £2,000): £5,150 (the same as previously);

(b) Section B: Summary of Works: Internals - £1,823; Externals: £3,380 (compared with £1,100 and £3,430 initially);

(c) Summary of Repairs: £8,050 (compared with £7,050). We have no information relating to the provisional sums quoted for items 7, 12, 13, 14, 15 and 17.

39. At the hearing, the Applicant provided the Tribunal with a five page document headed "Tender Analysis". This is not dated. It is difficult to reconcile this with the tenders with which we have been provided. The analysis seems to be incomplete. Page 4 is critical. We have summarised the crucial data:

	Saxon	**ADL**	**Taff Tech**
Total Price	£16,730	£18,403	£46,562
Internals:			
Preliminaries	£5,150	£7,000	£16,112
Other Items:	£1,550	£2,177	£4,690
Externals:	£1,440	£1,728	£5,500
Total of these three sums:	£8,140	£10,905	£26,302

40. In their analysis, Crabtree correctly record the totals of the three tenders that have been submitted. They also note the 202.53% variation between the highest (Taff Tech) and the lowest price (Saxon). They observe that 20% would normally be an acceptable spread. The Tribunal is satisfied that this range reflects the unsatisfactory manner in which the tender documentation was prepared.

41. However, when Crabtree break down the tenders between "Internals" and "External", problems arise. In the analysis, "Section A: General Conditions and Preliminaries" are included as part of the "internals". The more significant problem is that the figures do not add up to the tender quote and no reference seems to be made to the "Summary of Repairs". Our initial impression was that a page of the analysis is missing. However, the document is numbered and appears to be complete.

42. There are more significant problems in this analysis which suggest that the analysis was largely superficial:

(i) "Preliminaries": Saxon's figure £5,150 includes the contingency of £2,000. The figures for ADL (£7,000) and Taff Tech (£16,112) do not.

(ii) Preliminaries (Item 17): ADL had not quoted for scaffolding. Saxon and Taff Tech had included quotes of £3,000 and £5,000.

(iii) Preliminaries (Item 34). Taff Tech had quoted £1,875 for the CDM responsibilities. Saxon and ADL had provided no such quote.

Any proper analysis of these tenders should have identified these differences.

43. On 4 October 2010, Crabtree served their Stage 3 Notice about Estimates (at 8.54). The Notice stated that a summary of the written observations that had been received during the consultation period could be inspected at Crabtree's offices. Mr Milner told us that no written representations had been received. Neither Mr Lemon nor Mr Barnaby suggested that they had made any response.

44. The notice gave details of the three estimates. We suspect that a page of the notice is missing from the bundle and are willing to accept that the tenants were invited to make observations on the estimates. To the estimates provided by the three builders, Crabtree added a management charge of 10% and a CDM (Construction Design and Management) charge of £850. This latter charge is somewhat surprising as Item 34 of "Section A" seemed to impose this obligation on the contractor.

<u>The Execution of the Works</u>

45. Thereafter, nothing happened. Over the next 20 months, the condition of the property continued to deteriorate. Mr Milner suggested that this was because of the County Court proceedings that the landlord had issued against Flat D in respect of unpaid service charges. We note that Mr Lemon was also withholding his service charges at this time (see 4.22). It seems that the landlord may have sought to levy a service

charge of £5,903.40 in advance to cover the cost of the works. It then discovered that the lease did not permit it to do so.

46. On 11 July 2012, Quantum Group Services Ltd provided a report in respect of disrepair to the basement flat. No repairs were executed because the area was in such a poor condition.

47. On 18 July 2012, Crabtree notified Mr Lemon that works were due to commence on 10 September and would last some 4 weeks (at 8.51). The notice was stated to be given pursuant to the Statement of Estimates issued in October 2010. The work was described as "general external decoration and repair, including roof repairs, plus redecoration of the internal common parts of the property". Given that no tenant had nominated a contractor and the landlord was accepting the lowest quote, the Stage 4 Consultation requirements did not apply.

48. On 4 September 2012, Saxon invoiced the landlord for £420 for temporary works to the steps to prevent water penetrating to the basement flat.

49. On 10 September 2012, Saxon commenced the major works. The Specification (Item 4 of Section A) provided that the works were to be inspected and executed to the entire satisfaction of Crabtree, referred to as the "Surveyors". The contract contemplated three stages:

(i) Stage 1: To carry out preparatory works to each agreed section of the property. The Supervising Surveyors must approve this work before any further works are commenced.

(ii) Stage 2: Once the preparatory works have been approved, the Contractor may proceed to knot as necessary, prime and undercoat the required surfaces to those areas to bring them forward. The Supervising Surveyors must carry out another inspection before any further work is undertaken.

(iii) Stage Three: Once the undercoating is complete and approved, the Contractor may proceed to the final paint coat and final completion of that part of that contract.

The Applicant adduced no evidence relating to the supervision of the works. Our inspection suggested that this was not adequate.

50. The next critical event is the decision of the landlord to withdraw Saxon from site before the Schedule of Works had been completed. The Tribunal were given no satisfactory explanation as to why this had occurred. The explanation seems to have been that Saxon had executed works up to the value of the contract sum of £16,730 and the landlord was not willing to commit any further sums towards the works. The

landlord was, admittedly, in an unfortunate situation. The leases do not permit the landlord to build up a reserve fund or to collect service charges in advance. Further, not all the tenants were paying service charges when demanded.

51. However, the contractual position is somewhat different:

(i) The builder had contracted to carry out a full specification of internal and external decorations and repairs for £16,730 (£20,076 if VAT at 20% is included). These works had not been completed. The landlord had decided to repudiate the contract, by sending the builder off site, before the works had been completed.

(ii) The landlord had consulted its tenants on proposals to carry out a full specification of internal and external decorations and repairs for £16,730. These works have not been completed. However, the landlord is seeking to charge them £17,990 (exc VAT) for part of the works. The landlord is now seeking to consult separately for the outstanding works with the intention of charging the tenants further sums in respect of this.

The Position of the Landlord

52. On 15 September 2012 (see 9.56 – we assume that the reference to 2011 is an error), Saxon applied for an interim payment of £18,325 for sums under the contract and an additional £2,865 for "items not instructed", a total of £21,190. The builder was just two weeks into the contract. It seems that this demand caused the landlord to take the builders off site.

53. 7 November 2012, Crabtree issued a certificate of practical completion (at 7.48). We were not provided with any explanation as to why this certificate had been issued. It was quite apparent that the specified works had not been completed.

54. On 8 November 2013, Crabtree valued the work which had been executed at £17,990 (at 7.44). The Applicant's case is that the tenants are obliged to pay the sums which Crabtree have certified that the landlord should pay to Saxon. It is accepted that that there was a retention of 10%. On 13 November 2012 (at 10.68), Saxon invoiced the landlord for this sum of £16,191. With VAT at 20%, the total is £19,429.20. It seems that the landlord has paid this sum.

55. It is unclear whether the 10% retention has now been released to Saxon. If so, this cost is likely to be passed on to the tenants.

56. On 25 March 2013 (at 10.67), Crabtree invoiced the landlord for £2,158.88, namely their 10% contract administration charge in the sum of £1,799 + VAT. Again it is unclear whether this cost has been passed

on to the tenants. This Tribunal is satisfied that Crabtree's supervision of this contract has been far from satisfactory.

<u>The Valuation of the Works</u>

57. The Applicant has not provided the Tribunal with the full tender that Saxon provided. It is therefore difficult for the Tribunal to compare this valuation of works (at 7.44-47) with the tender. This reflects the wholly inadequate manner in which Crabtree have managed this contract and their failure to maintain a proper paper chain. We make the following findings:

(i) The Works have not been assessed against the relevant tender, namely in the contract sum of £16,730. They have rather been assessed against the later quote in the sum of £18,403.Thus the price quoted for "internals" is £1,823 rather than the contractual sum of £1,100; "externals" is £8,050 rather than £7,050.

(ii) It is common ground that Saxon did not carry out any of the "internals". Neither have any of the internal repairs been executed, namely items 16, 17 and 18 in the Summary of Repairs. Despite this, Saxon had claimed £950 for items 16 and 17. These were disallowed by Crabtree.

(iii) Crabtree approved payment of the full amount (£3,150) for the "preliminaries". However, part of these costs will be incurred again when a builder returns to complete the agreed works. In particular, we were concerned to be told at the inspection that it may be necessary to re-erect the scaffolding to complete the external works incurring an additional cost of some £3,000.

(iv) Saxon quoted £3,430 for "externals". Crabtree approved payment of £3,180. On our inspection, we noted rot to the windows at lower and upper ground floor levels. Payment had been approved for this work. £100 was approved for paint to metal work. We saw no such metal work. £1,830 was approved for decorations including "previously varnished timber". We saw no such timberwork. £200 was approved for filling in defects to wood. Defective timbers were still apparent.

(v) Saxon had quoted £7,050 for "repairs". Saxon approved payment in the sum of £4,550. No payment is included under this head for Items 9, 12, 13, 14, 15, 16, 17 and 18. We do not know how much Saxon had quoted for these items in their initial tender; they quoted £3,500 in their second tender. A number of these items were external works. They should have been completed prior to the external decorations. For some items, provisional sums were quoted. If these works were found not to be required, the overall contract price should have been reduced accordingly.

(vi) The most significant approval is a total of £7,110 for additional items, most of which seem to arise from Clause 31 of Section A. This makes a provision for a contingency of £2,000. Some £4,750 seems to be claimed against this contingency. It is suggested that Saxon had quoted firm prices for these items, for example £175 to "replace 5 no. Slates to the front and refix cowelling". They had not quoted for this work, albeit that our inspection did indicate that some slates had been replaced. If it were found that additional items were required once the contractor was on site which could not have been anticipated when the Schedule of Works was prepared, it may well be that such additional sums could be justified. The Applicant has adduced no evidence to justify such additional works. In so far as there was a further duty to consult, there has been no application for dispensation. Other items are not set against the contingency. Thus £700 is approved for "party wall parapets (front and rear of the building)". From our inspection, we would merely observe that if this work was executed, it was done to a very poor standard. £113 is claimed as a contingency to for "UPVC – to cut and cleaning (front and rear)". Again we could see no evidence that this work was done.

Outstanding Works

58. Mr Milner informed the Tribunal that the landlord was now embarking on a further consultation exercise in respect of the outstanding works. At the end of the hearing, we asked the Applicant to provide the Tribunal with copies of the relevant documents relating to this consultation. None have been provided. We therefore do not know what additional sums for which the landlord intends to make the tenants liable for works which should have been completed in 2012 pursuant to Saxon's tender in the sum of £16,730.

Claim against the Respondent

59. On 26 June 2013, Crabtree prepared the accounts for the year ended 25 December 2012 (at 7.41). There is an overall deficit for the year of £21,318, or £5,329.50 per flat. This covers the following items:

(i) The Major Works: £19,429. This is the sum invoiced by Saxon on 13 November 2012. The Tribunal notes that Crabtree's additional management fee of £2,158.80 (10%) has not been included in the accounts either for 2011/2 or 2012/3 (at 11.70).

(ii) Managing Agents Fees: £1,512 (inc VAT). The net figure is £315 per property.

(iii) Auditing and Accountancy: £225.

(iv) Repairs and Maintenance: £536. This covers two items:

(a) £90 for the report by Quantum Group Services Ltd. The invoice is dated 11 July 2012.

(b) £420 in respect of the invoice from Saxon, dated 4 September 2012.

(v) A Transaction charge of £16 in respect of a set of keys cut for the builders.

60. On 19 August 2013, Mr Lemon paid £100 towards his outstanding service charges (see 4.22). At that date, there were arrears of £541.35. This was the only payment which he had made for over three years. Crabtree had threatened forfeiture and had contacted his Building Society. On 19 March 2013, the Building Society had discharged the historic arrears of £1,467.48. Mr Lemon explained that this was to have been the first of a series of monthly payments of £100 which he intended to pay. However, he did not make any payment in September because of the further bill that he received.

61. On 2 September 2013, Crabtree demanded payment of the balancing charge for 2011/2 in the sum of £5,329.50 (at 13.98). Mr Lemon failed to pay the sum demanded.

62. On 26 September 2013, Crabtree sent a reminder, seeking payment not only of this sum, but also the arrears on his service charge account (at 14.125-6). The total sum claimed is £5,770.85. This includes:

(i) £291.35, the shortfall from the 2010/11 accounts. These accounts are at 11.78. This includes a management charge of £1,492.31, or £311 per flat (enc of VAT).

(ii) £150, representing three six monthly instalments of the service charge which was payable in advance on 24 June 2012, 25 December 2012 and 24 June 2013.

63. On 22 October 2013, Crabtree sent a second reminder (at 14.123-4). The Respondent was warned that an additional management fee would be charged if this was not paid. It was not paid.

64. On 29 November 2013, Crabtree, invoiced the Respondent for an additional management fee of £360. Mr Milner explained that this is a standard administration fee when a tenant has failed to pay up in response to a second reminder letter.

65. On 17 December 2013, the Applicant issued proceedings in the County Court claiming arrears of service charges in the sum of £6,130.85 and costs of £720.

66. Mr Milner explained that the costs of £720 represented the fixed fee of £600 that Crabtree LLP intended to charge the landlord in respect of the cost of recovering the arrears of service charge. However, we note that the landlord had already signed a conditional fee agreement (CFA) with the landlord dated 4 October 2012. This pre-dated the changes to the CFA arrangements introduced in April 2013. It also pre-dated the debt for which the Applicant is currently suing the Respondent. Mr Clarke accepted that this aspect of the claim is no more than costs relating to the County Court action. This is outside our jurisdiction.

Our Decision

Issue 1 – The Sum Payable In respect of the Major Works

67. We have discussed the history to this major works contract at some length. We are satisfied that Crabtree failed to draw up the Schedule of Works with insufficient precision. This made it difficult for the builders to know how to frame their tenders. It also makes it difficult to compare the three tenders which were submitted. We are satisfied however, that the landlord did comply with the statutory consultation requirements. The landlord notified the tenants describing in general terms the works which were to be executed. The tenants were given the opportunity to make written observations on the proposed works or to nominate a person from whom an estimate should be obtained. The tenants did not seek to exercise their rights. We are further satisfied that the landlord obtained three estimates and was entitled to accept the lowest tender from Saxon in the sum of £16,730. On 4 October 2010, the landlord notified the tenants of the estimates that had been obtained.

68. The purpose of the consultation requirements is to ensure that tenants are protected from paying for inappropriate works or from paying more than would be appropriate. We make the following findings:

(i) In 2010, the property was in need of "general redecoration and repair to the roof and all external and internal parts of the property".

(ii) The landlord drew up a Specification and Schedule of Works in respect of the required repairs and decorations.

(iii) Saxon quoted a price of £16,730 to execute these works. Their tender included a contingency of £2,000.

(iv) Saxon commenced these works pursuant to this specification in September 2013.

(v) The landlord repudiated his contract with Saxon by taking them off site before they had completed these works.

(vi) The lease does not permit the landlord to levy an advance service charge or a contribution to a reserve fund.

(vii) Until the landlord has completed the specified works of repair and decoration to a reasonable standard, the landlord is not entitled to pass the cost of the works onto the tenants.

69. The landlord must now accept the consequences of his decision to take Saxon off site. The specified works must now be completed by Saxon or by another builder. When those works have been completed to a reasonable standard, it will be entitled to pass the cost of the works to the tenants.

70. This Tribunal can see no reason why the tenants should pay twice, because of the landlord's decision to take the builders off site. Further, we can see no justification for seeking to assess the value of the works which have been done. The tenants are entitled to have the property put in a proper state of repair and decoration. They are also entitled to have those works executed at the stated price of £16,730 (+ VAT).

71. The Tribunal notes that Saxon returned their tender on 3 May 2010, and that the tender remained open until 1 June 2011. Further, the works did not commence until September 2012. This delay was the choice of the landlord. It did not consider it necessary to prepare an updated schedule of works and to recommence the consultation process. We have been provided with no explanation for the second and higher tender from Saxon. We merely observe that this was not the estimate upon which the landlord relied in this Consultation process.

72. It may be that the contingency of £2,000 was inadequate. However, when additional works become necessary which were not reasonably foreseeable when landlord commences on a Consultation exercise, it is always open to the landlord to seek dispensation in respect of the failure to consult in respect of such unforeseen works. There has been no such application for dispensation before this Tribunal. It is not one that we would have been minded to grant given the wholly unsatisfactory manner in which this contract has been managed.

Issue 2 – The Management Fees

73. In 2010/11 and 2011/12, Crabtree charged management fees of £1,492 and £1,512. These equate to £311 and £315 per flat exclusive of VAT. In LON/00QH/LSC/2011/0770, the LVT reduced the management fee charged for 2009/10 from £280 to £185 per flat. There are two issues for this Tribunal to consider:

(i) Are the sums claimed reasonable for managing a terraced property with four flats in respect of which the management duties are not onerous.

(ii) Should the basic charge be reduced because of the quality of the management services which were provided?

74. We consider that the sums claimed in respect of management charges are excessive. We have regard to the decision of the LVT that £185 per flat was a reasonable charge for 2009/10. We have decided to increase this to £195 for 1010/11 and £205 for 2011/12. However, we reduce this by 25% because we are satisfied that the quality of the management has not been satisfactory. Thus the sums due are reduced from £311 to £146.25 for 2010/11 and from £315 to £153.75 for the year 2011/12, both figures being exclusive of VAT.

Issue 3– The Administration Charge of £360.

75. The additional management fee of £360 which was charged on 29 November 2013 (at 13.97) is not an estimate of the costs of chasing up the arrears of service charges. It is rather a fixed fee that is charged when a tenant has failed to pay up in response to a second reminder letter.

76. Tenants must recognise their obligation to pay the sums which are lawfully due under their leases. It is appropriate that the cost of chasing up arrears should be borne by the tenant in default rather than by all tenants through the service charge. However, a landlord is only entitled to levy an administration fee which fairly represents the costs incurred. Standard letters were sent. We are satisfied that £300 + VAT is excessive. We reduce this to £150 + VAT, a total of £180.

Issue 4 – The Service of the Summary of Rights and Obligations

77. There was an issue as to whether the relevant demands had been accompanied by the appropriate Summary of rights and Obligations required by Section 21B of the 1985 Act in respect of service charges and Schedule 7, paragraph 4 of the 2002 Act.

78. Mr Milner provided a copy of the Summary of Rights and Obligations which he said was sent out with all demands. Mr Lemon denied that he had ever received such a document. Mr Lemon was not able to produce the original of any demand that he had received. The Tribunal is satisfied that Crabtree, who manage a large number of properties, would seek to ensure that they comply with this basic statutory requirement. Whilst it is possible that on isolated occasions the necessary Summary may have been omitted through some clerical

error, we accept Mr Milner's evidence on this point and accept that the requisite Summary was served with all relevant demands for service and administration charges.

Issue 5: Application under s.20C and Refund of Fees

79. At the hearing, the Respondent applied for an order under section 20C of the 1985 Act. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal determines that it is just and equitable in the circumstances for an order to be made under section 20C of the 1985 Act, so that the Respondent may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge.

80. The Applicant made an application for a refund of the fees that he had paid in respect of the hearing. Having heard the submissions from the parties and taking into account the determinations above, the Tribunal does not order the Respondent to refund any fees paid by the Applicant.

81. Either party has the right to appeal to the Upper Tribunal (Lands Chamber) (s.175 Commonhold and Leasehold Reform Act 2002). Permission to appeal is required which should initially be sought from this Tribunal.

Robert Latham

Tribunal Judge

4 August 2014

Appendix of relevant legislation

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.

Section 20 - Consultation Requirements

(1) Where this section applies to any qualifying works or qualifying long term agreement, the relevant contributions of tenants are limited in accordance with subsection (6) or (7) (or both) unless the consultation requirements have been either—

(a) complied with in relation to the works or agreement, or

(b) dispensed with in relation to the works or agreement by (or on appeal from) the appropriate tribunal .

(2) In this section *"relevant contribution"*, in relation to a tenant and any works or agreement, is the amount which he may be required under the terms of his lease to contribute (by the payment of service charges) to relevant costs incurred on carrying out the works or under the agreement.

(3) This section applies to qualifying works if relevant costs incurred on carrying out the works exceed an appropriate amount.

(4) The Secretary of State may by regulations provide that this section applies to a qualifying long term agreement—

(a) if relevant costs incurred under the agreement exceed an appropriate amount, or

(b) if relevant costs incurred under the agreement during a period prescribed by the regulations exceed an appropriate amount.

(5) An appropriate amount is an amount set by regulations made by the Secretary of State; and the regulations may make provision for either or both of the following to be an appropriate amount—

(a) an amount prescribed by, or determined in accordance with, the regulations, and

(b) an amount which results in the relevant contribution of any one or more tenants being an amount prescribed by, or determined in accordance with, the regulations.

(6) Where an appropriate amount is set by virtue of paragraph (a) of subsection (5), the amount of the relevant costs incurred on carrying out the works or under the agreement which may be taken into account in determining the relevant contributions of tenants is limited to the appropriate amount.

(7) Where an appropriate amount is set by virtue of paragraph (b) of that subsection, the amount of the relevant contribution of the tenant, or each of the tenants, whose relevant contribution would otherwise exceed the amount prescribed by, or determined in accordance with, the regulations is limited to the amount so prescribed or determined.

<u>Section 27A</u>

(1) An application may be made to a leasehold valuation 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 a leasehold valuation 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.

<u>Section 20C</u>

(1) A tenant may make an application for an order that all or any of the costs incurred, or to be incurred, by the landlord in connection with proceedings before a court, residential property tribunal or leasehold valuation tribunal, or the Upper Tribunal, or in connection with arbitration 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 tenant or any other person or persons specified in the application.

(2) The application shall be made—
(a) in the case of court proceedings, to the court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to a county court;
(aa) in the case of proceedings before a residential property tribunal, to a leasehold valuation tribunal;
(b) in the case of proceedings before a leasehold valuation tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any leasehold valuation tribunal;
(c) in the case of proceedings before the Upper Tribunal, to the tribunal;

(d) in the case of arbitration proceedings, to the arbitral tribunal or, if the application is made after the proceedings are concluded, to a county court.

(3) The court or tribunal to which the application is made may make such order on the application as it considers just and equitable in the circumstances.

The Service Charges (Consultation Requirements) (England) Regulations 2003

These Regulations have been made pursuant to sections 20(4) and (5) of the Landlord and Tenant Act 1985. By Regulation 7(4)(b) the relevant consultation requirements are set out in Part 2 of the Schedule 4.

Schedule 4, Part 2

Paragraph 1 – Notice of Intention

(1) The landlord shall give notice in writing of his intention to carry out qualifying works:

(a) to each tenant; and

(b) where a recognised tenants' association represents some or all of the tenants, to the association.

(2) The notice shall:

(a) describe, in general terms, the works proposed to be carried out or specify the place and hours at which a description of the proposed works may be inspected;

(b) state the landlord's reasons for considering it necessary to carry out the proposed works;

(c) invite the making, in writing, of observations in relation to the proposed works; and

(d) specify:

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(3) The notice shall also invite each tenant and the association (if any) to propose, within the relevant period, the name of a person from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

Paragraph 2 - Inspection of description of proposed works

(1) Where a notice under paragraph 1 specifies a place and hours for inspection:

(a) the place and hours so specified must be reasonable; and

(b) a description of the proposed works must be available for inspection, free of charge, at that place and during those hours.

(2) If facilities to enable copies to be taken are not made available at the times at which the description may be inspected, the landlord shall provide to any tenant, on request and free of charge, a copy of the description.

Paragraph 3 - Duty to have regard to observations in relation to proposed works

Where, within the relevant period, observations are made, in relation to the proposed works by any tenant or recognised tenants' association, the landlord shall have regard to those observations.

Paragraph 4 - Estimates and response to observations

(1) Where, within the relevant period, a nomination is made by a recognised tenants' association (whether or not a nomination is made by any tenant), the landlord shall try to obtain an estimate from the nominated person.

(2) Where, within the relevant period, a nomination is made by only one of the tenants (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate from the nominated person.

(3) Where, within the relevant period, a single nomination is made by more than one tenant (whether or not a nomination is made by a recognised tenants' association), the landlord shall try to obtain an estimate"

(a) from the person who received the most nominations; or

(b) if there is no such person, but two (or more) persons received the same number of nominations, being a number in excess of the nominations received by any other person, from one of those two (or more) persons; or

(c) in any other case, from any nominated person.

(4) Where, within the relevant period, more than one nomination is made by any tenant and more than one nomination is made by a recognised tenants' association, the landlord shall try to obtain an estimate:

(a) from at least one person nominated by a tenant; and

(b) from at least one person nominated by the association, other than a person from whom an estimate is sought as mentioned in paragraph (a).

(5) The landlord shall, in accordance with this sub-paragraph and sub-paragraphs (6) to (9):

(a) obtain estimates for the carrying out of the proposed works;

(b) supply, free of charge, a statement ("the paragraph (b) statement") setting out:

(i) as regards at least two of the estimates, the amount specified in the estimate as the estimated cost of the proposed works; and

(ii) where the landlord has received observations to which (in accordance with paragraph 3) he is required to have regard, a summary of the observations and his response to them; and

(c) make all of the estimates available for inspection.

(6) At least one of the estimates must be that of a person wholly unconnected with the landlord.

(7) For the purpose of paragraph (6), it shall be assumed that there is a connection between a person and the landlord–

(a) where the landlord is a company, if the person is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(b) where the landlord is a company, and the person is a partner in a partnership, if any partner in that partnership is, or is to be, a director or manager of the company or is a close relative of any such director or manager;

(c) where both the landlord and the person are companies, if any director or manager of one company is, or is to be, a director or manager of the other company;

(d) where the person is a company, if the landlord is a director or manager of the company or is a close relative of any such director or manager; or

(e) where the person is a company and the landlord is a partner in a partnership, if any partner in that partnership is a director or manager of the company or is a close relative of any such director or manager.

(8) Where the landlord has obtained an estimate from a nominated person, that estimate must be one of those to which the paragraph (b) statement relates.

(9) The paragraph (b) statement shall be supplied to, and the estimates made available for inspection by:

(a) each tenant; and

(b) the secretary of the recognised tenants' association (if any).

(10) The landlord shall, by notice in writing to each tenant and the association (if any):

(a) specify the place and hours at which the estimates may be inspected;

(b) invite the making, in writing, of observations in relation to those estimates;

(c) specify–

(i) the address to which such observations may be sent;

(ii) that they must be delivered within the relevant period; and

(iii) the date on which the relevant period ends.

(11) Paragraph 2 shall apply to estimates made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

<u>Paragraph 5 - Duty to have regard to observations in relation to estimates</u>

Where, within the relevant period, observations are made in relation to the estimates by a recognised tenants' association or, as the case may be, any tenant, the landlord shall have regard to those observations.

Paragraph 6 - Duty on entering into contract

(1) Subject to sub-paragraph (2), where the landlord enters into a contract for the carrying out of qualifying works, he shall, within 21 days of entering into the contract, by notice in writing to each tenant and the recognised tenants' association (if any):

> (a) state his reasons for awarding the contract or specify the place and hours at which a statement of those reasons may be inspected; and
>
> (b) there he received observations to which (in accordance with paragraph 5) he was required to have regard, summarise the observations and set out his response to them.

(2) The requirements of sub-paragraph (1) do not apply where the person with whom the contract is made is a nominated person or submitted the lowest estimate.

(3) Paragraph 2 shall apply to a statement made available for inspection under this paragraph as it applies to a description of proposed works made available for inspection under that paragraph.

The Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013

Regulation 13

(2) The Tribunal may make an order requiring a party to reimburse to any other party the whole or part of the amount of any fee paid by the other party which has not been remitted by the Lord Chancellor.