FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case references	**:**	**LON/00BD/LSC/2018/0347** **LON/00BD/LSC/2018/0240**
Property	**:**	**56b Friars Stile Road, Richmond, TW10 6NQ**
Applicant	**:**	**Kirkrealm Limited**
Representative	**:**	**Ms Hannah Laithwaite of Counsel instructed by Carter Bells LLP Solicitors**
Respondent	**:**	**Mr Geoffrey David Payne**
Representative	**:**	**In Person**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge and an administration charge**
Tribunal members	**:**	**Judge N Hawkes** **Mr M Mathews FRICS** **Mr P Clabburn**
Venue	**:**	**10 Alfred Place, London WC1E 7LR**
Date of decision	**:**	**3 July 2019**

DECISION

Decisions of the Tribunal

(1) The Tribunal finds for the Respondent, Mr Payne, in respect of items 4(c), 6(a), 6(b), 6(k) and 17(b) in the List of Issues which is set out below. Accordingly, the Tribunal finds that:

a. In respect of application reference LON/00BD/LSC/2018/0347, the sum of £11,209.01 in respect of the works and the sum of £1,270.85 in respect of fees are payable by Mr Payne to the Applicant, Kirkrealm Limited.

b. In respect of application reference LON/00BD/LSC/2018/0240, sum of £8,995.81 is payable by Mr Payne to the Applicant, Kirkrealm Limited. In respect of the County Court costs, no determination has been made for the reasons set out below.

(2) The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that 30% of the costs incurred by the Applicant landlord 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 Mr Payne.

(3) The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing 30% of Mr Payne's liability, if any, to pay an administration charge in respect of the Applicant's costs of these proceedings.

(4) The Tribunal does not make an order reimbursing any hearing fees.

The applications

1. There are two applications before the Tribunal. The first in time, Tribunal reference LON/00BD/LSC/2018/0240, concerns proceedings which were originally issued by Kirkrealm Limited ("the Landlord") in the County Court Money Claims Centre, under Claim No. E68YJ141, on 2 May 2018.

2. The claim was transferred to this Tribunal, by order of Deputy District Judge Nix, on 22 June 2018. It concerns the reasonableness and payability of certain charges (primarily relating to roof repair work) in respect of the service charge year ending 30 September 2017.

3. By an application dated 19 September 2018, Tribunal reference LON/00BD/LSC/2018/0347, Mr Payne sought determinations as to the reasonableness and payability of certain other charges (primarily

relating to redecoration) in respect of the service charge years ending 30 September 2015 and 30 September 2016.

4. Directions were issued on 17 July 2018 and 29 October 2018. Relevant legal provisions are set out in the Appendix to this decision.

The hearing

5. The hearing of this matter took place on 21 March 2019, 22 March 2019 and 10 June 2019. The Landlord was represented by Ms Laithwaite of Counsel at the hearing and the Tenant, Mr Payne, appeared in person.

6. The hearing was also attended by Mr John Turnbull, Mr Ian Turnbull, Ms Pat Turnbull and Mr Nick Oldham for the Landlord and by Ms Kate Harkness for Mr Payne. Ms Dru Vesty of the Personal Support Unit attended as an observer on 10 June 2019.

7. The Tribunal heard oral evidence from:

   (i) Mr Payne;

   (ii) Mr John Turnbull, a Director of the Landlord company; and

   (iii) Mr Nick Oldham, Chartered Surveyor.

8. On 10 June 2019, the Tribunal heard detailed oral submissions from both parties based upon written submissions which the parties handed in. The oral and written submissions have been carefully considered by the Tribunal, both on 10 June 2019 and subsequently. However, as discussed with the parties at the hearing, the submissions will not be set out in full in this decision in light of their length.

9. Mr Payne has referred in his submissions to a number of matters which are not within the jurisdiction of this Tribunal in the present proceedings. For example, Mr Payne has referred to alleged breaches of contract and to issues in connection with the proposed sale of his property.

10. The applications before the Tribunal are brought under section 27A of the Landlord and Tenant Act 1985 ("the 1985 Act") and under Schedule 11 to the Commonhold and Leasehold Reform Act 2002 ("the 2002 Act").

11. The Tribunal will solely address the matters which are before it pursuant to the relevant provisions of the 1985 Act and the 2002 Act in this decision.

The background

12. The Landlord has been the registered freehold owner of the property known as 56 Friars Stile Road, Richmond, TW10 6NQ ("the building") since 21 August 2000.

13. The Landlord's freehold interest comprises:

    (i) Ground floor shop premises, a basement and a rear store ("the commercial property").

    (ii) A first floor residential flat ("56a Friars Stile Road") which is let on a long lease to Van Santen Limited.

    (iii) A second and third floor residential flat, and fourth floor loft space, 56b Friars Stile Road ("the property"), which is let to Mr Payne pursuant to a lease dated 19 April 1996, and a deed of variation dated 28 September 2005 demising the loft space to Mr Payne.

14. The Landlord purchased the freehold interest in the building from Oddbins Limited ("Oddbins") on 21 August 2000. The Landlord leased the commercial property back to Oddbins under a 15-year lease. The current commercial tenant is Whittalls Wines Merchants 1 Limited. By a Transfer of Part dated 29 May 1997, Mr Payne purchased a part of Oddbins' freehold property which is known as "Garages at Marlborough Road, Richmond, London".

15. Photographs of the building were provided in the hearing bundle. Neither party requested an inspection and the Tribunal did not consider that one was necessary.

The issues

16. The issues which fall to be determined have been set out in a List of Issues which provides as follows:

    2015 MAJOR REDECORATION / REPAIR WORKS ("First Works"):

    [This is the Tenant's application reference LON/00BD/LSC/2018/0347]

1. Did the Landlord comply with s.20 Landlord and Tenant Act 1985 ("the 1985 Act") when it carried out its consultation for the 2015 major works, considering the requirements contained in Sch.4 Part II to the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations"). Specifically:

a. Were the stage 1 notices dated 11/8/2014 (enclosing the detailed major works specification) and 13/10/2014 (in respect of the additional fire alarm and electrical works) compliant?

b. Was the revised specification of works dated 7/1/2015 and served on 8/1/2015 following tenant observations so different as to require the Landlord to re-perform stage 1 of the consultation?

c. If not, was the stage 2 notice dated/served on 18/2/2015 providing 2 revised estimates complaint?

d. Were the stage 3 notices dated/served on 23/3/2015 and/or 15/5/2015 compliant?

2. If so, was it reasonable for the Landlord to incur the emergency lighting & fire alarm costs (see item 20.16 omitted and replaced with 'additional/varied' items 2.0-4.0)?

3. If not in part, what is a fair and reasonable charge to allow, if any, for the work done (see Yorkbrook Investment Ltd v Batten (1985) 276 EG 545 (CA))?

4. Additionally, were the following works completed to a reasonable standard?

a. Front and side exterior plinths;

b. Emulsion to all internal walls and ceilings;

c. Rub down & repaint all internal woodwork.

5. If any item was not, what is a fair and reasonable charge for the work done?

6. Additionally, were the following specified works actually undertaken/completed?

a. Regular cleaning whilst the works were undertaken;

b. Clearing the site;

c. Upper roofs;

d. Chimney stack render;

e. Rainwater pipe;

f. Cleaning of the entry system;

g. Ease & adjust all windows to the side and rear elevation;

h. Glazing putties;

i. Gas meter cupboards – alleged only 1 coat applied;

j. Coir matting;

k. Varnish;

l. Pipework redecoration;

m. Lead pointing / general pointing;

n. Re-fix existing slates;

o. Scaffolding netting;

p. Additional scaffold licence;

q. OH&P;

r. Scaffolding hire;

s. Alarm hire;

t. OH&P;

u. Decorate cornice.

7. If not, what sum is irrecoverable by reference to any works found not to have been completed?

8. Generally, are the costs of the works reasonable in amount:

a. Has the Tenant provided comparable quotations for any of the works?

b. If so, do they demonstrate that the costs incurred by the Landlord in undertaking the works is unreasonable in amount?

c. If so, what sum of service charges were not reasonable in amount and thus irrecoverable by the Landlord?

SURVEYOR'S FEES INCURRED IN RELATION TO THE MAJOR WORKS: £4,431.18 (Tenant's 33% £1,462.29)

9. Is Mr Oldham's fee of 12.5% of the 2015 major works final account value reasonable in amount?

2017 ROOF REPAIR WORKS

[This is the County Court transfer LON/00BD/LSC/2018/0240]

10. Interpreting the terms of the Lease, was the Tenant contractually liable to contribute to the 2016/2017 roof repair works to "roof 1" (i.e. were the service charges relating to this repair cost, payable under the Lease)?

11. If so, did the Landlord comply with s.20 of the 1985 Act when it carried out its consultation for the 2016 roof works, considering the requirements contained in Sch.4 Part II to the Regulations. Specifically:

a. Was the stage 1 notice served on 5/12/2016 compliant?

b. Was the stage 2 notice enclosing estimates, served on 9/5/2017, compliant? Specifically:

i. Were both contractors provided with the same specification of works from which to quote, as a matter of fact on the balance of probabilities?

ii. If not, does that render the stage 2 notice uncompliant?

c. Did the slight variation to the agreed repair works (resulting in no additional cost) after commencement of the works require the Landlord to repeat stage 2 of the consultation process (considering the test in Reedbase Limited and Anr v Fattal and others [2018] EWCA Civ 840)?

d. If not, was the stage 3 notice containing reasons, served on 19/6/2017, compliant?

12. If so, were the roof repair works completed to a reasonable standard?

13. If not, what is a fair and reasonable charge for the work done (see Yorkbrook Investment Ltd v Batten (1985) 276 EG 545 (CA))?

SURVEYOR'S COSTS OF £1,560 (Tenant's 33% £514.80) for roof repair works; and £289.50 fee for abortive meeting:

14. Was it reasonable for the Landlord to arrange the meeting between the surveyor and Tenant for 28/7/2017 and consequently incur the surveyor's wasted costs of the meeting (£289.50) when the Tenant did not attend?

15. Whether the surveyor's costs are reasonable in amount by reference to:

a. Hourly rate of £185;

b. Time spent in relation to the:

i. Roof repair works – 7 hours; and

ii. Abortive meeting on 28/7/2017 to discuss the Tenant's complaints as to the 2015 major works, which the Tenant did not attend.

LEGAL COSTS INCURRED IN CLAIM NO. E68YJ141 - £1,983.00; AND CARTER BELL'S RECOVERY LEGAL COSTS - £2,374.20

16. Are these items of legal costs incurred by the Landlord prima facie contractually recoverable from the Tenant under the terms of the Lease?

17. In light of the Tribunal's findings as to the Tenant's liability for the relevant service charges in dispute, and all the relevant background correspondence, are the two sets of costs reasonable in amount?

a. Costs to issue in the County Court (the claim transferred to the Tribunal / the First Application) - £1,983.00;

b. Costs incurred in pursuing the Tenant for payment of his service charge contribution towards the 2015 major works. - £2,374.20.

ANCILLARY APPLICATIONS:

18. Whether the Tribunal should make an order pursuant to:

a. s.20C of the 1985 Act;

b. para.5A of Sch.11 Commonhold and Leasehold Reform Act 2002 ("the 2002 Act"); and

c. reimbursing any court fee.

17. Both parties made submissions concerning these issues.

THE TRIBUNAL'S DETERMINATIONS

The 2015 Major Works (LON/00BD/LSC/2018/0347)

The Statutory Consultation

18. Section 20 of the 1985 Act provides for the limitation of service charges in the event that statutory consultation requirements are not met.

19. The consultation requirements apply where the works are qualifying works (as is the case in this instance) and only £250 can be recovered from a tenant in respect of such works unless the consultation requirements have either been complied with or dispensed with.

20. The consultation requirements are set out in the Service Charges (Consultation Requirements) (England) Regulations 2003 ("the Regulations"). Regard should be had to the express wording of the Regulations. However, in summary:

    (i) The landlord serves a "notice of intention" on all tenants and any recognised tenants' association describing the proposed works.

    (ii) The tenants or recognised tenants' association then have 30 days to make observations as to the works proposed and to nominate a person or persons from whom the landlord should try to obtain an estimate for the carrying out of the proposed works.

(iii) The landlord then obtains a minimum of two estimates. The landlord must try to obtain an estimate from one and in some cases two of the tenants' nominees, at least one estimate must be from a contractor wholly unconnected with the landlord.

(iv) The landlord serves on all tenants and any recognised tenants' association a "paragraph (b) statement" free of charge summarising at least two of the estimates, setting out any observations received and the landlord's response to observations. All estimates should be made available for inspection.

(v) At the same time, the landlord should make the estimates available to all tenants and any recognised tenants' association, inviting observations on the estimates and the tenants or recognised tenants' association have 30 days to respond.

(vi) The landlord is obliged to consider the observations but is otherwise free to enter into a contract for the carrying out of the works, if the landlord contracts either with a person nominated by the tenants or recognised tenants' association or with the person who supplied the lowest estimate.

(vii) Otherwise, the landlord must within 21 days of entering into the contract serve notice on the tenants or recognised tenants' association stating the landlord's reasons for awarding the contract, setting out observations received, and the landlord's response to those observations.

21. In *Reedbase Limited and Anr v Fattal and others [2018] EWCA Civ 840*, the Court of Appeal held that the relevant test for determining whether the second stage should be repeated in light of changes to the proposals for the works is whether the tenants have been given sufficient information by the first set of estimates and whether the protection afforded to the tenants by the consultation process is likely to be materially assisted by obtaining fresh estimates.

22. The Landlord set out in detail the evidence which it relied upon in support of its assertion that it has complied with the statutory consultation requirements pursuant to section 20 of the 1985 Act in respect of this work. This decision solely concerns the aspects of the Landlord's consultation which Mr Payne asserts are non-compliant and

in respect of which the Tribunal is therefore required to make a determination.

23. Mr Payne asserts that the notices relied upon at the hearing are different from notices previously relied upon by the Landlord. Whether or not this is the case, there is no dispute that the notices were served and the Landlord is entitled to rely upon the evidence which it presented to the Tribunal at the hearing.

24. The Tribunal's task is to determine whether or not the Regulations have been complied with. The Tribunal has no jurisdiction to apply more stringent proposed consultation requirements. For example, Mr Payne is of the view that the specification should have been provided with the stage 1 notice; that there is a requirement to have "valid regard" to observations (this appears to be more stringent than the obligation to simply have regard), and that there is a requirement to have regard to out-of-time observations.

25. Mr Payne was invited to refer the Tribunal to the specific wording of the Regulations with which he asserts there has been non-compliance. However, rather than point to any specific provision of the Regulations which on his case has not been complied with, Mr Payne raised other concerns.

26. As regards issue 1(a), the Tribunal finds that the second of the two notices which are relied upon by the Landlord as being stage 1 notices is compliant. This notice refers back to/incorporates the first notice in addition to including fire alarm and electrical works. The Tribunal does not accept that there is any requirement in the Regulations to include a specification for the work together with the stage 1 notice.

27. As regards issue 1(b), the Tribunal accepts Mr Oldham's oral evidence that the differences between the original and revised specifications were minor and finds that there was no requirement for the Landlord to re-consult. Some items were omitted following consideration of the lessees' out-of-time observations and a carpet contractor nominated by the lessee of Flat 56a was substituted in. The fire alarm/electrical works had been included in the stage 1 notice dated 13 October 2014.

28. The Tribunal finds on the facts of this case that the tenants had been given sufficient information by the first set of estimates and that the protection afforded to the tenants by the consultation process is unlikely to be materially assisted by obtaining fresh estimates.

29. The Tribunal accepts the Landlord's evidence that no in-time observations were made by the lessees and is satisfied that the stage 2 and stage 3 notices relied upon by the Landlord at the hearing were compliant.

30. As regards issues 2 and 3, there was a dispute concerning whether the fire safety measures which the Landlord has undertaken were reasonable in extent. Mr Oldham gave oral evidence that these measures, which included fitting a mains fire alarm and emergency lighting, were needed and the Tribunal accepts Mr Oldham's expert opinion on this issue. The Tribunal notes that both a fire safety assessment and advice from an alarm installation company were obtained.

The standard of work carried out

General issues

31. Mr Payne gave oral evidence that the photographs which he provided are representative of the entirety of the work carried out by the Landlord.

32. The Tribunal accepts this evidence in broad terms, whilst noting that the more exposed areas of the building will inevitably weather more rapidly than less exposed areas of the building (a proposition with which Mr Payne did not disagree). Accordingly, the Tribunal finds that it is fair and just to consider the disputed items by category rather than, for example, window by window.

33. The Tribunal has considered a report from Dulux which was relied upon by Mr Payne and a report prepared by Mr David Whitehouse which was relied upon by the Landlord but it found the photographic and oral evidence to be of greater assistance. Both Mr Payne's evidence of fact and the factual evidence and expert opinion of Mr Oldham were thoroughly tested in cross examination and the Tribunal was informed that photographs were sent to Dulux prior to completion of the work.

The front and side exterior plinths

34. As regards issue 4(a), Mr Payne believes that work to the plinths was carried out using sand and cement when it should have been carried out using resin. Mr Oldham asserted that sand and cement was in fact used. Notwithstanding the time which has elapsed since the relevant work was carried out in 2015, the Tribunal was not referred to any photographs showing significant deterioration to the plinths.

35. Accordingly, the Tribunal finds on the balance of probabilities (the standard of proof which the Tribunal must apply in these proceedings) that it is likely that appropriate materials were used and that it is likely that this work was carried out to a reasonable standard.

36. The Tribunal accepts that the work may not have been carried out to an extremely high standard but notes that a "reasonable" standard is what is required of the Landlord under the provisions of 1985 Act.

Emulsion to all internal walls and ceilings

37. As regards issue 4(b), the photographs to which the Tribunal was referred did not reveal any significant defects notwithstanding the passage of time since this work was undertaken. Accordingly, the Tribunal finds on the balance of probabilities that this work was carried out to a reasonable standard.

38. The Tribunal accepts that this work may not have been carried out to an extremely high standard but again notes that a "reasonable" standard is what is required under the provisions of the 1985 Act.

The woodwork

39. As regards issue 4(c), it was apparent to the Tribunal from the photographs which were relied upon by Mr Payne that this work was not carried out to a reasonable standard. This was accepted by Mr Oldham and the Tribunal considers that it was to Mr Oldham's credit (and adds to the credibility of his evidence in general) that he made appropriate concessions.

40. For example, Mr Oldham accepted that photographs which were taken by Mr Payne eight months after completion of the work showed premature deterioration and that this would "inevitably" have added to the natural deterioration caused by a severe winter and a hot summer which followed.

41. The Tribunal has carefully reviewed the photographs which show premature weathering on the basis that they are broadly representative of the standard of work carried out, although less exposed areas will be less severely affected. The Tribunal has also reviewed its notes of both Mr Payne's oral evidence and Mr Oldham's oral evidence.

42. Applying its expert knowledge and experience, the Tribunal determines that a deduction of 30% of the cost of this work falls to be made in order to reflect its finding that the work undertaken fell below a reasonable standard.

43. Accordingly, as regards issue 5, a deduction in the sum of £1,291.50 falls to be made under this heading.

Whether or not certain works were undertaken, completed and/or were necessary

44. The Tribunal will make findings in respect of issues 6 and 7 under this heading. The items which Mr Payne asserts were not carried out, not carried out to a reasonable standard, or which were unnecessary are listed at issue 6 in the List of Issues. At issue 7, the Tribunal is asked to determine what sum, if any, is irrecoverable. In doing so, the Tribunal has considered the final account and the nature of the available evidence.

45. Mr Oldham gave evidence that he personally inspected the works and that he visited the building on a regular basis. As stated above, he is a Chartered Surveyor. Mr Payne is not a surveyor and he is therefore unable to give expert evidence. However, he resides at the property, he has taken a keen interest in the work, and he is able to give relevant factual evidence.

46. The Tribunal considers both Mr Payne and Mr Oldham to be credible witnesses who did their best to assist the Tribunal.

47. Mr Oldham was not on site at all times and it is likely that there were matters which he simply did not observe. Having seen and heard Mr Payne give evidence and having noted his extensive and detailed preparation for this application, the Tribunal considers it likely that Mr Payne has high standards and that he may be aggrieved if work, although carried out to a reasonable standard, is not carried out to a higher standard which he himself would apply if overseeing the work.

48. Further, the Tribunal notes that straightforward witnesses can be mistaken and that the Tribunal must do its best on the basis of the limited evidence available. As stated above, the standard of proof in these proceedings is "the balance of probabilities". The Tribunal does not, for example, have to be satisfied "beyond all reasonable doubt" before it can make a finding.

49. As regards item 6(a), the Tribunal prefers Mr Payne's evidence that regular cleaning was not completed to a reasonable standard whilst the works were being undertaken.

50. Mr Payne's oral evidence to this effect was supported by photographic evidence of the matters which he complained of. The Tribunal considers that it is likely that Mr Oldham was not on site at the material time. Further, as Mr Payne gave evidence that he himself cleared up, it is unlikely that debris would have been evident to Mr Oldham when he did inspect.

51. Applying its expert knowledge and experience and doing its best on the basis of the limited evidence available, the Tribunal finds that 50% falls to be deducted from the cleaning costs. Accordingly, a deduction in the sum of £287.50 falls to be made under this heading.

52. As regards item 6(b), the Tribunal prefers Mr Payne's evidence that the clearing of the site following the works was not carried out to a reasonable standard.

53. Again, Mr Payne's oral evidence is supported by photographic evidence and, as Mr Payne cleared up after the builders himself, the debris would probably not have been evident to Mr Oldham.

54. Accordingly, a deduction in the sum of £175 falls to be made under this heading.

55. Mr Oldham accepted that item 6(c) was not carried out but he stated that there was a "quid pro quo" variation and that instead work was carried out to replace ridge tiles and to repoint. The Tribunal accepts Mr Oldham's evidence and finds that Mr Oldham acted reasonably in agreeing this slight variation. In all the circumstances, the Tribunal is not satisfied that there is any deduction which falls to be made in respect of item 6(c).

56. As regards item 6(d), the Tribunal accepts Mr Oldham's evidence that no render is visible to the chimney stack and that the flaunching was repaired. The Tribunal is not satisfied that anything turns on the fact that the word "render" was inadvertently used instead of the word "flaunching"; this had no impact on the cost of the works.

57. As regards items 6(e) to 6(g), the Tribunal prefers Mr Oldham's evidence that on inspecting, during which time Mr Oldham would have applied his knowledge and experience as a surveyor, Mr Oldham observed that each of these items of work was carried out to a reasonable standard.

58. As regards item 6(h), Mr Oldham accepted that not all putties were replaced but he explained that this was because the contractors had been asked to rake out only loose and defective putties. He gave evidence that, on inspection, this work was carried out to a reasonable standard. The Tribunal prefers Mr Oldham's evidence on this issue.

59. As regards items 6(i) and 6(j), Mr Oldham gave evidence that, on inspection, this work was carried out to a reasonable standard and the Tribunal prefers Mr Oldham's evidence on these issues.

60. As regards item 6(k) the specification provided for two coats of varnish but Mr Oldham accepted that only one coat had been applied. The varnishing costs were not itemised and the Tribunal heard no evidence concerning the size of the area to which varnish was applied.

61. Doing its best on the basis of the extremely limited evidence available, the Tribunal finds that the sum of £50 falls to be deducted from the decorating costs on account of the substandard nature of this work.

62. As regards items 6(l) to 6(u), the Tribunal prefers Mr Oldham's evidence that these items were necessary and that, on inspection, this work was completed to a reasonable standard.

63. Mr Oldham gave evidence, which the Tribunal accepts, that the local authority required an alarm and the scaffolding netting to be put in place and, applying the Tribunal's own knowledge and experience as a check, the Tribunal considers the scaffolding costs to be within a reasonable range for major works of this nature.

The total cost of the work

64. As regards issue 8, the Tribunal notes that the Landlord is not required to carry out work in the cheapest possible manner; the costs will be reasonable if they fall within a reasonable range.

65. The Tribunal accepts the Landlord's contention that the alternative quotations which Mr Payne has provided are not like for like with reference to the Landlord's specification.

66. On the basis of the evidence available, the Tribunal finds that the costs of the work are reasonable in amount, subject to the deductions which are expressly set out in this decision.

The surveyor's fees

67. As regards issue 9, the Tribunal is not satisfied that Mr Payne has supplied any like for like alternative quotation. Further, applying the Tribunal's expert knowledge and experience, the Tribunal is satisfied that the percentage charged by Mr Oldham falls within the reasonable range of surveyor's fees for major works of this type.

68. However, the sum to be paid to Mr Oldham (being 11% of the total cost of the redecoration works) will reduce in line with the Tribunal's deductions which are set out above.

69. Accordingly, a deduction in the sum of £198.44 falls to be made under this heading.

The 2017 roof repair works

The payability of the cost of the roof repair works

70. As regards issue 10 (whether the costs of the works are payable by the tenant under the lease), the Landlord's case is as follows.

71. Pursuant to paragraph 2(a) of Part I, Schedule 4 to the lease, the Landlord has an obligation to repair the roof comprised within the 'Property' and 'the main structure of the Property and common parts of the Property'.

72. Under paragraph 6 of Part I, Schedule 2, the Tenant has an obligation to pay his proportion of the expenses incurred by the Landlord in performing his obligations under Part I, Schedule 4.

73. The 'Property' is defined in the lease as 'the whole of the freehold property owned by the Lessor known as 56 Friars Stile Road Richmond Surrey being part of the property comprised in the title herein before mentioned'. The Tribunal has been referred to a plan of the freehold title; to an annotated plan showing its 5 roof areas; and to a plan showing the commercial property footprint which does not extend beyond the freehold interest.

74. The Landlord states that the starting point is thus that all of the 5 roof areas of the freehold form part of the 'Property' and are the responsibility of the Landlord to repair, recovering the expense through the service charge.

75. The Tribunal is satisfied, having considered the plans, that the relevant area of roof falls within the freehold title and the Tribunal was not referred to any document which provides that the commercial tenant is to carry out the work in question.

76. Mr Oldham gave evidence that a leak which led to the roof repairs occurred to the common parts of the Property and that the repairs were carried out to the common parts. The Tribunal accepts this evidence and finds as a fact that both the leak and the repairs were to common parts. Accordingly, the reasonable cost of the relevant work is payable under the terms of the lease.

77. The Tribunal notes that Mr Payne and his partner have carried out a considerable amount of research concerning the history of the area. However, as explained at the hearing, the role of the Tribunal is simply to construe the wording of the lease.

78. Mr Turnbull gave evidence that he previously erroneously believed the commercial tenant to be responsible for repairing the relevant area of roof. However, he also gave evidence, which the Tribunal accepts, that no works were previously carried out to this area of roof during the Landlord's tenure. The Tribunal does not accept Mr Payne's case that

Mr Turnbull's previous belief, which was not acted upon, amounts to a lease variation.

79. Accordingly, the Tribunal finds for the Landlord in respect of issue 10.

The Statutory Consultation

80. As regards item 11, the Tribunal finds that the statutory consultation procedure was properly carried out. During the course of the hearing, Mr Payne did not refer the Tribunal to any specific Regulation which he claimed had not been followed.

81. Further, the Tribunal has itself considered the notices relied upon by the Landlord, the Tribunal accepts Mr Oldham's evidence that he provided both contractors with the same specification of works, and the Tribunal does not consider that a slight variation to the agreed works after the commencement of the work, at no additional cost, (the omission to take up and cart away old asphalt roof and the addition of insulation) required the landlord to repeat the consultation process.

The standard of the work to the roof

82. As regards items 12 and 13, there a dispute of fact between the parties concerning whether or not water leaked through the roof following the completion of the work which was undertaken by the Landlord to this area. The Tribunal notes that, in the case of a flat roof of this type, fallen leaves blocking outlets or gutters is a common cause of water ingress and that there was no evidence before the Tribunal as to the cause of any leak in the present case.

83. In all the circumstances, the Tribunal is not satisfied that water leaks, if any, were caused by poor workmanship and the Tribunal finds that it is likely on the balance of probabilities that this work (which was inspected and signed off by a surveyor) was completed to a reasonable standard. Mr Oldham inspected and signed off this work and the Tribunal accepts Mr Oldham's expert evidence that the standard of work was reasonable.

The surveyor's fees

84. As regards items 14 and 15, the Tribunal is not satisfied that Mr Payne has supplied any like for like alternative quotation and, applying its knowledge and experience, the Tribunal is satisfied that the surveyor's fees in total are within a reasonable range for work of this nature.

85. The Tribunal also considers the hourly rate and the time spent to be reasonable. Having regard to the contentious nature of these works,

the Tribunal is of the view that it was reasonable for the Landlord to incur the surveyor's costs of the proposed meeting which ultimately did not take place. However, as stated above, the Tribunal is satisfied that the total costs are, in any event, within a reasonable range having regard to the nature of the work undertaken.

The legal costs

86. As regards issue 17(a), the County Court costs of the proceedings which have been referred to this Tribunal are a matter for the County Court to determine (see the "next steps" below).

87. Issue 17(b) relates to "costs incurred in pursuing the Tenant for payment of his service charge contribution towards the 2015 major works - £2,374.20". At issue 16, the Tribunal is asked to determine whether the costs claimed are contractually recoverable.

88. By paragraph 4 of Part II to the lease, and paragraphs 6 and 7 of the Second Schedule Part 1, the lessee is required to pay the lessee's proportion (33%) of:

> "All expenses costs and fees reasonably incurred by the Lessor in any proceedings or contemplated proceedings or dispute relating to the Property or to any part or it or with the Lessee or the lessee of any other part of the Property to the extent that such expenses costs and fees are not paid by the other party to such proceedings."

89. The Tribunal finds that legal costs of a dispute relating to the property are potentially recoverable under this paragraph applying the natural meaning of this service charge clause (the normal rules of contractual interpretation apply, see *Arnold v Britton & Ors [2015] UKSC 36*).

90. The Landlord also sought to rely upon paragraph 10(a) of Part 1, Schedule 2 to the lease which concerns legal costs incurred in or in contemplation of proceedings under section 146 of the Law of Property Act 1925. However, the Tribunal is not satisfied on the basis of the evidence to which it was referred at the hearing that the relevant costs were incurred in contemplation of proceedings under section 146 of the Law of Property Act 1925.

91. The evidence before the Tribunal concerning the solicitors' costs was limited. Further, the Tribunal notes that Mr Payne did not agree the reasonableness and payability of the costs of the 2015 major works.

92. The Tribunal considers that only a limited amount of relatively straightforward correspondence would have been required in order to seek payment and to ascertain that there was a dispute concerning the

reasonableness and payability of the Landlord's charges which would fall to be determined by the Tribunal.

93. The Tribunal has been referred to the following fee notes:

(i) a fee note dated 28 February 2017 in the sum of £1,101.60, representing 3 hours 36 minutes work at £255 per hour plus VAT;

(ii) a fee note dated 31 March 2017 in the sum of £397.80, representing 1 hour 18 minutes work at £255 an hour plus VAT; and

(iii) a fee note dated 31 May 2017 in the sum of £874.80, representing 2 hours 42 minutes at £270 an hour plus VAT.

94. The chasing of unpaid fees could have initially been carried out by a paralegal using standard form letters. However, the Tribunal acknowledges that a review by a solicitor would then have been required in order to ascertain that there was a dispute concerning reasonableness and payability of the service charges to be determined by the Tribunal (and that this could have taken in the region of 1-1.5 hours).

95. Doing its best on the basis of the limited evidence available, the Tribunal finds that the sum of £750 is reasonable and payable under this heading (of which Mr Payne's contribution will be £250).

Applications under section 20C, paragraph 5A and refund of fees

96. The Tribunal's determinations in respect of issue 18 are as follows.

97. Section 20C of the 1985 Act provides that 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 Residential Property Tribunal are not to be regarded as relevant costs to be taken into account in determining the amount of any service charge payable by the tenant or any other person or persons specified in the application.

98. Paragraph 5A of Schedule 11 to the 2002 Act provides that:

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

99. The question for the Tribunal under both section 20C and paragraph 5A is what is "just and equitable". These provisions provide the Tribunal with a wide discretion to exercise having regard to all the circumstances of the case.

100. As regards the principles to be applied in determining these applications, in *Tenants of Langford Court v Doren Ltd (LRX/37/2000)*, His Honour Judge Rich QC stated in respect of section 20C (emphasis supplied):

"In my judgement the only principle upon which the discretion should be exercised is to have regard to what is ***just and equitable*** *in all the circumstances … Where, as in the case of the LVT there is no power to award costs, there is no automatic expectation of an order under s.20C in favour of a successful tenant…"*

101. His Honour Judge Rich QC stated that relevant factors would include "the conduct and circumstances of all parties as well as the outcome of the proceedings in which they arise".

102. In *Schilling v Canary Riverside (LRX/26/2005)* His Honour Judge Rich QC reconsidered and reaffirmed the principles in *Doren*.

103. Mr Payne has been successful in respect of matters which, although of limited financial value, took up a substantial amount of time at the hearing, in particular, concerning the standard of the work which was undertaken to the external woodwork and the cleaning costs.

104. Further, the Tribunal considers that matters which were very properly conceded by the Landlord's expert and which were apparent from the photographic evidence were capable of agreement prior to the hearing.

105. The Tribunal also takes into account the fact that it has found a significant proportion of the costs incurred in pursing Mr Payne for payment of his service charge contribution towards the 2015 major works to be irrecoverable.

106. In all the circumstances, the Tribunal finds that it is just and equitable to make the following orders.

107. The Tribunal makes an order under section 20C of the Landlord and Tenant Act 1985 that 30% of the costs incurred by the Applicant landlord 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 Mr Payne.

108. The Tribunal makes an order under paragraph 5A of Schedule 11 to the Commonhold and Leasehold Reform Act 2002 extinguishing 30% of Mr Payne's liability, if any, to pay an administration charge in respect of the Applicant's costs of these proceedings.

109. However, the Tribunal does not exercise its discretion to reimburse any Tribunal fees.

The next steps

110. The Tribunal has no jurisdiction over County Court costs. This matter should now be returned to the County Court.

Name: Judge N Hawkes **Date:** 3 July 2019

Rights of appeal

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

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

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

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

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

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

Appendix of relevant legislation

Landlord and Tenant Act 1985 (as amended)

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 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.

Section 20

(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.]

Section 20C

(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 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 that tribunal;
(b) in the case of proceedings before a residential property tribunal, to the tribunal before which the proceedings are taking place or, if the application is made after the proceedings are concluded, to any residential property 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.

Commonhold and Leasehold Reform Act 2002

Schedule 11, paragraph 1

(1) In this Part of this Schedule "administration charge" means an amount payable by a tenant of a dwelling as part of or in addition to the rent which is payable, directly or indirectly—
(a) for or in connection with the grant of approvals under his lease, or applications for such approvals,
(b) for or in connection with the provision of information or documents by or on behalf of the landlord or a person who is party to his lease otherwise than as landlord or tenant,
(c) in respect of a failure by the tenant to make a payment by the due date to the landlord or a person who is party to his lease otherwise than as landlord or tenant, or
(d) in connection with a breach (or alleged breach) of a covenant or condition in his lease.

(2) But an amount payable by the tenant of a dwelling the rent of which is registered under Part 4 of the Rent Act 1977 (c. 42) is not an administration charge, unless the amount registered is entered as a variable amount in pursuance of section 71(4) of that Act.

(3) In this Part of this Schedule "variable administration charge" means an administration charge payable by a tenant which is neither—
(a) specified in his lease, nor
(b) calculated in accordance with a formula specified in his lease.

(4) An order amending sub-paragraph (1) may be made by the appropriate national authority.

Schedule 11, paragraph 2

A variable administration charge is payable only to the extent that the amount of the charge is reasonable.

Schedule 11, paragraph 5

(1) An application may be made to the appropriate tribunal for a determination whether an administration 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) Sub-paragraph (1) applies whether or not any payment has been made.

(3) The jurisdiction conferred on the appropriate tribunal in respect of any matter by virtue of sub-paragraph (1) is in addition to any jurisdiction of a court in respect of the matter.

(4) No application under sub-paragraph (1) 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.

(6) An agreement by the tenant of a dwelling (other than a post-dispute arbitration agreement) is void in so far as it purports to provide for a determination—
(a) in a particular manner, or
(b) on particular evidence,
of any question which may be the subject matter of an application under sub-paragraph (1).

Schedule 11, paragraph 5A

(1) A tenant of a dwelling in England may apply to the relevant court or tribunal for an order reducing or extinguishing the tenant's liability to pay a particular administration charge in respect of litigation costs.

(2) The relevant court or tribunal may make whatever order on the application it considers to be just and equitable.

(3) In this paragraph—

(a) *"litigation costs"* means costs incurred, or to be incurred, by the landlord in connection with proceedings of a kind mentioned in the table, and

(b) *"the relevant court or tribunal"* means the court or tribunal mentioned in the table in relation to those proceedings.

Proceedings to which costs relate	***"The relevant court or tribunal"***
Court proceedings	The court before which the proceedings are taking place or, if the application is made after the proceedings are concluded, the county court
First-tier Tribunal proceedings	The First-tier Tribunal
Upper Tribunal proceedings	The Upper Tribunal
Arbitration proceedings	The arbitral tribunal or, if the application is made after the proceedings are concluded, the county court."