FIRST-TIER TRIBUNAL
PROPERTY CHAMBER
(RESIDENTIAL PROPERTY)

Case reference	**:**	**LON/OOAC/LSC/2019/0234**
Property	**:**	**36 West Heath Road, London, NW3 7UR**
Applicant	**:**	**36 West Heath Management Services Limited**
Representative	**:**	**Richard Davidoff (Manager appointed by the Tribunal)**
Respondent	**:**	**Gogol Kafi (Flats 1A and 6)** **Smair Soor (Flat 4)**
Representative	**:**	**Smair Soor**
Type of application	**:**	**For the determination of the reasonableness of and the liability to pay a service charge**
Tribunal Members	**:**	**Judge Robert Latham** **Alison Flynn MA MRICS**
Venue and Date of Hearing	**:**	**10 Alfred Place, London WC1E 7LR on 25 November 2019 and 13 January 2020**
Date of decision	**:**	**27 February 2020**

DECISION

Decisions of the Tribunal

(1) The major external works proposed to the to the building at 36 West Heath Road at an estimated cost of £113,022 (including VAT and a 10% supervision fee and a charge of 5% by the manager) are both payable and reasonable.

(2) The Tribunal does not make an order under section 20C of the Landlord and Tenant Act 1985.

The Application

1. On 26 June 2019, this application was issued seeking a determination pursuant to s.27A of the Landlord and Tenant Act 1985 ("the 1985 Act") as to the amount of service charges payable by the Respondents in respect of the service charge year 2019. The application is brought by Mr Richard Davidoff on behalf of the Applicant. On 20 September 2018, the Tribunal appointed Mr Davidoff to manage 36 West Heath Road, London, NW3 7UR ("the Property") for a period of two years commencing on 1 October 2018. The application concerns the reasonableness of the estimated cost of major external works to the building in the sum of £113,022 including VAT and a 10% supervision fee and a charge of 5% by the manager.

2. On 27 August, the Tribunal held a Case Management Hearing at which Mr Davidoff and Mr Kafi attended. Mr Kafi accepted that works were necessary, but contended that the works proposed by Mr Davidoff were more extensive than required and were too expensive. He stated that all the lessees were making the same objection. He also suggested that Mr Davidoff had failed to follow the statutory consultation procedures.

3. The Tribunal gave Directions, pursuant to which:

   (i) The Applicant has filed a Bundle of Documents. This includes a witness statement from Mr Davidoff. Reference to this will be prefixed by "A.__").

   (ii) Mr Soor has filed a Supplementary Bundle. Reference to this will be prefixed by "R.__").

   (iii) Pursuant to the Further Directions which were given on 25 November, the Applicant has filed a Supplementary Bundle. Reference to this will be prefixed by "SB.__").

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

The Hearing

5. On 25 November 2019, the Tribunal commenced the hearing. Mr Davidoff appeared and gave evidence. Two lessees appeared: Mr Gogol Kafi (Flats 1A and 6) and Mr Smair Soor (Flat 4). Mr Soor is a barrister. He gave evidence.

6. Mr Davidoff had appointed Mr Paul McCarthy MRICS to inspect the Property, draw up both a Planned Maintenance Programme ("PMP") and a schedule of works, and undertake the tendering process. Mr

McCarthy was not present at the hearing. The Tribunal did not have any analysis of the tenders which had been received for the works. The Tribunal also considered that an inspection was required.

7. On 13 January 2020, the Tribunal reconvened. The Applicant had filed the Supplementary Bundle which included the additional documents which we had requested. In the morning, we inspected the property. We inspected Flats 1 and 6 internally. We were accompanied by Mr Davidoff. Mr Kafi was present when we inspected Flat 6. None of the other lessees attended for the inspection. In the afternoon, we heard evidence from Mr McCarthy. He was questioned by Mr Soor. Mr Soor and Mr Davidoff then made closing submissions.

8. It became apparent that there is a single issue for the Tribunal to determine, namely whether we prefer the case advanced by Mr Davidoff or that advanced by Mr Soor and Mr Kafi:

(i) Mr Davidoff contends that the building has been neglected for many years and that major external works proposed to the to the building are required at an estimated cost of £113,022 (including VAT and a 10% supervision fee and a charge of 5% by the manager). He seeks a determination that the sums demanded are both payable pursuant to the terms of the Respondent's leases and are reasonable.

(ii) Mr Soor and Mr Kafi contend that a much more limited package of works is required. These are set out in a quotation from Allen Construction, dated 29 May 2019. Work is required to the brickwork in three areas. These works are estimated at £2,860. Scaffolding would also be required at an additional cost of £2,890 + VAT. The other works are not urgent and could be executed elevation by elevation over a number of years.

9. We were told that four lessees oppose the application, namely Mr Gogol Kafi (Flats 1A and 6); Ms S Leyser & Ms Angela De Martini (Flat 2); Mr Smair Soor (Flat 4) and Mr V De Mesquita (Flat 5). Two lessees support the application and have paid the service charges which have been demanded: Alcove Private Ltd - Mr Sharma (Flat 1) and Dr W Phillips & Ms G Phillips (Flat 5).

10. In 2005, the lessees acquired the freehold of the property. All the lessees are now shareholders of the Respondent Company, each lessee holding one share, save for Mr Kafi who holds two shares. Mr Sharma uses his flat as a summer house, living in India for most of the year. Mr Kafi is the sole director. Mr Mesquita resigned as a director in Nov 2018. A previous Tribunal noted that Mr Mesquita had been responsible for "some of the more vitriolic exchanges".

The Consultation Requirements

11. Mr Soor argued that Mr Davidoff had failed to comply with the statutory consultation procedures. The consultation requirements applicable in the present case are contained in Part 2 of Schedule 4 to the Service Charge (Consultation Requirements) (England) Regulations 2003. A summary of those requirements is set out in *Daejan Investments Ltd v Benson* ("*Daejan*") [2013] UKSC 14; [2013] 1 WLR 854:

    Stage 1: Notice of Intention to do the Works: Notice must be given to each tenant and any lessees' 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 lessees or the association.

    Stage 3: Notices about Estimates: The landlord must issue a statement to lessees 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.

The Leases

12. The Tribunal have been provided with the lease for Flat 3 is at A.254-275. It is dated 27 September 1974 and grants a term of 99 years from 25 December 1973. The original leases have been superseded by leases which were granted upon the lessees acquiring the freehold. On 16 May 2005, the lessees surrendered their leases and were granted new 999 year leases on the terms of the original leases.

13. The lessee's covenants are set out in Clause 3. The lessee covenants to keep the interior of the demised flat in good and substantial repair. This includes the windows, window frames and doors belonging to the demised flat. It also extends to drains, cisterns, pipes, wires, ducts and gutters used exclusively for the purposes of the demised flat. The lessee also covenants to maintain, uphold, and keep in good and substantial repair the areas of any terrace included in the demise.

14. The lessor's covenants are set out in Clause 5. The lessor covenants:

(i) to keep in good and substantial repair (a) the main structure of the building including the foundations, the roof, the gutters and the rain water pipes; and (b) all gas and water pipes, drains and electric cables and wires, in, under and upon the building as are enjoyed or used in common by the lessees.

(ii) to decorate the exterior of the building so often as reasonably required and in any event of not less (sic) than five years.

(iii) to use its best endeavours to maintain and keep tidy the common parts, both internally and externally, including the shared areas of the garden.

The Inspection

15. The property is a substantial mansion house which was constructed in about 1870. It is situated in Barnet between Hampstead and Golders Green on the edge of Golders Hill Park. This is a prime location. In the early 1970s, the house was converted into seven flats, in a manner intended to extract the maximum value from the property. Thus, much of the roof space has been incorporated into Flat 6. We were told that Flat 3 is currently on the market at an asking price of some £2m.

16. The inspection allowed us to assess the veracity of Mr McCarthy's inspection report which had been subject to sustained criticism from Mr Soor. Mr Soor did not attend the inspection. Mr McCarthy had inspected the property on 2 November 2018. His headline conclusion was that the property was in good structural condition, but in poor decorative order both externally and internally. We agree. We were told that a comprehensive package of external decorations had last been carried out in the late 1980s. This is consistent with what we observed.

17. The building has lost much of its character as the windows are now a combination of traditional timber, single-glazed sliding sash units and UPVS windows. This reflects the choice of individual lessees. Where lessees have carried out works to the roof, some of the finishes, particularly to the ridge tiles and terracotta bonnets, are not entirely satisfactory.

18. It was apparent that because the Respondent landlord had failed to carry out its responsibilities over many years, many of the lessees had carried out the required repairs. Thus, Mr Kafi had carried out various repairs to the roof above his flat. Some lessees have painted their windows; others have not. The contractual obligations are not entirely satisfactory: the lessee is obliged to keep their windows in repair, whilst the lessor is responsible for external decorations. Some of the rain

water goods were in poor condition with evidence of plant growth and green staining to the brickwork by one of the downpipes.

19. Flat 1 had been subjected to extensive damp problems: (i) water penetration from the flats above; (ii) rising dampness; and (iii) penetrating dampness through the defective brickwork. We were told that the lessee had arranged for a package of works at his own expense, to make the flat habitable for his family at Christmas.

20. Mr McCarthy had concluded that the external walls were in a fair condition. However, he noted areas of damaged brickwork, and poor pointing. There were also a number of delaminating bricks and poor detailing to the front elevation. Pointing and brick repairs were required to a number of the external staircases. These are illustrated by the photographs taken by Mr McNally on 17 April 2019. It was apparent that the extent of the repairs to the brickwork will only become apparent when the builder is on site.

The Appointment of Mr Davidoff as a Manager

21. On 20 September 2018, a Tribunal appointed Mr Davidoff as a manager for a period of two years in LON/00AC/LVT/2018/0013. On 12 April 2018, Dr and Mrs Phillips had served on the Respondent company a notice under section 22 of the Landlord and Tenant Act 1987 indicating an intention to appoint a manager. The notice set out the perceived failings and gave the Respondent company 28 days in which to correct these shortcomings.

22. On 18 May 2018, Dr Phillips applied to the Tribunal seeking the appointment of a Manager under section 24 of the 1987 Act. The application was opposed by Mr Gogol Kafi (Flats 1A and 6); Ms S Leyser & Ms Angela De Martini (Flat 2); Mr Smair Soor (Flat 4) and Mr V De Mesquita (Flat 5).

23. At the hearing on 6 September 2018, Dr Phillips stated that he had owned the Flat 3 for some 19 years and had found it difficult to deal with the directors as things were not dealt with as they should be. He stated that the windows needed repainting. He had been told that this the responsibility of the individual lessees. There had also been problems with rodents, pipework was decaying, the driveway was uneven, and there had been problems with slates coming loose from the roof and leaks which afflicted Flat 1.

24. Mr Soor gave evidence and accepted that the Property had not been properly managed. He described the application as "a huge wake up call." The lessees accepted that they needed to get "their act together." However, he did not consider that the building was in a bad state of repair.

25. The Tribunal found that the lessor is responsible for the external decoration of the windows. We confirm this finding. The Tribunal was satisfied that there had been breaches of the statutory consultation procedures, accounts had not been properly prepared, and lawful demands had not been made for payment. The problems had been ongoing for many years and despite Dr Phillips' intervention, nothing has been done.

26. Despite the fact that a majority of the lessees opposed the application, the Tribunal concluded that a professional manager was required. Mr Davidoff had been managing Flats 1 and 3 on behalf of Mr Sharma and Mr Phillips and that he would have to relinquish this role. He has done so. The Tribunal made some reductions to the charges that Mr Davidoff had proposed in the draft management order.

27. Dr Davidoff was appointed as manager for a period of two years commencing on 1 October 2018. The Tribunal considered that this should be a sufficient time to enable him to deal with any outstanding issues, to set up proper systems for dealing with the accounts and the payment and retention of service charge monies together also with a reserve fund going forward. At the end of that two year period, it was suggested that the lessees might wish to continue with the appointment of Mr Davidoff.

28. The management order permits Mr Davidoff to bring proceedings on behalf of the Respondent company. Clause 5 provides that the Respondent company and the lessees shall give the manager all reasonable assistance and cooperation. This has not occurred. The management order provided that each lessee should pay £1,000 on account of service charges and a set-up fee of £500. This has been paid. However, five of the lessees have withheld payment of the further service charges which have been demanded. Mr Kafi, as the sole director, has had a particular responsibility to support the manager.

29. In his Management Report prepared for the Tribunal, dated 12 December 2019, Mr Davidoff states that the following sums are owed by the four Respondents who oppose this application: (i) Mr Kafi (Flat 1A): £5,020.16; (ii) Ms Leyser & Ms De Martini (Flat 2): £17,935.49; (iii) Mr Soor (Flat 4): £17,855.36; (iv) Mr Mesquita (Flat 5): £18,189.29; and (v) Mr Kafi (Flat 6): £25,631.80. The lessees of Flats 1 and 3 have paid the sums demanded.

Developments since the appointment was made

30. On 1 October 2018, Mr Davidoff's appointment commenced. He instructed Mr McCarthy to inspect the Property and prepare a PMP. On 2 November, Mr McCarthy inspected the property. He gained access to Flats 1A, 2, 3, 4, 5 and 6. He did not have access to the main roof. His report (at A.36) is dated 16 November. This does not address the damp

problems which have affected Flat 1. He attaches a PMP (at A.55). He proposed two phases:

> (i) Phase 1 planned for 2018/9 at a total cost (including fees, but excluding VAT) of £72.183. He had noted that the pitched roof to the side elevation had been replaced, and therefore recommended that the remainder of the roof was replaced, along with the lead flashings and lead dormer cheeks.
>
> (i) Phase 2 planned for 2022/3 at a total cost (including fees, but excluding VAT) of £21,859.

31. On 22 November 2018, Mr Davidoff's firm, ABC Real Estate ("ABC") served two Notices of Intention to Execute Works. The first (at A.68) related to the external repairs and decorations; the second (at A.164) to health and safety works which are not subject to this application. The proposed works are summarised in Schedule 1 of the Notice. The lessees were invited to nominate a preferred contractor. Responses were required by 27 December. The Notice referred to Mr McCarthy's PMP, a copy of which was subsequently provided to the lessees.

32. On 27 December (at R.1), Mr Soor responded to the Notice. He provided a detailed response to the PMP. He took issue with the proposal to replace the roof. He contended that the Inspection Report was inadequate. There was no photographic evidence. The schedule of condition was inadequate for the tendering process. Mr Soor did not nominate a builder from whom an estimate should be obtained.

33. Mr Davidoff responded on 27 December (at A.216) and 31 December (at A.215). He asked Mr Soor to specify why the inspection was inadequate. He noted that the Report was not intended to be used for tendering purposes. A Specification of Works would be prepared in the New Year. In response to Mr Soor's adversarial and negative approach, he suggested a meeting to discuss the proposed works.

34. In January 2019, Mr McCarthy prepared a Specification of Works (at A.168-175). The Respondents do not accept that this is a Specification of Works (see A.118). We disagree. However, the scope of many of the works was unclear. Thus Item 4.3.1 relates to repointing and specifies "approximate provisional quantity 12.00m2". The builders were not required to price these individual items in the specification. Without a price for this item, the surveyor could not assess what adjustment should be made to the contract price if the required work exceeded this provisional estimate.

35. Estimates were provided from four builders: (i) Hammer & Chisel Ltd: £132,000 inc VAT (at SB.38); (ii) OE Consultancy Ltd: £141,890 (SB.37); (iii) BMS Ltd: £147,864 (SB.33); and (iv) CJAP Ltd: £154,200

(SB.34-6). On 25 November, we directed Mr McCarthy to provide his analysis of the tenders. We have been provided with this at SB.39-42. It is apparent that the tenders were only assessed on price.

36. On 1 February (at A.73-77), ABC served the Stage 3 Notice about Estimates on the lessees. This summarised the observations which had been made by Mr Soor. The Applicant was minded, subject to any observations received from the lessees, to accept the estimate from Hammer & Chisel Ltd. In addition, there would be a supervision fee of 10% for the surveyor and a 5% fee for the managing agent. Observations were invited by 8 March. Strictly, the Notice should only have invited observations in relation to the estimates. However, the covering letter invited observations on both "the works to be carried out and on the estimates".

37. Thereafter, a number of meetings were held. There is a difference in recollection as to what was agreed. On 12 February, Mr Davidoff met Mr Kafi. It was agreed that Mr Kafi and Mr Soor would come up with proposals to phase the works. On 11 March, Mr Smair submitted proposals to spread the works over four years. Mr Davidoff considered this to be unreasonable. On 13 March, Mr McCarthy was asked to provide a revised Schedule of Works identifying which were urgent and which could be carried out a year later. This revised Specification of Works is at SB.12-32.

38. On 1 April, there was a further meeting to discuss the scope of the works. It was agreed to carry out a drone survey of the roof. These photos are at SB.49-61. As a result of this survey, it was decided that the roof did not need to be replaced. Mr Soor contends that it was agreed that Mr McCarthy would provide an updated report clearly indicating what works were required. Mr Davidoff denied this. However, Mr McCarthy did provide a number of photos (at SB.22-72) with comments indicating the repairs that were required. Mr Soor contends that it was agreed that only the rear elevation would be scaffolded in Year 1. Again, this is denied by Mr Davidoff.

39. As a result of these meetings, Mr McCarthy prepared a revised Specification of Works (at A.202-10). The works were split into two phases. The builders were asked to submit revised estimates. Estimates were provided by three builders: (i) CJAP Ltd (18.5.19): £98,280 (SB.73-81); (ii) Hammer & Chisel Ltd (28.5.19): £106,500 (at SB.91-93); and (iii) Valens Ltd (25.5.19): £110,952 (SB.82-90). The builders only quoted for the revised Phase 1 works. On this occasion, the builders did price for the individual items in the specification. CJAP Ltd gave a price of £5,000 for Item 2.1.1, namely replacing the main roof. Mr Davidoff told the Tribunal that this was a provisional sum and that the extent of the work required would be assessed when the scaffolding is erected. We note that Hammer & Chisel priced this item at £4,800, whilst Valens Ltd priced it at £4,250.

40. Mr McCarthy has provided the Tribunal with his analysis of the tenders (at SB.94-6). Again, the analysis is only based on the overall price. It is not possible to compare these tenders with those which had been submitted in January as these tenders had not priced the individual items. Thus, it is not possible to identify the prices which had originally been attributed to Item 2.1.1 or the items which were now deferred to Phase 2. We note that Hammer and Chisel Ltd only reduced their tender from £132,000 to £106,500, whilst CJAP Ltd reduced theirs from £154,200 to £98,280.

41. On 21 May (at A.79-82), ABC served the second Stage 3 Notice about Estimates on the lessees. The Applicant was minded, subject to any observations receive from the lessees, to accept the estimate from CJAP Ltd. Again, observations were invited by 25 June on both the works and the estimates.

42. On 23 May (at R.16), ABC served demands on the lessees for (i) the service charges due for 2019 and (ii) a contribution to the reserve fund for the financial year. Mr Soor contribution, whose contribution is 14%, was required to pay (i) £3,332,28 and (ii) £16,523.02. A budget was enclosed for 2019 in the sum of £141,824 (at R.17). The proposed reserve fund totalled £118,022, £113,022 which relates to the external decorations, roof and drain works which is subject to this application. The letter states that the budget had been agreed "after consultation with your Directors". Mr Davidoff informed the Tribunal that this was an error arising from the use of a template. There had been no consultation with Mr Kafi, the sole director of the Applicant Company.

43. On 29 May, Mr Soor obtained an estimate from Allen Construction (at R.18) for a much more limited package of works in the sum of £2,860. This is restricted to pointing and brickwork repairs. He also obtained a quote for scaffolding to the rear roof at a cost of £2,890 + VAT from "Jason" (at R.20).

44. On 25 June (at A.218), Mr Soor responded to the Stage 3 Notice. This was the last day for a response. He did not address the estimates which had bee obtained. He rather revisited the issues that he had raised in December 2018. Mr McCarthy's Report, dated 2 November 2018, was not "adequate for the purposes of identifying the work that is needed." No specification of works had been prepared. What was required was a detailed specification of works prepared by a competent building surveyor. The required works could be carried out to the rear elevation for £3,000 with a further £3,000 for scaffolding. He was taking advice on an application to the Tribunal to have Mr Davidoff removed as manager. He proposed to pay £1,000 by 31 June, £1,000 by 30 September and a final £1,000 by 31 December 2019. He was not willing to pay the sums demanded. It seems that he has not even paid these more modest sums which were offered.

45. On 26 June, Mr Davidoff made this application to the tribunal. On the same day, there were a series of e-mails. At 07.59 (at R.24), Mr Kafi suggested that it had been agreed that scaffolding would only be erected at the rear of the property. At 07.31 (R.24), Mr Davidoff responded that this had not been agreed. The final quotes had been reduced by £30k because of the more limited works to the roof. He considered the works to be urgent and these needed to be executed during his two year appointment as a manager. At 19.52 (R.26), Mr Soor stated that his understanding had been that scaffolding would only be erected to the rear. On 28 June (at A.223) Mr McCarthy stated that there would be scaffolding at the front and the rear. There would be no scaffolding to the sides as access could be obtained from towers. The Tribunal accepts Mr McCarthy's recollection of what had been agreed.

46. On 6 November 2019, Mr Davidoff served three further Stage 1 Notices of Intention in respect of (i) Electrical works (SB.105); (ii) Works to abate the dampness which was affecting Flat 1 (SB.108); and (iii) Urgent roof replacement works to the roof terrace above Flat 1 boiler room (SB.109). These works are not subject to the current application.

47. Mr Davidoff informed the Tribunal that Mr Shama, the tenant of Flat 1, had carried out significant works to his Flat at his own expense so that the flat was habitable for his wife by Christmas. We were also told that there had been a leak above Flat 5 at the end of November. Again, Mr De Mesquita had arranged for repairs to be executed, absolving the landlord from responsibility.

The Tribunal's Determination

48. There is a single issue for the Tribunal to determine, namely whether we prefer the case advanced by Mr Davidoff or that advanced by Mr Soor and Mr Kafi:

(i) Mr Davidoff contends that the building has been neglected for many years and that major external works proposed to the to the building are required at an estimated cost of £113,022 (including VAT and a 10% supervision fee and a charge of 5% by the manager).

(ii) Mr Soor and Mr Kafi contend that a much more limited package of works is required. These are set out in a quotation from Allen Construction, dated 29 May 2019 at an estimated cost of £2,860 together with scaffolding at an additional cost of £2,890 + VAT.

49. We have set out the history of this matter at some length as Mr Davidoff is in an invidious position. Two of the six lessees applied to the Tribunal for him to be appointed as a manager. This application was opposed by four lessees. Despite, the opposition of the majority, the Tribunal concluded that it was just and convenient to make an appointment. The

management order directed the Management Company and the lessees to give the manager all reasonable assistance and cooperation. This has not occurred in practice.

50. At the Tribunal hearing in 2018, Mr Soor had accepted that the Property had not been properly managed and described the application as "a huge wake up call". However, rather than agree a PMP for the Property, the majority of the lessees have adopted a minimalist approach urging that the majority of the PMP be deferred. They have withheld the payment of service charges which have been lawfully demanded. Without the required funds, the manager cannot put the Property in a proper state of repair. We accept Mr Davidoff's assessment that this was not a case of "can't pay", but rather one of "won't pay". The Respondent's adduced no evidence of financial hardship.

51. In considering the standard of repair, we have regard to the age, character and locality of the building. The Property is a substantial mansion house in a prime location. The Property has lost much of its character because of the past neglect and the ad hoc repairs carried out by the individual lessees. Some flats, particularly Flat 1, have been subjected to significant water penetration. It is in the interests of all lessees to have the Property put in a proper state of repair to protect the value of their leasehold interests.

52. Upon being appointed as manager, Mr Davidoff arranged for Mr McCarthy to inspect the Property and prepare a PMP. Mr Soor complained that Mr McCarthy's report was inadequate. We disagree. Our inspection confirmed that the report accurately reflects the current condition of the Property. There are a number or areas of damaged brickwork and poor pointing. The Property is in a poor decorative condition. There have been a range of problems of water penetration. The extent of any roof repairs will only become apparent when scaffolding has been erected.

53. Mr Soor also criticised the PMP. We have regard to the comments which he has made on his schedule. He complains that the roof was not inspected. Mr Davidoff arranged for the drone survey and has now accepted that roof does not need to be replaced. Mr Soor complained that insufficient detail was provided of a number of the defects. Mr McCarthy has provided his further report which contains a number of photographs which illustrate the details. Mr Davidoff has agreed to phase the works over two years. We suspect that this may merely increase the overall cost of the works.

54. Mr Soor complained that the lessees had not been afforded an opportunity to nominate a builder from whom an estimate should be obtained. This opportunity had been afforded in the Stage 1 Notice. The lessees did not avail themselves of the of the opportunity to nominate a

builder. We are satisfied that Mr Davidoff has complied with the statutory consultation requirements.

55. We have criticised some aspects of the tendering process. However, when the second set of tenders were returned, the builders were asked to price the individual items. The Respondents criticise the Specification of Works prepared by Mr McCarthy and suggest that it is not fit for purpose. We disagree. Whilst the scope of some of the works is not entirely clear, Mr McCarthy assured the Tribunal that he would have a meeting on site with the contractor before a contract is signed.

56. When the second Stage 3 Notice about Estimates were served, the Respondents did not afford themselves of the opportunity to make any observations on these. Mr Soor and Mr Kafi rather sought to challenge the scope of the proposed works. It is a matter of regret that the Respondents did not have greater regard to the statutory framework provided for by the Consultation Regulations. The Stage 1 Notice of Intention provided the lessees with the opportunity to make representations on the scope of the works. They made such representations and Mr Davidoff amended the Schedule of Works in the light of those representations. The landlord, or in this case the Tribunal appointed manager, has the ultimate responsibility to determine the scope of any required repairs, provided that that discretion is exercised reasonably.

57. There is a difference of recollection of what was agreed at various meetings. Where such differences arise, we prefer the evidence of Mr Davidoff and Mr McCarthy.

58. We are satisfied that the limited works for which the Respondents contend are wholly inadequate to put this property in a proper state of repair. A comprehensive package of external decorations was last carried out in the late 1980s. We are further satisfied that had the Respondents cooperated with Mr Davidoff as required by the management order, this application would not have been necessary.

59. The Respondents must have regard to the terms of their leases which govern the respective responsibilities of lessor and lessee. Where there is disrepair which falls within the responsibility of the landlord, the lessees should report it to the manager so that the works can be put in hand. The Respondents must also recognise their responsibility to pay the service charges which they are required to pay pursuant to the terms of their leases. These are high value flats. This Tribunal would not have appointed Mr Davidoff as manager, unless it had been satisfied that this was required to ensure that the Property is put in a proper state of repair and is properly managed.

Application under s.20C and Refund of Fees

60. The Respondents seek an order under section 20C of the 1985 Act so that the manager may not pass any of its costs incurred in connection with the proceedings before the tribunal through the service charge. We decline to make such an order as we are satisfied that this application has been properly brought. The manager will therefore be able to pass on the cost of this application through the service charge.

61. The Respondents also seek an order under paragraph 5A of the Commonhold and Leasehold Reform Act 2002. This is not appropriate as the manager does not seek to enforce his costs against the Respondents as an administration charge.

62. The Tribunal makes no order in respect of the tribunal fees pursuant to Rule 13(2) of the Tribunal Procedure (First-tier Tribunal) (Property Chamber) Rules 2013. It will be open to the manager to pass on these costs through the service charge account.

Judge Robert Latham
27 February 2020

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 lessees 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 lessees 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 lessees 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 lessees, 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.